The original documents are located in Box 5, folder "Busing (9)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

June 22, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON
ED SCHMULTS

SUBJECT: School Desegregation Standards and Assistance Act of 1976

Attached at Tab A you will find the final version of the Justice Department's "anti-busing" legislation and a summary of its major provisions. Attached at Tab B you will find a memorandum from Solicitor General Bork on the constitutionality of the legislation.

Three provisions of the Justice bill differ significantly from the draft which was first discussed with you a number of weeks ago. The first of these changed provisions is presented for your information and the latter two are presented for your decision. The Attorney General made these changes in the bill after consulting with a number of constitutional law professors, namely Herbert Wechsler of Columbia, Paul Mishkin of Berkeley, Francis Allen of Michigan, and Paul Freund of Harvard. He also carefully took into account the comments made at the meetings with community leaders and school officials in the Cabinet Room.

KEY CHANGES

1. Official Acts of Other Local or State Agencies or Officers

Section 4(b), Title I of the final version permits consideration of unlawful acts of discrimination by local or State agencies or officers other than education agencies or officers in determining court-ordered remedies, provided that the court finds:

(a) that the acts were committed for the "specific purpose of maintaining, increasing or controlling" the degree of student racial concentration in the schools [emphasis added]; and

(b) that this finding is supported by evidence "other than the effects of such acts or knowledge of such effects alone."

The original bill did not permit inclusion of official acts by entities other than school authorities based on the belief that it was inequitable to require school children and our educational systems to bear the burden of rectifying unlawful acts of discrimination by housing authorities, zoning boards, etc. However, after consulting with the constitutional law professors, the Attorney General decided to include those unlawful acts of other local or state governmental entities or officers which had a specific segregative purpose in the educational arena. This decision was made in order to bolster the constitutionality of the legislation and is consistent with the Supreme Court ruling in Washington v. Davis on June 7, 1976 in which the Court held that an official act is not unconstitutional solely because it has a racially disproportionate impact. A racially discriminatory purpose must be shown, though such a purpose may often be inferred from the total record.

2. Evidentiary Burden of Going Forward Placed on Defendant

Under Section 6(c), Title I of the final version, the defendant educational agency has the initial burden of going forward at the remedy phase to introduce evidence concerning the degree to which the student racial concentration of the schools within the jurisdiction "is reasonably attributable to factors other than the act or acts of unlawful discrimination" that had been found only in certain specific schools in the liability phase. If that burden is met by the local or State education agency, the remedy shall not be based on a presumption of system-wide unlawful discrimination.

This change was made by the Attorney General, again after consultation with the law professors, as a matter fairness to the plaintiffs and is probably not required as a constitutional matter. The consensus was that an unduly

difficult burden was being placed on the plaintiffs by not requiring some form of evidentiary burden on the defendant at the remedial stage.

Should the defendant school board fail to satisfy the burden of going forward, the court could then employ a Keyes-type presumption*/ in determining that the unlawful act or acts of the board impacted on a particular school or school system. Even in using a Keyes-type presumption, however, the court would still be guided by the rule that the relief be no more extensive than that necessary to adjust the racial composition of the school or school system to what it would have been in normal course. Nevertheless, it should be kept in mind that some courts might choose to interpret the Section 6 provisions as allowing a presumption of system-wide unlawful discrimination.

Option

Approve the placement of an initial evidentiary burden of going forward upon the defendant. This change is recommended by the Attorney General and concurred in by the Domestic Council, the Counsel's Office and HEW.

Approve _____

Disapprove _____

Comment _____

_____

*/The Court held in the case of Keyes v. School District No. 1. Denver, 413 U.S. 188 (1973) that:

> "a finding of intentionally segregative school board actions in a meaningful portion of a school system . . . creates a presumption that other segregated schooling within the system is not adventitious. It establishes, in other words, a prima facie case of unlawful segregative design on the part of school authorities, and shifts to those authorities the burden of proving that other segregated schools within the system are not also the result of intentionally segregative actions."

3. Five-Year Limitation on Court-Ordered Remedy of Assignment and Transportation of Students Unless There is A Finding of "Extraordinary Circumstances"

Under Section 8, Title I of the Justice bill, a court-imposed requirement for assignment and transportation of students shall be terminated on motion of any party affected by it after three years, except as follows:

(a) the court finds at the expiration of the three-year period that the defendant had failed to comply with the requirement and other provisions of the court's order "substantially and in good faith." If that finding is made, the court may extend the assignment and transportation requirement until there has been three consecutive years of such compliance; or

(b) if the court finds at the expiration of the three-year period (and of any extension under the principles of (a) above) that the other provisions of its order and other possible remedies are "not adequate to correct the effects of unlawful discrimination" and that the transportation requirement remains necessary for that purpose, it may continue that requirement for two additional years of substantial and good faith compliance; and

(c) after the above five-year period, the court may continue the transportation requirement, as a "transitional means of last resort," if it is necessary "for a specific limited period" to meet "extraordinary circumstances caused by unexpected failure or delay of other remedial efforts."

It is the position of the Attorney General that the utilization of the assignment and transportation of students as a remedy can impose serious burdens on the children affected and on the resources of the school system if it becomes unduly extensive in either scope or duration. The result can be the impairment of the quality of education for all students, which quality the Attorney General believes is

essential to overcome past discrimination and to achieve true equality of opportunity and equal protection of the laws. For these reasons, the Attorney General has taken the position that a busing remedy should not be utilized when necessary as an interim and transitional remedy. The five-year limitation is designed to prevent that remedy from becoming a permanent feature of a school system.

It is important to note that substantial and good faith compliance is required under the legislation in order for a school board to complete the five-year period and that a transportation requirement can be imposed for an additional period of time if there is an unexpected failure or delay in other remedial efforts that were instituted to rectify the constitutional violation since this would constitute "extraordinary circumstances" under the legislation.

Option

That you approve the five-year limitation on court-ordered assignment and transportation of students unless there is a finding of"extraordinary circumstances." This option is recommended by the Attorney General and is concurred in by the Domestic Council, the Counsel's Office and HEW.

Approve _____

Disapprove _____

Comment _____

SUMMARY OF MAJOR PROVISIONS OF
SCHOOL DESEGREGATION STANDARDS ACT OF 1976

(1) Court-ordered remedies to eliminate the present effects of acts of unlawful discrimination on racial concentration of students are limited to that which is "reasonably necessary" to: (a) adjust the racial composition of the particular schools where the discrimination occurred to what it would have been had no such unlawful acts occurred; or, if that is not feasible, to (b) adjust the overall pattern of student racial concentration in the school system to what it would have been had no such unlawful acts occurred.

(2) In the remedy stage, a hearing is required in which the burden of going forward is initially upon the local or State education agencies to introduce evidence concerning the degree to which the student racial concentration of the schools within the jurisdiction "is reasonably attributable to factors other than the act or acts of unlawful discrimination" that had been found only in certain specific schools in the liability phase. If that burden is met by the local or State education agency, the remedy shall not be based on a presumption of system-wide unlawful discrimination.

(3) Court-ordered remedies under the principle enunciated in (1) above shall be restricted to acts of the local or State education agency with jurisdiction over the schools to which the remedy is applied, with the following exception: the court finds that to the extent permissible under present law,

(a) that the acts were committed for the "specific purpose of maintaining, increasing, or controlling" the degree of student racial concentration in the schools [Emphasis added.]; and

(b) that this finding is supported by evidence other than the effects of such acts or knowledge of such effects alone."

(4) A court-imposed requirement for assignment and transportation of students shall be terminated on motion of any party affected by it after three years, except as follows:

(a) the court finds at the expiration of the three-year period that the defendant had failed to comply with the requirement and other provisions of the court's order "substantially and in good faith." If that finding is made, the court may extend the assignment and transportation requirement until there has been three consecutive years of such compliance; or

(b) if the court finds at the expiration of the three-year period (and of any extension under the principles of (a) above) that the other provisions of its order and other possible remedies are "not adequate to correct the effects of unlawful discrimination" and that the transportation requirement remains necessary for that purpose, it may continue that requirement for two additional years of substantial and good faith compliance; and

(c) after the above five-year period, the court may continue the transportation requirement, as a "transitional means of last resort," if it is necessary "for a specific limited period" to meet "extraordinary circumstances caused by unexpected failure or delay of other remedial efforts."

(5) The Attorney General, in his discretion, may intervene as a party in cases that are covered by this statute or he may appear in such proceedings for the purpose of facilitating enforcement of the statute, including the submission of recommendations (1) for the appointment of a mediator to assist the court, the parties, and the affected community; and (2) for the formation of a committee of community leaders to develop, for the court's consideration in framing a relief order under this statute, a five-year desegregation plan which would "enable required student assignment and transportation to be avoided or minimized during such five-year period and to be terminated at the end thereof."

4

A B I L L

To establish procedures and standards for the framing of relief in suits to desegregate the Nation's elementary and secondary public schools, to provide for assistance to voluntary desegregation efforts, and for other purposes.

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

Title I. Standards and Procedures in School Desegregation Suits.

Sec. 1. Statement of Findings.

The Congress finds --

(a) that discrimination against students, because of their race, color, or national origin, in the operation of the Nation's public schools violates the Constitution and laws of the United States and is contrary to the Nation's highest principles and goals;

(b) that the Constitution and the national interest mandate that the courts of the United States provide appropriate relief to prevent such unlawful discrimination and to remove the continuing deprivations, including the separation of students, because of their race, color or national origin, within or among schools, that such discrimination has caused;

(c) that individuals may, in normal course, choose to associate with others and to reside in certain areas for many reasons and, as the courts have recognized, patterns of concentration, by race, color, or national origin, in the schools that reflect such voluntary, individual choices, rather than the results of unlawful discrimination, neither necessarily render such schools inferior in the quality of education they provide nor in themselves deprive any person of equal protection of the laws;

(d) that the purpose of relief directed to the effects of unlawful discrimination in the operation of the schools is not to compel a uniform balance by race, color, or national origin that would not have existed in normal course from individual voluntary acts, but is, rather, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct, and so to free society and our citizens from the conditions created by unlawful acts.

(e) that, although it has been found necessary in some cases, in order to remedy the effects attributable to unlawful discrimination, to require the assignment and transportation of students to schools distant from their homes, and although such a requirement may be appropriate, as a last resort, to eliminate the effects of unlawful acts that were intended to foster segregation in the schools, such a requirement can, if unduly extensive in scope and duration, impose serious burdens

on the children affected and on the resources of school systems and impair the quality of education for all students that is essential to overcome past discrimination, to achieve true equality of opportunity and equal protection of the laws, and to maintain a free and open society;

(f) that because of its detrimental effects, required student assignment and transportation should be employed only when necessary as an interim and transitional remedy, and not as a permanent, judicially mandated feature of any school system; and

(g) that in view of these conflicting values and consequences, Congress, being responsible for defining by law the jurisdiction of the inferior Federal courts and the remedies they may award in the exercise of the jurisdiction thus conferred and for enacting appropriate legislation to enforce the commands of the Fourteenth Amendment, may prescribe standards and procedures for accommodating the competing human interests involved.

Sec. 2. Purpose: Application.

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

(b) The provisions of this Title shall govern all proceedings, after the date of its enactment, for the award or modification of injunctive and other equitable relief seeking the desegregation of public schools under Federal law and all appeals, pending on the date of its enactment, from judgments awarding, modifying, or denying such relief, but shall not govern proceedings seeking a reduction of such relief awarded in any final order, entered prior to the date of its enactment and not pending on appeal on the date of its enactment, except as provided in Section 8

Sec. 3. Definitions.

For purposes of this Title --

(a) "local education agency" means a local board of public education or any other government agency or officer of a political subdivision of a State responsible for, or exercising control over, the operations of one or more public elementary or secondary schools

(b) "State education agency" means a State board of public education or any other State agency or officer responsible for,

or exercising control over, the operations of one or more public elementary or secondary schools.

(c) "School system" means the schools and other institutions of public education within the jurisdiction of a local or State education agency.

(d) "desegregation" means the prohibition of unlawful discrimination and the elimination of the effects of such discrimination in the operation of its schools.

(e) "unlawful discrimination" means action by a local or State education agency or by any local or State government body, agency, or officer which, in violation of Federal law, is intended to discriminate against students on the basis of race, color or national origin in the operation of the schools, including any action which, in violation of Federal law, is undertaken for the purpose of maintaining, increasing or controlling the present degree of concentration, by race, color, or national origin, in the student population of any school.

(f) "State" means any of the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Panama Canal Zone.

(g) "assignment and transportation of students" means the assignment of students to public schools in such a manner as to require, directly or indirectly, the transportation of students, in order to alter the distribution of students, by race, color, or national origin, among the schools.

Sec. 4. Liability.

A local or State education agency shall be held subject

(a) to relief under Section 5 of this Title if the court finds that such local or State education agency has engaged or is engaging in an act or acts of unlawful discrimination; and

(b) to relief under Section 6 of this Title if the court finds that an act or acts or unlawful discrimination have caused a greater present degree of concentration, by race, color or national origin, in the student population of any school within the jurisdiction of the local or State education agency than would have existed in normal course had no such act occurred; provided:

(i) that no order under Section 6 of this Title shall be based in whole or in part on an act or acts by a local or State agency or officer other than the local or State education agency with jurisdiction over such schools unless the court further finds, on the basis of evidence other than the effects of such acts or knowledge of such effects alone, that the act or acts were committed for the specific purpose of maintaining, increasing, or controlling the degree of concentration, by race, color, or national origin, in the student population of the schools; and

(ii) that nothing in this Title shall be construed as establishing a basis for relief against a local or State education agency not available under existing law or inconsistent with the principles governing equitable relief.

Sec. 5. Relief - Orders prohibiting unlawful acts and eliminating effects generally.

In all cases in which, pursuant to Section 4(a) of this Title, the court finds that a local or State education agency has engaged or is engaging in an act or acts of unlawful discrimination, the court may enter an order enjoining the continuation or future commission of any such act or acts and providing any other relief against such local or State education agency as may be necessary and appropriate to prevent such act or acts from occurring or to eliminate the effects of such act or acts; provided, that any remedy directed to eliminating the effects of such act or acts on the present degree of concentration, by race, color or national origin, in the student population of any school shall be ordered in conformity with Section 6 of this Title.

Sec. 6. Relief - Orders eliminating the present effects of unlawful acts on concentrations of students.

(a) In all cases in which, pursuant to Section 4(b) of this Title the court finds that an act or acts of unlawful discrimination have caused a greater present degree of concentration, by race, color or national origin, than would otherwise have existed in normal course in the student population of any schools within the jurisdiction of a local or State education agency, the court may order against such agency any appropriate relief to remedy the effects reasonably attributable to such acts; accordingly such relief shall be no more extensive than that reasonably necessary to adjust the composition by race, color or national origin of the particular schools so affected or, if that is not feasible, the overall pattern of student concentration by race, color or national origin in the school system so affected substantially to what it would have been in normal course, as determined pursuant to this Section, had no such act or acts occurred.

(b) Before entering an order under this Section the court shall conduct a hearing and, on the basis of such hearing, shall make specific findings concerning the degree to which the concentration, by race, color or national origin, in the student population of particular schools affected by unlawful acts of discrimination presently varies from what it would have been in normal course had no such acts occurred. If such findings as

to particular schools are not feasible, or if for some other reason relief cannot feasibly be fashioned to apply only to the particular schools that were affected, the court shall make specific findings concerning the degree to which the overall pattern of student concentration, by race, color or national origin, in the school system affected by such acts of unlawful discrimination presently varies from what it would have been in normal course had no such acts occurred.

(c) In any hearing conducted pursuant to subsection (b) of this section the local or State education agency shall have the burden of going forward, by the introduction of evidence concerning the degree to which the concentration, by race, color or national origin, in the student population of particular schools, or the overall pattern of student concentration by race, color, or national origin in the school system, is reasonably attributable to factors other than the act or acts of unlawful discrimination found pursuant to subsection 4(b) of this Title. If such evidence is introduced, the findings required by subsection (b) of this section shall be based on conclusions and reasonable inferences from all of the evidence before the court, and shall not be based on a presumption, drawn from the finding of liability made pursuant to subsection 4(b) of this Act or otherwise, that the concentration, by race, color or national origin, in the student population of any particular school or the overall pattern of concentration in the

school system as a whole is the result of acts of unlawful discrimination.

(d) If any order entered under this Section is based, in whole or in part, on an act or acts of unlawful discrimination by a local or State agency or official other than a local or State education agency, the court shall state separately in its findings the extent to which the effects found and the relief ordered pursuant to the requirements of this Section are based on such act or acts.

(e) In all orders entered under this Section the court may, without regard to the other requirements of this Section, (1) approve any plan of desegregation, otherwise lawful, that a local or State education agency voluntarily adopts, and (2) direct a local or State education agency to institute a program of voluntary transfers of students from schools in which students of their race, color, or national origin are in the majority to schools in which students of their race, color or national origin are in the minority.

Sec. 7. Voluntary action; local control.

All orders entered under Section 6 shall rely, to the greatest extent practicable and consistent with effective relief, on the voluntary action of school officials, teachers and students, and the court shall not remove from a local or State education agency its power and responsibility to control the operations of the schools except to the minimum extent necessary to prevent

unlawful discrimination by such agency or to eliminate the present effects of acts of unlawful discrimination.

Sec. 8. Review of orders.

(a) In all cases in which a court-imposed requirement for assignment and transportation of students has remained in effect for a period of three years from the date of entry of the order containing such requirement or, in the case of all final orders entered prior to and not pending on appeal on the date of enactment of this Act, from the effective date of this Act, the court shall, on motion of any party or person affected by such requirement, terminate the requirement unless:

(i) the court finds that the local or State education agency has failed to comply with the requirement and other provisions of the court's order substantially and in good faith for the three preceding years, in which case the court may extend the requirement until there have been three consecutive years of such compliance; or

(ii) the court finds, at the expiration of such period and of any extension under (i) above, that the other provisions of its order and other possible remedies are not adequate to correct the effects of unlawful discrimination, determined in accordance with Section 6 of this Title, and that the requirement remains necessary for that purpose, in which case the court may continue the requirement in effect, with or without modification, until the local or State education agency has complied with the requirement substantially and in good faith for two additional years; provided, that thereafter the court may continue

the requirement in effect, with or without modification, as a transitional means of last resort, for a specific, limited period necessary to meet extraordinary circumstances caused by unexpected failure or delay of other remedial efforts.

(b) If a court-imposed requirement for assignment and transportation of students has terminated and thereafter the court finds -

(i) that the local or State education agency, subsequent to the termination, has failed to comply substantially and in good faith with other provisions of the court's order; or

(ii) that an act or acts of unlawful discrimination, as defined in Section 4(b), have occurred since the termination and have caused a greater present degree of concentration, by race, color, or national origin, than would otherwise have exited in normal course;

the court may, if no other remedy is sufficient, require assignment and transportation of students to the extent and for such limited time as may be necessary to remedy the effects found, pursuant to Section 6 of this Title, to be reasonably attributable to such failure or to such act or acts, and any such requirement shall be reviewed and subject to termination at least annually.

Sec. 9. Effect of subsequent shifts in population.

Whenever any order governed by Section 6 of this Title has been entered, and thereafter residential shifts in population occur which result in changes in student distribution, by race, color or national origin, in any school affected by such order, the court shall not require modification of student assignment plans then in effect in order to reflect such changes, unless the court finds, pursuant to Section 6, that such changes result from an act or acts of unlawful discrimination.

Sec. 10. Intervention.

(a) The court shall notify the Attorney General of any proceeding to which the United States is not a party in which the relief sought includes that covered by Section 6 of this title, and shall in addition advise the Attorney General whenever it believes that an order requiring the assignment and transportation of students may be necessary.

(b) The Attorney General may, in his discretion, intervene as a party in such proceeding on behalf of the United States, or appear in such proceeding for such special purpose as he may deem necessary and appropriate to facilitate enforcement of this Title, including the submission of recommendations (1) for the appointment of a mediator to assist the court, the parties, and the affected community, and (2) for the formation of a committee of community leaders to develop, for the court's consideration in framing any order under Section 6 of this Title, a five-year desegregation plan, including such elements as relocation of schools, with specific dates and goals, which would enable required student assignment and transportation to be avoided or minimized during such five-year period and to be terminated at the end thereof.

Sec. 11. If any provision of this Title, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the provisions of this Title and the application of such provision to any other person or circumstances shall not be affected thereby.

THE CONSTITUTIONALITY OF THE PROPOSED BILL TO ESTABLISH PROCEDURES AND STANDARDS FOR THE FRAMING OF RELIEF IN SUITS TO DESEGREGATE THE NATION'S ELEMENTARY AND SECONDARY SCHOOLS

1. This bill is an exercise of the historic power of Congress to deal with remedies employed by the federal courts. It would be enacted pursuant to the power of Congress under Section 5 of the Fourteenth Amendment to provide for appropriate remedies to enforce the rights secured by that Amendment.

The distinction between the rights secured by the Constitution (which Congress cannot change) and legislative discretion to devise remedies to vindicate those rights is well recognized. As Professor Henry M. Hart, Jr., explained (Hart, The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic, 66 Harvard L.Rev. 1362, 1366 (1953)):

> The denial of <u>any</u> remedy is one thing. . . . But the denial of one remedy while another is left open, or the substitution of one for another, is very different. It must be plain that Congress necessarily has a wide choice in the selection of remedies, and that a complaint about action of this kind can rarely be of constitutional dimension. . . . [T]he basic reason, I suppose, is the great variety of possible remedies and the even greater variety of reasons why in different situations a legislature can fairly prefer one to another.

And with specific reference to school desegregation cases, former Solicitor General Archibald Cox has concluded (Cox, The Role of Congress in Constitutional Determinations, 40 Univ. of Cincinnatti L.Rev. 199, 258-259 (1971): "The scope and character of the relief to be afforded, however, seems well within the sphere open to congressional action under section 5." Indeed, Professor Cox specifically stated: "It seems irrelevant whether the relief is greater or lesser than the courts would order. In either event the relief is not part of the Constitution."

These views reflect the Supreme Court's own distinction between rights and remedies in school desegregation decisions. It is significant that in the two Brown v. Board of Education opinions, 347 U.S. 483 (1954) ("Brown I") and 349 U.S. 294 (1955) ("Brown II"), the Court dealt with the basic constitutional right in one opinion and the question of remedies in another, during different Court Terms. While Brown I states an inflexible constitutional objection to de jure segregation, Brown II stresses the flexibility appropriate in fashioning remedies. However regrettable, it is obvious, for example, that little can be done to recompense the countless victims of school discrimination who have already

finished their schooling. And it is universally assumed that there is nothing unconstitutional in not providing a damage remedy for the graduates of discriminatory school systems.

Accordingly, in adopting a remedial approach to school desegregation cases, the Court in Brown II recognized that it had entered a field where judgment, prudence, discretion, and awareness of differing situations and competing values were required. It stated (349 U.S. at 300, emphasis added):

> In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. [Brown I] Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

These themes are prominent also in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971), in which Chief Justice Warren Burger, writing for a unanimous Court, undertook to frame general guidelines for desegregation decrees. The Chief Justice's opinion notes that, since Brown I, "district courts and courts of appeals have struggled in hundreds of cases with a multitude and variety of problems under this Court's general directive. Understandably, in an area of evolving remedies, those courts had to improvise and experiment without detailed or specific guidelines" (402 U.S. at 2). The opinion thus recognizes that the cases on desegregation decrees deal essentially with questions of remedies and that the area does not involve a flat constitutional rule. Courts are obliged to "improvise and experiment without detailed or specific guidelines." That is obviously the language of discretion and remedy rather than the language of basic constitutional right.

Later in the opinion, the chief justice said that "a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing

of the individual and collective interests, the condition that offends the Constitution" (402 U.S. at 11; emphasis added).

Thus, with respect to school desegregation, as in other fields (see, e.g., Bank of Columbia v. Okeley, 4 Wheat. 235, 245 (1819); United States v. Union Pacific R.R. Co., 98 U.S. 569 (1878); Bivens v. Six Unknown Agents, 403 U.S. 388, 397 (1971); id. at 421 (dissenting opinion)), there is room for considerable legislative discretion in devising appropriate remedies, so long as the basic constitutional guaranty is effectuated.

2. The proposed Bill would provide for appropriate means to vindicate the constitutional right against discrimination in the operation of the public schools. The only provisions of the Bill which possibly could be questioned in that regard are the proviso in Section 4(b), Section 6, Section 8, and Section 9. Each of these provisions will be discussed in turn.

The proviso in Section 4(b) restricts the use of school desegregation remedies to the relief of unlawful discrimination in the operation of the schools and its effects, and prohibits the use of school remedies for the alleviation of such non-school violations as housing discrimination unless that discrimination was engaged in for the specific purpose of its effect on the schools. This is entirely appropriate in light of the fact that

Congress has enacted other laws to rectify residential discrimination. See 82 Stat. 81 et seq., 42 U.S.C. 3601 et seq. It is certainly permissible for Congress to decide that racial discrimination in housing should be attacked and eliminated directly as speedily as possible from our society, but that its effects ought not to be the object of a "collateral attack" in school cases. Indeed, as the Supreme Court observed in Swann, supra, 402 U.S. at 22-23:

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

Section 6 of the Bill provides a procedurally fair method for restricting the remedy in school cases to eliminating the segregatory effects that are reasonably attributable to the violations that occurred. There can be nothing constitutionally inadequate about a remedy that is specifically designed to restore the situation that would have occurred if the school authorities had complied with all their obligations under the Constitution and federal law. Indeed, the Supreme Court has already stated in Milliken v. Bradley, 418 U.S. 717, 746, that the remedy in school desegregation cases "is necessarily designed, as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." Section 6 merely provides a method for more effective and uniform implementation of that principle.

Section 6(e)(1) recognizes, in accordance with McDaniel v. Barresi, 402 U.S. 39, that a school board may voluntarily adopt a more extensive desegregation plan than a court could otherwise require. And Section 6(e)(2) authorizes a court to utilize a requirement of voluntary transfer options as a safeguard against the possibility of non-apparent, additional residual segregatory effects of the school discrimination being relieved. The race-

consciousness involved in administering these provisions is constitutionally permissible under North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43.

Section 8 would reflect a legislative judgment that court-required assignment and transportation of students should ordinarily not be required for an extended period of years in order to achieve the objective of restoring the school system to the situation that would have occurred in the absence of the violations. Periodic review of the decree with a view to the elimination or modification of the assignment and transportation requirement will stimulate the more effective use of other methods, such as new construction and revision of attendance zones, to achieve the purpose of creating a non-discriminatory school system in which the effects of prior discrimination in the operation of the schools have been eliminated. The prescribed time limitations contain sufficient flexibility to provide for extension of court-ordered transportation in situations involving non-compliance with the decree or extra-ordinary residual effects of the violation that cannot be eliminated without such an extension. Of course, the Bill would not prevent a court from ordering relief anew to rectify a new

violation, but any such relief would be tailored solely to the elimination of the new violation and its effects.

The temporal judgment expressed by Congress in Section 8 would serve to implement the following observation by the Supreme Court in Swann (402 U.S. at 32):

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems will then be "unitary" in the sense required by our decisions in Green and Alexander.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary.

Section 9 of the Bill merely restates one of the principles relied on in this portion of the Supreme Court's opinion in Swann.

THE WHITE HOUSE

WASHINGTON DECISION

June 22, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Busing: Outstanding Issues

While we are working with the Attorney General to complete the legislation, two related issues dealing with how Secretary Mathews' proposal for a National Community and Education Committee should be presented need to be resolved.

The two issues are:

1. Should the HEW proposal be created by legislation or by Executive Order?

2. If legislation is preferred, should it be joined with the Attorney General's proposal in one bill or should it be a separate bill transmitted to Congress along with the Attorney General's bill?

DISCUSSION

1. Should Secretary Mathews' proposal for a National Community and Education Committee be created by legislation or by Presidential executive order?

   Secretary Mathews' original suggestion was that you create, by executive order, a National Community and Education Committee. While the Secretary continues to prefer this procedure, he has also drafted a bill to create the Committee should you decide to ask for legislation.

   The advantages of proceeding by executive order are:

   a. You could create the Committee by your own administrative act, thus demonstrating your commitment and willingness to take the lead in this important area and your appreciation of the fact that the Committee is needed now; and

b. Under an executive order, the program may be modified (or eventually terminated) to accommodate changing circumstances more easily than would be the case if it had been established by legislation.

On the other hand, the advantages of proceeding by legislation are:

a. It would enable you to secure Congressional endorsement of the concept of a National Community and Education Committee (which is particularly relevant since Congress will have to appropriate funds for the Committee); and

b. With the added weight of the Congress behind it, the Committee would enjoy an enhanced stature which, hopefully, would improve its capacity to function effectively.

Staff Comments

Jack Marsh: Proceed with Executive Order

Robert Hartmann: Proceed with Executive Order. "This Congress will never help President in 1976."

Paul O'Neill: Seek legislation

Ed Schmults: Recommend legislation

Max Friedersdorf: Recommend Executive Order

Recommendation: I recommend legislation so that Congress specifically has the opportunity of reacting to each proposal.

Decision: Proceed with Mathews' proposal via:

_____ Executive Order

_____ Legislation

* * *

2. If you decide to proceed with Secretary Mathews' proposal in legislative form, should it be joined with the Attorney General's proposal in one bill, or should the two proposals be submitted as separate bills?

Secretary Mathews has suggested that we submit his proposal as a separate bill. He believes that, while there clearly is an interrelationship between the two proposals, the ideas embodied in the two are sufficiently distinct as to warrant their separate consideration.

The advantages of two bills are:

a. Separate bills would be referred to the Judiciary and Labor and Education Committees respectively, making it possible for Congress to act more swiftly.

b. The two measures complement each other, but either would be a significant step forward if the other is not passed.

The Attorney General has suggested that the proposals be combined and sent to the Congress as one bill.

The advantage to a single bill is:

a. One bill will present a more balanced combination of community assistance and limitation on courts.

Staff Comments

Robert Hartmann: If legislation is preferred, submit proposals as one bill.

Paul O'Neill: Send two bills. "...if Mathews' idea is incorporated in the 'single' bill, it will be swamped by the criticism of the restraints on busing."

Ed Schmults: Recommends a single bill as a "more effective presentation of President's position." He argues that if two bills are submitted:

-- "the media and others will soon lose interest in the National Community and Education Committee and the busing proposal will be subjected in the following months to one-sided criticism."

-- "the National Community and Education Proposal would move forward in the legislative process but the busing proposal would be stalled, thereby diminishing the President's principal effort to do something about court ordered forced busing."

Recommendation: I would urge that you transmit via one message two distinct bills in order to avoid jurisdictional battles bogging down any action and to enable each proposal to proceed on its own merits.

Decision: Submit the proposals as:

_____ One Bill

_____ Two Separate Bills

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 22, 1976

MEMORANDUM FOR: Jim Cannon

FROM: Art Quern and Dick Parsons

SUBJECT: Proposed Legislation to Limit the Remedial Authority of Federal Courts in School Desegregation Cases

As you know, we continue to believe that it is neither in the country's best interest nor the President's to send the subject legislation to Congress. First of all, as a matter of policy, we believe the bill is wrong in its approach. It seeks not to resolve the underlying problems, which are great indeed, but to deprive the courts of a tool they need to cope with those problems until they are resolved. Secondly, we believe that the bill proceeds on the basis of assumptions that are not supported by facts. Thirdly, we are concerned about the symbolic value of the bill; that it may stiffen the resolve of those who would resist desegregation. Nevertheless, accepting the inevitability of submission of the bill, we would like to share with you two observations on the bill which we feel you should be aware of.

1. Can the bill work?

As you know, the bill proceeds from the premise that the appropriate role for the courts is simply to place the parties where they would have been but for some unlawful conduct. This is easy to say, but in the instant context not so easy to achieve. A great number of people, including several former judges with whom we have spoken, do not believe it is realistic to expect a Federal District Court Judge to be able to reconstruct the student population within a school system as it would have existed but for some unlawfully discriminatory actions on the part of a school board. This is not simply a matter of determining how many individuals were directly affected at the time the discriminatory act was perpetrated, or of determining how many students would today be affected if such an act was voided. What this bill will require is for a judge to attempt to determine how a community would have evolved over the course of years in the absence of a policy designed to maintain segregated schools. In truth and in fact, we do not believe this can be done and we would not be surprised if the bill were simply found to be unworkable by the courts.

2. Is the five-year cut-off appropriate?

In essence, the bill provides that a court may not require student transportation for more than five years, unless it finds that "extraordinary circumstances" required an extension of the five-year period. "Extraordinary circumstances" has been defined to mean the unexpected failure or delay of other remedial efforts (which we don't entirely understand). In this regard, the bill looks at busing not as a remedy intended to right a wrong but as a sanction intended to punish a wrongdoer. If looked at in this way, one can rationalize the five-year cut-off on the basis that the wrongdoer has been sufficiently punished; however, we believe this is an inappropriate way to view the matter. We think busing is and always has been a remedy to right a wrong and, while we can appropriately require the courts to periodically review the situation to determine if the remedy continues to be necessary for such purpose, we cannot (or at least should not) deny the courts the right to use this remedy for so long as it remains necessary. To the argument that busing is a "transitional" remedy, we would respond that all remedies are transitional; that is, they may appropriately be applied only until the wrong complained of is completely righted.

You may wish to share some or all of these views with the President.

PENULTIMATE DRAFT 6/22/76

A B I L L

To establish procedures and standards for the framing of relief in suits to desegregate the Nation's elementary and secondary public schools, to provide for assistance to voluntary desegregation efforts, and for other purposes.

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

Title I. Standards and Procedures in School Desegregation Suits.

Sec. 1. Statement of Findings.

The Congress finds --

(a) that discrimination against students, because of their race, color, or national origin, in the operation of the Nation's public schools violates the Constitution and laws of the United States and is contrary to the Nation's highest principles and goals;

(b) that the Constitution and the national interest mandate that the courts of the United States provide appropriate relief to prevent such unlawful discrimination and to remove the continuing deprivations, including the separation of students, because of their race, color or national origin, within or among schools, that such discrimination has caused;

(c) that individuals may, in normal course, choose to associate with others and to reside in certain areas for many reasons and, as the courts have recognized, patterns of concentration, by race, color, or national origin, in the schools that reflect such voluntary, individual choices, rather than the results of unlawful discrimination, neither necessarily render such schools inferior in the quality of education they provide nor in themselves deprive any person of equal protection of the laws;

(d) that the purpose of relief directed to the effects of unlawful discrimination in the operation of the schools is not to compel a uniform balance by race, color, or national origin that would not have existed in normal course from individual voluntary acts, but is, rather, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct, and so to free society and our citizens from the conditions created by unlawful acts.

(e) that, although it has been found necessary in some cases, in order to remedy the effects attributable to unlawful discrimination, to require the assignment and transportation of students to schools distant from their homes, and although such a requirement may be appropriate, as a last resort, to eliminate the effects of unlawful acts that were intended to foster segregation in the schools, such a requirement can, if unduly extensive in scope and duration, impose serious burdens

Sec. 2. Purpose: Application.

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

(b) The provisions of this Title shall govern all proceedings for the award or modification of injunctive and other equitable relief, after the date of its enactment, seeking the desegregation of public schools under Federal law, but shall not govern proceedings seeking a reduction of such relief awarded prior to the date of its enactment except as provided in Section 8.

Sec. 3. Definitions.

For purposes of this Title --

(a) "local education agency" means a local board of public education or any other government agency or officer of a political subdivision of a State responsible for, or exercising control over, the operations of one or more public elementary or secondary schools.

(b) "State education agency" means a State board of public education or any other State agency or officer responsible for,

or exercising control over, the operations of one or more public elementary or secondary schools.

(c) "School system" means the schools and other institutions of public education within the jurisdiction of a local or State education agency.

(d) "desegregation" means the prohibition of unlawful discrimination and the elimination of the effects of such discrimination in the operation of the schools.

(e) "unlawful discrimination" means action by a local or State education agency or by any local or State government body, agency, or officer which, in violation of Federal law, is intended to discriminate against students on the basis of race, color or national origin in the operation of the schools, including any action which, in violation of Federal law, is undertaken for the purpose of maintaining, increasing or controlling the present degree of concentration, by race, color, or national origin, in the student population of any school.

(f) "State" means any of the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Panama Canal Zone.

(g) "assignment and transportation of students" means the assignment of students to public schools in such a manner as to require, directly or indirectly, the transportation of students, in order to alter the distribution of students, by race, color, or national origin, among the schools, but does not include the assignment of any student to the school nearest or next nearest his or her residence and serving the grade he or she is attending, even if the local or State education agency provides transportation to enable

the student to reach that school.

Sec. 4. Liability.

A local or State education agency shall be held subject

(a) to relief under Section 5 of this Title if the court finds that such local or State education agency has engaged or is engaging in an act or acts of unlawful discrimination; and

(b) to relief under Section 6 of this Title if the court finds that an act or acts or unlawful discrimination have caused a greater present degree of concentration, by race, color or national origin, in the student population of any school within the jurisdiction of the local or State education agency than would have existed in normal course had no such act occurred; provided:

(i) that no order under Section 6 of this Title shall be based in whole or in part on an act or acts by a local or State agency or officer other than the local or State education agency with jurisdiction over such schools unless the court further finds, on the basis of evidence other than the effects of such acts or knowledge of such effects alone, that the act or acts were committed for the specific purpose of maintaining, increasing, or controlling the degree of concentration, by race, color, or national origin, in the student population of the schools; and

(ii) that nothing in this Title shall be construed as establishing a basis for relief against a local or State education agency not available under existing law or inconsistent with the principles governing equitable relief.

Sec. 5. Relief - Orders prohibiting unlawful acts and eliminating effects generally.

In all cases in which, pursuant to Section 4(a) of this Title, the court finds that a local or State education agency has engaged or is engaging in an act or acts of unlawful discrimination, the court may enter an order enjoining the continuation or future commission of any such act or acts and providing any other relief against such local or State education agency as may be necessary and appropriate to prevent such act or acts from occurring or to eliminate the effects of such act or acts; provided, that any remedy directed to eliminating the effects of such act or acts on the present degree of concentration, by race, color or national origin, in the student population of any school shall be ordered in conformity with Section 6 of this Title.

Sec. 6. Relief - Orders eliminating the present effects of unlawful acts on concentrations of students.

(a) In all cases in which, pursuant to Section 4(b) of this Title the court finds that an act or acts of unlawful discrimination have caused a greater present degree of concentration, by race, color or national origin, than would otherwise have existed in normal course in the student population of any schools within the jurisdiction of a local or State education agency, the court may order against such agency any appropriate relief to remedy the effects reasonably attributable to such acts; accordingly such relief shall be no more extensive than that reasonably necessary to adjust the composition by race, color or national origin of the particular schools so affected or, if that is not feasible, the overall pattern of student concentration by race, color or national origin in the school system so affected substantially to what it would have been in normal course, as determined pursuant to this Section, had no such act or acts occurred.

(b) Before entering an order under this Section the court shall conduct a hearing and, on the basis of such hearing, shall make specific findings concerning the degree to which the concentration, by race, color or national origin, in the student population of particular schools affected by unlawful acts of discrimination presently varies from what it would have been in normal course had no such acts occurred. If such findings as

to particular schools are not feasible, or if for some other reason relief cannot feasibly be fashioned to apply only to the particular schools that were affected, the court shall make specific findings concerning the degree to which the overall pattern of student concentration, by race, color or national origin, in the school system affected by such acts of unlawful discrimination presently varies from what it would have been in normal course had no such acts occurred.

(c) In any hearing conducted pursuant to subsection (b) of this section the local or State education agency shall have the burden of going forward, by the introduction of evidence concerning the degree to which the concentration, by race, color or national origin, in the student population of particular schools, or the overall pattern of student concentration by race, color, or national origin in the school system, is reasonably attributable to factors other than the act or acts of unlawful discrimination found pursuant to subsection 4(b) of this Title. If such evidence is introduced, the findings required by subsection (b) of this section shall be based on conclusions and reasonable inferences from all of the evidence before the court, and shall not be based on a presumption, drawn from the finding of liability made pursuant to subsection 4(b) of this Act or otherwise, that the concentration, by race, color or national origin, in the student population of any particular school or the overall pattern of concentration in the

school system as a whole is the result of acts of unlawful discrimination.

(d) If any order entered under this Section is based, in whole or in part, on an act or acts of unlawful discrimination by a local or State agency or official other than a local or State education agency, the court shall state separately in its findings the extent to which the effects found and the relief ordered pursuant to the requirements of this Section are based on such act or acts.

(e) In all orders entered under this Section the court may, without regard to the other requirements of this Section, (1) approve any plan of desegregation, otherwise lawful, that a local or State education agency voluntarily adopts, and (2) direct a local or State education agency to institute a program of voluntary transfers of students from schools in which students of their race, color, or national origin ~~are in the~~ majority to schools in which students of their race, color or national origin are in the minority.

Sec. 7. Voluntary action; local control.

All orders entered under Section 6 shall rely, to the greatest extent practicable and consistent with effective relief, on the voluntary action of school officials, teachers and students, and the court shall not remove from a local or State education agency its power and responsibility to control the operations of the schools except to the minimum extent necessary to prevent

unlawful discrimination by such agency or to eliminate the present effects of acts of unlawful discrimination.

Sec. 8. Review of orders.

(a) In all cases in which a court-imposed requirement for assignment and transportation of students has remained in effect for a period of three years from the date of entry of the order containing such requirement or, in the case of all final orders entered prior to enactment of this Act, from the effective date of this Act, the court shall, on motion of any party or person affected by such requirement, terminate the requirement unless:

(i) the court finds that the local or State education agency has failed to comply with the requirement and other provisions of the court's order substantially and in good faith for the three preceding years, in which case the court may extend the requirement until there have been three consecutive years of such compliance; or

(ii) the court finds, at the expiration of such period and of any extension under (i) above, that the other provisions of its order and other possible remedies are not adequate to correct the effects of unlawful discrimination, determined in accordance with Section 6 of this Title, and that the requirement remains necessary for that purpose, in which case the court may continue the requirement in effect, with or without modification, until the local or State education agency has complied with the requirement substantially and in good faith for two additional years; provided, that thereafter the court may continue

the requirement in effect, with or without modification, as a transitional means of last resort, for a specific, limited period necessary to meet extraordinary circumstances caused by unexpected failure or delay of other remedial efforts and unusually severe residual effects of unlawful acts.

(b) If a court-imposed requirement for assignment and transportation of students has terminated and thereafter the court finds --

(i) that the local or State education agency, subsequent to the termination, has failed to comply substantially and in good faith with other provisions of the court's order; or

(ii) that an act or acts of unlawful discrimination, as defined in Section 4(b), have occurred since the termination and have caused a greater present degree of concentration, by race, color, or national origin, than would otherwise have existed in normal course;

the court may, if no other remedy is sufficient, require assignment and transportation of students to the extent and for such limited time as may be necessary to remedy the effects found, pursuant to Section 6 of this Title, to be reasonably attributable to such failure or to such act or acts, and any such requirement shall be reviewed and subject to termination at least annually.

Sec. 9. Effect of subsequent shifts in population.

Whenever any order governed by Section 6 of this Title has been entered, and thereafter residential shifts in population occur which result in changes in student distribution, by race, color or national origin, in any school affected by such order, the court shall not require modification of student assignment plans then in effect in order to reflect such changes, unless the court finds, pursuant to Section 6, that such changes result from an act or acts of unlawful discrimination.

Sec. 10. Intervention.

(a) The court shall notify the Attorney General of any proceeding to which the United States is not a party in which the relief sought includes that covered by Section 6 of this title, and shall in addition advise the Attorney General whenever it believes that an order requiring the assignment and transportation of students may be necessary.

(b) The Attorney General may, in his discretion, intervene as a party in such proceeding on behalf of the United States, or appear in such proceeding for such special purpose as he may deem necessary and appropriate to facilitate enforcement of this Title, including the submission of recommendations (1) for the appointment of a mediator to assist the court, the parties, and the affected community, and (2) for the formation of a committee of community leaders to develop, for the court's consideration in framing any order under Section 6 of this Title, a five-year desegregation plan, including such elements as relocation of schools, with specific dates and goals, which would enable required student assignment and transportation to be avoided or minimized during such five-year period and to be terminated at the end thereof.

Sec. 11. If any provision of this Title, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the provisions of this Title and the application of such provision to any other person or circumstances shall not be affected thereby.

THE WHITE HOUSE

WASHINGTON

June 22, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON

FROM: JIM CONNOR JEC

SUBJECT: Memorandum from Secretary Coleman re: Busing

The President reviewed your memorandum of June 21 concerning Secretary Coleman's memorandum on the Attorney General's Desegregation Bill and approved your circulating it to the Attorney General and Secretary Mathews.

Please follow-up with appropriate action.

cc: Dick Cheney

Coleman - Busing file

See attachment
(do not go through
DECISION (computer)

June 21, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: Jim Cannon

SUBJECT: Memorandum from Secretary Coleman Re: Busing

Attached is a memorandum from Secretary Coleman commenting on the Attorney General's proposed legislation to limit the remedial authority of Federal courts in school desegregation cases. In it, the Secretary expresses his strong opposition to the legislation, which he views as a retreat from existing constitutional doctrine in the school desegregation area, and urges that it not be submitted to the Congress.

The Secretary, who missed the last Cabinet meeting, has requested that a copy of his memorandum be circulated among other Members of the Cabinet. Because the memorandum is addressed to you, however, I thought you ought to have an opportunity to review it and then, if you feel it should be circulated, authorize us to do so.

Attachment