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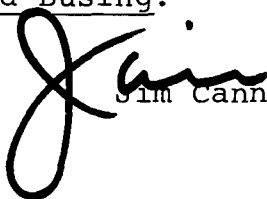
THE WHITE HOUSE
WASHINGTON

June 1, 1976

NOTE FOR THE PRESIDENT

Here are the memoranda for
your meeting tomorrow on
busing.

If you are pressed for time,
I would suggest that you read
the two-page memo on Busing
Legislation and the five-page
memo on Alternatives to Court
Ordered Busing.


Jim Cannon



THE PRESIDENT HAS SEEN.....

THE WHITE HOUSE

WASHINGTON

June 1, 1976

DECISION

MEMORANDUM TO THE PRESIDENT

FROM:

JIM CANNON 

SUBJECT:

Alternatives to Court Ordered Busing

PURPOSE

To offer for your consideration possible alternatives to court ordered busing which the Federal government could make available to a community seeking remedies to school segregation.

ISSUE

Busing has become the most controversial remedy ordered by the Federal courts to facilitate desegregation.

As an appropriate remedy to desegregate, busing was first affirmed by the Supreme Court in 1971, 17 years after the Brown decision. A chronology of the major school desegregation decisions is at Tab A.

The school bus started to become a major element of elementary and secondary education in the 1920's as consolidated school districts replaced the little red school house. Today, more than 21 million school children, 51% of the total school enrollment of 41 million, are bused to school.

Busing for better education has been widely accepted in this country, but decisions by Federal courts to order busing of children against prevailing community opinion are often resisted and accompanied by violence and disorder.

Since most situations in which desegregation is occurring will involve some voluntary or involuntary busing, the need is to find a means by which the Executive Branch can best assist a community to undertake voluntary or cooperative busing plans rather than leaving it to the courts to impose forced busing.

BACKGROUND

On August 21, 1974 you signed the Education Amendments of 1974 which included the "Esch Amendments." These amendments (Tab B) are designed to place legislative limits on the extent to which busing could be ordered by Federal courts or agencies.

Last Fall you directed the Attorney General and the Secretary of HEW to explore better ways to bring about school desegregation than court ordered busing.

In an October 27, 1975 meeting with Senator Tower you directed Phil Buchen to ask Justice and HEW to review the busing situation with the objective of seeking alternative remedies.

On November 20, 1975, you met with Attorney General Levi and Secretary Mathews and requested that they consider and develop:

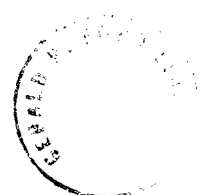
1. means of helping local school districts stay out of court.
2. alternative remedies and legal theories which a court might find acceptable once a school district was in court.

I have been working with HEW and others in your Administration on item 1 while Phil Buchen has been regularly in contact with the Attorney General on item 2.

On February 17, 1976, we outlined approaches and concepts under consideration. You indicated four which you felt merited further examination.

On April 12, 1976, I reported to you that we were developing approaches based on these premises:

1. Communities should find solutions on their own rather than have them imposed by the Federal government.
2. Remedies can best be reached before any court action begins.
3. Any approach must be in accord with Federal law enforcement responsibilities.



On May 17, 1976, I reported to you that we were in the process of refining and further examining three possible approaches to help a community avoid a court order to bus.

ALTERNATIVES TO COURT ORDERED BUSING

The following proposals have evolved as the most responsible courses of action available to be offered to a community to better enable it to desegregate its schools prior to the initiation of legal action. While it is likely that each of the alternatives would result in some busing the intent is to have such plans be developed by a community itself rather than imposed on it by the courts.

Alternative I: Mediation Service

Establish a Community Mediation Service, somewhat parallel to the Federal Mediation and Conciliation Service, to provide mediation assistance to a community in its efforts to desegregate. As proposed, it would be available to a community both before and after it was under a court order to desegregate. Such service could head off busing by court order by providing assistance to a community, at its request, to develop an acceptable plan to desegregate its schools. If any busing were involved it would result from a community decision assisted by the mediation process, not from a court order.

We believe such a mediation service could be set up by Presidential Executive Order.

Alternative II: Presidential Representative

At the request of a community, the President would designate a nationally known person to be his special representative to insure that the full resources of the Federal government were made available to communities who were initiating efforts, prior to legal action, to desegregate their schools.

This Presidential representative would seek to facilitate the use of the many existing Federal resources and also to involve religions, academic, business and labor groups in the response to a community's request for assistance.

This could be done by Presidential action.

Alternative III: National Community and Education Commission

Secretary Mathews proposes the establishment of a National Community and Education Commission to assist communities in preparing for desegregation activities and for avoiding community violence and disruption. (Tab C)

The bipartisan Commission would be independent of both HEW and Justice and would be composed of nine members who were nationally representative of business, education, labor, community leadership and local government.

The Commission would have a staff of approximately 50 and an annual budget of \$2 million.

Its responsibilities would be to work through local community leaders, using existing Federal resources, to encourage and facilitate constructive, comprehensive planning for school desegregation at the local level. Its approach would be to work quietly with a broad spectrum of local leaders --

- to identify problems before they develop.
- to informally mediate so that communities themselves can cooperatively devise solutions.
- to expedite Federal assistance, both technical and fiscal, from existing programs.
- to encourage assistance from the private sector.

It would specifically not serve as a court-appointed intermediary between parties in a legal suit related to desegregation.

We believe such a Commission could be created by Presidential Executive Order.

DISCUSSION

The various advantages and disadvantages of these alternatives and the related staff comments and recommendations can, we believe, best be covered in the discussion at Wednesday's



meeting with the Attorney General, the Secretary of HEW, Secretary of Labor and other members of your staff.

DECISION

Alternative I: Mediation Service

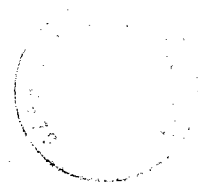
Approve _____ Disapprove _____

Alternative II: Presidential Representative

Approve _____ Disapprove _____

Alternative III: National Community and Education Commission

Approve _____ Disapprove _____



CHRONOLOGY OF SCHOOL DESEGREGATION DECISIONS

A. Brown v. Board of Education (1954)

The landmark Supreme Court decision in the school desegregation area in this century was Brown v. Board of Education (of Topeka), 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. In the Brown decision, the Supreme Court did not prescribe any specific method for accomplishing desegregation.

B. Brown II (1955)

In a follow-up to its 1954 Brown decision, the Supreme Court in 1955 directed that desegregation proceed with "all deliberate speed."

C. "Freedom of Choice"

In the years immediately following Brown, from 1954 to 1964, 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. The result was that only 1.2 percent of black students in the 11 southern states attended schools with whites in 1963-64.

D. Civil Rights Act of 1964 and Bradley Case

Shortly after passage of the Civil Rights Act of 1964, the Supreme Court stated in Bradley v. School Board of Richmond (1965) that "delays in desegregating school systems are no longer tolerable." The



Civil Rights Act of 1964 provided additional support for the desegregation process through Titles IV and VI. Under Title IV, technical assistance may be given to applicant school boards in the preparation, adoption, and implementation of plans for desegregation of public schools. If efforts to secure a school district's voluntary desegregation failed, administrative enforcement proceedings under Title VI would be initiated.

E. Green Decision (1968)

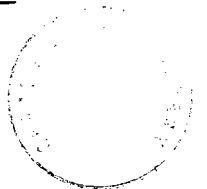
In April 1968, HEW's Office for Civil Rights directed that, where freedom of choice plans had not effectively eliminated dual school systems, the systems should adopt plans that would accomplish this task. During that year, the Supreme Court strengthened the HEW position in deciding Green v. New Kent County School Board (Virginia). 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." This was the death, since rarely, if ever, did freedom of choice result in effective school desegregation.

F. Alexander v. Holmes (1969)

In the summer of 1969, the Court decided Alexander v. Holmes County Board of Education (Mississippi), holding that school districts had a constitutional obligation to dismantle dual school systems "at once" and to operate now and hereafter as unitary systems. The Court, quoting from Green, reiterated its determination that school systems must develop desegregation plans that "promise realistically to work now." Thus, Alexander clearly reaffirmed the Court's position on the issue of timing in desegregation cases.

G. Busing - Swann v. Charlotte-Mecklenburg Board of Education (1971)

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 (North Carolina). 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.

H. HEW Responsibilities to Enforce (1973)

The immediate desegregation mandate of Alexander and the insistence in Swann that schools having disproportionately minority enrollment were presumptively in violation were not acted upon by HEW, which permitted these districts to remain "under review." HEW attempted to secure compliance through persuasion and negotiation, and the Title VI enforcement mechanism fell into disuse. These conditions led to the initiation of Adams v. Richardson, in which HEW was charged with delinquency in desegregating public educational institutions that were receiving Federal funds.

This suit alleged that HEW had defaulted in the administration of its responsibilities under Title VI of the Civil Rights Act of 1964. The district court (District of Columbia) stated on February 16, 1973, that, where efforts to secure voluntary compliance with Title VI failed, the limited discretion of HEW officials was exhausted. Where negotiation and conciliation did not secure compliance, HEW officials were obliged to implement the provisions of the Title VI regulations: provide for a hearing; determine compliance or noncompliance; and, following a determination of noncompliance, terminate Federal financial assistance.

The district court's decision was modified and affirmed by the Court of Appeals (D.C. Circuit, 1973). Essentially, the district court order requires that HEW properly recognize its statutory obligations, ensuring that the policies it adopts and implements are consistent with those duties and not a negation of them.

I. Keyes - "Segregative Intent" (1973)

In June 1973, the Supreme Court rendered its decision in Keyes v. School District No. 1 (Denver, Colorado). 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. A finding of de jure segregation as to one part of the system creates a presumption that segregative intent existed in the entire system and in such cases, the school board had "an affirmative duty to desegregate the entire system 'root and branch'".

J. Milliken - Cross District Busing (1974)

In its most recent ruling respecting school desegregation, Milliken v. Bradley (Detroit, Michigan), the Supreme 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.

ESCH AMENDMENTS (1974)

You signed into law on August 1974, Amendments to the Elementary and Secondary School Act which included the Esch amendments which were designed to place legislative limits on the extent to which busing could be ordered by Federal Courts or agencies. The key elements of those provisions are:

A. Remedies to Correct Segregation

When formulating desegregation plans, Federal Courts and agencies must use following remedies in order listed:

- (1) Assign students to closest school (considering school capacity and natural physical barriers).
- (2) Assign students to closest school (considering school capacity only).
- (3) Permit students to transfer from school where their race, color or creed is a majority to one where it is a minority.
- (4) Create or revise attendance zones or grade structures without requiring busing beyond that described below.
- (5) Construct new schools or close inferior ones.
- (6) Construct or create "magnet" (high quality) schools.
- (7) Implement any other educationally sound and administratively feasible plan.

B. Additional Restrictions on Federal Courts or Agencies

- (1) No ordered busing of students beyond school next closest to home.

- (2) No ordered busing at risk of students' health.
- (3) No new desegregation plans may be formulated to correct shifts in attendance patterns once school system determined non-segregated.
- (4) No desegregation plans can ignore or alter school district lines unless such lines were drawn to, or tend to, promote segregation.
- (5) No ordered busing shall be effective until the beginning of an academic school year.

C. Rights Granted to Individuals and School Districts

- (1) Allows suits by individuals (or Attorney General on individuals' behalf) under the Act.
- (2) Permits voluntary busing beyond limits outlined.
- (3) Allows reopening of pre-existing Court orders or desegregation plans to achieve Title II compliance.
- (4) Requires termination of court-ordered busing if Federal Court finds school district non-segregated.

It should be noted that 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), it appears that OCR has never required busing on a massive scale and has, since their enactment, observed the terms of the Amendments.



C



THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

MAY 20 1976

MEMORANDUM FOR THE PRESIDENT

Pursuant to our conversation, I have prepared for your consideration a proposal to establish a National Community and Education Commission to assist communities in preparing for desegregation activities and in avoiding trauma, violence and disruption. At Tab A I have enclosed a brief discussion of the nature and functions of such a Commission and at Tab B a proposed draft Presidential Executive Order establishing the Commission. I would call to your attention the following two specific issues in terms of this approach.

Implementation Strategy - Executive Order or Legislation

Although the Commission could be established either through legislation or an Executive Order, the Executive Order approach appears preferable for the following reasons:

The chances of Congress considering legislation to implement this proposal in the near future are very slight.

You have the authority and precedent to create an action-type council or commission by Executive Order. As long as the Executive Order does not contradict or supersede any statutes, you may create councils, commissions, and committees to carry out any function from studying a problem to developing programs. You may also give such bodies review and regulatory authority and the power to mediate.

It is common practice for such commissions to receive appropriations from Congress without authorizing legislation. In most cases, the "parent" Department (in this case HEW) requests funds for the commission as a line item in its appropriation.

Although the Executive Order approach does not require Congressional action, it is imperative that consultations with minority members on the appropriate committees be initiated promptly if such a proposal is approved by the Administration. Unless handled carefully, the Democratic Congress could endanger the proposal by arguing that the

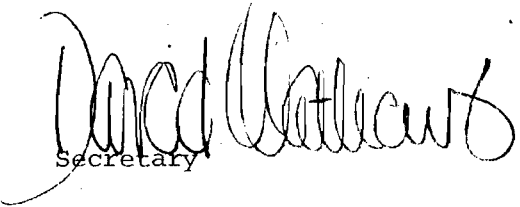


Administration is taking away Congress' authority to legislate. Even with an Executive Order, Congress' support and tacit approval is needed to enable the Commission to succeed in its complex mission.

Appropriations Strategy - Commission

To accomplish its mission effectively, the Commission would require a permanent staff of approximately 50 persons, as well as the ability to hire such consultants as it may need for specific projects. Support costs for such an enterprise would be around \$2 million annually. As noted above, HEW would request funds for the Commission as a line item in its appropriation. Although funds could be requested through an emergency supplemental or obtained through a reprogramming of present HEW funds, the preferred course of action is a budget amendment which would fund the Commission as of October 1.

I believe the approach suggested herein provides the most viable and effective strategy for the Administration to demonstrate it is truly concerned about the issue of the disruption of communities because of desegregation activities. I would recommend your approval of this approach and the issuance of such an Executive Order after appropriate consultation with the Congress.


Secretary

Enclosures





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WASHINGTON, D. C. 20201

MAY 20 1976

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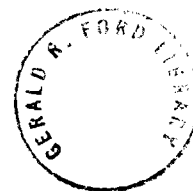
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Secretary

Enclosures



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ESTABLISHMENT OF THE NATIONAL COMMUNITY AND EDUCATION COMMISSION

A MAJOR INITIATIVE IN SCHOOL DESEGREGATION

Summary Description

In an effort to encourage and facilitate constructive, comprehensive planning for school desegregation at the local level, it is proposed that the National Community and Education Commission be established by Executive Order. The Commission would be a Presidentially-appointed, bipartisan group of distinguished citizens drawn from business and other professional circles. Its charge would be to assist local communities in carrying out desegregation planning activities designed to build lines of communication, avert disorder, and encourage constructive interracial classroom environments through the example of constructive interracial community environments.

Specific Function

The Commission's chief responsibility would be to advise local community leaders at the earliest stages of desegregation planning. Assistance would be initiated at the request of the affected community, and at that point a determination would be made by one or more Commission members as to what course of Commission activity offered the greatest promise of success within the particular community. In general, however, the orientation of the Commission would be toward working quietly with a broad spectrum of local leaders to identify problems before they develop and to devise solutions which could be carried out locally. While working within a community, the Commission would function primarily in a supportive and advisory role.

In the course of its consultations with the community and the school district, one of the Commission's chief functions would be to inform local leaders of additional sources of desegregation assistance (Federal, State, local and private) and encourage that these sources be investigated. Such sources include direct funding through the Emergency School Aid Act; technical assistance through OE's General Assistance Centers; OE's ten regional offices, and the Justice Department's Community Relations Service; formal mediation service through the Federal Mediation and Conciliation Service; and other forms of aid through the U.S. Commission on Civil Rights, State human relations agencies, and related private agencies.

Although the Commission's activities will overlap to some extent with those of the organizations mentioned above, the Commission should be



able to minimize unnecessary duplication through careful liaison with these other resources. It will be particularly important to work out non-duplicative roles with the Community Relations Service (CRS) since the function of CRS -- helping communities defuse tensions and conflicts arising from inequities or discrimination based on race, color, or national origin -- is notably similar to that of the proposed Commission. The CRS focuses less of its attention on pre-crisis intervention now than it did prior to FY 1974. Budget cuts that year effectively removed CRS from its earlier pre-crisis role, even though some individuals have held that the nature of the CRS function and expertise makes the agency particularly well suited to pre-crisis assistance. Thus, although CRS may not be currently active in some of the Commission's more important roles, its staff probably will have valuable insights and experiences to share with the Commission.

In keeping with its general functions already described, the Commission's role would not be to serve as a court-appointed intermediary between parties in a legal suit related to desegregation. Mediation would be a proper role for the Commission only in instances where it was conducted informally and with the voluntary participation of the major elements of the community. Similarly, the Commission would not be empowered to act for any State or Federal agency in an enforcement or compliance capacity. Moreover, it would not be expected to draw up desegregation-related student assignment plans at the request of a State or Federal agency.

Federal Incentives for Comprehensive Community Planning

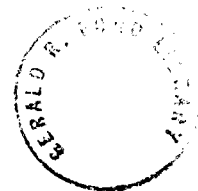
The Commission is intended primarily to provide help to school districts which have not yet adopted or been issued a desegregation plan (although districts at other points in the desegregation process certainly would not be precluded from receiving assistance from the Commission). In order to provide support for districts which are conducting comprehensive, community-based planning for desegregation, it is proposed that a specified amount of funds in the Emergency School Aid Act (ESAA) discretionary account be set aside to support local planning activities, including those initiated with Commission involvement.

The ESAA discretionary account (Section 708 (a)) is the only part of the ESAA under which a school district without an eligible desegregation plan may receive funds. Therefore, it would be possible to stipulate by regulation that a community which showed proof of effort to conduct community-wide desegregation planning could receive funding to conduct such planning and other activities authorized under ESAA. The intention would be that this planning would involve all major sectors of the community, including business and housing representatives.



Structure

The Commission would be made up of nine members who would be appointed by the President for three-year terms of office. To provide continuity within the Commission, terms of office for individual members would be staggered at one-year intervals. The Commission chairman would be selected by the President, with the first chairman appointed for a full three-year term. Commission members would be expected to maintain their regular occupations but would be compensated at EL IV for the days they work on Commission activities. To ensure bipartisan representation, restrictions would be placed on the number of Commission members permitted from each political party. The Commission would have the authority to hire staff on an excepted service basis and to retain consultants as needed for specific projects.



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EXECUTIVE ORDER

NATIONAL COMMUNITY AND EDUCATION COMMISSION

Throughout the history of our Nation, the education of our children, especially at the elementary and secondary level, has been a community endeavor. The concept of public education began in the community and continuous support for public schools has been provided by the community. Although the States, and to some extent the Federal government, have been providing increasing financial assistance for education, it has become clear that the solution of many of the most pressing problems facing our schools lies within the community which supports those schools.

This fact has particular relevance to the problem of school desegregation. Over the past two decades, communities have been under pressure from the courts, the Department of Health, Education, and Welfare, and in some cases the States, to institute changes in the assignment of students to schools. Too often this has been accomplished without the involvement of the community or with its involvement only after confrontations have occurred and community positions have been established.



The problems that have arisen in the process of school integration have not been due to the inadequacy of law or the lack of appropriate resources. Rather, they can be attributed to the fact that the burden of initiating and enforcing school desegregation has been borne by the courts and the Federal government without the benefit of those forces from within the community that are uniquely able to bring about necessary change in an orderly and peaceful manner.

It is therefore the purpose of this executive order to provide a means to activate and energize effective local leadership in the desegregation process at an early stage in order to reduce the incidence and severity of the trauma that would otherwise accompany that process, and to provide a national resource that will be available to assist communities in anticipating and resolving difficulties encountered prior to and during desegregation.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America, it is hereby ordered as follows:



Section 1. Establishment of the Commission. (a) There is hereby established a National Community and Education Commission (hereinafter referred to as the "Commission"), the purpose of which shall be to consult with, provide technical assistance to, and informally mediate between, community groups and State and local governmental organizations (including educational agencies) in order to anticipate and resolve problems and conflicts relating to the desegregation of schools.

(b) Composition of the Commission. The Commission shall be composed of nine members who shall be appointed by the President from among individuals who are nationally recognized and respected in business, education, government and other fields and whose experience, reputation, and qualities of leadership render them uniquely capable of carrying out the purposes of the Commission. No person who is otherwise employed by the United States shall be appointed to serve on the Commission. No more than five of the members of the Commission at any one time shall be members of the same political party.



(c) Terms of members. The term of office of each member of the Commission shall be three years, except that of the members first appointed to the Commission three shall be appointed for a term of one year and three shall be appointed for a term of two years. Any member appointed to fill an unexpired term on the Commission shall serve for the remainder of the term for which his predecessor was appointed.

(d) Chairman; quorum. The Chairman of the Commission shall be designated by the President. Five members of the Commission shall comprise a quorum.

(e) Compensation of members. Each member of the Commission shall be compensated in an amount equal to that paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5313 of title 5, United States Code, prorated on a daily basis for each day spent on the work of the Commission, including travel time. In addition, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government Service.



(f) Executive Director; staff. The Commission shall have an Executive Director, designated by the Chairman with the approval of a majority of the members of the Commission, who shall assist the Chairman and the Commission in the performance of their functions as they may direct. The Executive Director shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Commission is also authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, or otherwise obtain the services of, such professional, technical, and clerical personnel, including consultants, as may be necessary to enable the Commission to carry out its functions. Such personnel, including the Executive Director, shall be compensated at rates not to exceed that specified at the time such service is performed for grade GS-18 in section 5332 of that title.



Sec. 2. Functions of the Commission. The functions of the Commission shall include, but shall not be limited to:

(1) Consulting with leaders in the community and local groups in determining means by which such leaders and groups can, through early involvement in the development of, and preparation for, school desegregation plans, contribute to the desegregation process in such a way as to avoid conflicts and the invocation of judicial procedures.

(2) Encouraging the formation of broadly based local community organizations to develop a program designed to encourage comprehensive community planning for the desegregation of schools.

(3) Providing advice and technical assistance to communities in preparing for and carrying out comprehensive plans to desegregate the schools, involving the broadest possible range of community interests and organizations;

(4) Consulting with the Community Relations Service of the Department of Justice (established under title X of the Civil Rights Act of 1964), the Office for Civil Rights in the Department of Health, Education, and Welfare, the National Institute of Education, the U.S. Office of Education,

General Assistance Centers (funded under title IV of the Civil Rights Act of 1964), the United States Civil Rights Commission, and State and local human relations agencies to determine how those organizations can contribute to the resolution of problems arising in the desegregation of schools within a community; and

(5) Providing informal mediation services among individuals, groups, and agencies within a community in order to resolve conflicts, reduce tensions, and develop acceptable means of desegregating schools without resort to administrative and judicial processes.

Sec. 3. Limitations on activities of the Commission.

It shall not be the function of the Commission--

- (1) to prepare desegregation plans;
- (2) to provide mediation services under the order of a court of the United States or of a State; or
- (3) to investigate or take any action with respect to allegations of violations of law.

Sec. 4. Cooperation by other departments and agencies.

(a) All executive departments and agencies of the United States are authorized to cooperate with the Commission and furnish to it such information, personnel and other

assistance as may be appropriate to assist the Commission in the performance of its functions and as may be authorized by law.

(b) In administering programs designed to assist local educational agencies and communities in planning for and carrying out the desegregation of schools, the Secretary of Health, Education, and Welfare and the heads of agencies within that Department shall administer such programs, to the extent permitted by law, in a manner that will further the activities of the Commission.

Sec. 5. Expenses of the Council. Expenses of the Commission shall be paid from such appropriations to the Department of Health, Education, and Welfare as may be available therefor.

Sec. 6. Confidentiality. The activities of the members and employees of the Commission in carrying out the purposes of this executive order may be conducted in confidence and without publicity, and the Commission shall, to the extent provided by law, hold confidential any information acquired in the regular performance of its duties if such information was provided to the Commission upon the understanding that it would be so held.





MAR 29 1976

MEMORANDUM FOR THE HONORABLE JAMES M. CANNON

Here is a report on the reaction of our best staff in the Department to the options in your memo on "Alternatives to Busing:"

1. Many successful superintendents have been successful because of a low profile. The recognition, while flattering, might well be counterproductive. Civil rights groups could have a field day with suits aimed at proving that the efforts of these individuals really were not good enough.

Furthermore, since many of the superintendents in such a group would have used busing, the President could be seen as endorsing busing by one group and then, for the same gesture, criticized for tokenism by the other side.

Of course, as the Commissioner of Education notes, there is some value to reinforcement for people doing a hard job well.

2. DHEW is already doing much of what is suggested in this option. However, since the federal government is seen as the problem, its role as a point of reference or place for assistance is, regrettably, limited-- regardless of how fine its services are.
3. The same comment just made applies here, too. More research can always be done, but as you will see from the attached status report, DHEW is already in the midst of a multitude of good studies. And the National Institute of Education predicts that these studies will show busing is "working" in eight out of ten situations.

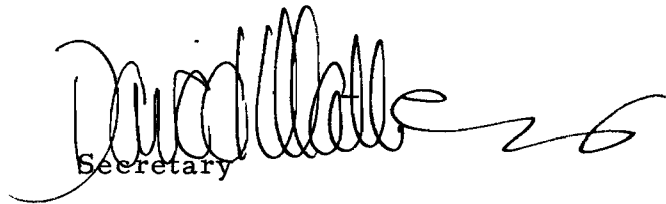
There might be some more work done, however, in studies on using community institutions outside the schools to aid in desegregation.



Memorandum for the
Honorable James M. Cannon
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4. The staff advised great caution with this option. They made the point that to attack busing raises the question of alternatives and since there are not many good ones, the Administration would be left with its back to a wall.

Our working papers are available if they would be helpful.


Secretary

Attachments



MAR 29 1976

MEMORANDUM FOR THE PRESIDENT

The best advice I can bring together from across the country leads me to recommend a few basic precepts from which to make judgments on a whole host of complex issues and options on the matter of busing and desegregation.

The best policy position would be one with three basic elements:

1. It is important that the President first reaffirm the national commitment to the basic moral principle that segregation is incompatible with any good vision of the future of this country and that no child should be denied the benefits of an equal education because of race. Any position that does not begin at this point and clear the air on it will mire down. *or any other way*
2. *must* Your position on busing can then be restated and expanded by the assertion that because of this moral imperative, we cannot do other than pursue, with all diligence, the issue of the best means. There is evidence that busing is not an effective means in some situations, and we cannot escape an obligation to find better approaches to the problem. It is important at this point, however, not to go on to try to prove that any of the alternatives we now have is a certain cure either. None is. And there are a great many cases where transportation by buses is working well according to the research reports we have.
3. The "truth" that nobody is saying is that the solution is in taking an approach much broader than concentrating on busing or any of its alternatives. The first part of that solution is to turn the issue away from just a busing question. The busing debate is really not a constructive debate at all, and the issue must be "depoliticized" as much as possible. Perhaps this issue has met a stalemate in the political processes and must be lifted out of that atmosphere and placed in a nonpartisan, nonpolitical *quality education*



forum for serious and far-reaching reassessment. The suggestion is that you push for real, useful-- not just rhetorical-- attention to the problem.

4. The other part of the solution is to focus on the problem as it really is, not as it seems to be. The issue is not what means are used to achieve desegregation but who controls that decision and how parental and community concerns are taken into consideration. To reframe the case and to focus on reuniting the community and parents with school control has great potential and is the way the cities have had some success with getting on with desegregation.

5. *man* The public feels that the federal government (whether by the courts or the legislative process) has not only failed to solve the problem but has made it worse. Therefore, any solution from any part of the federal government is likely to fail--even if it were the "right" solution. The only good option for the Executive Branch may be to act as a "helper" and a partner to aid communities in helping themselves.

6. Using the precedent of the government to create a national force that is not governmental (the National Academy of Sciences and the National Council on the Arts and Humanities are examples), perhaps we should consider working with local governments and community groups to create a body from the best of the local community, education and parental leadership, titled perhaps the National Community and Education Council. It could work as a mediating force and provide technical assistance to communities to deal with problems before they become crises. In fact, the evidence from successes in Atlanta and Dallas is that citizen alliances of the type the Council should foster were the decisive forces. As I noted earlier, "success" seems to turn most on how well a community goes about making decisions that come up before the question of busing or any other means. The Council could also help cities to get the whole community, not just the schools, involved in voluntary efforts to prevent unhealthy racial isolation and foster constructive human relations.

*Part -
Court
division
~ me?*



The courts might find such a body a welcome referral point (that is, to get ideas but in no sense would it be proper for such a council to be an agent of the courts), and cities or community alliances might find it a source of good ideas and even endorsement.

Another alternative would be to use the occasion of getting the ESA legislation renewed to allow us to encourage many of the activities that the Council would foster without the fanfare of creating a new agency.

In sum, there do not seem to be any solutions that come from dealing with busing directly or even in searching for alternatives. The best chances for success seem to be in pioneering some new ground. Americans traditionally have solved problems not by changing the problem, but by changing their view of the problem.


Secretary



ON-GOING DEPARTMENT STUDIES AND ACTIVITIES RELATED TO DESEGREGATION

The Department has planned or on-going many analyses, evaluations, or research projects related to questions of quality education, urban education, and desegregation. The major ones are listed below:

Office of Education

The desegregation-related studies underway in OE are primarily directed toward the evaluation of OE's desegregation assistance programs and their effects on schools. One special study will look at a small number of districts that are successfully and peacefully desegregating in an attempt to discover the practices that contribute to successful desegregation.

- . The evaluation of the Emergency School Aid Act (ESAA) basic and pilot programs is a longitudinal study of the effectiveness of two of the largest components of ESAA in meeting the objectives of the legislation. Special attention is being given to the relative efficacy of alternative school programs in raising student achievement. The study is being conducted through a contract with the System Development Corporation. The report on the first year of the study has been issued with subsequent reports due in May 1976 and May 1977.
- . The evaluation of Title IV of the 1964 Civil Rights Act is assessing the effectiveness of this program in delivering training and technical assistance services to desegregating school districts. The study is being conducted by Rand Corporation, with the final report scheduled for release in June 1976.
- . The OE study of exemplary desegregated schools is examining evidence showing the degree to which various school practices and programs contributed to successful desegregation. The final report is due in June 1976 from the contractor -- Educational Testing Service.

National Institute of Education

NIE has a number of on-going studies relating to various aspects of school desegregation. In FY 1976 the total amount spent on desegregation research was \$682,000. The aim of these studies is to assist in making desegregated education settings exciting and humane places for children and is not to study the effects of desegregation on children. Some of the most policy relevant of these studies are:

- . Six ethnographic studies of the cultural milieu and environment of desegregated schools. These studies are being carried on in New York, Pittsburgh, Pontiac, Durham, San Francisco, and Memphis. They are due July 1978.
- . A study of status equalization and changing expectation in integrated classrooms. This will be due in 1978 or 1979.
- . A study of racial integration, public schools, and the analysis of white flight. Due October 1976.
- . A study entitled "Political Protest and School Desegregation: A Case Study of Boston". Due September 1976.
- . A study of social impact on school desegregation, dealing with how much school desegregation is possible before it becomes counterproductive. Completed January 1976.
- . A study of desegregation research and appraisal. This has resulted in a compendium that updates and evaluates the finding of recent research on integration and desegregation. Completed and at printers.

Assistant Secretary for Planning and Evaluation

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is beginning an analysis of Federal School Desegregation Policy as it has evolved through judicial, legislative, and administrative action in the last twenty

years. The analysis consists of six related studies. The first of these is a legal study that describes the implementation of desegregation actions in the nation's schools. It will systematically describe features of the various desegregation plans implemented in response to Federal actions. It will be due a year from now. Three other studies will investigate the impact of Federal action and different desegregation plans on the racial and socio-economic characteristics of schools and communities, attitudes toward desegregation, and student educational attainment. These studies will be completed in eighteen months. A fifth study will investigate minority participation in Federally-funded education programs. This study is in the design phase and will be completed in eighteen months. A study of Federal policy alternatives will complete the analysis.^{1/} It is anticipated that all six studies will be completed in approximately eighteen months.

Assistant Secretary of Education

A small scale effort is underway in ASE's Policy Development office to project probable effects of present court cases, to develop new measures of district and regional racial isolation, and to review other policy variables of interest to the Education Division. This work is being conducted as part of a larger policy analysis contract with Stanford Research Institute.

^{1/} A later effort will review the impact of Federal desegregation policy on postsecondary education. Study components will build upon the analysis developed for elementary and secondary education.