The original documents are located in Box 4, folder "Busing, June 1, 1976 (1)" of the White House Special Files Unit Files at the Gerald R. Ford Presidential Library.

THE PRESIDENT HAS SEEN.....

THE WHITE HOUSE

WASHINGTON

June 1, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: Phil Buchen and Jim Cannon

SUBJECT: Busing Legislation

This memorandum briefly describes the substance of the busing legislation the Attorney General has submitted for your consideration.

DESCRIPTION

As you know, under current case law, where a Federal District Court finds that a school board has acted to foster, promote or perpetuate racial discrimination in a school system, the Court may order the board to take whatever steps might be necessary to convert the entire school system into a "unitary" (i.e., racially balanced) system. The Attorney General's bill (attached at Tab A) proceeds from the premise that the proper role of the courts in fashioning a remedy in a school desegregation case is simply to require the racial composition in the school system that would have existed but for unlawful acts by the school board.

Specifically, the bill would require a Federal District Court to determine the extent to which the racial or ethnic concentration in a school system is attributable to the unlawful action of a State of local school board and to limit the relief to eliminating only that racial or ethnic concentration. The bill would prohibit a court from ordering the transportation of students to alter the racial or ethnic composition of a school unless it finds that the current racial or ethnic composition of the school resulted in substantial part from unlawful acts of the State or local school board and that transportation of students is necessary to adjust the racial or ethnic composition of the school to that which would have existed but for such unlawful acts.

Additionally, the bill provides for a review by the court every three years to determine if the remedy imposed is still appropriate. With respect to forced busing, the bill requires that, except in extraordinary circumstances, no forced busing shall continue for more than five years.

Finally, the bill would authorize the Attorney General to appoint Federal School Desegregation Mediators to assist the court and the parties in school desegregation cases. It would also provide that, before a Federal judge may order busing, he must give notice to ennumerated Federal, State and local officials, who shall create a committee composed of leaders of the community, which committee shall immediately endeavor to fashion a feasible desegregation plan which can be put into effect over a five-year period. Such a plan would be subject to approval by the court.

IMPLICATION

The Attorney General argues in the "draft" message he has prepared for your consideration (attached at Tab B) that the bill will minimize the extent to which Federal courts may order the forced busing of school children. This interpretation is, of course, subject to review by the courts.

One thing is clear, however, and that is that this bill would involve the Federal government in major desegregation litigation by:

- authorizing the Attorney General to appoint Federal School Desegregation Mediators to work with the courts in designing appropriate desegregation plans, and

- requiring the Secretary of Health, Education and Welfare, in concert with other Federal, State and local officials, to appoint (and presumably oversee) the citizens' committees which will be responsible for developing the five-year desegregation plans.

These and other points can be discussed at tomorrow's meeting.

A Bill

To provide for orderly adjudication of school desegregation suits, 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 Act of 1976."

TITLE I -- Adjudication of Desegregation Suits

Sec. 101. Purpose: Application

(a) The purpose of this Title is to prescribe standards and procedures to govern judicial relief in school desegregation cases brought under Federal law in order (1) to prevent the continuation or future occurrence of any acts of unlawful discrimination in public schools and (2) to assist in the identification and elimination, by all necessary and appropriate remedies, of the present consequences within the schools of acts of unlawful discrimination found to have occurred. This title is based upon the power of the Congress to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States.

(b) The provisions of this title shall apply to all judicial proceedings, and the award or modification of

all judicial relief, after the date of its enactment, seeking the desegregation of public schools under Federal law.

Sec. 102. Definitions

For purposes of this title --

(a) "Local education agency" means a public board of education or any other agency or officer exercising administrative control over or otherwise directing the operations of one or more of the public elementary or secondary schools of a city, town, county or other political subdivision of a State.

(b) "State education agency" means the State board of education or any other agency or officer responsible for State supervision or operation of public elementary or secondary schools.

(c) "Desegregation" means elimination of the effects of unlawful discrimination in the operation of schools on the part of a State or local education agency.

(d) "Unlawful discrimination" means action by a State or local education agency which, in violation of constitutional rights, discriminates against students, faculty or staff on the basis of race, color or national origin.

(e) "State" means any of the States of the Union.

Sec. 103. Liability

A local or State education agency shall be held liable (a) to relief under Section 104 of this Act 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 105 of this Act if the Court further finds that the act or acts of unlawful discrimination which occurred within thirty years prior to the filing of the suit increased the present degree of racial or ethnic concentration in the student population of any school.

Sec. 104. Relief - Orders prohibiting unlawful acts.

In all cases in which, pursuant to section 103(a) of this Act, 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 shall enter an order enjoining the continuation or future commission of any such act or acts and providing any other relief that, in the Court's judgment, is necessary to prevent such act or acts from occurring, or to remedy, as to particular individuals, such act or acts specifically directed at them.

Sec. 105. Relief - Orders eliminating the present effects of unlawful acts.

(a) In all cases in which, pursuant to section 103(b) of this Act, or any other provision of federal law, the Court finds that the act or acts of unlawful discrimination increased the present degree of racial or ethnic concentration in the student population of one or more schools, the Court shall order only such relief, in conformity with sections 213-216 of the Equal Education Opportunity Act of 1974, as may be necessary to eliminate the present effects found, in compliance with this section, to have resulted from the discrimination.

(b) Before entering an order under this section the Court shall receive evidence, and on the basis of such evidence shall make specific findings, concerning the degree to which the racial or ethnic concentration in particular schools affected by unlawful acts of discrimination presently varies from what it would have been had no such acts occurred. Should such findings not be feasible or useful because of the great number of schools that were or may have been effected, the demographic changes that have occurred over a period of years, or some other circumstance, the Court shall receive evidence, and on the basis of such evidence shall make specific findings concerning the degree to which patterns of racial or ethnic

concentration in the school system affected by unlawful acts of discrimination presently varies from what it would have been had no such acts occurred.

(c) The findings required by subsection (b) of this section shall in no way be based on a presumption, drawn from the finding of liability made pursuant to section 103(b) of this Act or otherwise, that the degree of racial or ethnic concentration in the schools or any particular school is the result of unlawful acts of discrimination.

(d) The Court shall notify the Attorney General of any proceeding pursuant to subsection (b) of this section to which the United States is not a party, and the Attorney General may, in his discretion, intervene in such proceeding on behalf of the United States to present evidence and take all other actions that he may deem necessary to facilitate enforcement of this Act.

(e) No order entered under this Act or any provision of federal law shall require the transportation of students to alter the racial or ethnic composition of schools unless, pursuant to this section, the Court finds that the racial or ethnic concentration in particular schools, or, if such findings are not feasible or useful, the patterns of racial or ethnic concentration in the school system resulted in substantial part from unlawful discrimination by a local or State education agency, and that transportation of students is necessary to adjust the racial or ethnic composition of particular schools, or patterns of racial

or ethnic concentration in the school system, substantially to what they would have been if the unlawful discrimination had not occurred.

(f) In all orders entered under this section the Court may without regard to this section's other requirements, direct local or State school authorities to institute a program of voluntary transfers of students from any school in which their race is in the majority to available places in one in which it is in the minority.

Sec. 106. Voluntary action; local control.

All orders entered under section 105 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 and to eliminate its present effects.

Sec. 107. Review of Orders.

Subject to the provisions of section 105(f) of this Act, no requirement of the transportation of students contained in any order entered under section 105 of this Act or subject to that section's provisions shall remain in effect for a period of more than three years from the date of the order's entry unless at the expiration of such period the Court finds:

(1) that the defendant has failed to comply with the requirement substantially and in good faith; or

(2) that the requirement remains necessary to eliminate the effects of unlawful discrimination determined in compliance with the provisions of section 105 of this Act.

If the Court finds (1) above, it may extend the requirement until there have been three consecutive years of substantial compliance in good faith. If the Court finds (2) above, after the expiration of three consecutive years of substantial compliance in good faith, it may extend the effect of the requirement, with or without modification, for a period not to exceed two years, and thereafter may order an extension only upon a specific finding of extraordinary circumstances that require such extension. The Court may, however, continue in effect a voluntary transportation program to implement relief under section 105(f) of this Act. The provisions of this section shall not apply to any plan approved and ordered into effect under section 203.

Sec. 108.

With respect to provisions of its order not covered

by section 107, the court shall conduct a review every three years to determine whether each such provision shall be continued, modified, or terminated. The court shall afford parties and intervenors a hearing prior to making this determination.

TITLE II -- Federal School Desegregation Mediator

Sec. 201. Appointment of mediator.

The Attorney General is hereby authorized to appoint, at such times and for such period as he deems appropriate, a Federal School Desegregation Mediator or Mediators to assist the court and the parties in a school desegregation lawsuit.

Sec. 202. Functions of a mediator.

(a) When a mediator is appointed pursuant to section 201, he shall provide assistance to the court, the parties and the affected community to the ends of (1) full and orderly implementation of the constitutional right to equality of educational opportunity, (2) insuring that desegregation is accomplished in a manner which is educationally sound and (3) seeking to secure community support for proper elimination of unlawful school discrimination.

(b) A mediator may request the assistance of other Federal agencies.

"Citizens Council" pg 9

Suggest the word "Committee" be substituted for the word "Council" where it appears. Reminds too much of "White Citizen Council." This can be mentioned to Ed Levi after meeting.

Jack

Sec. 203.

It is the sense of the Congress that required transportation of students beyond the nearest school in order to reduce the lingering effects of past unlawful discrimination is an unusual remedy which should be used sparingly. Accordingly prior to ordering such required transportation, the district judge shall give notice to the Attorney General of the United States, to the Secretary of Health, Education and Welfare, to the Governor of the State, the Mayor or other chief executive official of the governing unit involved, and the Secretary of Health, Education and Welfare in cooperation with these officials shall create a committee composed of the leaders of the community. The committee shall immediately endeavor to fashion a feasible plan which can be put into effect over a five year period, including such matters as the relocation of schools, which can give assurance that such progress will be made toward a removal of the effects of unlawful discrimination over the five year period, with specific dates and goals, so that in the meantime required transportation can be avoided or greatly minimized. Such a plan shall be submitted to the court for its approval. If, during the continuance or at the expiration of a plan approved under this section, the court determines that the plan is inadequate, progress made under such plan shall be taken into account in framing any order under Section 105 of this Act.

MESSAGE TO CONGRESS

I know I am speaking for the vast majority of Americans when I say that the causes and effects of unconstitutional racial discrimination in our school systems must be removed. The process by which we have sought to achieve this has been a long and difficult one. The goal must be achieved, and I believe substantial progress has been made.

The ultimate aim must be voluntary, wholehearted compliance with non-discriminatory practices, practices we all accept because they are right. The public school system has been one of America's greatest assets. The desire for quality education is deep in the heart of American parents and children. And the longstanding tradition of local control of the educational system is very important.

The way to achieve the removal of the causes and effects of racial discrimination in the schools is not the same in every locality in which unconstitutional acts of discrimination have occurred. This is because of a variety of factors such as the geographic array of schools in various systems and the special characteristics of individual systems

which properly reflect diverse communities' ideas about the appropriate structure of the educational process.

On the long and difficult road our society has traveled in attempting to remove the causes and effects of racial discrimination there has at times been illegal resistance to the orders of federal courts and at times there has been some violence. This resistance and this violence are illegal. They contradict the Constitution. The federal government certainly will not condone or tolerate them. The law will be enforced.

We must realize that what is involved in the effort to put an end to unlawful racial discrimination in the schools is a basic constitutional doctrine. That doctrine has been set forth in a number of decisions of the United States Supreme Court. And it is not surprising that there are certain ambiguities in the statements of the Court -- in the ways in which the doctrine should translate into action, particularly as to the scope of the remedy.

During this period it is inevitable that the decisions of federal district judges, faced with the arduous and often unpleasant duties of overcoming resistance, will

have elements of artificiality in them. The Supreme Court has written that the remedy "may be administratively awkward, inconvenient, and even bizarre in some situations" (Swann v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, 28 (1971)).

Courts have used various mechanisms for removing the causes and effects of racial discrimination in the schools, and the most controversial of them has been the forced busing of students. In an essential way, the use of busing highlights the ambiguities in the constitutional doctrine as stated by the Supreme Court. In my view, and consistent with the doctrines of the Supreme Court, the only purpose of court ordered busing should be to achieve the racial balance within particular schools which would have occurred through the normal enrollment pattern in the absence of unconstitutional acts of school discrimination or, if that is not feasible, to recreate the normal pattern of racial or ethnic integration which would now exist within the district but for such acts.

I have always been philosophically opposed to court ordered busing, but I realize that in some cases it is

constitutionally required under opinions of the Supreme Court. It is, however, not a good mechanism. Many of the district court judges who have ordered busing have stated publicly that it is not desirable and that it is a remedy of last resort. The Congress itself, which has an important role in defining the nature of the constitutional prohibition and the appropriate remedy under section 5 of the Fourteenth Amendment, has also indicated its disfavor of court ordered busing. In the Equal Educational Opportunity Act of 1974, P.L. 93-380, 88 Stat. 514 et seq., 20 U.S.C. (Supp. IV) 1701 et seq., it established other remedies that may be used to eliminate the effects of racial discrimination and directed that these other remedies be given priority. These other remedies include voluntary transfer systems, creation or revision of attendance zones or grade structures without requiring student transportation, construction of new schools or the closing of inferior schools, and creation of magnet schools. For reasons involving ambiguities in the legal doctrine in this area which I will shortly describe, that congressional effort to solve the problem of busing has

proven insufficient. Congress once more must meet the challenge and fulfill its constitutional role.

Last November 20 I met with the Attorney General and the Secretary of Health, Education and Welfare and directed them to devise legislation that would clarify the law in this area and move toward the reduction and eventual elimination of court ordered busing wherever possible. Since that time we have been at work on a bill that will enable the constitutional goal of eliminating race discrimination in its causes and effects to be achieved with the minimum amount of busing required by the Constitution. I am today transmitting proposed legislation which is the result of that effort and which, in my opinion, will sweep away the confusion and ambiguity which now exist concerning the purpose and scope of the busing remedy.

In devising legislation in this difficult field the first and most important need is to clarify the legal theory upon which the relief for unconstitutional acts of racial discrimination is based. I do not believe we can now terminate all busing, but I do believe we can considerable reduce its use while still achieving the constitutionally required elimination of the effects of illegal race discrimination.

Each school case involves two distinct questions. The first is whether the school authorities have committed acts of racial discrimination (the liability question). The second is what relief the court should afford once racial discrimination in the operation of the schools has been established (the remedy question).

Brown v. Board of Education, 347 U.S. 483 (1954), addressed the liability question; held conclusively that official acts to enforce racial discrimination in the operation of the schools violates the Constitution. The remedy question has not yielded easily to analytical solution. The first problem that arose was how quickly the remedy must take effect. The second Brown case, 349 U.S 294 (1955), was the Court's first attempt to grapple with that problem. The Court held (id. at 300) that "[i]n fashioning and effectuating the [desegregation] decrees, the courts will be guided by equitable principles," and that the remedy must proceed with "all deliberate speed" (id. at 301).

That formula proved unsatisfactory when both school systems and courts used "all deliberate speed" as an excuse for inaction. A series of decisions in the 1960's called

for more rapid compliance. In 1964 the Court held that "[t]he time for mere 'deliberate speed' has run out" (Griffin v. County School Board, 377 U.S. 218, 234), and in 1968 that "[t]he burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now" (Green v. County School Board, 391 U.S. 430, 439 (emphasis in original)).

What is the goal of the remedy that must "realistically . . . work now"? Many judges and courts thought at first that the proper remedy was to direct school officials to cease their racial discrimination. The illegal practices could be prohibited and stopped. This is a common form of equitable relief.

The courts, however, went further. Some requirement to show there was a good faith abandonment of these practices and that they would not be renewed was no doubt essential. Moreover, it is within the jurisdiction of a court of equity to eradicate the lingering effects of a wrong -- to the extent this is feasible.

This recognition of a need to eradicate the continuing effects of past racial discrimination created problems that

continue to confront the Nation. What are those "continuing effects"? How do we ascertain them? What means must we use to eradicate them? All of these questions go to the nature and scope of the remedy for unlawful discrimination.

We cannot begin to ask whether particular remedial tools -- such as busing to achieve racial balance -- are necessary, when viewed in light of all their advantages and disadvantages, until we are sure what it is that the remedy must accomplish.

The public school system in this country developed as people came together toward the common goal of educating their children in a manner which reflected the shared values of the community. This led to a tradition of diversity in the ways of the educational process, and that diversity in turn embodied our national commitment to individuality and community self-reliance. At the same time we also have a strong national commitment to social mobility and equal opportunity. These values find their expression in the constitutional requirement that public officials may not discriminate against individuals on the basis of their race,

color, national origin or sex. Neither the Constitution nor any tradition of the public school system requires that children go to school in their immediate neighborhood. But likewise, neither prohibits, absent illegal official acts of race discrimination, a community from sending its children to a neighborhood school.

Busing is required only if, in fashioning a remedy for the unconstitutional acts, a court must assign students to schools far from home. When are such assignments necessary? That question, so basic to the task of devising a remedy for illegal discrimination, has never received a satisfactory answer from the Supreme Court.

The Court has emphasized that "[t]he objective today remains to eliminate from the public schools all vestiges of state-imposed segregation" (Swann, supra, 402 U.S. at 15). That formula, seemingly so simple, conceals a variety of ambiguities. These ambiguities become of over-riding importance when lower courts must attempt to translate the Supreme Court's generalities into the particulars of a plan for the operation of the schools.

The Supreme Court decision in Keyes v. School District No. 1, Denver, Colorado, 413 U.S. 189, 214 (1973), created

an important ambiguity. The Court emphasized (413 U.S. at 203) that "racially inspired school board actions have an impact beyond the particular schools that are the subject of those actions." It therefore established a rule that, once a district court has found acts of unlawful discrimination in some schools of a school system, it should "presume" that unlawful discrimination was practiced throughout the school system -- in other words, that the school system is a "dual school system," for which the remedy is "all-out desegregation." But what is the real effect of this presumption? It means, at a minimum, that the court should assume that acts of discrimination have been pervasive and that they have effects throughout the system. Does it also mean that the court must presume that some observed distribution of the races was caused by the discrimination? That some particular part of the distribution was caused by the discrimination? That all of the distribution was caused by the discrimination? The Supreme Court did not say. Some lower courts have taken the last-mentioned interpretation. They have interpreted what the Supreme Court said in Keyes as support for orders that every school should mirror the racial composition of the school district.

The ambiguities, standing by themselves, make it difficult enough to determine what the remedy should be designed to accomplish. But that difficulty is compounded by the discretion traditionally accorded to trial courts in the formulation of equitable remedies. Discretion of this sort can cover a multitude of readings of the Supreme Court's precedents. The ambiguous nature of the precedents and the distinctive factual complexity of each new case make it difficult for the district court to devise a remedy and even more difficult for appellate courts to exercise effective supervision.

The result of all of this is that many district courts use a finding of some unlawful discrimination as a "trigger" for a holding that all schools must be racially balanced. They define "all-out desegregation" as the elimination of racial distribution in the schools, however caused, and bend their efforts to achieve a racial balance which would not have occurred even in the absence of illegal acts of racial discrimination. Such a task naturally requires many students to be assigned to schools far from home and,

hence, must be accomplished by busing.

The goal of the remedy in a school case ought to be to put the school system, and its students, where they would have been if the violations had never occurred. In other words, the goal ought to be to eliminate "root and branch" the violations and all of their lingering effects. Green, supra, 391 U.S. at 438- This articulation of the goal has been approved by the Supreme Court. This is the consitutional goal which the Supreme Court has mandated, and it is the goal which any legislative approach to the problem must seek to achieve.

First, the courts have held that the existence of schools attended predominantly by members of one race does not in itself amount to racial discrimination; if it were otherwise, there would be no meaning to the requirement of "state action" as a precondition to a violation of the Fourteenth Amendment. Keyes, supra; Spencer v. Kugler, 326 F. Supp. 1235 (D. N.J.), affirmed, 404 U.S. 1027.
Any legislation should make it clear that "desegregation" means only the elimination of the effects of racial discrimination by state officials.

Second, any legislation should make it clear that the remedy must deal only with the effects of the acts of school officials. Discrimination in other parts of society should

be redressed with other tools. For example, Congress has enacted laws to rectify residential discrimination. See 82 Stat. 81 et seq., 42 U.S.C. 2601 et seq. Racial discrimination in housing should be attacked directly and eliminated as speedily as possible from our society. Its effects ought not to be the object of a "collateral attack" in school cases. As the Court has observed (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 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 concentrations in some schools.

I should emphasize the language that one vehicle can only carry a limited amount of baggage. The schools have to try to fulfill the goal of quality education for all our children, and no goal is more important than this to all of our citizens.

Third, any legislation should make it clear that the remedy should not go beyond the effects of the violations. It should attempt to remedy past wrongs, but not to produce a result merely because the result itself may be attractive.

"The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution . . . . As with any equity case, the nature of the violation determines the scope of the remedy" (id. at 16). "[T]he remedy 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." (Milliken v. Bradley, 418 U.S. 717, 746 (1974)). Cf. Franks v. Bowman Transportation Co., No. 74-728, decided March 24, 1976, slip op. 23. The consequence of illegal acts by school officials can often be eliminated without an insistence upon a racial composition in each school that in some degree reflects the racial composition of the school district as a whole.

Whenever feasible, the objective of an order altering the racial or ethnic student compostion of schools should be to recreate that student composition of each particular school that would have existed but for the illegal acts of discrimination. It will sometimes prove impossible or not useful to recreate such conditions in particular schools. This may be so because of the great number of schools that are or may have been affected, changes in demographic patterns, or some other circumstance. In such cases, the objective of the desegregation remedy is to restore as closely as possible a social process that places great importance upon individual choice, mobility,

and community self-reliance. When legality is restored in a community, our utlimate hope must be the normal operation of the restored social process reflecting the hopes and aspirations of all of our citizens. Thus, when the courts cannot recreate the precise situation in particular schools which would now exist but for the past act of illegal discrimination, they should attempt to recreate patterns of racial or ethnic integration that would have existed in the absence of illegal acts. To the degree that a neighborhood school system was in effect at any level of a school system, the court should take into account the extent to which attendance patterns would, in any event, have reflected residential patterns of racial and ethnic concentration. This will often require integration measures primarily at the borders of racial and ethnic areas of concentration. This, combined with appropriate opportunities for transfer, voluntary busing, magnet schools, the appropriate siting of new schools, and other forms of relief provided by the statute, will allow for the resumption of normal and free social processes. Of course, approximations in achieving this goal must be permissible.

The inclusion in the decree of a provision for voluntary transfer of individual students from any school in which their race is in the majority to one in which it is in the minority can be a useful device to compensate for possible non-apparent additional lingering effects of the discriminatory conduct.

In some circumstances, temporary additional remedial measures may also be appropriate to break down officially caused racial identifiability of particular schools. But the necessity for such devices and approximations should not divert the courts from the pursuit of the proper ultimate objective.

Fourth, the remedy ought to be limited in time (Swann, supra, 402 U.S. at 31-32). Any judicial order of this sort strongly interferes with normal social processes and local autonomy. The interference is necessary, but it ought to terminate as soon as the court can reasonably conclude that the object of the remedy has been attained. In some cases (for example, those involving teacher assignments or gerrymandering of attendance zones) a fully effective remedy can be devised and applied expeditiously. It may take longer to overcome the effects of discriminatory school siting and capacity decisions, for an effective remedy may involve school closings and construction. But however long each component of the remedy may take to achieve, any legislation should ensure that the courts monitor the process and dissolve their orders once the effects of racial discrimination have been ameliorated to the extent possible. It should also ensure that the use of forced busing is, except in extraordinary circumstances, strictly limited in duration.

Let me now address the way in which the legislation I transmit today meets these concerns.

First, it would bring certainty to the remedial goal. Instead of the ambiguous word "segregation" it uses "unlawful discrimination," which in turn means racial or ethnic discrimination in the operation of the schools. This makes it clear that the only proper objects of the remedy are to ban such acts and eliminate their effects. "Desegregation" is therefore appropriately defined as the elimination of the effects of unlawful discrimination by school officials.

In order to give meaning to these definitions, the legislation requires courts to hold trials and to make explicit findings of fact concerning the effects of unlawful discrimination. In making these findings, the courts are instructed not to rely on any presumption that the unlawful discrimination caused all (or any particular part) of any observed racial distribution. The effects of the discrimination must be proved as facts; they cannot be presumed. It will no longer be possible for courts to use a finding of unlawful discrimination as a "trigger" for an order to produce system-wide racial balance. Courts will mandate only that balance that would now exist but for the unlawful discrimination by school authorities.

Second, the legislation makes it clear, if it was not already clear from other sections, that in a school case only the acts of school officials are to be considered. Racial imbalance caused by voluntary choice, by private dis-

crimination, or by unlawful discrimination other than discrimination in the operation of the schools, is not to be addressed in a school case. School cases should not attempt to cure social problems the genesis of which is outside the schools.

Third, the legislation provides for a review by the judge every three years of the remedies he has imposed. With respect to forced busing, it requires that except in extraordinary circumstances no forced busing can continue for more than five years. These provisions would return the operation of a school system to local authorities at the earliest possible time.

Fourth, we must give renewed emphasis to the fact that public schools are and must be of basic concern to local communities. Efforts should be directed toward bringing local community leaders together so that proper educational procedures can be developed and can gain the maximum community support. The intervention of the federal courts to enforce the constitutional mandate should as much as possible leave responsibility upon the local community. For this reason the legislation I am proposing places emphasis on the use of mediators and mechanisms that will bring community leaders together to solve their problems. The legislation authorizes the Attorney General to intervene in suits at the remedy stage in order to enforce the statute's objectives, and it authorizes him to appoint mediators to assist the court and the parties in these difficult

cases.

Finally, the legislation provides that before a Federal Judge orders busing, a Committee of leaders from the area should be formed to endeavor to fashion a feasible plan which could be put into effect over a five-year period to make progress toward the removal of the effects of unlawful discrimination. The creation and implementation of such a plan could result in the elimination or substantial minimization of forced busing.

The efforts to restore our public schools to the condition in which they would have been but for unconstitutional acts of racial discrimination by school officials should not be met with resistance and fear. We should be united in our attempt to achieve this goal. The legislation I today propose is an important step.To work toward this goal with a minimum of divisiveness can be an exercise in the harmony that we seek to achieve and can lead to the end we all so deeply desire.