



Department of Justice

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PRESS CONFERENCE

OF

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

WITH

MEMBERS OF THE PRESS

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P R O C E E D I N G S

QUESTION: Mr. Levi, you have said that the whole question of busing needs rethinking, but you never were specific on (inaudible). This has led to an awful lot of shadow boxing.

Can't you finally tell us what it is that you think needs rethinking about this busing?

ATTORNEY GENERAL LEVI: Well, I can try to help.

First let me say as a minor matter that, when I say it needs rethinking, perhaps what I should have said is that it needs thinking; and that isn't perhaps such a minor matter, because there are not many, really very many Supreme Court cases on school desegregation and busing and so on. And the normal course of Supreme Court opinions, when the constitutional doctrine is being developed, is that it takes thought as to what has been decided and what has not been decided and how these cases are to be applied. That's the normal way that the rule of law develops and is applied in our society.

QUESTION: (Inaudible).

ATTORNEY GENERAL LEVI: Yes.

I didn't answer the first question, but I will also try in some way to do that.

Now, there is no doubt that the Supreme Court has decided that official, illegal acts by the school officials to

accomplish and maintain segregation, sometimes called the dual system, are illegal and those acts must be stopped, and the illegal effects must be removed, sometimes described as the root and the branch. There is no doubt about that.

There is, I think, a basic question as to whether, once illegal acts have been found in a school district, it is then the duty of the Federal court, if a case is brought and the illegal acts are found, to compel complete integration in the schools. And that really is a different question: because we don't -- we really do not have a society where there aren't clusters of population, where there are not -- where there aren't distributions of people, based on various factors -- education, income levels, or whatever -- so that one would expect in a diverse society, which I think is one of the richnesses of our society, that in the normal course there would be considerable integration and there would also be some concentrations.

So that this is a matter not so easy to state; but that I think is the, really the basic problem that has to be worked out. That's one of the problems.

The second one is -- and perhaps it would be decided in the Pasadena case, and I don't want to say too much about it -- is whether busing is a transitional remedy. There is no

doubt, in my mind, at least, that in some cases busing is constitutionally required; it is constitutionally required if there is no other adequate remedy.

The courts that have used busing have usually stated they don't want to use it, that they do regard it, as the Esch Amendment states, as a remedy of last resort. But they feel that in a particular situation it is necessary; and I have no doubt that in particular situations it is necessary; and also I have no doubt that in some areas it works well and others it does not. But there is a question as to whether it is supposed to be a permanent remedy or a transitional remedy. And I do think that legal scholars are coming more and more to think -- and perhaps this is always the case anyway -- that it was to be regarded as transitional, and that may be involved in the Pasadena case.

Now, before I respond, if I have answered what I mean by "rethinking," I will try to talk about Boston, the Boston case for a moment, and then I'll come to you.

The Boston matter, as I think has been said frequently, has been a matter of concern to this -- for the Department of Justice, because through the United States marshals and the Community Relations Service, we have been doing our best to help support the court and get a better observance of the law and

reduce violence in the Boston situation. So that of course we have been concerned about Boston, as we have been concerned about other places where decrees have had their problems in terms of acts of violence.

But the Boston case, particularly in terms of the Supreme Court, came here because the Solicitor General was notified of the four petitions which had been filed with the Supreme Court asking for certiorari in that case; and in the normal case, he would review that and he began that review as I understand it right after the Pasadena case had been argued; and he called me on the telephone and said, "I want you to know that I am thinking about whether or not we should file a Memorandum in support of at least one of the petitions; Do you want to discuss it?"

Now, I had several options open to me, quite obvious ones: I could have said, No; I don't; it is up to the Solicitor General to decide, unless the Attorney General thinks it's so important that he has to get into it; I could have said -- and you must remember that Bob Bork is a former student of mine; I don't say that in any pejorative sense, I hope -- but his relationships with me, as is true with the other Assistant Attorneys General is, I am sure, close enough so that I could have said, "Bob, forget it. Why are you going

to cause trouble?" I didn't think it would be -- I knew there would be difficulties; but I thought my responsibility was such that I had to say, "I think we should review it," and I immediately got Stan Pottinger and Bork together and their assistants and we began a series of discussions as to whether we should file such a memorandum. And those discussions were proceeding; and one kind of pivotal point in it, late in the afternoon, if I recall it, I asked the question whether we were reasonably satisfied that we knew what kind of a brief the United States would file if the Supreme Court were to grant certiorari; and there seemed to be general agreement that we did know that. And of course -- this is an important matter, and I said, "Well, I think I want to sleep on it." The next morning, I said, I came back and I said to Bork, "I think that since we seem to be agreed as to what kind of thing we would file, if it grants it, maybe we should try to find out what kind of thing we would file to urge them to take it, and the way to do that is to try to write the memorandum, and let's see what it looks like." And I put down two basic requirements to that memorandum.

First, I said any memorandum would have to -- and I didn't know whether this could be written; and the only way -- and the only way -- and I am sure since this is your craft,

that you find out whether something can be written is that you try to write it and after you write it you see where there are holes in it and whether it doesn't work.

I said first it has to be supportive of the District judge, because I don't think that in view of the long history in Boston and the community relations problems involved, that we should be in the position of pulling the rug out from the judge; and secondly, it must not in any way -- and I don't like the word, but I use it -- condone violence. The reason I don't like the word "condone," is that I think the Department's position on that has to be really more affirmative where there are illegal acts which involve Federal jurisdiction; it seems to me we must affirmatively act to prevent or punish violence. So that was the second requirement of the first category.

Then the third thing that I said, which was perhaps more important because it shows at least what our thinking has been, I want to be sure that the position that we are taking is not asking the court to overrule any Supreme Court case. And that, you see, immediately involved the question of the interpretation of the Swann case, the Keyes, Greene, and others.

So that was the first category.

The second thing that I said was that I also want to be sure -- and this was the matter with the greatest difficulty -- that what we are saying as a theoretical matter would make a sufficient difference in Boston so that it is a good case in which to raise the issue and that involved a question -- not only a theoretical point of the theory, but the facts. And that meant not only the findings of the judge -- because there were some matters on which he apparently didn't feel he had to make findings -- but what was actually in the record, and the record is enormous.

So that we immediately started out then to write these memoranda, which changed; they went through I think six drafts as we learned more and more about what was in the record.

At some point in that deliberative process, which is the normal process and one which you really have to go through if you are going to decide an issue of this kind, it became public; and I haven't the slightest idea how it became public and it is not my bent to try to find out. I am quite sure it did not come from me and it didn't come from my office; and I don't know where it came from.

Then Senator Brooke called me and then I knew that it was public and the President was out of town. I had not been in communication with the White House on this at all. I

called Phil Buchen; he didn't call me; I called him -- not that that's important -- and I said, "I think you ought to know that we are considering this case and since it apparently has become public, you ought to tell the President, because I think Senator Brooke has told me that he is going to call the President."

The White House did not convey that message to the President soon enough, so to speak, because when Senator Brooke called him, the President hadn't been told, so when he said he didn't know anything about it, he was, as is usual for the President, telling the truth.

Now, once it became public, the deliberations had to continue; we still had to find out what was in the record, which is a long process. But we had the added point that a lot of people wanted to talk to us. Now, that had a certain value, I think. In any event, various groups came in and we heard them out, and I was told a great deal about the situation in Boston.

Towards the middle of the week -- and I really can't remember whether it was Tuesday morning or Wednesday morning -- I got the first memorandum, which told me of various facts, which I don't want to go into, which were in the record. And I discussed in considerable depth with the

President, on two occasions, the kind of considerations which I thought were involved. And as the President has said, and he is correct, these were excellent discussions and are the kind that one would have with the top lawyer; but his reaction always was that it was up to me to decide. And I did a lot of consulting, as one has to, in short, with my advisers in the Department and the people who have special responsibilities in the area, such as Mr. Pottinger and Mr. Bork, and on Saturday morning, I made the decision. Previous to that I had written out two statements myself, one announcing that we were going into Boston and one announcing that we weren't. I had that in a briefcase. I didn't give it to anyone. I didn't show it to anyone except the President.

It was much easier to write the one saying we were going in than the one saying we weren't; because if we had gone in, then the brief would really speak for itself.

So that on Saturday morning I decided that on balance, using the best judgment I could -- and I have no desire to try to second-guess myself any more on that subject -- that we should not go in.

I know that people have looked for clues as to what was involved.

What was involved was basically a question of law,

but that oversimplifies it; because the evolution of opinions and the kind of cases one brings to the court inevitably involve what you think the facts in the case really are and as they will be seen by the court, whether it is a case for the kind of theory which we think and have thought for some time is correct; but we also of course had to be concerned, as I think the Department of Justice always has to be, about the -- you can't be indifferent to the effect on the particular community. And I don't have a way of calibrating percentage points of how these things weigh; but I did my best to remove any other kinds of influences upon me.

I always knew that whatever decision I made would be the wrong one; that it is the kind of a decision which you do not win on. In fact, when I called Phil Buchen, as I have described, and told him that this is what we were considering and that it was now public, I said, it is the kind of thing where if I have two friends I know now that I will lose one of them at least and maybe I've, you know, lost both.

So that that's really --

QUESTION: Can you tell us -- I am trying to understand this new policy that you are talking about today, transitory busing; are you saying it's OK to try it experimentally in some communities, but not in others?

ATTORNEY GENERAL LEVI: No, I don't really think

it is a new policy; I think that because busing has been regarded as something which -- I don't like to use the key words there, but -- required busing, or transportation, or whatever it is -- really is trying to make up by transporting children around for the other consequences of, say, gerrymandering the school districts, or restrictions that have been imposed, and so on.

I think in fact it has probably always been regarded by the courts as not a permanent remedy; and of course that is not an unusual, as you know, position to take in terms of equitable remedies, in any event.

But I think it has been regarded as an unusual remedy. And one that the courts not only don't really want to use very much, but probably do regard as transitory. Judge Garrity's own opinion, as you may recall, states that he was not -- he really didn't want to use busing, but he found that that was a necessary remedy. Now, the question is, How long is it necessary, and when are the illegal effects dissipated?

QUESTION: Mr. Levi --

ATTORNEY GENERAL LEVI: I have to -- I promised.

QUESTION: (Inaudible) very great difference of opinion with the President on the busing; he refers to them as court-ordered or forced busing; you call it required busing.

ATTORNEY GENERAL LEVI: Well, I don't

QUESTION: (Inaudible).

ATTORNEY GENERAL LEVI: Well, now, you started with one question and you ended with another.

I don't think there is a basic difference between me and the President. What I am doing is acting as Attorney General and trying to see what, as any lawyer has to, what the law and application would be and that includes the law at the highest tribunal. So that I have to continue to ask myself what is the constitutional mandate, and as I have said, I think that, although some of my friends who are law professors have publicly disagreed with this, I think that busing is constitutionally required where there is no other adequate remedy.

But the President certainly has agreed with that and has said that. If he expresses his view that he doesn't like busing, that's not the least bit inconsistent.

Now, as to the politics of the matter, the fact that we are in that time of the year, that's really why I recited to you -- and with particular emphasis of the call to me from Bob Bork; and of course it went through my head at that point. I could have said to him, "Bob, you know, forget it." And I am not sure of this, but I think he would have.

But I really made the rather immediate judgment --

and I think it was the right one -- that I have responsibilities, official responsibilities, and I don't think they can be put in the icebox because this is a political year.

Now, of course, I can't say that I was completely astonished that the discussions became public, because I have been in the Department of Justice long enough to know that those things occur; but I was exceedingly disappointed and it is true that once that happened, then the political aspects became more pronounced.

But I -- and then you are in a difficult position; because, as I move around the country -- and I don't do it much, but I do it some -- I come to any city, they say, well, are you considering what is going on here as a possible case? Frequently I don't know what's really going on there, but if I did, it would be most inappropriate for me to stir up that kind of thing, and still, if you say, well, no, I am not, that immediately raises the question, well, why did you rule us out?

So that my own attitude on it has been to try not to pinpoint places. As a matter of fact, as you undoubtedly know, for many years, the Department of Justice's posture on this has been to enter at the appellate levels and not at the District Court level. It is in some District Court cases, but

you will find that that's usually because that occurred many years ago.

So that the pace of those cases and when they will be coming up is always uncertain; and then there is always the additional uncertainty, which I just stated for you on the Boston case; namely, what is in the record; what kind of a situation are you going to present.

Now, I don't have any hesitance -- because it has been announced -- in saying that we are reviewing the Wilmington, Delaware, case. But I don't want to go down a list of cities -- in the first place, I can't remember them all -- and surprising things suddenly turn up, and say, well, we are considering this one or that one or the other one. I do think I have an obligation of -- not to cause more feelings of uncertainty with respect to court decrees.

QUESTION: (Inaudible) My understanding was that you got instructions or a request from the White House last November to look into this issue and try to do something about it.

The chronology you give is that this all began --

ATTORNEY GENERAL LEVI: Well, that is because I was referring to Boston. It is certainly true that in November-- and I think subsequent to that -- there was a meeting at the

White House with the President at which the whole problem of busing and various aspects of that were discussed; and the position I took there was that I did not think this was a matter for a constitutional amendment; that I did think that one had to realize -- really, the point that I made a little bit ago -- that the cases as I saw them were in a posture of still developing.

Now, that doesn't mean that I think the cases are going to go back, going to go back on the basic principles, because I don't think they are, and I don't want them to. But when you come down to the kind of matters, such as the scope of the relief and busing and things of that sort, and not whether busing is at times constitutionally required, which I don't really think is at issue, I think these cases are in the situation where they are not fully developed. And I made that point at that meeting and said that the department was looking for the appropriate case in which to help this development along.

Now, we told the Supreme Court that in the Pasadena case. As a matter of fact, -- and I had more or less expressed this in various interviews; so that when I had a meeting with civil rights leaders, they asked what I meant by saying that I thought we had to rethink some of these

matters and, as I say, a better use of the word would have been to work with the cases and see what one would project from them. And that was in connection with the Pasadena case.

Well, in the Pasadena case, the Solicitor General finally opposed the granting of certiorari and the court granted it. And then our brief, if one reads it carefully, I think, will show that while we were arguing that this is not the appropriate case, we indicated the various concerns we had and in the oral argument, now the Solicitor General was very clear to the court that we were looking for a case to bring to them. So this has been a consistent thing, and the President, in making up his mind, as a result of that meeting, then directed that various things be done and one of them was what I said; namely, the looking for a case. But he also directed that there be consultation between HEW and the Department to see whether there were other helpful steps that we could take, which would help the communities, and whether there should be legislation.

And so all of that was started -- and I don't have the precise dates -- it began in November, as you said.

QUESTION: (Inaudible).

ATTORNEY GENERAL LEVI: Well, I don't think -- I think it is very hard to pinpoint it the way you want me to,

because you have to make the assumption that the court decree in a desegregation case is going to have a number of requirements that have to be met, and these may relate to the building of schools; it may relate to the redrawing of lines; it may relate to voluntary transfers, which, given the proper atmosphere, can be very helpful; and if all of these things work, as one assumes they will at some point, then presumably the busing will be no longer required. And you can try to handle that by a period of time or perhaps you can try to handle it by pointing to -- this is very difficult to do -- various objectives that have been realized.

The legislation which we are discussing here in the department and which is not in final form, and which we will when it is in final form recommend to the President, and then the President will have to decide, along with his other advisers, whether this is the legislation he wants, does have in it a provision that busing can under certain circumstances be ordered for a three-year period; that it can then be continued for two additional years, so it is a five-year period; then if the orders of the court over that period of five years have been carried out in good faith, the assumption is that busing will not any longer be required unless there are extraordinary circumstances.

QUESTION: Mr. Attorney General, do you agree with the President's view as to private schools (inaudible) be permitted to exclude members of certain races?

ATTORNEY GENERAL LEVI: Well, it is my understanding of your question you are asking me whether I agree with the President's private views as to the law.

The -- my position as to the law is indicated by the brief that we filed in the Supreme Court that we think that private schools may not discriminate on the basis of race; and we do that on the basis of a 19th Century statute dealing with the illegality of contracts which discriminate on the basis of race.

So that is my position as to the law. My understanding is that the President was not stating what he personally would prefer as to his own conduct, but he was thinking about the conduct of other people, but not talking about the law.

QUESTION: Mr. Levi, I would like to go back to one of your earlier responses in which you said that I don't think -- let me be sure I have this correct --

"In particular situations it is necessary, and I have no doubt in some cases it work (inaudible).

ATTORNEY GENERAL LEVI: Well, I don't think I can

be, frankly, more specific than that unless I talk about particular communities.

One has to recognize that busing as is so often said is in some form an old American tradition. Busing is most frequently used in urban areas -- I mean in rural areas.

My guess is that the larger the city, the more difficult it is when you require busing.

But I think it depends a good deal on the particular community, the distribution of population, the community relationships; the relationships with the school.

We have a great many different values involved here. One of the things that always used to be said is it is very important for the local community to have an effect on the local schools. And while I know that as an old pseudo-educator that parents are regarded as a nuisance; but the fact of the matter is that it is important that they be involved and that the community be involved with the local school.

Now, busing can defeat that; there may be ways you can make up for that and all I know is that in some areas it seems to have worked well and others not; and again I don't want to go into this, but insofar as one can tell from a -- the educational results which, by the way, is the end-all

answer; but so far as one can tell from the educational result, sometimes it works better and sometimes it works very badly.

QUESTION: General Levi, what is the significance of Mr. Shaheen's investigation, new investigation into the Martin Luther King case?

ATTORNEY GENERAL LEVI: Well, that, I take it has nothing to do with busing.

That -- I am surprised at the question, because the recommendation which I got from the Civil Rights Division was that -- really to the effect that they had made a partial investigation into the Martin Luther King and FBI-Department of Justice relationship. And their first recommendation was that that investigation be completed.

Now, their second recommendation, which somehow was made public, was that an outside board of some sort or other be appointed.

I knew -- I didn't make up my mind about the outside board and I still haven't; and I will explain that.

But I knew that the first thing that had to be done and that there should be no time wasted was to complete that investigation. And I was very insistent that that be done.

The Civil Rights Division had had its -- more or less its -- two of its top -- well, three of its top people

on it and didn't feel it could continue that; but they thought it should be continued and finished; and they had certain tentative conclusions; but they said it had to be finished, and I agreed with them.

So I immediately asked Mr. Shaheen, whose Office of Professional Responsibility has that duty, to organize a group, taking lawyers by the way in part from the Civil Rights Division, and others, to complete that investigation. And that is being done, and I am glad to say it is being done quickly. And my understanding is that they are now in Memphis, because one of the points that had been made in the report that I got was that, while certain materials had been looked at in the Headquarters here, it really was not known what was in the field offices and whether they were simply duplicates of what was here or whether there was something different; and I felt that we simply had to get to that.

Now, as to appointing an outside board, the reason I wondered about it was because you achieve nothing by appointing an outside board except -- just by appointing them.

If their names are well-known, that may add some credibility or something, but if I were going to appoint an outside board I think what I would do would be to take the best, not too old, lawyers that I know who would have no particular bias one way or another, to be on that board. But

what would they do?

The first thing they would have to do is have the investigation completed; and then how would they do that?

So it would seem to me that that was what we really had to do first.

Now, secondly, I do have a persistent problem that bothers me, and I just might as well say it: There are rights of privacy involved here, very important rights of privacy, and I think one has to think quite a lot before one brings in other people who I think in order to be fair would have to review a great deal of material which I do not think should have been gathered.

So that -- but I haven't crossed that bridge because I haven't had to cross that bridge. And I am sure there is a lot of advice for me and, as you know, I had such trouble making up my mind, as some of you say, I always take advice, so I would be glad to get whatever advice you have.

QUESTION: General Levi, Mr. Kauper resigned as Director of the Antitrust Division, and now there is all kinds of speculation as to possible change in the direction and emphasis of the Antitrust policy.

Is it reasonable to expect a continuing aggressiveness in this, or is there going to be some kind of change?

ATTORNEY GENERAL LEVI: Oh, I would think that there would be continuing aggressiveness; and I really don't expect a change except that I think that if Tom Kauper were staying, that it is very likely that the Antitrust Division would be entering into a new stage where they would be bringing more cases.

They have as you know been very much involved and should be involved and will continue to be involved in deregulation. They have been very much involved in the legislative changes. They have had problems of staffing big cases; they got rid of one of the big ones; so that I would assume that if Tom Kauper was staying that there might be a more aggressive litigation policy; but I think that is not because of a change in leadership; I think it is because other things will have been accomplished by that time.

QUESTION: Mr. Levi, the Justice Department has been investigating Congressman Bill Clay from Missouri for the past three years on one allegation or another. He has contended, I might add, that they have found no evidence in the cases. He contends that there is harassment on the part of the Justice Department and the latest allegation is that he billed the government for trips that he didn't make. The Justice Department is now in litigation with that case.

Do you plan to sue the nine other Congressmen that were also alleged?

ATTORNEY GENERAL LEVI: Well, we certainly -- we certainly are aware of the allegations with respect to other Congressmen, and they fall into the same category, or may fall in the same category; we will proceed and in fact we have -- although I -- you know, you press me; I do not like discussing pending investigations; we have taken the first steps.

QUESTION: Is this harassment on the part of the Justice Department?

ATTORNEY GENERAL LEVI: Well, I hope not. I would be terribly upset if I thought it were. I don't think it is.

QUESTION: Sir, could you please say why it was that you did not go into the Boston case?

ATTORNEY GENERAL LEVI: Well, I don't really want to go into that because I have to be concerned about -- I told you what the process was, the kinds of things we took into account; there is a community in Boston which I do not wish to unsettle in any way; and there are proceedings constantly going on before the judge. So that -- but I do think that when the -- when and if the legislation that the Department is recommending is made public, you will see in that legislation the theory, which I am quite glad to state to you really, that

the department thinks . is the proper theory for relief; and our concern with respect to Boston was, how much difference that would make in that particular situation? So that we had to make a judgment whether it was the right case to bring it out.

QUESTION: (Inaudible.)

ATTORNEY GENERAL LEVI: I am not -- I don't want to -- it isn't -- taking everything into account, we were concerned about the amount of difference -- I think it would have made some difference; but I think -- we do not consider it, for all the kinds of things that you have to consider when you decide to go to the Supreme Court, we didn't think it was the right case.

QUESTION: I have a larger question.

(Inaudible) has said that if the courts would only follow the Esch Amendment (inaudible). Do you agree, and in this same type of case (inaudible)?

ATTORNEY GENERAL LEVI: No; I can't specify which cases they have now to follow the Esch Amendment because you have to have an enormously thorough knowledge of the particular case.

I think the courts have followed, tried to follow the Esch Amendment. The Esch Amendment has in it a provision

which of course says that it is really not in any way changing the court's interpretation of the, own interpretation of the Constitution, so on and so forth, so I don't know, I don't know that the Esch amendment has required the court to make specific findings, for example, which would exhibit more clearly that it was following the Esch Amendment; but I think the courts have more or less considered that priority list which the Esch Amendment states.

I am not sure those priorities are the right priorities, and we get into a curious area where you are trying to say which kind of priority works best for every place.

QUESTION: Mr. Attorney General, could you take the burgeoning sex scandal on Capitol Hill -- and this is not the kind of alleged crime that we are particularly used to dealing with.

Could you set out for us the guidelines that must have been established in your Department, under which you will or will not ask for indictments in this kind of case?

ATTORNEY GENERAL LEVI: Well, I think the -- I don't view this -- the Department of Justice's intrusion into these matters as trying to correct sexual behavior. It is really a question of the misuse of Federal funds, statutes of that order. It is not -- I don't think that it is up to the

Federal Government to do the kind of policing which perhaps that question suggests.

QUESTION: (Inaudible) as to how to judge where there is a violation relating to public funds and where there is none?

ATTORNEY GENERAL LEVI: Well, I think it is -- as is always, I don't think -- you know, that is only complicated because you have to know what the facts are, and sometimes it is hard to know what the facts are, but it is a question of what was done and the intention with which it was done; and I don't really want to go into any more depth on a matter which has been before the grand jury and is there now.

QUESTION: Mr. Levi, if the House-Senate Conference Committee should approve an antitrust measure similar to the one the Senate passed last week, would you advise President Ford to sign it?

ATTORNEY GENERAL LEVI: Well, I think they are moving in the right direction, and I think we have to wait until we see what the full legislative process shows. There are certainly some compromises which I would urge the President to accept; but I have to see what comes out.

QUESTION: Do you support --

ATTORNEY GENERAL LEVI: Pardon me?

QUESTION: Do you support fluid class recovery in parens patriae actions _____?

ATTORNEY GENERAL LEVI: I didn't hear the first words, but I think I can perhaps put them in.

QUESTION: I asked whether you supported the concept of fluid class recovery in parens patriae actions.

ATTORNEY GENERAL LEVI: Well, I have indicated my concern about that, because the -- but it is not a simple problem; because the state attorneys general and private parties can bring these cases now, and in many of the states the state attorneys general have the power to do so right now.

They probably would have to notify the litigants they represent and this would remove that.

The problem that you have to face -- and it is a public policy problem -- listen to me on it.

The possible amount of damages can be so terrific that for a large company, the threat of that kind of a case is likely to be inevitably met with a settlement, because if you are telling your client that the liability may be, say, \$170 million because you don't think that the plaintiff will win, then how do you -- is it worth a million dollars to get rid of this, and so on.

Now, that is the problem, and I don't think anybody knows the answer to that. But I discussed that with the Executive Committee of the state attorneys general last week, and they also said that they were concerned about the formula;

while it's hard to think of a different one; so that -- but I think that narrowing down the *parens patriae* therefore is a good idea and I don't know whether -- I don't know what the final shape is going to look like nor what the treble damage part of it is going to look like; and we will have to think of it.

Now, I want to make a second point.

I gave a talk at one point before the -- well, at the Press Club on antitrust where I said that one of my concerns was that you might have to save antitrust from its friends.

Now, what I had in mind was that if you -- if we start -- and I hope we don't -- a mechanism which is going to bring into being those kinds of cases all over the country with enormous damage awards where it is exceedingly hard to know whether there was in fact that damage, then I would assume that the next step would be to have some kind of a government agency authenticate the reasonableness of the prices which you charge. That is the kind of history which the antitrust laws have always verged on getting into. And in my book, it is the particular special virtue of the kind of antitrust law that we have that we haven't gotten into that.

I don't want to push the antitrust laws so far in that direction that the reaction will be, well, just to

protect everyone, wouldn't it be better if there were some kind of a price-fixing governmental board. That was Judge Gary's proposal, as I am sure all of you recall, in the early days of U. S. Steel, and it doesn't happen to be the kind of proposal I like very much; and it has always been waiting around the corner in the United States.

If you look at the history of the United States on the antitrust laws and their periods of enforcement and non-enforcement. . . .

(End side 1 of cassette.)

(The question, to which the following answer was given, was not recorded on the cassette.)

ATTORNEY GENERAL LEVI: Well, I can't speak in terms of Washington society because I wasn't here during the Water-gate period, and I keep finding what I regard as the old boys who tell me how it was; and they seem to think they have earned some special merit for having lived through that period, and no doubt they did, or do.

QUESTION: (Inaudible).

ATTORNEY GENERAL LEVI: Yes.

I think the country has been in a reaction to Water-gate and how long that will last I do not know; there has been obviously a readjustment between Presidential and Congress-

ional power, which I have written about. There are at times I think a great deal of suspicion, but -- of government people, and I have been told by Governors of states that the Watergate or the post-Watergate suspicion hits most heavily on them rather than on the Federal Government.

Now, I want to add that -- first I can say I don't know about those things; secondly, like everybody else, I think I do, and third, I don't think you can really tell what the American public's reaction on these matters really is.

Certainly, the -- what we have done in the Department of Justice was not done before the Watergate era; that is, the setting of the guidelines for the FBI and that kind of supervision is an entirely new development unless one goes back to the days of Stone.

The electronic surveillance bill, which was reported out by the Senate Judiciary Committee, the Foreign Intelligence Electronic Surveillance Bill, is something that, you know, I don't suppose would have been proposed by an Administration -- at least wasn't over a prior time, and so maybe all of these things are in recognition that we do have to be particularly careful of abuses or, that in addition, we have to take into account that it is important that the public get assurances

that there are not such abuses.

QUESTION: Do you think that the bills that have been reported out by the Senate Judiciary Committee and earlier you had mentioned your concern about the right to privacy in connection with the King investigation, does not the Senate bill restrict the right to privacy recognized by the court in _____ & Abel, with respect to aliens in this country?

ATTORNEY GENERAL LEVI: I am sorry, I can't --

QUESTION: You mentioned the bill that was reported out by the Senate Judiciary Committee.

ATTORNEY GENERAL LEVI: Yes.

QUESTION: (Inaudible)

ATTORNEY GENERAL LEVI: Oh, I don't think so. I don't think so at all. I am surprised at the Question.

QUESTION: In those cases, the court said the Fourth amendment applies to aliens and the bill consistently says it doesn't if they are working for a foreign power.

ATTORNEY GENERAL LEVI: No; this bill applies to American citizens in the same way that it applies to resident aliens; and I do not believe under the restrictions of this bill, which are very carefully drawn, that that is at all an invasion of protected rights of privacy or other constitutional rights. If I thought so, I wouldn't be proposing it.

QUESTION: (Inaudible).

ATTORNEY GENERAL LEVI: Now, what is that about the De Feo report?

QUESTION: Do you intend to release the De Feo Report on the investigation of the Drug Enforcement Administration?

ATTORNEY GENERAL LEVI: Well, I don't know the answer to that. The De Feo report contains -- there are problems about rights of privacy in that report and whether parts of it could be made public, I really don't know. That has to be --

QUESTION: Mr. Attorney General, I am still trying to, well, sir, see your bottom line on your comments on busing.

In view of your statement that busing is viewed as transitory, and more and more scholars are seeing that, and then the five-year language in the suggested legislation.

Are we seeing then some official backing off of busing as a remedy?

ATTORNEY GENERAL LEVI: I think what we are seeing is a recognition of what I think was always the way busing was viewed. But I think you have to couple that with our belief that the appropriate relief in a school desegregation case is to ban the illegal actions, to remove the illegal effects, to provide always, if the court thinks it necessary for transfers of students from a school where they are in the majority to where they would be in the minority, things of that sort; but that the scope of the relief really has to be to put the community in a position where the normal pattern

which it would otherwise have had takes over and it is not the purpose of the relief to require, for example, complete racial balance in every school.

QUESTION: Mr. Attorney General, may I follow up on that, please?

Do you have any concerns that by attempting that and the other remedies that you mentioned earlier by statute it might be unconstitutional?

ATTORNEY GENERAL LEVI: No. No; I do not, and I feel rather certain about that, and we certainly are not going to propose anything that we have any feeling would be unconstitutional.

I don't think one has to be particularly clever in drafting the kind of a bill I am talking about, because I think it follows the line of the cases.

QUESTION: (Inaudible) put in a position to be following the pattern which it normally would, and --

ATTORNEY GENERAL LEVI: Well, that -- I mean by that that one has to recognize, as I said before, that there are circumstances where appropriate acts, official acts with respect to schools may well result, may result in a school which has an -- overwhelmingly people of one national origin or race, and that it is not -- there is no specific purpose

there to discriminate, segregate, and that it is the kind of thing which we have had in our society if we forget the black and white problem, which we have had in our society ever since it has existed.

So that it isn't necessary to report having found an illegal act to say well now that triggers a mechanism which requires results which would never have otherwise, absent all the illegal behavior, would never have probably occurred.

You want to put the society in a position where there is recognition of the rights of individuals, the integrity of each individual, no discrimination on the basis of race or national origin or whatever, and where you do recognize that sometimes very good schools, for example, have not engaged in discrimination and have been very effective schools.

The argument about -- let me add, although perhaps I will be misunderstood.

I think it is denigrating to suggest that a school which is primarily black can't be a good school. I think that is a misunderstanding of the argument which is often made.

The argument which is often made is that unless -- in some communities, unless white children are going to the

black school, the community will not give the resources that it ought to give to that school. That is a different kind of argument, and decrees and the human values which should come to the fore in our community should take care of that. So that that is the kind of a problem that should be handled.

But assuming that the resources are given, I think it is wrong to assume that a school which has greater proportions or is almost totally of one national origin may not be an excellent school. The problem is, why were they put there? Were they put there in order to achieve this segregation? Are transfers permitted, and so on and so forth.

And I think a judge who finds that he really believes that his duty is to achieve a racial balance in every school is reaching for a remedy which is beyond the Constitution and was never intended by the cases.

QUESTION: Mr. Attorney General, what is the status of the so-called U.S. Recording Company case?

ATTORNEY GENERAL LEVI: The investigation is going on.

QUESTION: Under the FBI guidelines, will you allow the FBI to continue investigating the Socialist Workers Party?

ATTORNEY GENERAL LEVI: Well, you tell me. Under the FBI guidelines, full investigations do have to be reviewed by the Attorney General once a year and

so I assume that if there is such an investigation, as you seem to suggest, of the Socialist Workers Party, it will be reviewed and a decision will be made.

QUESTION: You said the investigation into the CIA would take three months.

ATTORNEY GENERAL LEVI: Yes. I don't think I said that it would just take three months. If I did, I was my normally foolish self; because it takes a long, long time, as any person in a prosecutorial business knows, and I can assure you those investigations have been going ahead with great care; there have been times when I have met with the group every week; I do want to say that I don't want to put such pressure on a group to complete an investigation before they say it's completed so as to give rise to suggestions that it has been a whitewash; and so I have tried to indicate the importance of completing it and prosecutors know that the statutes of limitations have to be watched; but they -- it has been an enormous job and it has been a job which really has involved going back 30 years.

I do have to say, if this is my final comment, that it is a great advantage being Attorney General of this department during this period, because in a way, one isn't Attorney General just for this period, but has apparently displaced all of his predecessors for the last 30 years, and

all of this information keeps coming to us.

VOICE: Mr. Levi, thank you.

(Whereupon, the Press Conference was concluded.)