



U.S. Department of
Office of Public Affairs

Office of the Director

May 6, 1982

AG
DAG
Associate
Olson
Rose
McConnell
Lee
Starr
Morris
Lezar
Habicht
Roberts
Kuhl
Stewart
Fein
Hiller

Attached is the information provided to the White House today--all but the talking points were provided to the press at noon for release at 1 p.m.

A handwritten signature in black ink, appearing to read "Tom DeCair".

Tom DeCair

° After careful and lengthy analysis, the Attorney General has concluded that Congress may not, consistent with the Constitution, make "exceptions" to Supreme Court appellate jurisdiction which would intrude on the core functions of the Supreme Court as an independent and equal branch in our system of separation of powers.

° Various factors must be considered in determining whether the core function would be invaded by particular legislation including whether constitutional issues would be withheld from the Court, the need for uniformity of results among the states, the extent to which Supreme Court review is necessary to ensure supremacy of federal law and whether suitable alternative forums have been left in place.

° If Congress determines to consider S. 1742 further, it may wish to do so in light of the Attorney General's analysis of the constitutional issues and the factors enunciated by him.

° The legislative record, debates in Congress, and committee reports are important analytical tools and final Attorney General analysis is necessarily predicated on completion of that process.

° As a policy matter, the Department of Justice has grave concerns over the withdrawal of Supreme Court appellate jurisdiction over classes of cases. The integrity of our federal system depends upon a single court of last resort having final say on the resolution of federal questions.

° Ultimately it is for Congress to enact laws and for the Executive to defend them unless clearly unconstitutional or an infringement on Executive Branch powers. If S. 1742 were enacted, the Attorney General would defend its constitutionality in the courts.

TALKING POINTS

JOHNSTON-HELMS AMENDMENTS TO DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION BILL FOR FISCAL YEAR 1982.

° These provisions limit the power of lower federal courts to order student transportation to schools beyond those closest to their homes, with certain exceptions, beyond 10 mile or 30 minute round trips, and restrict the power of the Justice Department to seek busing decrees.

° These provisions do not restrict the power of school boards or state courts to order desegregation decrees. They do not limit the power of the Supreme Court to consider constitutional questions.

° Congress has substantial power over the jurisdiction and remedial powers of the lower federal courts. In numerous instances, most notably with respect to the Norris-La Guardia Act, the Supreme Court has upheld legislative restrictions on the power of the courts to issue injunctions.

° Mandatory cross-town busing has been destructive of quality education and the goal of desegregation. The Supreme Court has held that busing may be limited by factors of time and distance which would "risk the health of the children or significantly impinge on the educational process."

° These provisions are within Congress' power under Article III of the Constitution and Section 5 of the 14th Amendment. They do not violate the Equal Protection or Due Process Clauses.

° The restrictions on Department of Justice authority, while unnecessary and unduly restrictive of Department discretion, are not unconstitutional. The Department retains ample authority to enforce civil rights statutes.

LIMITS ON SUPREME COURT'S APPELLATE JURISDICTION

° S. 1742, limiting Supreme Court appellate jurisdiction over cases involving prayer, raises fundamental and difficult constitutional questions regarding the role of the Supreme Court. Prominent constitutional scholars have reached different conclusions.