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**Kleindienst Says Bus Curb
Could Reopen Rights Suits**

**He Asserts Nixon Would
Welcome Court Test
on Constitutionality**

By JOHN HERBERS
Special to The New York Times

WASHINGTON, April 12 — Acting Attorney General Richard G. Kleindienst testified today that President Nixon's anti-busing legislation would permit the reopening of every school desegregation case in the country to meet standards in the proposed legislation.

His testimony, before the House Judiciary Committee, conflicted with that of the Secretary of Health, Education and Welfare, Elliot L. Richardson, who told the Senate Labor and Public Welfare Committee last month that the measure would permit the reopening of relatively few of the desegregation orders in effect.

Mr. Kleindienst's statement was important in that influential Southern members of Congress have opposed President Nixon's legislation on the grounds that it would not help desegregate Southern school districts that have undergone extensive school integration and had some additional busing.



United Press International
Richard G. Kleindienst

In his first appearance before Congress on the legal aspects of the antibusing legislation, submitted March 24, Mr. Kleindienst also did the following:

¶He said the Administration would welcome a provision in the proposal for a moratorium on court-ordered busing that would provide for a quick review by the Supreme Court to

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settle the disputed question of constitutionality.

¶He refused to give his opinion on constitutional amendments against busing before the committee, saying that the President preferred to push for legislation instead on the grounds that it was quicker and less drastic.

¶He said he believed that "some" lower Federal courts had ordered desegregation to achieve "racial balance," an action expressly forbidden by the Civil Rights Act of 1964.

Secretary Richardson said at a news conference following submission of the legislation that he knew of no court decision to bring "racial balance," and that the purpose was to do away with deliberately segregated schools.

President Nixon's proposals are in two parts: (1) to stay all court orders requiring additional busing until July 1, 1973, or until Congress enacts legislation prescribing standards for desegregation; (2) to concentrate Federal funds in segregated slum schools to improve the quality of education and to draw guidelines in the law to limit busing to achieve desegregation.

As soon as Mr. Kleindienst was seated at the witness table this morning, committee leaders of both parties charged that the Administration had submitted unconstitutional legislation.

Emanuel Celler, Democrat of Brooklyn, the House Judiciary Committee chairman, compared Mr. Nixon's action to that of President Franklin D. Roosevelt's proposal to enlarge the Supreme Court so it would approve his New Deal legislation.

"It seemed to me that the Court-packing plan was an un-

warranted attack on the integrity of the Federal courts," Mr. Celler said. "The busing moratorium bill now before the committee appears to reflect similar lack of confidence in the capacity of the Federal judiciary properly to implement constitutional protection."

He said the committee had solicited the views of constitutional scholars on the moratorium proposal. Alexander Bickel of Yale Law School, Harold Horowitz and Kenneth Karst of U.C.L.A. Law School and Milton Katz of Harvard Law School all expressed objections on constitutional grounds, Mr. Celler said.

McCulloch Accusation

William M. McCulloch of Ohio, the ranking Republican on the committee, accused the Administration of "asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause for a time so that Congress may debate the merits of further slowing down and perhaps even rolling back desegregation in public schools."

On reopening cases, the President's second proposal contained this section:

"On application of an educational agency, court orders or desegregation plans under Title 6 of the Civil Rights Act of 1964 in effect on the date of enactment of this act and intended to end segregation of students on the basis of race, color or national origin shall be reopened and modified to comply with the provisions of this act."

The bill says that, in drawing desegregation plans, the court and Federal agencies cannot increase busing for grades 1 through 6 and must use busing only as a last resort in higher grades.

Asked about the reopening

provision, Mr. Kleindienst said, "If you're going to have the national standard then you've got to have a right to reopen cases."

"All desegregation cases?" asked Robert McClory, Republican of Illinois.

"Yes sir," Mr. Kleindienst replied.

In his prepared statement, Mr. Kleindienst defended the constitutionality of the President's move, saying that it did not constitute interference with the Supreme Court's securing of a constitutional right, only a "particular remedy,"—busing.

Asked what the situation would be if busing were the only remedy available, Mr. Kleindienst said, "that raises a good question." But he added that he could not think of a school district where that would be true.

John Doar, a former Assistant Attorney General for civil rights, and Lloyd N. Cutler, a

Washington attorney, co-chairmen of the lawyers committee for civil rights under law, disputed the legal case made by Mr. Kleindienst.

They said that some precedents cited by the Administration for the legislation were in fact Congress extending 14th Amendment protection rather than taking it away, as they said the Nixon bill would.

Yesterday, the United States Commission on Civil Rights, in testimony before the House Labor and Education Committee, disputed a statement in the legislation that school districts are burdened with transportation costs because of desegregation orders.

The commission submitted the results of a study by the Department of Transportation, which showed that of the \$200-million in increased cost for busing in the current school year, less than 1 per cent was for desegregation. Ninety-five

per cent was for population growth.

The total cost for public school busing this year is about \$1.7-billion, compared to \$1.5-billion a year ago, according to the study.

Hesburgh Scores Candidates

SAN MATEO, Calif., April 12 (AP)—President Nixon and other election year candidates are copying Gov. George C. Wallace of Alabama on the "phony issue" of school busing, the Rev. Theodore M. Hesburgh, chairman of the Federal Commission on Civil Rights, has contended.

Father Hesburgh, president of the University of Notre Dame, told a news conference here last night that "Mr. Wallace heated up this phony issue in an election year and everybody jumped aboard the wagon, including the President."

"It is an issue doctored up to deal with emotionalism and fear, rather than the true issue of better schools," he said, and appeals "to fear, hatred and pettiness."

"I feel like vomiting when I heard them, and that includes them all," he went on. "We're living in an age of midgets."

Asked if he planned to resign as chairman in protest, Father Hesburgh replied that he did not.

"I'd get one headline, and then he'd put in a rabbit," Father Hesburgh, who was appointed by the President, said.

There is nothing sacred about busing, he said, adding that, it was just one method of providing better education for deprived children.

He was here to address the 49th annual Notre Dame Night gathering, sponsored by Bay area and San Jose alumni clubs.