



# Department of Justice

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INTERVIEW OF  
HONORABLE ELLIOT L. RICHARDSON  
ATTORNEY GENERAL OF THE UNITED STATES  
BY  
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AFRO-AMERICAN NEWSPAPERS

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[This transcript was prepared from a tape recording.]



1           Most of the President's efforts and my own involve-  
2 ment in them in the last year or more have concerned the  
3 objective of getting Congress to do this.

4           MR. NEWSON: Could I ask you then, on the question  
5 of changes and slowing the rate of busing, do you feel that  
6 the Congress can do anything that would vastly or greatly  
7 restrict the rate of busing without resorting to a constitu-  
8 tional amendment? And would you have any concerns about a  
9 constitutional amendment from the viewpoint that it might  
10 restrict other civil liberties?

11           ATTORNEY GENERAL RICHARDSON: Let me answer the last  
12 question first. I would be concerned about an amendment, and  
13 I have consistently opposed one, that would be directed at  
14 the busing problem itself. My concern rests not so much on  
15 any spillover or impact it might have on other civil rights  
16 or liberties, but on the sheer difficulty and inappropriate-  
17 ness of trying by constitutional amendment to deal with the  
18 highly specific problems that arise out of the variant situa-  
19 tion from school district to school district.

20           It seems to me that insofar as general rules or  
21 guidelines can be established, that it is better to try to do  
22 this by legislation. And I think legislation is also appro-  
23 priate because we are, after all, dealing with the question of  
24 when the remedy of transportation gets in the way of the  
25 objective of equality of educational opportunity. It has

1 tended to be neglected in the controversy over busing, the  
2 paramount proposition that it is, after all, the education of  
3 children that we are concerned with, and when busing becomes  
4 too prolonged, depending on the age of the child, then the  
5 consequence can be educationally counterproductive.

6 And so it was in the context therefore of seeking  
7 to improve educational opportunity and reinforce equality of  
8 educational opportunity that the President's legislative  
9 proposals were made.

10 It would not have eliminated busing, of course, and  
11 it would have recognized this in some situations where there  
12 is no other available means of dealing with the problem of  
13 eliminating a dual school system. But it would have sought  
14 to spell out the criteria to be used in the limitations on  
15 the use of busing.

16 As a matter of fact, we were quite receptive to  
17 congressional initiatives. We in effect invited them to come  
18 forward with any better ideas they might have. But I don't  
19 think really anybody regards busing as a -- at least nobody  
20 that has thought much about the problem -- strike that and let  
21 me start over again.

22 There has tended to be an attitude that has regarded  
23 busing as almost an end to itself, and I don't think anybody,  
24 white or black or any minority representative, really is for  
25 busing for its own sake.

1 MR. NEWSON: I think I have one more busing related  
 2 question and then I will move on to something else. A District  
 3 Court Judge in Indianapolis ordered the Justice Department in  
 4 1971, I believe, to file suit in relation to -- I suppose you  
 5 would call it a merger-type suit, Indianapolis with the  
 6 suburban areas. The suit was filed but nothing was done about  
 7 it much, I don't think. Now the NAACP's Legal Defense Fund  
 8 has moved on the same case to take up the business of the  
 9 merger. I gather by the position that the Justice Department  
 10 took in Detroit and in the Richmond case that we are not  
 11 supporting at the Justice Department school merger across districts.

12 ATTORNEY GENERAL RICHARDSON: I don't know. Of  
 13 course, in Indianapolis, you have a different situation, that  
 14 there has been a consolidation across local municipal lines of  
 15 all other municipal services --

16 MR. NEWSON: Right.

17 ATTORNEY GENERAL RICHARDSON: -- excepting only  
 18 schools to date. That may create a different situation from  
 19 one in which a court decree itself overrode the geographic  
 20 boundaries between school districts established by the state  
 21 and local authorities. Indianapolis, I don't know -- Stan,  
 22 can you pick up this point?

23 MR. POTTINGER \* : Yes. Well, briefly, to bring  
 24 you up to date, that case is in trial right now. Adding to  
 25 the exceptional circumstances which the Attorney General has

\* Mr. Pottinger is Assistant Attorney General in charge of the Civil Rights Division.

1 mentioned to you, with regard to the other consolidations of  
2 municipal services, is still another exception, which is that  
3 the existing Indianapolis school system is about 40 percent  
4 black and many of the school authorities are testifying that  
5 if it were desegregated, it would probably hold. It would not  
6 lead to the element of white flight that would tip it to an  
7 all-black system as is suspected in the 65 or 70 percent black  
8 Detroit or other major urban centers of the north. So that is  
9 still another exceptional situation in that regard, too. Our  
10 position is that the system ought to be desegregated stably. If  
11 that can be done with limiting the remedy to the area where the  
12 wrong is proved, without alterations of other lines, so be it.

13 MR. NEWSON: Am I understanding now that the Justice  
14 Department is going on with the suit it initiated sometime  
15 ago?

16 MR. POTTINGER : Yes, it is in trial right  
17 now.

18 MR. NEWSON: It is in trial --

19 MR. POTTINGER : Right now.

20 ATTORNEY GENERAL RICHARDSON: Are we seeking a remedy  
21 limited to the city proper? Are we opposing a remedy involving  
22 the suburbs?

23 MR. POTTINGER : We have opposed it in the  
24 sense that we have said that unless there is a showing, which  
25 to date has not been made, that would require consolidation, we

1 would not gratuitously argue for it. That's correct. What  
2 we are saying is that since the remedy is admittedly -- the  
3 liability is admittedly one that is shown to exist only in  
4 Indianapolis, we are starting with the proposition that that  
5 is where it would --

6 ATTORNEY GENERAL RICHARDSON: I thought that in  
7 Indianapolis, Mayor Lugar wanted to bring about what was in  
8 effect a larger consolidated metropolitan government and has  
9 done this in every area but education. The only reason he  
10 didn't do it in education was that he was concerned about  
11 bucking the sentiment of the suburbs.

12 MR. POTTINGER : Well, that may be. I don't  
13 know what his personal opinion is. I can tell you that, unlike  
14 Detroit, unlike Richmond, unlike Denver and other areas where  
15 the question of metropolitanization has arisen, unlike all  
16 of those, the school authorities within the core  
17 city itself of Indianapolis, do not want metropolitanization.  
18 Obviously they do in Detroit. Obviously, the  
19 whites as well as blacks do in Richmond. In Indianapolis  
20 they do not want it. They believe that they have a different  
21 kind of curriculum, they have a different kind of approach to  
22 the problem. They have a kind of constructive race relations  
23 that they would like to develop, not to do it, and I think we  
24 are trying to respect that opinion.

25 MR. NEWSON: But over and above what they would like,  
26 the Justice Department position is that at this point, for

1 whatever reasons, you are against the merger type operations?

2 MR. POTTINGER : Unless a higher evidentiary  
3 showing were made that there was either a wrong committed  
4 there or that it made sense for some other reason, which is  
5 possible, as the Attorney General has pointed out. The con-  
6 solidation of other municipal services may yield that conclu-  
7 sion, but it hasn't as of this Wednesday morning. We were  
8 literally developing that evidence this week and last week, the  
9 last two weeks in Indianapolis.

10 MR. NEWSON: Lastly in this area, just recently you  
11 took action, the Justice Department took action in Baltimore  
12 County regarding the hiring of teachers, and I think you  
13 requested that a goal be urged in the area of about 25 percent.  
14 Now, because Baltimore County is only about 4 percent black,  
15 it seems logical that what you are working on is an area  
16 type thing as far as the hiring of teachers is concerned. Why  
17 would the Justice Department be promoting that sort of thing  
18 for teachers across boundaries but not of students?

19 ATTORNEY GENERAL RICHARDSON: Well, I think it is  
20 because of the proposition basically that you are dealing  
21 with a pool of qualified people, and so for purposes of  
22 equality in employment opportunity, the standards are derived  
23 from the definition of the pool, sort of like the definition  
24 in marketing in an antitrust case, and here you are looking  
25 at the sources from which a particular type of employee can be

1 drawn. Is that substantially right?

2 MR. POTTINGER : Yes, sir. Just to give an  
3 example, many school districts do not limit their employment to  
4 teachers who live within the coincidental bounds of that district,  
5 and teachers are not required to live within a district which  
6 include the schools to which they are assigned, regardless of  
7 whether the districts are consolidated or not. And it may be  
8 that Baltimore County has a number of white teachers that live  
9 in Baltimore City. I can't tell you how many, but I believe  
10 that is the case. If they do that, why should they not also  
11 look to Baltimore City for the recruitment of black teachers?

12 ATTORNEY GENERAL RICHARDSON: You see, this is a  
13 problem that arises, for instance, in building trades, under  
14 a home town plan. You try to get the bricklayers to establish  
15 a goal for the recruitment of black apprentices, or contractors,  
16 I should say, to employ black bricklayers. When you come to  
17 the question of what the goal should be, or whether they have  
18 made a good-faith effort to meet the goal, you have to look at  
19 the question of what opportunity did they have to employ black  
20 bricklayers; how many are there in the labor market on which  
21 they draw. Presumably that is an area represented by the re-  
22 gional commuting distance to any given job which the contractor  
23 is handling. So you look within that radius to derive both  
24 the goal and to see whether or not the guy has made a reason-  
25 able effort to meet it.

1 Is that correct?

2 MR. POTTINGER : Yes, sir. May I just add one  
3 thing, Mr. NEWSON. The relevant labor market which the  
4 Attorney General is talking about is not limited to the stand-  
5 ard metropolitan area around Baltimore, even though that 25  
6 percent figure might represent that. It is defined by the  
7 schools in the state of Maryland which produce qualified black  
8 teachers and qualified white teachers. It even includes  
9 Pennsylvania and other states.- The point is: Where does the  
10 Baltimore County system draw its white teachers from? If it  
11 draws from Pittsburgh as well as from Baltimore City, then it  
12 ought to be looking for black teachers in those areas. Now,  
13 the 25 percent figure should not be sanctified by anybody.  
14 What it was is nothing more than a suggestion as to what the  
15 SMSA figures, provided to HEW, would indicate in the immediate  
16 vicinity should be a target. And they rejected that, and  
17 they might be right. In the course of litigation it might turn  
18 out that it is higher than 25 percent, or it might be lower  
19 than 25 percent. What they have to do is say "here is where  
20 we traditionally recruit, where we could recruit, the universi-  
21 ties and colleges of this stage, and here is what they have  
22 produced. They have provided 20 percent black teachers, 20 to  
23 30 percent, therefore that is a long-range target that we will  
24 set." That is wholly unlike the pupil situation, where we don't  
25 ordinarily go state-wide or even out of state to look at the  
pupils.

1 MR. NEWSON: Mr. Secretary, I would like to shift  
2 over to another area in which we have had quite a bit of  
3 interest, and that is the no-knock and preventive detention  
4 aspects of the omnibus crime bill. What is your feeling  
5 about no-knock and preventive detention? How extensively  
6 would you expect it to be used, particularly preventive de-  
7 tention?

8 ATTORNEY GENERAL RICHARDSON: I don't have a firm  
9 judgment on this. I haven't had a chance to find out really  
10 what the experience with either one has been or to what ex-  
11 tent they have been shown to be important law enforcement  
12 tools. I certainly think the burden has to be on the justi-  
13 fication for them, since in both cases they represent depar-  
14 tures from what would otherwise be valid procedural due process  
15 standards. The question then is does the narcotics law  
16 enforcement problem make it urgent enough, is the tool neces-  
17 sary and useful enough in the case of no-knock or the case of  
18 preventive detention? I don't know.

19 Mr. Kleindienst, of course, came into this job from  
20 several years as Deputy and was more familiar with the back-  
21 ground of this kind of thing than I am. I haven't gotten into  
22 it deeply enough. . .

23 MR. NEWSON: I want to ask you a question on the entire  
24 situation involving the appointment of judges, particularly with  
25 reference to the Southern areas, where at this time we don't

1 have a single black district court judge. I think there may  
2 have been some appointed recently to military courts some  
3 place, but in the district courts I don't think there is a  
4 single one except maybe a couple in Washington, D. C., here  
5 in Washington, D. C.

6 ATTORNEY GENERAL RICHARDSON: You mean in the South  
7 we don't?

8 MR. NEWSON: Right. Would you feel that this is a  
9 reflection of the fact that racism continues to be a problem  
10 that this failure to get any black judges is a bad reflection  
11 on the judicial system of the United States? And would you  
12 further think that the Executive body, which is responsible  
13 for appointments, should bring some sort of public pressure  
14 in this area, that is on Senators who may be reluctant to  
15 accept black judges in their states?

16 ATTORNEY GENERAL RICHARDSON: I think it is a problem  
17 that ought to be addressed, and that we in the Executive  
18 Branch should seek to take affirmative steps to bring about  
19 the appointment of black judges in southern states. I think that  
20 the first steps, however, ought to be through dealing directly  
21 with the bar associations and the elected officials that are  
22 the other sources of judicial recommendations, including the party  
23 organization representatives for the purpose of inviting their  
24 personal interest in finding qualified black judges. And I  
25 think that that kind of an approach is more likely to achieve

1 the kind of results than by launching a public campaign. At  
2 least I think the first approach should be by that route, and  
3 that the public campaign should be launched only if it should  
4 turn out that it doesn't produce the desired results.

5 MR. NEWSON: Do you think that a major problem in  
6 this failure to get black judges in the South has been the  
7 lack of qualified candidates?

8 ATTORNEY GENERAL RICHARDSON: I don't have any  
9 reason to believe that that is the case. Of course, of the  
10 total number of lawyers practicing in the South, I assume  
11 that there is a disproportionately higher number of white  
12 lawyers than black lawyers, so that if they were all equally  
13 qualified, if the distribution of qualifications were  
14 equal, that in itself would tend to produce, to have a higher  
15 ratio of white judges. But I am certainly not prepared to  
16 say that there are not a sufficient number in any given  
17 federal judicial district to qualify as black judges, I mean  
18 qualified black lawyers, so that if an affirmative effort were  
19 made to find black lawyers who are qualified -- I think if they  
20 looked, they'd find them all right.

21 MR. NEWSON: Well, I will ask you one more question  
22 in that regard sir. You say if they looked they would find  
23 them. Would you be promoting that look?

24 ATTORNEY GENERAL RICHARDSON: Yes. As I said, I  
25 think I should -- but rather than launch a public campaign, I

1 think my role can more effectively be, certainly at the outset,  
2 to work with the bar associations and elected officials and  
3 other sources of recommendations for judicial appointments  
4 on a direct basis rather than through the media.

5 MR. NEWSON: One of the first things you did shortly  
6 after going over to the Pentagon was to make a statement about  
7 the situation regarding the hiring and promotions of blacks,  
8 and you urged some steps be taken. I am wondering whether  
9 you found a much better situation over here so that you have  
10 not had to do that, or whether you have done and I just haven't  
11 heard about it, or whether shortly you may be taking some  
12 sort of action along that line.

13 ATTORNEY GENERAL RICHARDSON: One of the first  
14 things I did when I came over here was to ask one of my staff  
15 to prepare for me a memorandum on what the department is doing  
16 with respect to minority recruitment, promotion, upward  
17 mobility, and so on. I haven't gotten the report yet. I had  
18 seen in the meanwhile some statistics with respect, for  
19 example, to the prison system. There has been a major recruit-  
20 ment effort to bring in more blacks and other minority repre-  
21 sentatives, recognizing that they can develop in many in-  
22 stances better rapport with minority inmates than white prison  
23 personnel.

24 You can check this, Jack, but I think that a third  
25 of all recent hires --

1 MR. HUSHEN \* : There has been quite an  
2 improvement there. I think you're right on the future of a third.

3 ATTORNEY GENERAL RICHARDSON: I think a third,  
4 but do check that, have been minority. Of that portion,  
5 I don't know how many blacks contributed, a great bulk of  
6 them would be black.

7 There has been some effort, I know, in the Immigra-  
8 tion and Naturalization Service and the FBI. But I am await-  
9 ing a round-up of this before I would be in a position to  
10 decide what more or better we ought to be doing.

11 MR. NEWSON: Sir, you say shortly after you came in  
12 -- you were speaking about the social implications of the  
13 Justice Department and enforcement of the laws and this type  
14 of thing. I wonder if you could tell me any of the things  
15 that you plan to emphasize that would be in that connection,  
16 involving the social aspects, and how far you think you might  
17 be able to push those things without running into  
18 the problem of permissiveness or being accused of permissive-  
19 ness, and this sort of thing, which is a problem a lot of  
20 people run into when they get into that area.

21 ATTORNEY GENERAL RICHARDSON: There are a lot of things  
22 to be said in response to that. That is a very good question.  
23 There are so many things that I might say that I am trying to  
24 decide, trying to sort out the things that immediately come to  
25 mind.

\* John W. Hushen, Director of Public Information

1           At one level, it is important to the Department of  
2 Justice simply to become aware of the fact that it is a de-  
3 partment with major social responsibilities, and it is,  
4 whether it likes it or not, either an instrument for improve-  
5 ment of an important group of social programs or it is  
6 missing or failing to arise to that opportunity. For example,  
7 it has struck me increasingly since I have been here how  
8 ironical or even anomalous it is that we should be funding  
9 comprehensive criminal justice planning through the LEAA to  
10 the state and local level, and we don't have -- we have made  
11 no attempt as far as I can find out to achieve comprehensive  
12 criminal justice planning at the federal level.

13           This department alone encompasses all the elements  
14 of the criminal justice system except the courts, so it really  
15 is bizarre, when you think about it. We have pumped out  
16 millions of dollars to develop criminal justice planning at  
17 state and local levels to support programs of education,  
18 training people in this area, and we do not employ any of  
19 them to do this work for the federal system.

20           So there is a lot of opportunity, first of all then,  
21 to try to assure that the federal system is a model and so  
22 far as it is possible to define a model; in any event, to  
23 innovate, to do a better job of evaluation of the effective-  
24 ness of what we are doing, to develop better data from which  
25 to make judgments of program quality. That is one level of

1 response to the question, and that seems to me that kind of  
2 things is very clearly needed.

3  
4 There is the broader set of questions that have to  
5 do with prevention. No one, it seems to me, can be concerned  
6 with the criminal justice system without asking the question  
7 of why are some people delinquent or criminal than what others  
8 are, what could be done to reduce the social costs of crime  
9 by prevention. All of this requires, in my view, much more  
10 rigorous thought than it generally gets, and that we have to  
11 begin, for example, by -- a lot of this, as far as I'm concerned,  
12 of course, is a matter of getting caught up with where we are.  
13 But I would want to know, to begin with, how good the studies  
14 are with respect to the correlation between various types of  
15 social deprivation and crime, and more specifically various  
16 types of social deprivation and various types of crime, and  
17 overall income levels and crime. I am not at all sure that  
18 the incidence of crime at upper income levels is actually any  
19 lower. It may be that what we have had, as you go up the  
20 income scale, is a reduction of so-called street crime and  
21 an increase in so-called white collar crime, but not at an  
22 essentially different level of moral responsibility for the  
23 population at that income level as a whole.

24 If that is so, then you would be dealing perhaps  
25 with what is essentially an incidence of lack of conviction  
toward the underlying moral precepts that tell us not to kill  
or steal or cheat.

1 Still another plane of response deals with the  
2 question of the kinds of things that should be made subject  
3 to criminal penalty, and this in turn should involve much more  
4 exacting cost-benefit analysis than has been characteristic of  
5 the field of criminal law. This has been an interest of mine  
6 for a long time.

7 And of course, it is at this point that you get into  
8 the potential risk of the charge of permissiveness. I think,  
9 however, that it is responsible perhaps to get the debate or  
10 the dialogue onto a more rational plain by way of seeking to  
11 focus attention on the cost-benefits consideration involved.

12 Take gambling, for instance. There is in being a  
13 national commission -- I haven't had a chance yet to catch up with  
14 the agenda and find out what it is going to be looking into,  
15 but I assume that it will be looking at the questions such as  
16 the harm that society seeks to prevent by the prohibition of  
17 gambling versus the cost imposed by the attempt to enforce  
18 that prohibition. And there should be other areas where that  
19 kind of question needs to be asked.

20 MR. NEWSON: I think in accord with the limitations  
21 of time you gave, I would like to throw out one general ques-  
22 tion for whatever response you might like to give, if any. Many  
23 of us have looked at the Watergate situation as a reflection on  
24 well, I suppose the mood of the country, and not talking directly  
25 about the President, there has been a feeling that we have

1 reached the point where because of the feeling about busing,  
2 fair housing, the suburbs, welfare, give-aways and the crime  
3 situation, that a large number of people, possibly a great  
4 majority have reached the position that they would accept almost  
5 anyone in a leadership position if they felt that that person  
6 was going to slow down some of these things, say get them  
7 back into some perspective from their own points of view. And  
8 I am wondering if you go along with that theory to any extent,  
9 do you feel that the people who might have been involved in the  
10 Watergate thing were doing things that they might have known  
11 to be wrong but were on some sort of mission that catered to  
12 the mood of the majority of the people as they saw it?

13           ATTORNEY GENERAL RICHARDSON: Well, of course, I  
14 think that the attitude exhibited by the chief actors of the  
15 Watergate and related episodes certainly were oriented toward  
16 winning at almost any cost, and that attitude would certainly  
17 have been perfectly willing to exploit the narrow and selfish  
18 and bigoted elements of society to the extent that it would  
19 further what they thought was the overriding goal, and to that  
20 extent that attitude can be faulted for their failure to  
21 place higher the goals of a better and more generous, more  
22 racially enlightened society.

23           On the other hand, some of the participants were also  
24 individuals who were generally speaking -- well, it really  
25 isn't quite that simple, either, because there was going on in

1 the meanwhile the process that did in fact move further in  
2 the direction of positive gains in race relations and in  
3 equality of opportunity. As the record of the Civil Rights  
4 Division in this department, for example, the record of the  
5 Minority Business Enterprise of the Commerce Department, or  
6 school desegregation in the south and HEW, housing through  
7 HUD, and so on -- in all of these areas, gains have actually  
8 been made at a faster rate in each instance than during any  
9 comparable previous period.

10 So there were really a complex of forces at work,  
11 and I don't think that Watergate attitude should be made a  
12 generalization of the administration's faults.

13 MR. NEWSON: Thank you, Mr. Secretary. I certainly  
14 appreciate it.

15 ATTORNEY GENERAL RICHARDSON: Thank you.

16 MR. NEWSON: I hope to see you soon again in the  
17 future. Thank you very much.

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