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**HISTORICAL SUMMARY OF SCHOOL
DESEGREGATION SINCE 1954**

KATHERINE MONTGOMERY
Education and Public Welfare Division

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HISTORICAL SUMMARY OF SCHOOL DESEGREGATION SINCE 1954

Introduction

On Monday, May 17, 1954 in an historic decision of Brown v. Board of Education, the Supreme Court of the United States declared:

We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. 1/ (p. 495)

This ruling overruled the 1896 Supreme Court decision of Plessy v. Ferguson (163 U.S. 537 (1896)), which had been the legal basis for the creation of dual school systems throughout the South. In Plessy the Supreme Court upheld the validity of a Louisiana statute allowing separate but equal facilities for white and black passengers on railroad trains. In Brown, however, the Court ruled that with regard to schools separate but equal facilities could not exist. The impact of the Brown decision, which called for the elimination of statutory dual school systems nineteen years ago, is still being felt today. It has been the cause of much controversy in the South and the North as well, where de facto segregation caused not by State statute but by such things as residential housing patterns and population shifts, is receiving closer scrutiny and court action.

This paper will examine the Brown decision and its immediate impact and trace the history of school desegregation up to the present. Discussion will focus on subsequent court rulings concerning desegregation, including Cooper v. Aaron,

1/ U.S. Supreme Court. Brown v. Board of Education. 347 U.S. 483 (1954).
Referred to as Brown I.

Green v. New Kent County, Alexander v. Holmes, Swann v. Charlotte-Mecklenburg, Bradley v. The School Board of the City of Richmond, and Keyes v. School District No. 1, Denver. The Civil Rights Act of 1964 will be examined as well as the effects of the enforcement procedure by the Department of Health, Education and Welfare and the Department of Justice. Finally, recent Congressional action regarding desegregation, specifically Emergency School Aid and busing, will also be discussed.

School Segregation Cases, 1954

In 1951 Linda Brown, a black elementary pupil who lived five blocks from a white school in Topeka, Kansas, had to travel 21 blocks to attend a black school. A Kansas statute permitted cities with populations of over 15,000 to maintain separate schools for whites and blacks in grades 1-8. Topeka had a law allowing separate schools for grades 1-6. Linda's parents, contending that "segregation in and of itself causes inferiority and is thus a denial of due process and equal protection," went to court in an effort to enjoin the enforcement of the Kansas law and to have it declared unconstitutional. ^{2/} The U.S. District Court found that although school segregation is detrimental to black children, the Kansas schools in question had basically equal facilities and thus were within the law as established by earlier Supreme Court decisions. Linda's parents filed an appeal to the ruling.

At that time seventeen states and the District of Columbia had laws requiring racially segregated educational institutions: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Four other states had laws permitting separate schools for blacks and whites: Arizona, Kansas, New Mexico, and Wyoming. When the Supreme Court made its historic decision on May 17, 1954 (Brown I), forty percent of the nation's elementary and secondary school enrollment was in segregated schools. ^{3/}

Brown v. Board of Education was not the only school segregation case before the courts. A variety of others in states throughout the South and border areas were

^{2/} Hudgins, H.C., Jr. *The Warren Court and the Public Schools*. Danville, Illinois, The Interstate Printers & Publishers, Inc., 1970. p. 77.

^{3/} Blaustein, Albert P. and Ferguson, Clarence C., Jr. *Desegregation and the Law*. New York, Vintage Books, 1962. p. 6.

making their way up through the courts. In fact, the Supreme Court's Brown decision actually included three other specific cases, which arose in South Carolina, Virginia, and Delaware. They were Briggs v. Elliott, Davis v. County School Board of Prince Edward County, and Gebhart v. Belton.

In Briggs v. Elliott parents of black children in both the elementary and secondary schools in Clarendon County, South Carolina, with the aid of the National Association for the Advancement of Colored People (NAACP), sought to enjoin school segregation maintained by constitutional and statutory provision. The District Court for the Eastern District of South Carolina sustained the validity of the segregation laws, but found that the black schools were actually inferior to the white schools and ordered that equal facilities be provided for blacks. Schools officials were to report to the court within six months. The case was appealed immediately to the Supreme Court.

Davis v. School Board was similar to Briggs. The U.S. District Court directed that a new building and equipment be provided for black high school pupils in Prince Edward County, Virginia to remedy the unequal separate facilities. The plaintiffs went to the Supreme Court to ask for an overruling of the lower court's decision and an order for black children to be admitted to the white high school.

Gebhart v. Belton, the fourth case, arose in Delaware where a lower court held that segregation was detrimental to black children and they should be admitted to the white public schools until the black schools were made equal to the white schools. This decision was different from the South Carolina and the Virginia ones because "it stated the right of the plaintiffs to equal facilities to be present and personal." ^{4/} Separate facilities were allowed if currently equal. The decision was appealed by school officials who believed that the state had not allowed a reasonable time for equalization.

^{4/} Hudgins, op. cit. p. 78.

The Supreme Court grouped these three cases together with Brown stating that:

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the 14th amendment. 5/ (pp. 487-88)

The Supreme Court examined the Fourteenth Amendment and the circumstances surrounding its adoption and decided that its legislative history with regard to education was "at best...inconclusive." In addition, the Court stated that since the education of blacks was almost non-existent in 1868 when the Fourteenth Amendment was passed and since public education as a whole had changed considerably over the decades, "it is not surprising that there should be so little in the history of the 14th amendment relating to its intended effect on public education." (p. 490) Instead, the opinion stated, "we must consider public education in the light of its full development and its present place in American life throughout the Nation." (pp. 492-3) The Court declared that "today, education is perhaps the most important function of State and local governments." It then asked and responded to a basic question:

Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. (p. 493)

The Court went on to briefly discuss the detrimental effects of segregation on minority children. "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." (p. 494)

5/ Brown I. op. cit. Succeeding quotations in the paragraph are from Brown I.

The Supreme Court thus ruled that separate facilities per se were inherently unequal and those subject to such segregation laws were being deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. As for specifying ways to end segregation in the schools, the Supreme Court called for further argument of the case and asked the parties to consider whether the Court should issue a decree as to how segregation should end and if so, what form such a decree should take.

The fifth school case to be decided, on May 17, 1954, was Boiling v. Sharpe, involving the constitutionality of segregation in the District of Columbia. Because this case challenged federal, not state, action, it was not considered with the Brown case. Instead the challenge was raised under the due process clause of the Fifth Amendment. In discussing the concepts of due process and equal protection, Chief Justice Warren stated that equal protection "is a more explicit safeguard of prohibited unfairness than 'due process of law'." ^{6/} He continued in his opinion that:

Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause. (pp. 499-500)

The Brown case was reargued in 1955. The unanimous decision of the Court was handed down on May 31 (Brown II); it decreed how the previous decision should be carried out. In the Court's opinion, Chief Justice Warren stated that both school authorities and the district courts have responsibilities in implementing the decision.

^{6/} U.S. Supreme Court. Boiling et al. v. Sharpe et al. 347 U.S. 497 (1954).

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts. 7/ (p. 299)

The opinion then went on to discuss guidelines the courts should follow, namely equitable principles.

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. (p. 300)

The Court opinion continued, stating that defendants will be required by the lower courts to "make a prompt and reasonable start toward full compliance" with the first Brown decision. Acknowledging that additional time might be necessary to clear all the obstacles in the way of desegregation, the opinion indicated that the defendants must demonstrate that they were acting in the public interest and consistently with "good faith compliance at the earliest practicable date." The lower courts were to retain jurisdiction of the cases during the transition period. They

...may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. (pp. 300-301)

7/ U.S. Supreme Court. Brown v. Board of Education. 349 U.S. 294 (1955). Referred to as Brown II. Succeeding quotations in the paragraph are from Brown II.

Finally, the Court remanded the cases to the district courts which were

to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. (p. 301)

The Immediate Effect on the School Segregation Cases

The immediate impact of the Brown decision in the five cases involved was varied. In the District of Columbia school officials received orders to begin integration of students by September 2, 1954, the next registration date. President Dwight D. Eisenhower "expressed the hope that the District school system would become a 'model' for other systems to follow." ^{8/} In September 1953 the Board of Education in Topeka, Kansas had voted to abolish elementary school segregation under the local option clause as soon as possible. The first Brown decision made this abolition mandatory throughout the state, but the Supreme Court's delay for the second decision led to a general postponement of school integration while school officials and courts waited for instructions on how to implement Brown, I. In Delaware, state courts had enjoined local school authorities from refusing black children admission to white schools before the 1954 decision. The immediate effect of the first Brown decision, therefore, was to slow down desegregation in that state. The Delaware Supreme Court handed down a decision on February 8, 1955 stating that:

The opinion of the Supreme Court of the United States in the Segregation Cases has the present effect of nullifying our segregation laws, but the opinion does not require immediate desegregation of the public schools. Until the mandate of the Supreme Court of the United States is received, the State may take immediate steps toward desegregation; it is not compelled to do so at the moment. ^{9/}

Virginia and South Carolina both delayed after Brown I waiting for the follow-up opinion and then took advantage, as many states were to do in the future, of the

^{8/} Sarratt, Reed. The Ordeal of Desegregation. New York, Harper & Row, 1966. p. 49.

^{9/} Steiner v. Simmons, in Blaustein, op. cit., pp. 175-6.

vague time limits set by the Supreme Court. In Virginia on July 18, 1955 another decision was made in the Davis Case. Although the school officials were "restrained and enjoined from refusing on account of race or color to admit to any school under their supervision any child qualified to enter such school," the injunction was not to go into effect until the school board had made "necessary arrangements...with all deliberate speed." 10/ A similar decision had been rendered in South Carolina three days before on July 15, 1955. The court discussed the Supreme Court ruling in words that have been quoted many times by desegregation supporters in the South:

Whatever may have been in the views of this court as to law when the case was originally before us, it is now our duty to accept the law as declared by the Supreme Court. 11/

The court goes on to state its interpretation of the law as declared by the Supreme Court.

Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state agencies, not a limitation upon the freedom of individuals.

10/ Davis v. County School Board of Prince Edward County, in Blaustein, op. cit., pp. 176-7.

11/ Briggs v. Elliott, in Blaustein, op. cit., pp. 178-179.

1954-1964: General Effect of the School Segregation Cases throughout the South

Elsewhere in the southern and border states reaction to the Brown decision was mixed. Generally in the border states compliance proceeded without much resistance. Sarratt notes in his book on desegregation that "with a few notable exceptions, school boards acted rather quickly to desegregate, and in none of the border states was school desegregation a major political issue." 12/

The situation in the South, however, was quite different. Most of the governors, taking their cues from the people in their states, expressed dissatisfaction with the ruling.

All of them supported segregation, and most of them pledged that they would maintain it. Most of them attacked the Supreme Court, while calling for law and order and keeping of the public peace. The majority urged that public schools be preserved, but some were willing to abandon public education rather than to permit white and Negro children to attend classes together. 13/

The legislators in the southern states led the battle with the federal judges over desegregation. "Most legislators in the eleven states of the old Confederacy were determined to preserve segregation in the public schools, either absolutely or to the maximum possible degree." 14/ Opposition, however, ranged from the moderate to the militant. In some states such as Florida, North Carolina, Tennessee, Texas, and sometimes Kansas, legislators reacted against the decision while respecting the Supreme Court's authority by supporting some integration. The greatest resistance was in the deep South in Alabama, Georgia, Louisiana, Mississippi, and South Carolina, where virtually no integration was allowed to take place. Virginia at first followed a policy of passive resistance but after a few years allowed some integration.

12/ Sarratt, op. cit., p. 3.

13/ Ibid., pp. 5-6.

14/ Ibid., p. 28.

Legislative resistance took three major forms: pupil assignment laws, school closing laws, and laws providing for tuition grants and private school programs. These laws had a wide variety of application among the states. In some states they had the effect of circumventing the Supreme Court's decision against segregation, while in others they resulted in a bare minimum of desegregation to comply with the law.

Pupil assignment laws set rules for how pupils were to be assigned to schools. Eleven Southern states passed such laws. Ten states vested in the local school boards the power to assign students. Any individual case arising in a school district could only be decided for that district; thus no statewide decree to desegregate would be forthcoming. North Carolina and Alabama passed laws which were the kind generally adopted by the other states. The constitutionality of these laws was questioned, and the U.S. Supreme Court held that they were not unconstitutional on the surface mainly because no mention of race was made, but they might be held so later in their application.

The North Carolina law set forth several simple criteria for pupil assignment, namely "the orderly and efficient administration of the public schools and for the health, safety and general welfare of the pupils." ^{15/}

The Alabama Act, according to Sarratt, was more complicated in its criteria which included ^{16/} "available room and teaching capacity, available transportation, adequacy of a student's scholastic aptitude and preparation, psychological qualifications of the pupil for the type of teaching and associations involved, effect of the admission of the pupil on the academic progress of others, possibility or threat of friction or disorder, possibility of breaches of the peace or ill will or economic retaliation within the community, home environment of the pupil, morals,

^{15/} Sarratt, op. cit., p. 32.

^{16/} Ibid.

conduct, health and personal conduct of the pupil." This Act was the one most frequently adapted by other southern states.

Sarratt indicates that the elaborate procedures for admission to schools set forth in the laws were designed to discourage black applicants to white schools. In the more moderate states a few blacks were allowed to attend white schools, but in the most defiant states the law was used to exclude all blacks from white schools.

The closing of the public schools was viewed by some people as the main last resort tactic of massive resistance practiced by extreme segregationists. South Carolina State Senator L. Marion Gressette stated the reasoning behind school closings:

We cannot find anywhere in the U.S. Constitution where the right to operate a school has been delegated to the U.S. Government, nor can we find where it has been prohibited to the states; it therefore follows that this right was reserved for the states. This being true, the state cannot be forced to appropriate money for schools contrary to the public interest. 17/

Although all of the militant states except South Carolina and all of the moderate states except Tennessee adopted laws which gave either the governor or the local school boards the power to close the schools, actual implementation of the law was rare. The rationale for adoption of these laws differed in the militant and the moderate states.

The legislators in the former intended that any white public school accepting Negro students, for whatever reasons, would be closed... In the token states the school closing laws were intended to serve as lightning rods should desegregation brew a thunderstorm of public protest. 18/

Six states actually adopted laws permitting or directing school closing specifically to avoid desegregation. The courts eventually attacked the constitutionality of these

17/ Ibid., pp. 33-34.

18/ Sarratt, op. cit., p. 34.

laws. "Schools in both Virginia and Arkansas were reopened after the courts struck down the laws under which they were closed; and the emphasis of subsequent legislation, by and large, shifted to new strategies of resistance." 19/

Directly related to the school closing laws with regard to purpose, effect, and constitutionality were laws providing for cut-offs of State funds to schools and school districts undergoing desegregation. Seven states passed such laws, "but they became more a hindrance than a help in time of need." 20/ The Georgia law, passed in 1955, was repealed in 1961. Virginia repealed its fund cut-off law in 1959 after it had been in effect three years. The Texas attorney general interpreted the 1957 statute in that state as non-applicable to districts undergoing court-ordered desegregation. The U.S. Civil Rights Commission in its 1961 report on education concluded that:

It seems clear that, as with school-closing laws, a State may not give financial support to some public schools while withholding it from others -- especially if the reason is court-ordered desegregation. Application of such laws doubtless would result in the closing of the schools for, although local taxation is generally the major source of public school financing, State aid is often indispensable. 21/

Another kind of legislative resistance tactic was to provide state and/or local funds in the form of tuition grants to students who chose to attend private schools. These grants usually were of an amount approximately equal to the per-pupil share of state and local expenditure for public schools. Some states also passed laws providing funds for indirect aid to non-public schools. This aid generally took the form of "tax deductions or credits for donations made to such institutions, extension of State retirement benefits to teachers employed by private schools, and even reimbursement for transportation expenses of pupils attending the school." 22/ Eight states

19/ U.S. Commission on Civil Rights. Education. Washington, D.C., U.S. Government Printing Office, 1961. p. 85.

20/ Sarratt, op. cit.

21/ Civil Rights Commission Report on Education, op. cit., p. 87.

22/ Ibid., p. 88.

(Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, Arkansas, and North Carolina) adopted laws for these types of funding following the Brown decisions.

When the supporters of desegregation realized that the Brown decisions were not going to be fully implemented in the near future, they sought enforcement from the courts. The National Association for the Advancement of Colored People (NAACP) handled many of the cases, providing not only lawyers but also the necessary funds to carry out the costly legal proceedings. In order to prevent many of these cases from arising, Sarratt states that every southern state except North Carolina passed some type of anti-NAACP law which inhibited the organizations from operating in each state. These laws ranged from prohibitions of barratry ("persistent incitement and solicitation of litigation") ^{23/}, to elaborate registration and membership requirements, to laws forbidding the public employment of members of the organization. Although, according to Sarratt, wherever these anti-NAACP laws were taken to court, they were declared invalid, they still tended to curtail NAACP activities.

Pupil assignment, school closing, tuition grants, and anti-NAACP laws were the major forms of legislative resistance in the South. Individual states, however, also passed a variety of other laws as well. For example, in order to prevent a white child from having to attend school with black children, all eleven southern states amended or repealed their compulsory school attendance laws. Teacher-tenure laws were modified in six states so that school boards could dismiss teachers simply by not extending their contracts. Six states also passed laws providing for the sale or leasing of public school property in case of desegregation. In addition, six states gave local school boards the right to segregate pupils by sex. In some states teaching in a desegregated class was considered a misdemeanor, and frequently school personnel could be dismissed for advocating integration in any form. ^{24/}

^{23/} Sarratt, op. cit., p. 36.

^{24/} Ibid., pp. 38-39.

Despite the plethora of segregation laws adopted in the southern states, indicating the general attitude of the populace toward the Brown decision, a small amount of desegregation did take place. Most of it occurred in rural areas or small towns where blacks and whites all lived in the same school district. Although sentiment opposing integration ran high, most of the desegregation took place peacefully. Sarratt notes that "where there was organized effort to prevent desegregation or to restore segregation, the action or inaction of the police was a significant factor in shaping events." 25/ He continues:

The support of the elected officials to whom the police were responsible was essential to effective law enforcement. Even where resistance to school desegregation was strongest, public passions seldom erupted into disorder and violence if the political leaders were determined to maintain order. 26/

Little Rock, Arkansas was the scene of one of the most publicized instances of violence over desegregation. In 1957 the Eighth Circuit Court of Appeals had approved a desegregation plan, which despite some dissatisfaction, the community seemed prepared to accept. Governor Orval Faubus, however, without consulting local officials, called out the National Guard to keep nine blacks from entering Central High School in order "to maintain or restore the peace and good order of this community." 27/ Little Rock's Mayor Mann made a statement that:

The Governor has called out the National Guard to put down trouble when none existed. He did so without a request from those of us who are directly responsible for preservation of peace and order. The only effect of his action is to create tensions where none existed. 28/

After three weeks the federal district court ordered removal of the National Guard to let the blacks attend the school. Mob violence, however, broke out, and the Little Rock police force was finally forced to erect barricades and to escort the

25/ Sarratt, op. cit., p. 174.

26/ Ibid.

27/ Ibid., p. 159.

28/ Ibid., pp. 159-60.

black students to and from the school. The mob kept growing which forced the blacks to stay away from school. The following day President Eisenhower federalized the National Guard and sent troops to calm the crowds. When order was restored the blacks returned to school. This incident was played out before the courts in Cooper v. Aaron which reached the Supreme Court in 1958. "The question was the validity of a delayed integration plan when violence threatens a school." ^{29/} On September 29, 1958 the Court issued a unanimous decision which declared that de-segregation could not be delayed because of a threat of violence. The Court

...accepted without reservation the position of the School Board, the Superintendent of Schools, and their counsel that they displayed entire good faith in the conduct of these proceedings and in dealing with the unfortunate and distressing sequence of events which has been outlined. We likewise accepted the findings...that the educational progress of all students, white and colored, of that school has suffered and will continue to suffer if the conditions which prevailed last year are permitted to continue.

The significance of these findings, however, is to be considered in light of the fact, indisputably revealed by the record before us, that the conditions they depict are directly traceable to the actions of legislators and executive officials of the State of Arkansas, taken in their official capacities, which reflect their own determination to resist this Court's decision in the Brown case and which have brought about violent resistance to that decision in Arkansas. ^{30/} (pp. 14-15)

The Court opinion continued:

The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the Governor and the Legislature...Thus, law and order are not here to be preserved by depriving the Negro children of their constitutional rights. (p. 16)

^{29/} Hudgins, op. cit., p. 83.

^{30/} U.S. Supreme Court. Cooper v. Aaron. 358 U.S. 1 (1958). Succeeding quotations in the paragraph are from Cooper.

In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the Brown case can neither be nullified openly and directly by State legislators or State executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.' (p. 17)

Finally the Court reminded all state officials that they were committed by oath to support the U.S. Constitution including the Supreme Court's interpretation of the Fourteenth Amendment in the Brown case.

In the ten years following the Brown decision little progress was made toward full-scale desegregation in the South. In 1964 only 2.25% of the black children in eleven southern states were attending school with white children, and 1,555 biracial school districts out of 3,031 were still fully segregated. 31/ In the border states, however, desegregation had been achieved in nine out of ten school districts, "and more than half the Negro children in the border area attended schools with white children." 32/

Congress and the Civil Rights Act of 1964

During the decade following the Brown decision neither Congress nor the executive branch of the government took major steps toward aiding the courts in carrying out the desegregation orders. In 1964, a new phase began in the desegregation struggle with the passage of the Civil Rights Act of that year. President John F. Kennedy had sent civil rights messages to Congress on February 28 and June 19, 1963. He expressed the opinion that

31/ U.S. Commission on Civil Rights. Survey of School Desegregation in the Southern and Border States, 1965-66. Washington, D.C., U.S. Govt. Print. Off., 1966. p. 1

32/ Sarratt, op. cit., p. 84.

although school desegregation should be kept largely within the realm of the courts, the Federal Government should shoulder some of the responsibility by way of initiating suits and providing aid to school districts undergoing desegregation. After Kennedy's assassination President Lyndon Johnson tried to get an early passage of the civil rights bill favored by Kennedy. He said in an address to a joint session of Congress on November 27: 33/

We have talked long enough in this country about equal rights. We have talked for 100 years or more. It is time now to write the next chapter -- and to write it into the books of law.

Opposition from the South was strong, however. Representative William M. Colmer of Mississippi said that the assassination of President Kennedy should not be the only reason for passing the bill. He declared:

this is no time to legislate in an atmosphere charged with emotion on a legislative proposal as highly controversial as this miscalled civil rights bill...this great tragedy has no merits bearing whatever on the merits of the bill. If it was a meritorious bill before the tragedy it is still meritorious, but conversely, if it was bad legislation before that unfortunate event, it is still bad. 34/

In the Senate, Senator Richard B. Russell of Georgia called the legislation "not a civil rights bill" but "a special privilege bill." 35/ Congress adjourned without further action on the bill.

In January, however, President Johnson said in his State of the Union message that he hoped the session of Congress would be "the session that did more for civil rights than the last hundred sessions combined." 36/ Sensing the ultimate passage of the bill, Senator Herman Talmadge of Georgia declared:

33/ Congressional Record, v. 109. p. 22839.

34/ Congressional Record, v. 109, Dec. 6, 1963. p. 23742.

35/ Russell, as cited in Sarratt, op. cit., p. 43.

36/ Congressional Record, v. 110, Jan. 8, 1964. p. 113.

it has become painfully apparent that in just a matter of days the most vicious legislation since the dark days of Reconstruction will be forced upon the American people. With the passage of this misnamed civil rights bill, individual liberty in the United States will be dealt a severe blow...experience has shown that in all too many instances, the enactment of coercive legislation is not the answer to problems involving human relations...we do not now deny, nor have we ever denied, that there is such a problem as that to which this bill purports to address itself. But it is a human problem and a moral problem which, in the final analysis, will be determined only by the free will of individuals. It is a matter for the mind and heart and the conscience. 37/

A major supporter of the bill, Illinois Senator Paul Douglas, discussed the necessity of desegregation and the importance of the bill, especially its provisions for supplying financial assistance to school districts undergoing desegregation. Speaking about these provisions, he said during the debate:

They establish a commitment by the entire Nation to insure adequate education to all its children. It is in every respect right that we not wash our hands of the many problems in the South and in the North as a result of desegregation; for no part of the Nation is free of responsibility 38/ for the present condition of education among the poor, and the disinherited.

On July 2, 1964, after a long battle in both the House and Senate, the Civil Rights Act was passed and signed into law by President Johnson, thus initiating a new phase in the history of desegregation.

Enforcement Procedures under the Civil Rights Act

The Civil Rights Act included three provisions designed to further the school desegregation process. Title VI (42 U.S.C. 2000e et seq.) banned discrimination on the grounds of race, color, or national origin in federally assisted programs. Termination of funds for projects where discrimination existed could result following failure of other enforcement procedures set down

37/ Congressional Record, v. 110, June 17, 1964. p. 14231.

38/ Congressional Record, v. 110, April 3, 1964. p. 6828.

by agencies administering the programs. Title IV (42 U.S.C. 2000c et seq.) of the Act gave the Attorney General the authority, upon receipt of a complaint, to initiate lawsuits against those districts refusing to desegregate. Title IV also provided Federal financial assistance to school districts undergoing desegregation. Grants would be made to local school boards for teacher training or for hiring technical specialists. State departments of education would receive money for technical assistance, and some grants would go to institutions of higher education for training programs and other technical aid to local school districts.

By way of implementing Title VI of the Civil Rights Act, the Department of Health, Education, and Welfare (HEW) issued a Statement of Policies in April 1965 which established standards for the elimination of dual or segregated school systems, which would thus make them eligible for federal assistance. Three methods by which a school district could end segregation were discussed:

- (1) it may execute an assurance of compliance (HEW Form 441); (2) it may submit a final order of a court of the United States requiring desegregation of the school system, and agree to comply with the order and any modification of it; or (3) it may submit a plan for the desegregation of the school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Civil Rights Act of 1964. ^{39/}

Three plans were mentioned as acceptable: freedom of choice, creation of geographic attendance areas, or a combination of the two. In addition the Statement of Policies included a wide variety of criteria for developing acceptable plans, especially freedom of choice, and timetables for implementing desegregation. The beginning of the 1965-66 school year was set as the date by which all school systems submitting plans should have desegregated every grade in all their schools. If this deadline was not met, the school district was to provide justification for the delay and a timetable for its particular desegregation plan. Fall 1967 became the target date for those systems not desegregated by 1965-66.

^{39/} Civil Rights Commission Survey, 1965-66, op. cit., p. 19.

With the publication of the Statement of Policies, the Office of Education (OE) had to determine whether 4,941 school districts in the Southern and border states were in compliance with the standards that had been set. This task meant not only evaluating the assurances of compliance and examining the plans and court orders to see if they were acceptable, but also keeping an eye on each district to make sure it was acting as it said it would. In less than nine months, by January 3, 1966, OE asserted that 98% of the 4,941 districts were qualified to receive federal funds. This 98%, or 4,823 districts, represented OE acceptance of 2,755 assurances of compliance, 164 court orders, and 1,904 desegregation plans from seventeen Southern or border states.

According to the Office of Education, in the 1965-66 school year, 1,563 school districts were 'newly desegregating,' that is, had adopted a policy of desegregation for the first time. This number exceeds by 87 the total number of districts newly desegregating during the entire period commencing shortly before the Brown decision in 1954 and ending with the beginning of the 1965-66 school year. 40/

As to the actual increase in the number of black children attending school with white children in the eleven Deep South States, statistics vary from 7.5% estimated by OE to 6% estimated by the Southern Educational Reporting Service in Nashville to 5.23% estimated by the Southern Regional Council. The Civil Rights Commission indicated dissatisfaction with this increase in its 1966 report: "Although (depending upon whose estimates are correct) the number of Negroes attending schools with whites in the Deep South has doubled or tripled since the 1964-65 school year, the number is still very low." 41/

The Commission on Civil Rights investigated some of the districts implementing plans that had been approved by OE. Approximately 57% of those plans used the freedom of choice method of desegregation, and 12% relied entirely on geographic

40/ Civil Rights Commission Survey, 1965-66, op. cit., p. 26.

41/ Ibid., p. 28.

zoning. The Commission, therefore, focused on freedom of choice and found that, although it was the major plan used throughout the South, relatively little actual desegregation had taken place.

In its 1965-66 Survey, the Commission indicated several reasons for the small amount of integration under these plans:

It is difficult for many of these Negroes to exercise the initiative required of them by free choice plans. In many cases the long history of subservience has eroded the motivation they might otherwise have to alter their way of life. 42/

Secondly, according to the Survey, freedom of choice plans enabled schools to stay pretty much as they were, either white or black. Parents and pupils had to take the first move to alter the racial identity of the school. Thus although black pupils might be attending a school with whites, the school could well retain its white features, such as white personnel, thus providing no racial identity for the blacks. Finally, the Survey indicated that many blacks parents and children 'chose' to attend black schools due to fear of whites who had in the past harrassed and intimidated them. The Commission actually recommended that:

the President should propose and Congress should enact legislation specifically authorizing the Attorney General and the victims to bring a civil action to enjoin private persons from harrassing or intimidating Negro parents or children who seek to exercise rights under desegregation plans accepted by the Office of Education. 43/

The Commission also took a spot survey of some of the school districts in Southern and border states said to be qualified for federal financial aid by OE. It found many of them actually not in compliance with the regulations. In its findings, the Commission noted that

42/ Civil Rights Commission Survey, 1965-66, op. cit., p. 33.

43/ Ibid., p. 60.

during 1965, the Office of Education did not have adequate staff or procedures for detecting violations of Title VI through field inspection or by other means. Efforts by the Office of Education to monitor compliances were largely limited to investigations of complaints filed. 44/

New guidelines were issued by HEW in 1966 which established standards, based on the percentage increase of student transfers, for determining whether freedom of choice plans were successfully desegregating school systems. In addition, the guidelines set up requirements for faculty and staff desegregation urging school systems to take positive action in assignments and reassignments to eliminate past discrimination. Despite the percentage limitations set down, the Civil Rights Commission found that "even these standards were not adhered to by EEOP" (Equal Educational Opportunities Program). 45/

In an amendment to the Elementary and Secondary Education Act passed December 1967, Congress required that the Title VI compliance program "be uniformly applied and enforced throughout fifty States," thus for the first time pointing to the discrimination existing in the North and West as well as in the South. 46/ In March 1968 the Office of Civil Rights published new Guidelines which were "generally applicable to school systems throughout the U.S." 47/ They established general compliance policies in such areas as school organization and operation, equal educational opportunity for all students within a system, inferior educational facilities and services, and non-discrimination in all phases of faculty and staff concerns. The Guidelines set 1968-69, or 1969-70 at the latest, as the deadlines by which most systems must be in compliance with the law.

44/ Ibid., p. 52.

45/ U.S. Commission on Civil Rights. HEW and Title VI. Clearinghouse Publication No. 22. Washington, D.C., U.S. Government Printing Office, 1970. p. 35.

46/ Public Law 90-247.

47/ Office of Civil Rights. Policies on Elementary and Secondary School Compliance with Title VI of the Civil Rights Act of 1964. U.S. DHEW. Washington, D.C., U.S. Government Printing Office, March 1968. p. 3.

Despite the implementation of stricter Guidelines, the Civil Rights Commission report on Title VI compliance published in 1970 indicated that although much progress had been made in school desegregation, there were still much to be done. The report stated:

Although strides made since passage of the Civil Rights Act of 1964 have been significant -- especially when compared to the previous 10 years following the Brown decision -- and although increasing momentum has been developed over the past year or two (1967 to 1968 marked the greatest 1-year increase in the number of Southern Negro children in desegregated schools), almost 80 percent of all Negro children in the 11 States of the Deep South still attended segregated schools as the 1968-69 school year got underway. Moreover, this does not describe the full picture. Discriminatory practices exist within many school districts and individual schools in systems which are considered to be in compliance. The lack of adequate staff in large part has been responsible for HEW's inability to discover and remedy discrimination within schools that appear outwardly desegregated and to conduct follow-up field reviews to determine whether schools considered to be 'in compliance' actually are abiding by the law. 48/

Green v. School Board of New Kent County

Despite enforcement efforts by the Department of Health, Education, and Welfare and the Justice Department and the increase in desegregation, there still were many districts in the South resisting it. As in the past people filed complaints in court, and in 1968 the Supreme Court spoke out again on the issue of dual school systems.

In Green v. School Board of New Kent County, the Supreme Court ruled on the procedures used to carry out the Brown decision. The case involved a rural Virginia county which operated two schools, New Kent school in the eastern part of town and Watkins school in the western section. No residential segregation existed, and the school system had no attendance zones. Until 1964 buses had served the school by transporting white children to the New Kent school and black children to the Watkins school in accordance with several Virginia statutes subsequently ruled unconstitutional.

48/ HEW and Title VI, op. cit., p. 70.

In 1965 the school system adopted a freedom of choice plan in order to be eligible for federal aid. The Supreme Court described the plan as follows: "... under that plan, each pupil may annually choose between the New Kent and Watkins schools and, except for the first and eighth grades, pupils not making a choice are assigned to the school previously attended; first and eighth grade pupils must affirmatively choose a school." ^{49/} (pp. 433-434)

After three years of operation, however, the Court noted, "not a single white child has chosen to attend Watkins school and although 115 Negro children enrolled in New Kent school in 1967 (up from 35 in 1965 and 111 in 1966) 85 percent of the Negro children in the system still attend the all-Negro Watkins school." (p. 441) The Court ruled, therefore, that the school system was still a dual one and ordered the local board of education to devise a new plan which would convert the district "promptly to a system without a 'white' school and a 'Negro' school, but just schools." The Court indicated that it was not overruling freedom of choice plans in general, but that the plan must be effective in eliminating the dual school system. The court stated:

Although the general experience under freedom of choice to date has been such as to indicate its ineffectiveness as a tool of desegregation, there may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a desegregation program to effectuate conversion of a State-imposed dual system to a unitary, non-racial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, nonracial school system, freedom of choice must be held unacceptable. (pp. 440-1)

Although the Green decision did not explicitly state how a school system should desegregate, it clearly indicated impatience with token efforts and delay tactics that failed to eliminate de jure segregation. District courts were given the task of

^{49/} U.S. Supreme Court. Green v. New Kent County. 391 U.S. 430 (1968).
Succeeding uncited quotations in this section are from Green.

assessing the effectiveness of local plans, especially freedom of choice. The Commission on Civil Rights stated that "after the Green ruling, many school boards continued to use tactics designed to avoid full integration in light of the Court's not yet having addressed itself to the question of what measures a school board must take to produce a unitary school system, nor having defined 'unitary nonracial'." 50/ The Commission indicated, however, that circuit courts of appeal began rejecting freedom of choice plans that did not clearly eliminate dual school systems.

Because of the lengthy time involved in court procedures most school districts continued using the freedom of choice plans for the 1968-69 school years. For the next year, however, with assistance from DHEW, they were obliged to devise alternative methods of desegregation, such as school attendance zones, pairing of schools, and busing of pupils.

Alexander v. Holmes

Despite the enforcement procedures outlined by DHEW, opinion was voiced that the department was tarrying in its obligations to insure desegregation. The Southern Regional Council wrote in one of its reports: "The most far-reaching administration decision reflecting the influence of those opposed to quick and effective desegregation involved school districts in Mississippi." 51/ On July 3, 1969, in accordance with the Green decision, the Fifth Circuit Court of Appeals had ordered thirty Mississippi school districts to implement plans that would desegregate their school by September 1969. New plans were developed with the aid of the OE and filed in the federal district court on August 11. On August 20, however, Secretary of HEW Finch requested a delay of the hearing until December 1 so that more time could be taken to develop effective plans. The request was granted by a two-judge federal panel and

50/ U.S. Commission on Civil Rights. School Desegregation -- The Past Five Years. Desegregation Law: An Introduction. Chicago, Integrated Education Associates, 1972. p. 10.

51/ Barker, Horace. The Federal Retreat in School Desegregation. Atlanta, Georgia, Southern Regional Council, Inc., 1969. p. 30.

upheld by the Fifth Circuit. The NAACP Legal Defense Fund took the case to the Supreme Court asking that the phrase from the Brown decision "all deliberate speed" be struck down. On October 29, 1969 in a unanimous decision of Alexander v. Holmes the Supreme Court reversed the Fifth Circuit ruling stating that:

...continued operation of segregated schools under a standard allowing 'all deliberate speed' for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. 52/ (p. 20)

The Alexander decision was a landmark in its striking of the "all deliberate speed" clause, which, according to some authorities, had permitted many southern school districts to delay desegregation. The Court was ordering immediate action to end dual school systems in the South.

Swann v. Charlotte-Mecklenburg Board of Education

In 1971 the Supreme Court for the first time considered the kinds of action school districts could take to end segregation. In Swann v. Charlotte-Mecklenburg Board of Education the Supreme Court upheld a district court desegregation plan which went much further than the school board's plan for achieving system-wide desegregation. The Charlotte-Mecklenburg school system includes the city of Charlotte and surrounding Mecklenburg County, North Carolina. In the 1968-69 school year, 84,000 pupils attended 107 schools there; 71% of these pupils were white, 29% black. About two-thirds of the black students attended schools that were more than 99% black. This attendance pattern was the result of a 1965 desegregation plan based on geographic zoning with provision for free transfers. During hearings on Swann's motion for further relief based on the Green decision, the district court found that school board action based on residential patterns, resulting from Federal, State and

52/ U.S. Supreme Court. Alexander v. Holmes. 396 U.S. 19 (1969).

local government action, led to segregated education. Some of these school board actions were, for example, locating schools in the middle of black neighborhoods and determining their sizes according to the needs of those immediate neighborhoods. ^{53/}

The district court ordered the school board to present a plan for faculty and student desegregation. After considerable delay and the presentation before the court of a variety of plans from different sources including a court-appointed expert, Dr. John Finger, the school board acquiesced in the Finger plan. The Supreme Court's opinion included the district court's description of the plan:

Like the board plan, the Finger plan does as much by rezoning school attendance lines as can reasonably be accomplished. However, unlike the board plan, it does not stop there. It goes further and desegregates all the rest of the elementary schools by the technique of grouping two or three outlying schools with one black inner city school; by transporting black students from grades 1 through 4 to the outlying white schools; and by transporting white students from the 5th and 6th grades from the outlying white schools to the inner city black school. (pp. 9-10)

The Supreme Court's unanimous opinion was delivered April 20, 1971 and upheld the district court's plan as drawn up by Dr. Finger. In doing so, the Court reaffirmed the duty of local school boards to take positive action toward ending segregation. The Court discussed four problem areas in an attempt to set some guidelines for desegregation: racial quotas, one-race schools, attendance zones, and transportation. Regarding racial quotas, the Court stated:

If we were to read the holding of the district court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole. (p. 24)

^{53/} U.S. Supreme Court. Swann v. Charlotte-Mecklenburg. 402 U.S. 1 (1971).
Succeeding quotations in this section are from Swann.

The use of racial ratios, therefore, "was no more than a starting point in the process of shaping a remedy, rather than an inflexible requirement." (p. 25) The Court declared that district courts should examine one-race or predominantly one-race schools, the mere existence of which does not mean a dual school system, to determine whether they are in fact the result of de jure segregation. To remedy any such de jure segregation the Court indicated:

An optional majority-to-minority transfer provision has long been recognized as a useful part of every desegregation plan. Provision for optional transfer of those in the majority racial group of a particular school to other schools where they will be in the minority is an indispensable remedy for those students willing to transfer to other schools in order to lessen the impact on them of the State-imposed stigma of segregation. In order to be effective, such a transfer arrangement must grant the transferring student free transportation and space must be made available in the school to which he desires to move. (pp. 26-7)

Concerning remedial altering of attendance zones, the Court acknowledged the gerrymandering of school districts and the pairing, 'clustering', or 'grouping' of schools to transfer blacks out of formerly all-black schools and whites into them. The Court declared:

Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some, but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems. (p. 28)

The Court indicated, on the other hand, that "no fixed or even substantially fixed guidelines can be established as to how far a court can go, but it must be recognized that there are limits." So-called neutral plans, however, may be inadequate in view

of past discrimination; plans, therefore, may have "to counteract the continuing effects of past school segregation...."

With regard to transportation the Court declared that "the scope of permissible transportation of students as an implement of a remedial decree has never been defined by this Court and by the very nature of the problem it cannot be defined with precision." Bus transportation, long an integral part of the public education system, may be used as a tool of desegregation since the "assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system...." The Court accepted the district court's remedy of bus transportation which provided trips for elementary school pupils averaging about seven miles and not more than 35 minutes one way. The Court stated that "desegregation plans cannot be limited to the walk-in school." Students may object to such transportation, however, "when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process." (pp. 30-1) In addition, "...limits on time of travel will vary with many factors, but probably with none more than the age of the students." In concluding the decision, the Court noted that year-by-year adjustments of racial composition of student bodies by school authorities or the courts was not constitutionally required.

Bradley and School Board of Richmond v. Virginia State Board

The Swann case concerned the city of Charlotte and the surrounding Mecklenburg County, both of which comprised the Charlotte-Mecklenburg school system. In Richmond, Virginia a case arose involving three separate systems within the metropolitan Richmond area. The city of Richmond has been undergoing court-ordered desegregation since 1960. The schools still remain largely segregated, however, primarily because about 15,000 whites have moved to the suburbs, and the black population has increased. On January 10, 1972, District Court Judge Robert R. Merhige, Jr. in Bradley v. School

Board of the City of Richmond blamed official action, or rather inaction, for the failure of the plan as far as taking into account the residential segregation in the City of Richmond. The judge stated:

The City of Richmond's present pattern of residential housing contains well defined Black and White areas, which undoubtedly is a reflection of past racial discrimination contributed in part by local, state and federal government. 54/ (p. 72)

He continued that:

...the court finds that (1) no consideration was given to race in the preparation of the plan -- a theory which has long passed on; and (2) the plan was drawn in spite of the awareness of the school board of the pattern of residential segregation within the City of Richmond... (p. 75)

He, therefore, ordered the merger of the City of Richmond school system (43,000 pupils, 70% black) with those in the two surrounding predominantly white counties, Henrico (34,000 pupils, 92% white) and Chesterfield (24,000 pupils, 91% white). The resulting metropolitan system would thus cover 752 square miles and consist of 101,000 pupils, 66% white and 34% black, with each school having a black minority of not more than 40% and not less than 20%. The judge declared:

...that the duty to take whatever steps are necessary to achieve the greatest degree of desegregation in formerly dual school districts by the elimination of racially identifiable schools is not circumscribed by school district boundaries created and maintained by the cooperative efforts of local and state officials. The Court also concludes, that meaningful integration in a bi-racial community, as in the instant case, is essential to equality of education, and the failure to provide it is violative of the Constitution of the United States. (pp. 79-80)

Under the Merhige plan about 78,000 children would be bused, an increase of 10,000, which is a large transportation task because of the rural nature of the two white counties where many children already take the bus to school.

54/ U.S. District Court, Virginia. Bradley v. School Board of the City of Richmond. 338 F. Supp. 67 (E.D. Va. 1972). Succeeding quotations in the section are from Bradley.

The case was appealed to the Fourth Circuit, however, and on June 5, 1972 that court overturned Merhige's decision. The majority opinion, written by Judge J. Braxton Craven, Jr. of North Carolina, asked the question:

May a U.S. district judge compel one of the states of the union to restructure its internal government for the purpose of achieving racial balance in the assignment of pupils to the public schools? We think not, absent invidious discrimination in the establishment or maintenance of local governmental units, and accordingly reverse. 55/ (p. 1060)

The opinion goes on to state that Judge Merhige "in his concern for effective implementation of the Fourteenth Amendment failed to sufficiently consider a fundamental principle of federalism incorporated in the Tenth Amendment and failed to consider that Swann v. Charlotte-Mecklenburg Board of Education established limitations on his power to fashion remedies in school cases...." (p. 1061)

According to the Tenth Amendment, powers not delegated to the U.S. nor prohibited to the states by the U.S. Constitution are then reserved to the states or to the people. One of the powers thus reserved to the states is the power to structure their internal government. Should the exercise of this power result in a conflict with the Fourteenth Amendment whereby, for example, blacks are accorded the equal protection right to attend a unitary school system, then the Fourteenth Amendment shall prevail. The Fourth Circuit Court opinion states, however, that:

The facts of this case do not establish, however, that state establishment and maintenance of school districts coterminous with the political subdivisions of the city Richmond and the counties of Chesterfield and Henrico have been intended to circumvent any federally protected right. Nor is there any evidence that the consequence of such state action impairs any federally protected right, for there is no right to racial balance within even a single school district but only a right to attend a unitary school system.... (p. 1069)

55/ U.S. Court of Appeals, Fourth Judicial Circuit. Bradley v. School Board of City of Richmond, Virginia. 462 F.2d 1058 (1972).

On appeal to the U.S. Supreme Court, the justices divided four-four, which had the effect of leaving intact the circuit court ruling. Justice Lewis Powell, past president of the Richmond and Virginia Boards of Education, disqualified himself from the case. This leaves unanswered for other circuits the legal question of crossing school district lines for purposes of desegregation. Recently attorneys for the Richmond School Board asked the Supreme Court to rehear the case, but the Court rejected their bid.

56/ U.S. Supreme Court. School Board of the City of Richmond, Virginia v. State Board of the Commonwealth of Virginia and Carolyn Bradley v. State Board of the Commonwealth of Virginia. 36 L.Ed. 2d 771 (1973).

Segregation: North and West

Swann was a landmark case for the Supreme Court in the southern desegregation battle because for the first time specific remedies for segregation were established. Swann, however, was directed only at Charlotte-Mecklenburg and similar areas, places where school segregation had once been required by law. What about de facto segregation, segregation which exists because of housing patterns, cultural differences, etc., situations not enforced by law? The most common examples of de facto segregation are the large urban centers of the North which have come to have low-income, often predominantly black or Spanish-speaking people, living in the central city with more affluent whites living in the suburbs. Neighborhood schools, therefore, have become predominantly one-race schools. For a variety of reasons including methods of school finance and socio-economic differences of the students, these inner-city and suburban public schools differ greatly in quality. Inequality of educational opportunity has been complained of by many people, especially by the large concentrations of blacks living in the inner cities. The Civil Rights Commission reports that "lower court decisions have (affirmed in some cases by the Supreme Court) affirmed the power of school officials to overcome de facto school segregation, even though such action, unlike the steps taken in Swann, has not been held to be constitutionally required." 57/

The resulting racial imbalance in the system is seen by many as a denial of equal protection of the laws. Some state laws requiring the remedying of racial imbalance in the public schools have been upheld. The Civil Rights Commission notes that "the Massachusetts Racial Imbalance Act which requires the withholding of State funds from districts which do not prepare and implement plans to eliminate racial

57/ School Desegregation, op. cit., p. 12.

imbalance, was held constitutional in School Committee of Boston v. Board of Education." ^{58/} Under that law, which is presently being questioned in the state courts, a school may not be more than 50 percent non-white. Likewise, in Illinois the Superintendent of Education issued regulations "requiring every school district to achieve approximate racial balance in each school, corresponding within 15 percent to the racial composition of the school district." ^{59/} Noncompliance results in cutoffs of State and Federal funds. The Illinois statute was upheld in Tometz v. Board of Education Waukegan City School District No. 61 and has not been further challenged.

In recent years, therefore, the school desegregation controversy has spread North and West. What was once considered de facto segregation in urban centers has been called de jure by some authorities who blame the state for countenancing residential segregation and drawing district lines that lead to segregated schools. As in the South, a number of people with discrimination complaints have gone to court.

Denver, Colorado

The first northern school desegregation case to reach the Supreme Court was Keyes v. School District No. 1, Denver, Colorado. The city of Denver has a population that presently is fourteen percent black and twenty percent Hispano, people of Latin American descent. As in many cities, these groups generally live in the same neighborhood, and with school attendance lines drawn on a neighborhood basis, their children attend school together. The Court's opinion indicates that as the black population in Denver has grown in the last decade, the Denver School Board has redrawn attendance zones around the expanded

^{58/} Ibid., pp. 12-13.

^{59/} Ibid., p. 13.

neighborhood, thus effectively segregating the black population. In one instance, a new school was built which separated blacks and whites. In 1969 the School Board adopted several resolutions incorporating desegregation plans for the Park Hill area in northeastern Denver which included busing both black and white children. In a school board election that year, however, two supporters of the desegregation plan were defeated, and the new board rescinded the resolutions and adopted a voluntary student transfer program. Some parents in favor of the integration proposal thereafter went to court charging the School Board with violation of the equal protection clause of the Fourteenth Amendment.

In his opinion in 1970, District Court Judge William E. Doyle listed the essential complaints of the parents as follows:

1. The Board of Education for School District No. 1, Denver, unconstitutionally rescinded certain resolutions which were designed to desegregate specific schools within the district;
2. The named defendants have created and/or maintained segregated student bodies and faculties in many of the schools in school district No. 1;
3. The said school district has provided an unequal educational opportunity to students attending segregated schools within the district. 60/ (p. 63)

The Court found that on the first claim involving the Park Hill schools, by gerrymandering student attendance zones, by using so-called optional zones, and by utilizing extensively such things as mobile classroom units, the School Board was guilty of de jure segregation. The Court stated that "the Board specifically repudiated measures which had been adopted for the purpose of providing a measure of equal opportunity to plaintiffs and others." (p. 68) On the second complaint on Judge Doyle's list the court found that de facto degregation based on housing patterns existed in the so-called core area schools, those in the

60/ U.S. District Court. Denver, Colorado. Keyes v. School District No. 1, Denver. 313 F. Supp. 61 (1970). Succeeding quotations until otherwise cited are from the District Court decision.

long-established part of the neighborhood, but according to the rule of law, the court could not order desegregation to end racial imbalance. The court stated:

It is to be emphasized here that the board has not refused to admit any student at any time because of racial or ethnic origin. It simply requires everyone to go to his neighborhood school unless it is necessary to bus him to relieve overcrowding. (p. 73)

The plaintiff's third count on this claim involving core schools was the illegality of the neighborhood school where it caused or perpetuated unconstitutional segregation. To this point the district court replied:

We recognize that some courts have moved along this line. However, the law in our circuit...is that a neighborhood school policy, even if it produces concentration, is not per se unlawful if: '...it is carried out in good faith and is not used as a mask to further and perpetuate racial discrimination.' (p. 76)

On the third complaint on Judge Doyle's list, the court found that there was a denial of equal opportunity for education in the schools mentioned. The court stated:

Today, a school board is not constitutionally required to integrate schools which have become segregated because of the effect of racial housing patterns on the neighborhood school system. However, if the school board chooses not to take positive steps to alleviate de facto segregation, it must at a minimum insure that its schools offer an equal educational opportunity. The evidence in the case at bar establishes, and we do find and conclude, that an equal educational opportunity is not being provided at the subject segregated schools within the District...Many factors contribute to the inferior status of these schools, but the predominant one appears to be the enforced isolation imposed in the name of neighborhood schools and housing patterns. (p. 83)

In the circuit court's decision on June 11, 1971, the district court's judgment was affirmed on all parts with the exception of this last one concerning equal educational opportunity. The circuit court opinion states:

We cannot dispute the welter of evidence offered in the instant case and recited in the opinion of other cases that segregation in fact may create an inferior educational atmosphere. Appellees observe that several of the Federal district courts across the land have indicated that because of the resulting deficiencies, the Federal courts should play a role in correcting the system...Our reluctance to embark on such a course stems not from a desire to ignore a very serious educational and social ill but, from the firm conviction that we are without power to do so. 61/ (p. 1004)

Keyes was appealed to the U.S. Supreme Court which handed down a decision on June 21, 1973. In what has been termed a 6½ to 1½ ruling, the Court stated that where segregation in one part of the school system was found to be the result of official action, school officials were obliged to demonstrate that other schools in the system were not segregated also by official action. The justices were divided in several ways. Justice William Rehnquist was the only outright dissenter. Justices William Douglas, Potter Stewart, Thurgood Marshall, and Harry Blackmun joined Justice William Brennan in his majority opinion, while Chief Justice Warren Burger concurred in the result. Justice Lewis Powell filed a separate opinion concurring in part, with a plea for national standards to determine the existence of illegal segregation, and dissenting in part, with a warning against massive pupil transportation. Justice Byron White did not participate in the decision.

As has been stated, the Denver school case was the first one involving elements of de facto segregation as opposed to exclusive de jure segregation to reach the Supreme Court. The majority opinion, however, treated the case along de jure lines, thus avoiding questions of racial proportions and whether actual racial separation not caused by official state action constituted illegal segregation. Instead the Court, referring back to the Swann decision made the distinction between de jure and de facto as that between intentional and non-intentional segregation. The Court stated, "We emphasize that the differentiating factor between de jure

61/ U.S. Court of Appeals. Tenth Judicial Circuit. Keyes v. School District No. 1, Denver. 445 F. 2d 990 (1971).

segregation and so-called de facto segregation to which we referred in Swann is purpose or intent to segregate." 62/ (Underlinings included.) It should be noted that both Justices Douglas and Powell took issue with this interpretation, and in separate opinions argued that the de jure-de facto distinction had outlived its usefulness and should be discarded, thus eliminating a lot of litigation involving the establishment of segregation by official action. Justice Powell stated in his opinion:

...the familiar root cause of segregated schools in all the biracial metropolitan areas of our country is essentially the same: one of the segregated residential and migratory patterns the impact of which on the racial composition of the schools was often perpetuated and rarely ameliorated by action of public school authorities. This is a national not a southern phenomena. (p. 7)

The majority of the Court held that the district court on remand must determine whether Park Hill can be viewed as a separate entity in the school system, and if it cannot be, whether a segregative policy there makes the school district a dual system. If a dual system is found to exist the "School Board has the affirmative duty to desegregate the entire system 'root and branch'." (p. 23) In addition, if the district court finds that Park Hill has not constituted the Denver school district a dual system, it is then up to the School Board to demonstrate that segregation in Park Hill does not mean segregation in the core city schools. If the Board fails to demonstrate this fact, then all-out school desegregation must take place.

With regard to the issue of a dual school system the Court stated that "... where plaintiffs prove that the school authorities have carried out a systematic program of segregation affecting a substantial portion of the students, schools, teachers and facilities within the school system, it is only common

62/ U.S. Supreme Court. Keyes, et al. v. School District No. 1, Denver, Colorado, et al. Doc. No. 71-507. Succeeding quotations in this section are from the Supreme Court's decision.

sense to conclude that there exists a predicate for a finding of the existence of a dual school system." (p. 11)

And with regard to neighborhood schools, the Court went back to the Swann decision and indicated that so-called racially neutral neighborhood school policy may not be adequate to overcome a de jure segregated school system. The Court stated:

Thus, respondent School Board having been found to have practiced deliberate racial segregation in schools attended by over one-third of the Negro school population, that crucial finding establishes a prima facie case of intentional segregation in the core city schools. In such case, respondent's neighborhood school policy is not to be determinative 'simply because it appears to be neutral.' (p. 23)

In the only dissenting opinion, Justice Rehnquist indicated his belief that the Court went too far in stating that racial segregation in one area implies segregation throughout the district. He stated that from the district court finding of gerrymandering of the attendance boundary between two particular schools,

It certainly would not reflect normal English usage to describe the entire district as 'segregated' on such a state of facts, and it would be a quite unprecedented application of principles of equitable relief to determine that if the gerrymandering of one attendance zone were proven, particular racial mixtures could be required by a federal district court for every school in the district. (p. 3)

Rehnquist concluded his opinion with the statement:

The Court has taken a long leap in this area of constitutional law in equating the district-wide consequences of gerrymandering individual attendance zones in a district where separation of the races was never required by law with statutes or ordinances in other jurisdictions which did so require. It then adds to this potpourri a confusing enunciation of evidentiary rules in order to make it more likely that the trial court will on remand reach the result which the Court apparently wants it to reach. (p. 12)

Detroit, Michigan

Detroit, Michigan, is the scene of another major northern school segregation case, this one involving a metropolitan (metro) plan of busing city and suburban children to desegregate the schools. In the 1971 decision of Bradley v. Milliken, U.S. District Court Judge Stephen Roth declared that "both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the city of Detroit." ^{63/} In calling for an end to this de jure segregation, mainly the result of housing segregation due to Federal and State housing laws, Judge Roth indicated that a remedy must be sought by going outside the city of Detroit which is predominantly black to the predominantly white suburbs. Subsequently four plans were produced for the court, and on June 14, 1972, the Judge ordered the implementation by fall 1972 of a plan similar to that submitted by the NAACP, involving the transportation of some 290,000 students out of a total school population of 780,000 within 53 school districts.

The ruling was appealed to the Sixth Circuit, which on June 12, 1973, ruled 6-3 that the public schools were indeed segregated due to state action, and that busing between the city and the suburbs was a means of achieving desegregation. ^{64/} The ruling of the Sixth Circuit is in contrast to that of the Fourth Circuit in the Richmond case. Since the Supreme Court split evenly on the Richmond case, and no opinions were written, the issue of metropolitan busing is still regarded as being open by many authorities. Although the Fourth Circuit ruling upheld the principle of metropolitan desegregation, it sent the case back to the district court so that a specific busing plan can be designed. The state of Michigan plans to appeal the case to the U.S. Supreme Court.

^{63/} U.S. District Court. Detroit, Michigan. Bradley v. Milliken. 338 F. Supp. 582 (1971). p. 592.

^{64/} U.S. Court of Appeals. Sixth Judicial Circuit. Doc. Nos. 72-1809 - 72-1814.

Elsewhere in the North and West

Elsewhere in the North, cities are facing challenges in the court like those in Denver and Detroit. Some cities, such as San Francisco and Pontiac, Michigan, have already started busing children under court-ordered plans. In San Francisco about 18,000 elementary pupils are being bused as part of a plan initiated in September 1971, which makes each elementary school roughly reflect the city's racial mixture: 34% white, 29% black, 14% of Spanish surname, 13% Chinese, and 10% other. 65/ A newly elected school board is attempting to delay the extension of the desegregation plan to the junior and senior high school level. The NAACP, however, has filed a suit against the San Francisco school district requesting full integration of the junior and senior high schools immediately. The suit is scheduled for trial in November of this year. 66/

In Pontiac, Michigan, a court-ordered desegregation plan went into effect in September 1971 requiring the busing of about 9,000 students, 2/3 of them in grades 1-9. Although there was considerable protesting after the court order, leading to the fire-bombing of ten school buses and white migration to the suburbs or other cities, according to a recent news article, "integration is moving smoothly, despite ongoing widespread opposition in this Northern industrial city." 67/

In Los Angeles in 1970 a state court ordered implementation of "the biggest and most expensive program of school integration ever attempted in the U.S." 68/

65/ Busing--Success or Failure? U.S. News & World Report, v. 74, March 26, 1973: 30.

66/ Mr. Benjamin James, San Francisco attorney handling this suit for NAACP, by phone, September 24, 1973.

67/ U.S. News, March 26, 1973, op. cit.: 29.

68/ Chaos over School Busing. U.S. News and World Report, v. 68, March 16, 1970: 32.

Approximately 240,000 children would have to be bused, requiring the school system to purchase 2,200 new 91-passenger school buses. Superintendent Robert E. Kelly estimated the cost of the plan as being \$40 million the first year and \$180 million for the next eight years. The ruling is presently on appeal.

The California situation is different, for in November 1972 the voters passed Proposition 21, The Assignment of Students to Schools Initiative. This proposition prohibits the transfer of any public school student on the basis of race, creed, or color. It also repeals a state law (The Bagley Act) which made it state policy to eliminate and prevent racial and ethnic enrollment imbalance. School districts were required to make periodic enrollment reports with ethnic breakdowns of the students and then consider plans to ease existing segregation or prevent developing segregation. The effect of Proposition 21 is to prevent any school district from implementing integration plans, even voluntarily. The proposition does not take precedent, however, over court-ordered plans already in effect, thus busing continues in such cities as San Francisco and Pasadena. The NAACP and the American Civil Liberties Union are challenging Proposition 21 in the courts; thus far, the NAACP has lost its first case in a local court in Sacramento.

In addition to the places where court orders have led to school desegregation, only a few of which are discussed in this paper, some cities have voluntarily implemented their own plans. Some of these are Boston, Massachusetts; Evanston, Illinois; White Plains, New York; Berkeley, California; and Riverside, California. It is beyond the scope of this paper to go into the details of these

plans and their effects. Brief mention should be made, however, of some of the methods used either as alternatives to or in conjunction with busing to desegregate the systems. These alternatives are also utilized in some of the court-ordered plans.

Desegregation Techniques

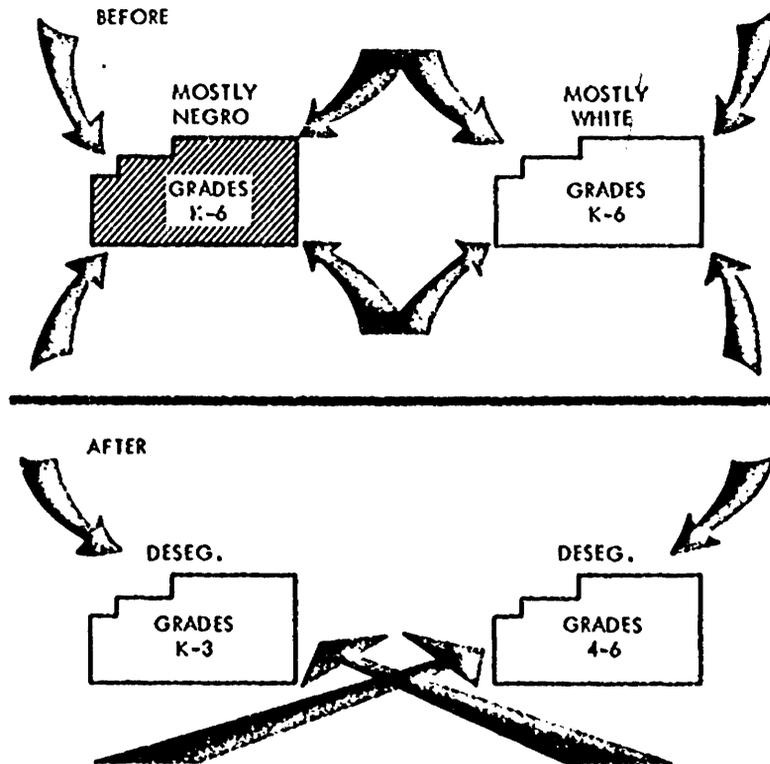
The Office of Education published a series of booklets entitled "Planning for Educational Change" designed to aid school districts create and implement their own desegregation plans. OE suggests that where simple geographic attendance zones do not lead to sufficient desegregation the following techniques should be considered: pairing of schools, grade structure reorganization, central schools, school closing, special-service schools, education parks, education complexes, metropolitan plans, magnet schools, and construction where financially feasible.^{69/} The following diagrams and descriptions illustrate these plans.^{70/}

Pairing of schools means that where, for example, two elementary schools fairly close together had served black and white children separately, with desegregation one school would serve black and white children together in grades 1-3, and the other would serve children in grades 4-6.

^{69/} Technical Aspects of School Desegregation. Planning Educational Change, v. 1. Washington, D.C., U.S. Government Printing Office, 1969. p. 4.

^{70/} All of the following diagrams are from Planning Educational Change.

PAIRING

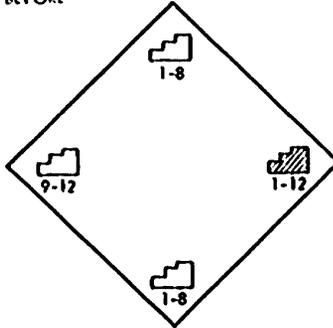


BEFORE PAIRING, STUDENTS ENROLL ACCORDING TO EACH SCHOOL'S ATTENDANCE AREA. AFTER PAIRING, STUDENTS OF BOTH ATTENDANCE AREAS ENROLL IN THE TWO SCHOOLS ACCORDING TO GRADE.

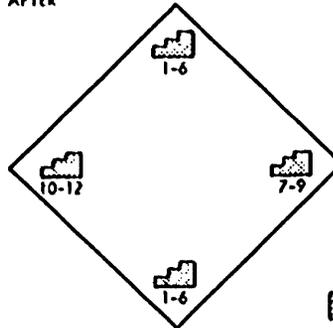
Reorganizing the grade structure means that where perhaps there had been only one black school serving grades 1-12 and 3 white schools serving different levels, they would all be reorganized so that each school served only certain grades with the black students distributed accordingly.

REORGANIZATION OF GRADE STRUCTURE

BEFORE



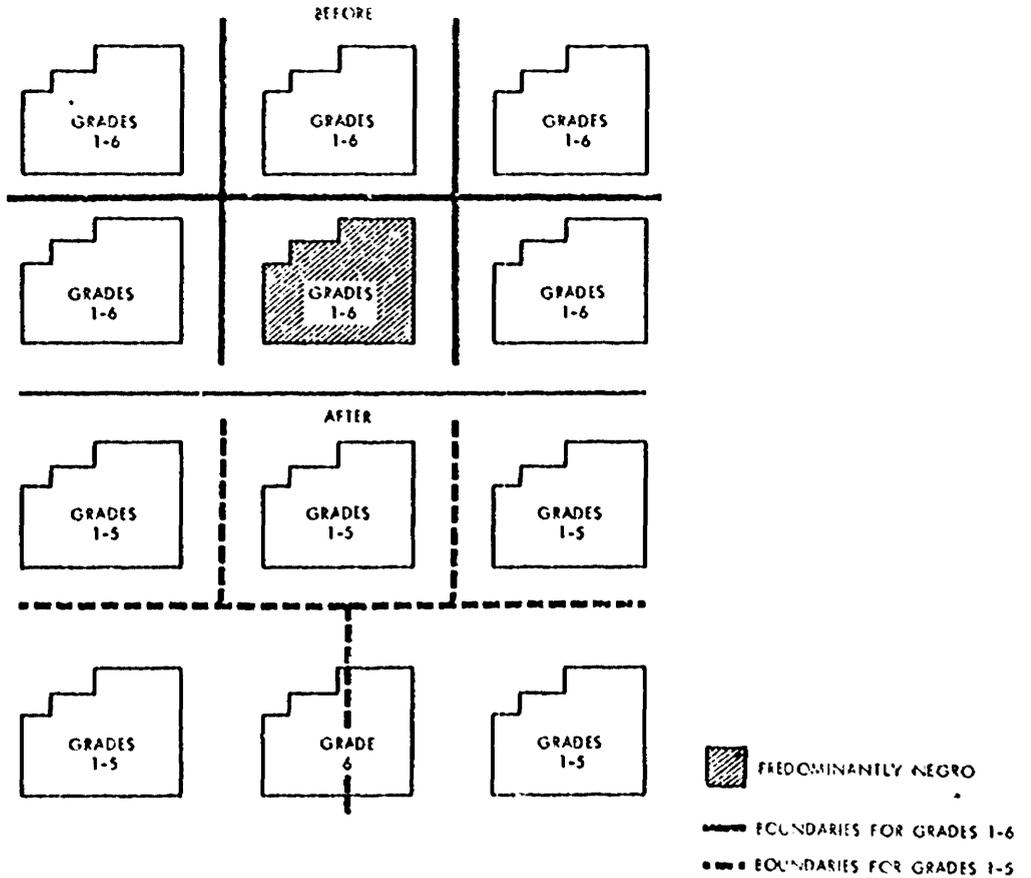
AFTER



-  PREDOMINANTLY NEGRO SCHOOLS
-  PREDOMINANTLY WHITE SCHOOLS
-  DESEGREGATED SCHOOLS

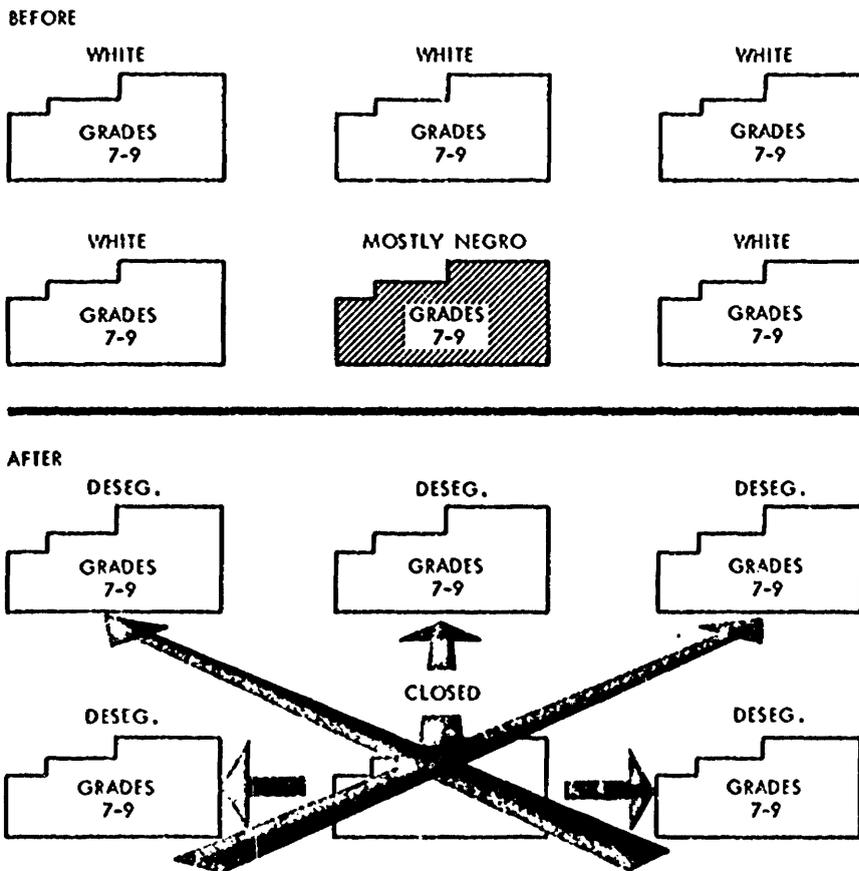
The central school technique involves making one school serve a single grade for a much greater geographical area.

CENTRAL SCHOOLS



According to OE, schools with inadequate facilities, often built to serve one particular race, should be closed and its students assigned to other schools in the system.

SCHOOL CLOSING

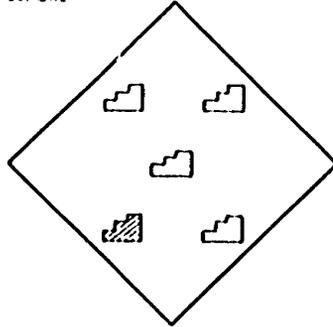


THE PREDOMINANTLY NEGRO JUNIOR HIGH SCHOOL IS CLOSED AND THE STUDENTS ARE ASSIGNED TO OTHER SCHOOLS.

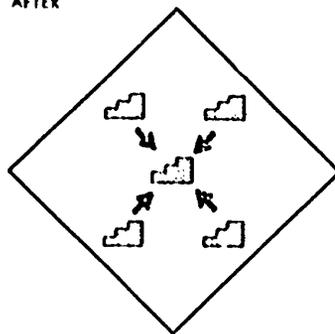
Another desegregation technique is to use a previously one-race school to house special needs of the system, such as handicapped students, an advanced learning center, and adult education center, or a recreation center.

ESTABLISHING SCHOOLS FOR SPECIAL SERVICES

BEFORE



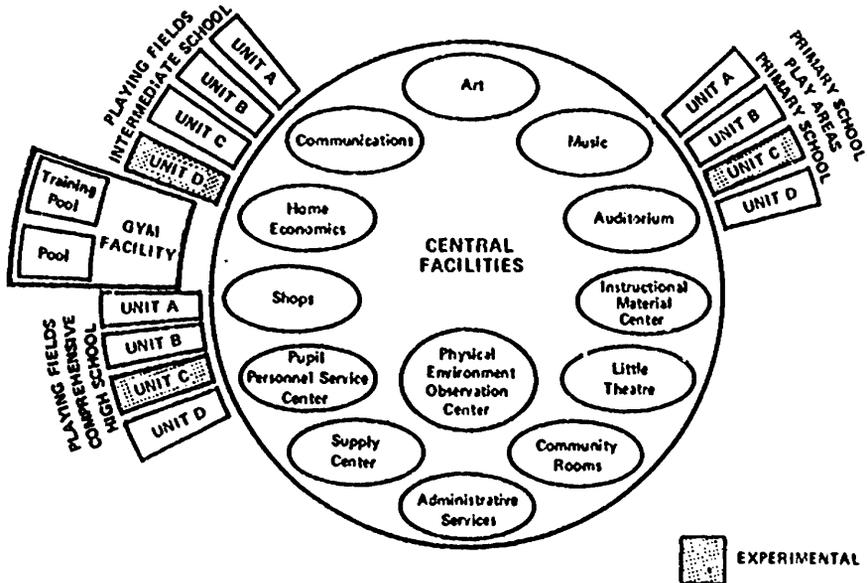
AFTER



-  PREDOMINANTLY
N.G.F.O. SCHOOLS
-  PREDOMINANTLY
WHITE SCHOOLS
-  DESEGREGATED
SCHOOLS

An education park is envisioned as a massive education plant where students from all over the city would come to learn. By utilizing economies of scale, it could offer a wide variety of non-traditional as well as traditional academic activities.

NEW YORK EDUCATION PARK PLAN

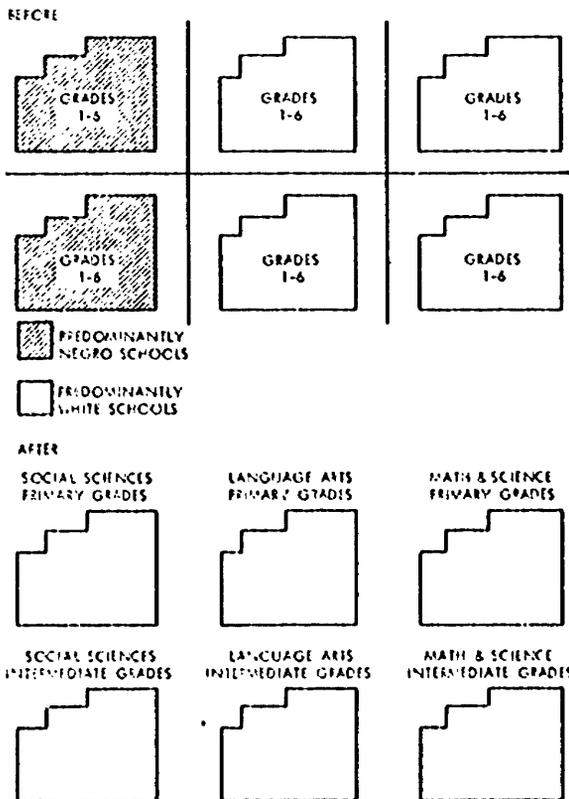


PLAN FOR NEW YORK'S NEW EDUCATION PARK PROVIDES FOR PRIMARY SCHOOLS FOR 2,800 PUPILS, INTERMEDIATE SCHOOLS FOR 3,600, AND A COMPREHENSIVE HIGH SCHOOL FOR 4,000 STUDENTS WILL BE GROUPED IN UNITS OF 700 EACH IN THE PRIMARY SCHOOLS, 900 IN THE INTERMEDIATE SCHOOLS, AND 1,000 IN THE HIGH SCHOOL. THE CENTRAL UNIT WILL OFFER COMMON FACILITIES FOR ALL SCHOOLS IN THE COMPLEX.*

*DIAGRAM ADAPTED FROM SATURDAY REVIEW, NOVEMBER, 1966

Education complexes are best suited to communities with several schools in reasonable proximity to each other. Each school would adopt its own speciality area.

EDUCATION COMPLEXES



The metropolitan plan is the concept employed in the Richmond case as discussed above. It could include pairing or adopt features of the education parks and complexes plans.

METROPOLITAN PLAN

Illustration #1

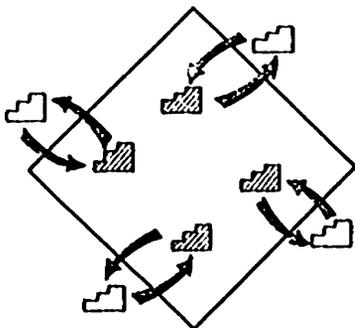
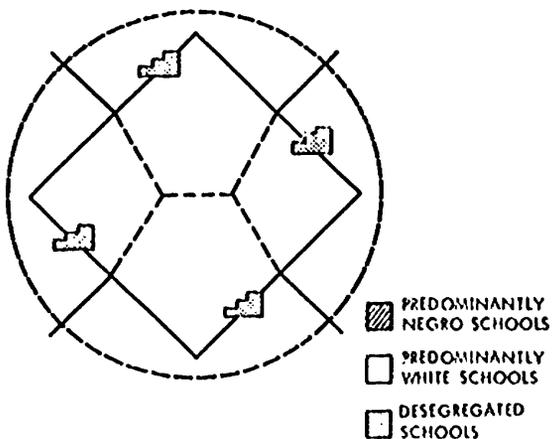
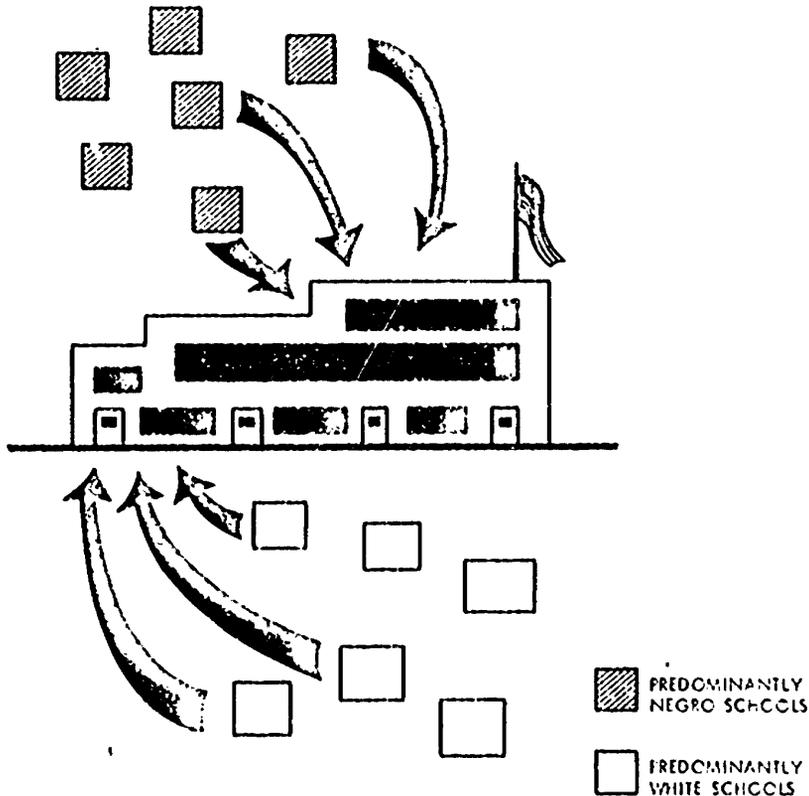


Illustration #2



Magnet schools are those that offer non-traditional subjects and thus attract a large variety of people from a wide geographical school attendance area.

MAGNET SCHOOLS



Effects of Desegregation

These techniques of school desegregation are those suggested by the Office of Education. Some of them such as pairing and magnet schools, are being used; others such as the education park concept have been experimented with on only a modest scale. The effects of the plans presently in operation are now the center of a major controversy. In the South where dual school systems were declared unconstitutional, desegregation was mandatory, and the effects of it outside of complying with the law attracted little national attention. In the North, however, where segregated school systems have not been the result of direct state action, people are weighing the pros and cons of voluntarily

desegregating their schools. Many studies have been done and are still being done to determine the effects of desegregation. It is a complex question which cannot be examined in this paper. Some of the questions being asked, however, should indicate the complexity of the problem:

1. Do children learn better in an integrated setting?
2. How are children affected, socially and intellectually, when low-income blacks are bused to a middle-income white school or when middle-income whites are bused to a low-income black school?
3. The desegregation issue in the courts has focused on unconstitutional segregation of the races; is racial integration the only goal? What about integration of economic classes?
4. Is a school made better because children of both races attend it, or because it is well-equipped, or because the children come from homes where they are motivated to learn?
5. Is equality of educational opportunity connected with the desegregation issue as asserted in the Denver case? What constitutes equality of educational opportunity? Equal facilities? Equal access to all schools?
6. When is a school considered to be desegregated? When and how does a desegregated school become fully integrated?

Many studies have examined the effects of desegregation and schooling in general, all related to the needs of the disadvantaged, frequently black, child. Some of these studies have been relied on by the Supreme Court and the lower courts in making their decisions on the segregation cases. Only a few of the most recent reports can be mentioned briefly here.

In 1966 the Office of Education published a study commissioned by the Civil Rights Act of 1964 "concerning the lack of availability of equal educational opportunities...."^{71/} James S. Coleman of Johns Hopkins University

^{71/} P.L. 88-352.

headed the study which generally is known as the Coleman Report. Based on a survey of 570,000 pupils and 60,000 teachers in 4,000 schools, the conclusions have become the subject of a controversy over the effects of schooling in general, particularly with respect to minority and disadvantaged children. Some of the conclusions of the Coleman Report were that 1) within regions, minority schools and white schools have nearly equal resources; 2) with the exception of Oriental Americans the average achievement of minority children is lower than that of whites; 3) no direct relationship to academic achievement seems to exist in teacher-pupil ratios or per-pupil expenditures; and 4) family differences seem to cause a greater variation in achievement than school differences.

Although immediate reaction to the Coleman findings was limited, in the past seven years more and more attention has been focused on the data resulting in the publication of several other studies using this data. In 1967 the U.S. Commission on Civil Rights published one entitled Racial Isolation in the Public Schools, prepared at the request of President Johnson. The Commission examined the extent and context of racial isolation, its causes, its effects, and remedies for it. The Commission indicated by way of conclusion:

The central truth which emerges from this report and from all of the Commission's investigations is simply this: Negro children suffer serious harm when their education takes place in public schools which are racially segregated, whatever the source of such segregation may be. 72/

Another study, entitled On Equality of Educational Opportunity and edited by Frederick Mosteller and Daniel P. Moynihan, grew out of a seminar conducted at Harvard University which was funded by the Carnegie Corporation for the

72/ U.S. Commission on Civil Rights. Racial Isolation in the Public Schools. Washington, U.S. Govt. Print. Office, 1967. p. 193.

1966-67 year to study and analyze the Coleman Report. This study, a collection of papers by participants in the seminar, basically supported the major findings of the Coleman Report. As one reviewer of the book states: "The point of the whole thing, however, is that schools do matter...but the total amount spent on education is not nearly so important as is the way the funds are used."^{73/}

The most recent of the studies that used the Coleman data is Christopher Jencks's book Inequality: A Reassessment of the Effect of Family and Schooling in America published late in 1972. Jencks examines causes and effects of the major forms of inequality including inequalities within and between schools such as distribution of money and resources, students' access to desirable schools and classmates, tracking and curricula, heredity, and environment. Despite the fact that these inequalities do exist, Jencks concluded that even if they were corrected, adult economic inequality would not be affected. In addition, desegregating schools tends to raise test scores somewhat, but it does not have much effect on the financial or social success of black children in adult life. Jencks is not condemning schools as worthless, however; rather, he is stating that they are not the means through which to achieve equality in American life. He says:

As long as egalitarians assume that public policy cannot contribute to economic equality directly but must proceed by ingenious manipulations of marginal institutions like the schools, progress will remain glacial. If we want to rove beyond this tradition, we will have to establish political control over the economic institutions that shape our society. This is what other countries usually call socialism. 74/

Although these three studies go far beyond the immediate problem of school desegregation, they have been increasingly used by the courts for their bearing on equal protection of the laws violations and determining how much

^{73/} Patterson, Wade N. Coleman Remains Inescapably There. The American School Board Journal, v. 159. December 1972. p. 19.

^{74/} Jencks, Christopher. Inequality: A Reassessment of the Effect of Family and Schooling in America. New York, Basic Books, 1972. p. 265.

desegregation is required to effectively correct a denial of equal protection. These studies have been especially useful in the Northern cases where segregation is de facto in the sense of not having been openly required by law. Coleman discussed the use of his study by the courts expressing caution at relying on the results too heavily. He stated:

I remain uncertain about the appropriate role of social science evidence or statistical evidence in relation to the courts. The concept of evidence by lawyers or judges is very different from the concept of evidence in social science. When results show that certain kinds of attendance patterns provide higher achievement for children from lower socio-economic levels, as our results did, the results ought to contribute to the question of whether schools should be integrated, and to the decision of how much effort should be put into school integration. But I don't think that a judicial decision on whether certain school systems are obeying or disobeying the constitution ought to be based on that evidence.

At the same time I think the report has been underutilized by legislatures and school boards. The results of the report are appropriate for legislators and school boards in encouraging the kind of student body mix which can provide achievement benefits. 75/

Brief mention should be made of two often cited studies directly relating to busing. The Lambda Corporation of Arlington, Virginia prepared the first one under a contract with HEW. Entitled School Desegregation with Minimum Busing, the Lambda report surveyed 29 urban areas and discovered "that the residential isolation of urban minority groups is not quite as serious a barrier to school desegregation as has usually been assumed."^{76/} The study examined alternative available methods of school desegregation relying on a minimum of busing. "The results obtained so far in some of the sensitivity analyses suggest that requirements for additional busing, even to provide almost complete desegregation, can

75/ Coleman on the Coleman Report. Education Researcher, March 1972. v. 1. p. 14.

76/ School Desegregation with Minimum Busing. Arlington, Virginia, Lambda Corp., Dec. 10, 1972. p. 4.

be as little as one third to one fourth of the amount estimated by conventional rule-of-thumb techniques."^{77/}

The second study relating to busing is the so-called Armor Report, a study by Harvard sociologist David Armor entitled "The Evidence on Busing." Armor examined several busing programs including the Boston METCO plan which bused black children out of the ghetto into white middle class schools. He found that mandatory busing not only did not improve race relations, but also did not raise the academic achievements, aspirations, or self-esteem of the black children, although black children who had been bused to white schools did seem more likely to attend "higher quality" colleges. One of Armor's major conclusions was that integration did exactly the opposite of what people expected; it "heightens racial identity and consciousness, enhances ideologies that promote racial segregation and reduces opportunities for actual contact between the races."^{78/} Armor's report met with much opposition including that from his former teacher Thomas Pettigrew. Pettigrew maintains that Armor's report is not based on enough scientific evidence. According to Pettigrew, the systems Armor selected to study were mainly those where busing had not worked very well; he neglected any mention of some of the successful programs such as Berkeley, California. Pettigrew believes that Armor

- 1) establishes standards for successful busing that are too high, i.e., results in one year of operation;
- 2) relies primarily on a short-term study of the Boston METCO plan done by Armor himself which in Pettigrew's opinion is the weakest study in terms of facts and findings probably reported in the paper; and
- 3) views racial change basically as a technical matter for social scientists rather than as insuring the constitutional rights for black children.^{79/}

^{77/} Ibid., p. 6.

^{78/} Armor, David J. The Evidence on Busing. The Public Interest. Summer 1972, No. 28. p. 102.

^{79/} Pettigrew, Thomas F., et al. Busing: A Review of "The Evidence". The Public Interest. Winter 1973. No. 30. pp. 88-91.

Reaction of the Congress and the President

The concern over busing for desegregation has been an issue since 1964 and has intensified in recent years. There were over a dozen Congressional anti-busing measures passed from 1964 through 1972. In response to the recent public concern over the busing issue, the President of the United States and the Congress recently proposed several measures concerning busing and desegregation. The Emergency School Assistance Program (ESAP) was proposed by the President and adopted by Congress in 1970 to provide funds to school districts undergoing desegregation. ESAP was followed by a more permanent Emergency School Aid Act (ESAA) enacted in June 1972 as Title VII of P.L. 92-318, the Education Amendments of 1972 (86 Stat. 354-371). Also passed in June were some general provisions relating to pupil assignment and transportation. In addition, the House passed in August 1972 a bill restricting busing to certain limited uses. Thus far in the 93rd Congress, a variety of busing proposals have been made, but nothing has emerged from Committee yet.

Emergency School Assistance

ESAP in its present form was started during the 91st Congress as a temporary program to aid school districts undergoing desegregation, many by court-order. President Nixon's emergency school aid legislation, which he sent to Congress in May 1970, was aimed primarily at about 1400 school districts, most of them in the South. ESAP was also intended to assist schools segregated on a de facto basis where minority students comprised over half the enrollment due largely to neighborhood residence patterns. Funds were to be used to assist districts with de facto racial isolation which voluntarily were implementing plans for desegregation and for programs in those schools designed to overcome the educational disadvantages that stem from racial isolation. In its first year of operation ESAP grants were made to 900 local education agencies and 144 community groups. In fiscal 1972 ESAP

grants were made to 451 local education agencies. \$75 million was appropriated for these programs for each of Fiscal Years 1971 and 1972.^{80/}

Several evaluations of ESAP were made by different organizations. In November 1970 six civil rights organizations published a study indicating that there were many violations of the ESAP statute and regulations. According to the report, in some cases funds were being used for general aid purposes, not to help desegregate schools, and in many instances funds had been granted to school districts still practicing discrimination.^{81/}

The General Accounting Office issued two reports on ESAP, one in March on administrative procedures and one in September on individual districts. The major criticism of GAO was the procedural weaknesses, including the failure to obtain complete information from school districts before granting them funds. GAO recommended that a more effective monitoring program be initiated to insure that funds are being used for desegregation purposes and not for general aid.^{82/}

The Office of Education contracted with the Research Management Corporation (RMC) to evaluate ESAP. Its conclusions, published in February 1972, are mixed regarding the effectiveness of the program. Generally RMC found that the attitudes of school administrators toward the program were favorable, but the actual activities undertaken to meet the needs of desegregation were not always the most effective. The study found evidence of improved racial climate in many

80/ U.S. Office of Education. Federal Assistance to Desegregating School Districts. Washington, D.C., Sept. 23, 1972.

81/ The Emergency School Assistance Program: An Evaluation. Prepared by the American Friends Service Committee; Delta Ministry of the National Council of Churches; Lawyers Committee for Civil Rights Under Law; Lawyers Constitutional Defense Committee; NAACP Legal Defense and Educational Fund, Inc.; and the Washington Research Project.

82/ U.S. General Accounting Office. Need to Improve Policies and Procedures for Approving Grants under the Emergency School Assistance Program (March 5, 1971) and Weaknesses in School Districts' Implementation of the Emergency School Assistance Program. Washington D.C., U.S. Govt. Print. Off.

school districts due in part to such activities as counseling, student programs, and remedial programs and materials. Teaching training programs, however, had not been effective according to RMC.^{83/}

The Emergency School Aid Act became law on June 23, 1972 as Title VII of the Education Amendments of 1972 (P.L. 92-318). It is an extension of ESAP incorporating certain changes recommended by some of the evaluations. ESAA authorizes funds for local education agencies to aid schools in eliminating racial segregation, to encourage the voluntary elimination or reduction of racial isolation in elementary and secondary schools, and to aid school children in overcoming the educational disadvantages of minority isolation. No ESAA funds may be used to require a local education agency, which assigns pupils to schools on a racially non-discriminatory geographical basis, to adopt any other method of pupil assignment. Activities under this program may include provision of additional staff members, inservice teacher training, comprehensive guidance, counseling and other personal services, and the development of new curricula and instructional methods.

Under the Supplemental Appropriation Act passed in August 1972 (P.L. 92-607) \$270,640,000 was appropriated for ESAA and desegregation activities of Title IV of the Civil Rights Act for Fiscal 1973. On March 2, 1973 the Office of Education announced that the first ESAA grants, totaling \$12.9 million, had been awarded to 39 school districts and 29 non-profit organizations in sixteen States. "Grant recipients will use the Federal funds for basic instruction in reading and mathematics, and to support other educational and community activities which will help schools serve the needs of students from diverse backgrounds."^{84/} The

^{83/} Evaluation of the Emergency School Assistance Program. Bethesda, Maryland, Research Management Corporation, February 15, 1972.

^{84/} HEW News. For release in A.M. papers, Friday, March 2, 1973. Washington, D.C., Office of Education. p. 1.

New York Times on the same day reported that "the Nixon Administration confirmed today that it will not spend 82 percent of the \$270.5 million appropriated this year to help desegregate school districts... The Office of Management and Budget had clamped a \$50-million ceiling on ESAA outlays for the fiscal year 1973 because of budget restraints and the limited time available to implement new programs."^{85/}

Equal Educational Opportunity

Also included in P.L. 92-318 is Title VIII (86 Stat. 371-375) concerning the assignment or transportation of students. It prohibits the use of Federal funds for the transportation of students or teachers to overcome racial imbalance or to carry out a desegregation plan in any school unless voluntarily requested by school officials. Funds for transportation may not ever be used when there is a health risk to the children due to time or distance, when the educational process is impinged upon, or when the children transported will receive educational opportunities inferior to those presently being provided. Federal pressure on local school boards to use busing for purposes of desegregation is forbidden unless constitutionally required. The title also postpones the effective date of any U.S. district court order requiring the transfer or transportation of students to achieve racial, religious, sex, or socioeconomic balance until all appeals have been exhausted or the time for them expired. The provision expires January 1, 1974. In addition parents of children now being transported to school under court order can reopen the case if the time or distance risks the child's health or significantly impinges upon the educational process.

Many opponents of busing to achieve integration, including President Nixon, felt that the provisions in P.L. 92-318 were not strong enough to

^{85/} Cuts Confirmed on Desegregation. New York Times. March 2, 1973. p. 41.

effectively prohibit busing. In connection with the Education Amendments of 1972, the President remarked:

This bill contains a wholesale retreat by the Congress from responsibility on school busing. Congress has refused to put a limit to court orders busing small children under 11 out of their neighborhood. Congress has granted no relief whatsoever to school districts which have been ordered by the courts to institute massive busing programs. This is not good enough.

Cross-city and cross-county busing is wrong; it is harmful to education; it does not unite races and communities; it divides them. If Congress continues to refuse to act on the proposal I have made to solve this problem -- a moratorium on all busing orders -- we will have no choice but to seek a constitutional amendment which will put the goals of better education for all of our children above the objective of massive busing for some children. 86/

The President had submitted to Congress on March 20, 1972 a message on busing and equality of educational opportunity with drafts of proposed legislation providing a moratorium on new busing, and an Equal Educational Opportunities Act of 1972 which would put Federal education funds in areas of greatest need. This legislation was introduced in the House on the same day by Mr. McCullough, Mr. Quie, and Mr. Gerald Ford. It was introduced in the Senate on March 21 and 22 by Mr. Hruska and Mr. Dominick.

The purpose of the Student Transportation Moratorium Act of 1972, H.R. 13916 and S. 3388, was to impose a moratorium on implementation of court-ordered busing plans or desegregation plans under Title VI of the Civil Rights Act of 1964 to give Congress time to fashion a clear, uniform standard of requirements for reassignment and busing in desegregating schools. No restriction was placed on voluntary plans. These bills died in committee at the end of the 92d Congress.

86/ School Busing. The President's Remarks in Connection with the Education Amendments of 1972. June 23, 1972. Weekly Compilation of Presidential Documents, June 26, 1972. p. 1085.

The Equal Educational Opportunities Act, H.R. 13915, was reported out of the Education and Labor Committee in August 1972. Its purpose was 1) to authorize \$500 million of the Emergency School Aid Act funds to be concentrated on educationally deprived students, and 2) to specify remedies for the removal of vestiges of the dual school system. Among the remedies specified were 1) pupil assignment on a neighborhood basis, 2) majority to minority school transfer policies, 3) revision of attendance zones or grade structures, 4) school construction or closing, and 5) magnet schools. It should be noted that education parks was one of the remedies in the initial versions of the bill but was deleted in the version that passed the House. Busing was strictly forbidden except to a school closest or next closest to a student's home. In addition a section was added on the House floor allowing the reopening and modification of court orders and desegregation plans which were in effect on the date of enactment of the Act. H.R. 13915 passed the House August 17, 1972, was considered in the Senate, but failed when efforts to obtain debate-limiting cloture proved unsuccessful. Hearings were held on S. 3395, but it was not reported out of committee.

So far in the 93rd Congress a variety of desegregation and busing bills has been introduced including several proposing an amendment to the Constitution prohibiting busing altogether. Senate Judiciary Committee hearings have been held on busing, but no further action has been taken on these bills.

Recent Enforcement Proceedings

The situation in the North regarding de facto segregation is still unclear. In instances of de jure segregation, however, the Supreme Court has spoken clearly that the segregation must end. Since the Brown decision considerable desegregation has taken place, but there are still a number of districts resisting the process. The Civil Rights Act gave the Federal Government the power to enforce the law through Titles IV and VI. As discussed previously, it has been

stated that the enforcement proceedings were hindered by lack of adequate manpower. Most recently some people feel that they still are not operating in the most effective manner.

Title VI

The problems of Title VI enforcement in the South have been no better illustrated perhaps than in the recent proceedings in the U.S. District Court for the District of Columbia. On February 16, 1973 in Kenneth Adams et al. v. Elliot L. Richardson, Judge John H. Pratt found that HEW "has not properly fulfilled its obligation" to enforce federal desegregation laws and ordered the Department to begin cutting off federal funds to segregated schools in 17 states.^{87/} Judge Pratt's order included a timetable for enforcement proceedings against school districts and colleges not in compliance with the law. In addition, HEW was ordered to report to the plaintiffs, the NAACP Legal Defense Fund, every six months for the next three years on the progress of enforcement proceedings.

HEW appealed the District Court ruling, arguing that not only did Judge Pratt lack jurisdiction but also that his February 16 ruling "contains 'numerous factual errors, and discrepancies, and findings without...support' in the record."^{88/} On June 12, 1973 the Appeals Court upheld Judge Pratt's ruling, although it extended for at least six months the action concerning ten state higher education systems.^{89/} At issue in the case is the amount and the kind of administrative discretion allowed under Title VI.

^{87/} U.S. District Court. District of Columbia. Kenneth Adams et al. v. Elliott L. Richardson. 351 F. Supp. 636 (1972) p. 636.

^{88/} Justice Department brief to the U.S. Court of Appeals as quoted by Eric Wentworth. U.S. High School Aid Cutoff Ruling. Washington post. April 3, 1973.

^{89/} U.S. Court of Appeals. District of Columbia. Adams v. Richardson. Doc. No. 73-1273.

As indicated earlier, three methods of enforcement are available to the HEW Office of Civil Rights which oversees Title VI: voluntary negotiations, referral to the Justice Department for possible litigation, and administrative enforcement resulting in termination of Federal funds. Until 1969 the power to withhold federal funds was the main source of federal pressure to get school districts to desegregate. On July 3, 1969 a new policy was announced by Attorney General John Mitchell and HEW Secretary Robert Finch which was to keep to a minimum the number of cases requiring federal funds cutoffs. They indicated that "the burden of a fund termination nearly always hurt the poor and the black more than the affluent white child, who needed less special attention in school and who could -- if his public school closed -- go to a private school."^{90/} The plaintiffs' brief in Adams v. Richardson states that:

Following this announcement, the number of districts whose Federal funds were terminated by HEW dropped precipitately. While 44 districts had been subjected to such fund terminations between the summers of 1968 and 1969, only two such cutoffs occurred between the summers of 1969 and 1970. Moreover, no fund terminations at all have occurred since the summer of 1970. 91/

In addition the brief notes the decrease in the number of districts 'noticed' for administrative hearing which is the first step toward termination of funds.

After initiating enforcement proceedings and deferring funds against almost 100 districts per year in 1968 and 1969, HEW virtually stopped such proceedings in March 1970, the month in which defendant Pottinger became director of HEW's Office for Civil Rights. Mr. Pottinger began no enforcement hearings against any districts for the first eleven months of his tenure as Director and commenced only a token number in recent months.

^{90/} Court Order: No More Funds for Segregated Schools. Congressional Quarterly, v. 31, Feb. 24, 1973: 379.

^{91/} Plaintiffs' Points and Authorities in Support of Motion for Summary. Adams v. Richardson. As printed in Administrative Repeal of Civil Rights Law: A Case Study. The Potomac Institute, Inc., Washington, D.C., 1972.

HEW has concentrated, therefore, primarily on voluntary negotiations with Southern school districts to further desegregation. The brief indicates the effectiveness of the fund termination mechanism as illustrated by HEW statistics and also as a deterring factor in school districts tempted to resist desegregation laws.

Thus between the passage of the Act in 1964 and March 1970, when the fund termination power was being utilized, HEW began approximately 600 administrative proceedings against noncomplying school districts. In all but four of these districts, Federal assistance was continued or restored after the district became subject to a desegregation plan. Moreover, undoubtedly the manifest commitment of HEW to use its fund discontinuance power also had beneficial impact on hundreds or even thousands of other districts which came into compliance voluntarily.

The plaintiffs in their brief listed six areas where HEW has defaulted its Title VI obligation: public higher education, reneging or noncomplying districts, compliance with the Holmes and Swann decisions, state departments of education, school districts subject to court-ordered desegregation, and deferral and recapture of funds.

Concerning reneging or noncomplying districts Judge Pratt found in his opinion delivered February 16, 1973 that "as of the school year 1970-71, 113 school districts had reneged on prior approved plans and were out of compliance with Title VI."^{92/} (p. 638) Of these 113 districts, eight were referred to the Justice Department, three of which were subsequently sued, and seven received notice of administrative hearings, the first step of administrative enforcement proceedings. Judge Pratt states that some 74 school districts remain out of compliance with Title VI and that "HEW has attempted to excuse its administrative inaction on the grounds that it is still seeking voluntary compliance through negotiation and conciliation." (p. 638) These 74 districts are still receiving Federal assistance from HEW.

^{92/} Adams v. Richardson, District Court, op. cit. Succeeding quotations until otherwise cited are from this decision.

Regarding compliance by public educational institutions with the new Supreme Court desegregation decisions, Judge Pratt found that at the time of the Alexander v. Holmes decision in 1969, "87 school districts had HEW-approved desegregation plans which permitted desegregation to be postponed until September 1970. Despite the Supreme Court's directive, HEW took no steps to compel immediate desegregation in these 87 districts." (p. 638)

After the Swann decision in 1971 "which enunciated 'a presumption against schools that are substantially disproportionate in their racial composition' HEW identified 300 non-court order school districts with one or more schools composed mostly of local minority students." (p. 638) Judge Pratt states that "HEW immediately eliminated 75 of these 300 districts "because in HEW's judgment the racial disproportion of the schools in these districts was too small to constitute a violation of Swann." (p. 638) Then 134 districts were eliminated still with no communication or on-site investigation. Judge Pratt asserts "Although at least 85 of these districts...have one or more schools substantially disproportionate in their racial composition, none was required to justify the substantial racial disproportion in its schools." (pp. 638-9) In the Summer of 1971 HEW sent letters to the 91 remaining districts advising them that further desegregation measures may be required under the Swann decision. "Of these 91 districts, HEW received desegregation plans acceptable to HEW from 37 districts, notified three for administrative hearing, and found Swann 'not applicable' to nine." (p. 639) Judge Pratt concluded that

thus 42 districts which HEW deemed to be in presumptive violation of Swann remain so approximately a year later while HEW continues to review them. These 42 school districts have been receiving Federal funds from HEW throughout this period of over one year. (p. 639)

In January 1973 the Civil Rights Commission published a reassessment of The Federal Civil Enforcement Effort. The report indicates that generally the enforcement effort has not been much improved since the first assessment done in October 1970. The Commission states that "in one of the most important areas of national life -- the provision of equal educational opportunities for our children, we now find lowered compliance standards for elementary and secondary schools and what appears to be the elimination of the threat of fund termination which has rendered the Department of Health, Education, and Welfare's enforcement program ineffective."^{93/} The Commission indicates that HEW has shifted its policies relying now on reviews of the Emergency School Assistance Program.

Simply terminating one program grant, as is the case in ESAP compliance, is not as persuasive as complete Federal fund termination. In addition, HEW has deemphasized use of the Title VI enforcement sanction in favor of voluntary negotiations, but there is no indication that this approach is succeeding.^{94/}

The Commission also mentions that the Office of Civil Rights has lowered the standard of compliance, specifically in the area of pupil transportation, as set forth by the Supreme Court in the Swann decision.

Although the Supreme Court, in Swann, specifically recognized transportation as a viable technique for desegregating schools, OCR does not require transporting students to school attendance areas not immediately adjoining the one to which they are currently assigned.

^{93/} U.S. Commission on Civil Rights. The Federal Civil Rights Enforcement Effort. Clearinghouse Publication No. Washington, D.C., U.S. Government Printing Office, 1973. pp. 8-9.

^{94/} Ibid., p. 197.

Moreover, although the Supreme Court, in Swann, specifically stated that there is a presumption against school systems in which the racial composition of schools is substantially disproportionate to the district's overall racial composition, OCR virtually ignores schools where such conditions prevail if they are less than 50 percent minority. 95/

Despite these indications that perhaps HFW has not been enforcing Title VI very effectively, on March 2, 1973, a Federal hearing officer ruled in a suit brought by the Federal Government that the Boston public school system was segregated in violation of the Civil Rights Act. Laurence M. Ring declared that the system was no longer eligible to receive Federal funds and unless the situation was remedied could not receive aid in the future. According to a New York Times account,

The Government had contended that there were 'affirmative acts of discrimination in the Boston schools beyond any racial imbalance resulting from population shifts.' It alleged that the school committee 'took over actions which had the inevitable result of establishing and encouraging separate attendance patterns for white and non-white students'. 96/

Title IV

As mentioned earlier the Civil Rights Act contained three mechanisms for furthering desegregation, two concerning enforcement and one, contained in Title IV, concerning the facilitation of desegregation itself. This latter mechanism provides Federal funds to school districts to help them meet the needs and problems of desegregation. As the Race Relations Information Center (RRIC) of Nashville, Tennessee indicated in its 1970 report:

95/ Ibid., pp. 211-212.

96/ Boston Schools Are Ruled Segregated. New York Times, March 3, 1973.

Title IV was the carrot, the gentle persuader, the sugar pill; it was intended to be a contract between willing parties, an agreement whereby school districts willing to use federal funds and expertise to smooth the desegregation process could find such help available in the U.S. Office of Education, in certain state departments of education, or in a select few Southern universities. Title VI, on the other hand, was the stick, the tough enforcer, the strong medicine; it was essentially a coercive force, focusing on reluctant and recalcitrant school systems and bringing them involuntarily into compliance with the law. 97/

Three years later the Civil Rights Commission published a report on Title IV's program of assistance. It concluded:

that Title IV represented an area of neglect. It had been relegated to the status of a minor program, allocated insufficient money with which to function well, indifferently staffed, and, consequently, remained immobile. It cannot be called a failure. It has never really been tried. 98/

The Commission indicated that in the early years after the passage of the Civil Rights Act, much greater emphasis was put on Title VI than on Title IV resulting in Title IV staff working on Title VI projects. During Fiscal years 1965 and 1966 grants were made to school districts but "without much regard to the substance or quality of the grant application." 99/ In 1967 the administration of the Title IV program was separated from Title VI and put in the Office of Education instead of the Office of the Commissioner, which resulted in the assumption of a greater role for Title IV in school desegregation.

97/ Egerton, John. Title IV of the 1964 Civil Rights Act: A Program in Search of a Policy. Nashville, Tennessee, Race Relations Information Center, March 1970. p. 1.

98/ U.S. Commission on Civil Rights. Title IV and School Desegregation. Washington, D.C., U.S. Government Printing Office. January 1973. p. iii.

99/ Ibid., p. 3.

First, the dollar amount of grants which have been approved under Title IV has increased, from \$4.6 million in 1965 to an estimated \$19 million in 1971. Second, Title IV's staff, freed from other responsibilities, has been in a position to give full-time to Title IV implementation, and, thus, to devote more attention to the substance and quality of individual proposals. Finally, Title IV's importance, through its function of assisting in the development of desegregation plans, has increased as a result of the growing emphasis on achieving school desegregation through voluntary means and technical assistance rather than through fund cutoff under Title VI. 100/

The RRIC report echoes this statement as it mentions the more conservative approach of the Nixon's Administration's enforcement of Title VI. It states, therefore, that "with the decline of Title VI has come a parallel rise in the visibility and importance of Title IV, which is administered in the U.S. Office of Education's Division of Equal Educational Opportunity (DEEO)."101/

The money appropriated under Title IV has been allocated for a variety of purposes which, according to the Civil Rights Commission, reflects differing views of HEW officials on how the money should be used to aid desegregation. Some of the money goes to local education agencies to help solve local desegregation problems, some goes to state departments of education to help local school districts, and some goes to institutions of higher education to establish desegregation assistance centers. Funds are used for such activities as developing better teaching techniques, curriculum models, teacher training methods for schools, and human relations workshops. In 1970, fifteen universities in fourteen southern states had desegregation centers, and 25 state departments of education received Title IV funds. 102/ Since 1969 federal courts have asked DEEO to draw up desegregation plans

100/ Ibid.

101/ RRIC report, op. cit., p. 2.

102/ Ibid., p. 3.

for school districts under court order. The RRIC report indicates that despite the changing policy ideas,

there is some basis for agreeing that Title IV, through its several forms of technical assistance to desegregating school districts, has at least provided some opportunities for people to work for a better understanding of one another, across race lines. Last fiscal year, more than 40,000 teachers and administrators in 1,465 school districts participated in the various institutes, workshops and training programs sponsored through Title IV, and that -- on paper, at least -- seems a fair return on the \$9.2 million investment.

But the newer and more controversial role of Title IV -- that of drawing up desegregation plans, seeking accommodations with the school districts those plans affect, and testifying in court in support of the plans -- has caught the Title IV staff at the national, regional, university center and state department of education levels in a political cross fire. By and large, the technical assistance activities of DEEO, when they have functioned as contracts between willing parties, have enjoyed a considerable measure of success. But the more coercive role of drawing plans under court orders, and even some of the technical assistance activities, have often been more political than educational. 103/

The Civil Rights Commission indicated in its report that with the advent of ESAP in 1971 the role of Title IV was diminished, and the initiation of ESAA may lessen even further the impact of Title IV. 104/

Atlanta and Desegregation at Present

To many people the Brown decision in 1954 represented the final say in school desegregation. Nearly twenty years later, however, the problem is far from solved. In fact, Brown seems to have been the beginning of an extensive battle in

103/ Ibid., pp. 29-30.

104/ Civil Rights Commission, Title IV, op. cit., p. 4.

the South now spreading to the North and West over the meaning of illegal segregation and ways to end it. One last case should be mentioned since it may indicate a new turn in the busing and desegregation controversy. That case concerns the Atlanta public school system, which has been in the courts for fifteen years.

Integration began in Atlanta in 1961 when ten black students transferred into four formerly all-white high schools. Further desegregation, however, was ordered by the courts. After a round of court battles, in February 1973 the local NAACP chapter, plaintiffs in the case, reached an out-of-court settlement with the local school board. The plan agreed on calls for minimal classroom integration, involving the transportation of some 2,700 children most of whom are black, in exchange for greater control by blacks over school administration. Calvin Trillin reports in a recent New Yorker article that "the architects of the plan said it would permit Atlanta to maintain a biracial school system and that its emphasis on administrative participation by blacks represented a national breakthrough."^{105/} In early April 1973 the U.S. District Court accepted the plan which was a compromise from the one submitted by the NAACP to the court in May 1972. That plan had called for the busing of approximately 23,000 children. In New York Roy Wilkins, Executive Director of the NAACP, stated that:

The Atlanta agreement must not be mistaken for a national NAACP position on school desegregation, and it does not represent any change in the NAACP's basic commitment to quality integrated education, to be achieved by whatever means are required, including transportation of children for that purpose. The Atlanta case agreement applies to Atlanta only. It has no significance for other cities in which we, or Negro parents, are involved.^{106/}

^{105/} Trillin, Calvin. U.S. Journal: Atlanta, New Yorker, v. 49. March 17, 1973. p. 101.

^{106/} Washington Post. Tuesday, February 27, 1973.

Wilkins also stated, however, that:

our general position has been there is no sacrifice of racial pride or loss of education if blacks go to school with blacks. If the school board agrees to the improvement in education and a program that leads to meaningful equalization of the educational process, black children will not suffer by attending an all-black school. 107/

Many people, therefore, were viewing the compromise as a new phase in the history of school desegregation, William Raspberry wrote after Wilkins' statements:

"The NAACP, the last bastion in the fight for maximum school integration (as opposed to desegregation), appears ready to take a new look at its posture." 108/ Pointing out that the NAACP has always "taken the position that there could be no quality education for black children except through integration," Raspberry states that "now it is saying that integration and quality education, while both desirable, are separable items, and that the latter is the overriding priority." 109/

The District Court's acceptance of the Atlanta plan may be setting precedent for similar cases in other cities. The Supreme Court has indicated in the Denver decision that school segregation, even in northern cities, will not be tolerated, but the extent of desegregation required is far from clear. What the people of the nation actually want is also hard to determine. There have been a number of public opinion polls in the last few years attempting to define the national sentiment on busing. In March 1973 the U.S. Civil Rights Commission published an analysis of what it considered to be the most comprehensive poll to date, that done by the Opinion Research Corporation in November and December 1972. That poll^a had shown that two-thirds of the people who indicated that they supported

107/ New York Times, February 25, 1973.

108/ Raspberry, William. The NAACP: Moving to Defuse the Busing Issue? Washington Post, February 28, 1973: A25.

109/ Ibid.

*70% opposed busing to achieve school integration; 21% favored; 9% no opinion.
67% supported racially integrated schools as a national objective; 22% opposed; 11% no opinion.

integration also indicated that they were opposed to busing. The purpose of the Civil Rights Commission's analysis of the data was to explore the contradictory opinions of the million of Americans polled. The Commission came up with three basic findings:

- (1) The public seriously misunderstands the facts of the busing controversy
- (2) Those who best understand the facts are more supportive of busing and much more opposed to Congressional action or a Constitutional amendment to forbid court-ordered busing
- (3) Most people expressing an opinion are willing to support strictly limited busing when there is no other way to desegregate the schools. 110/

The kinds of facts examined by the Commission related to cost of busing, interpretations of Court decisions, academic achievement effects of busing, school bus safety, alternative methods of achieving desegregation, etc. The Commission indicates that "this survey does not show public enthusiasm for busing, but merely that the public is poorly informed and that this misinformation is related to busing opposition."111/ The Commission states that people must be informed of all the facts relating to busing as a means of achieving desegregation: "Before the people decide, they deserve the facts."112/

William Raspberry responded to the Civil Rights Commission's position rejecting the idea of the public's ignorance of the facts of busing. Raspberry stated:

110/ U.S. Commission on Civil Rights. Public Knowledge and Busing Opposition: An Interpretation of a New National Survey. Released March 11, 1973. p. 3.

111/ Ibid.

112/ Ibid., p. 18.

Well, maybe the people aren't so ignorant after all. Some people are against busing because they are opposed to integration; no doubt about it. But some are opposed to busing because they are opposed to busing; because they think there is social and educational validity to the neighborhood school; because they believe that there isn't anything at the end of an unnecessary bus trip to justify the economic, social and educational costs. 113/

Several Congressmen agreed with Raspberry's views and inserted his article in the Congressional Record. Representative Bill Frenzel of Minnesota called it "an unusually balanced view in an area fraught with emotionalism." 114/ Senator Herman Talmadge stated:

Perhaps, in retrospect, I can agree at least in part with the Civil Rights Commission. People are misinformed about forced busing. If they were more informed about busing and all of its ramifications, I have no doubt that they would be even more opposed to it and rise up in righteous indignation and demand that Congress do something about it. 115/

Many cities throughout the country were awaiting the Supreme Court's decisions in the Richmond and the Denver cases. As with the Brown decision, however, the Court's response did not solve the desegregation controversy once and for all. In the Richmond decision the Court's even split did not set a clear precedent for other cities to follow. The Detroit desegregation case may shed more light on the issue of metropolitan busing when it reaches the Supreme Court. In the Denver case the Court continued to maintain the illegality of a dual school system, whether established by law or by administrative actions of the school officials. The issue of busing, however, and the use of other remedies to achieve desegregation continue to be debated in communities throughout the country as citizens strive towards solutions that will provide more equality of educational opportunity for all Americans.

113/ Raspberry, William. Busing, True or False. Washington Post, March 16, 1973: A29.

114/ Congressional Record, daily edition. March 22, 1973. E1764.

115/ Congressional Record, daily edition. March 19, 1973. S5012.