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An abridgment of

The Report
of the
UNITED STATES
COMMISSION ON CIVIL RIGHTS
1959

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PART THREE

PUBLIC EDUCATION

CHAPTER I. WHAT THE COURT DECIDED

At the root of the Supreme Court's decision in the *School Segregation Cases*, Chief Justice Warren explained, was "our American ideal of fairness."

Speaking in 1954 for a unanimous Court on the actions brought on behalf of Negro children against school boards in four States, the Chief Justice declared:

> Today, education is perhaps the most important function of State and local governments. . . . It is the very foundation of good citizenship. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms.
>
> We come then to the question presented: 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.

Reviewing earlier cases in which the Court had decided that "intangible considerations" made separate university graduate and professional schools for Negroes in fact unequal, the Chief Justice continued:

> Such considerations apply with added force to children in grade and high schools. 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.

Journalistic brevity and popular misconception have led many Americans to believe that the Court commanded the nation's public schools to "integrate" students of all races in their classrooms. But neither in the opinion quoted above nor in the accompanying decision on a similar case involving the District of Columbia did the Chief Justice use the words "integrate" or "integration." Nor did he use the words "desegregate" or "desegregation."

What the Court condemned was racial discrimination. What the Court declared was that no pupil may be refused admission to a public school solely because of his race or color. In the four State cases, the Court ruled that segregation in the public schools solely because of race or color is a denial of the equal protection of the laws promised

by the Fourteenth Amendment to the U.S. Constitution. Because the equal protection clause applies only to actions by States, a companion case from the District of Columbia required a separate decision; here the Court ruled that such segregation is also a violation of the due process of law guaranteed by the Constitution's Fifth Amendment.

This was not a precipitous reversal of all previous Court opinion. The doctrine that the equal protection requirements of the Fourteenth Amendment can be satisfied by "separate but equal" public schools had been advanced by a Supreme Court justice as a judicial aside (dictum) in the 1896 case of *Plessy* v. *Ferguson*, which was concerned not with schools but with segregated transportation. The doctrine was allowed to stand for some years. But beginning in 1938, in a series of decisions ordering the immediate admission of Negro applicants to State university graduate and professional schools, the Court had foreshadowed its 1954 ruling by declaring with growing emphasis that separate schools cannot be truly equal.

Yet to many white Americans, the 1954 decision seemed an unfair denial of their own State's rights and individual rights. What right has the Supreme Court, they asked, to compel a State to run its own public school system in a certain way? What right has the Federal Government, parents asked, to compel us to send our children to school with Negroes?

After a period of relative calm, the Southern States hardest hit by the Court decision—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Virginia—rallied to challenge the Court ruling. Reviving the doctrine of interposition, they also enacted laws of "massive resistance" discussed in the following chapter. Louisiana, for example, amended its constitution in 1954 to declare that a provision for separate white and Negro schools was not, as originally stated, because of race. No one questions a State's police power to promote and protect its own public health, morals, better education, peace and good order. This, said the Louisiana amendment, was now the purpose of its separate schools.

In 1957 the amendment was struck down by the Fifth U.S. Circuit Court of Appeals. A State may indeed use its police power for the positive purposes mentioned. But it may not use that power, the Court ruled, to negate the U.S. Constitution by denying any person his constitutional rights as defined by the Supreme Court.

The point became even clearer when, in 1956, Louisiana tried another legal tactic. This time it acted on the theory that, under the Eleventh Amendment to the U.S. Constitution, a State cannot be sued without its consent. The Louisiana constitution was thereupon amended to withdraw the State's consent to suits against certain

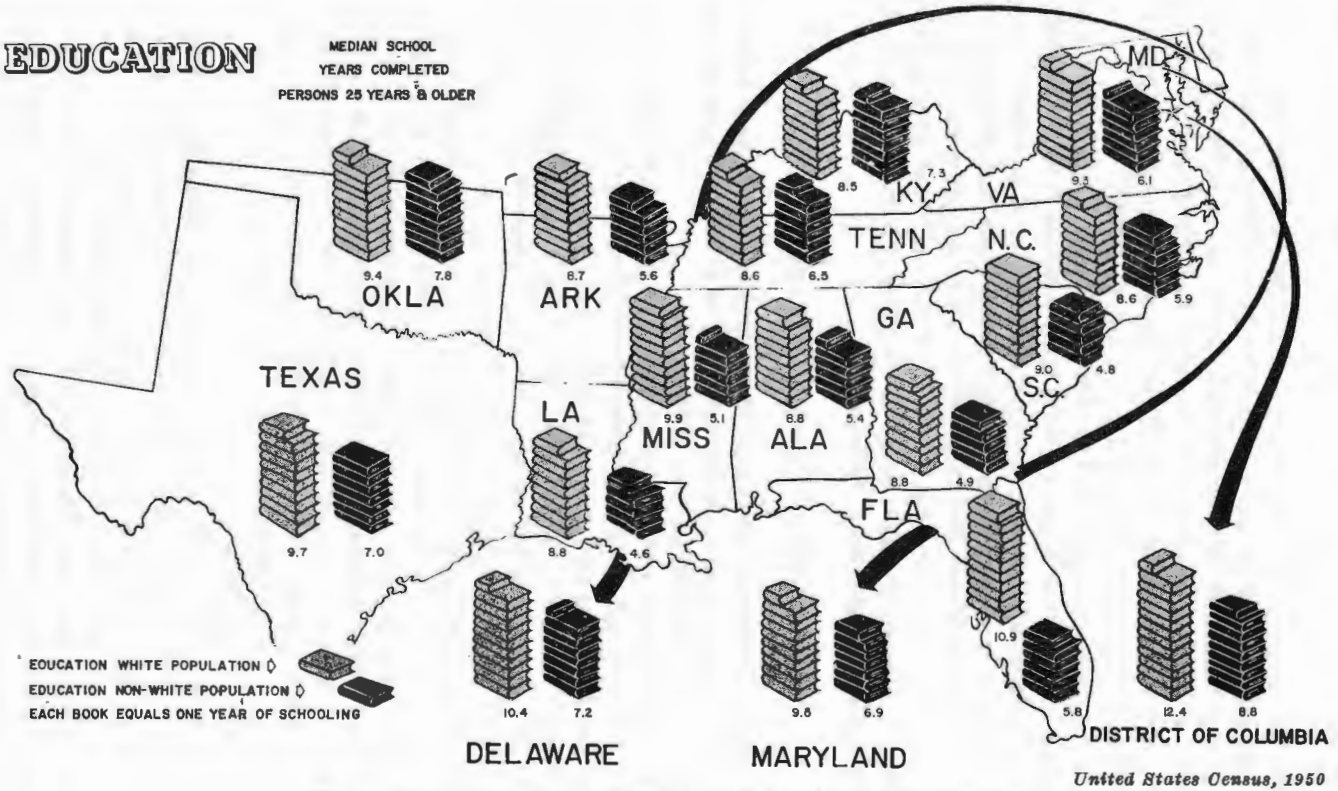


CHART V. Comparison of White and Non-white Education

State agencies, including those concerned with recreation and education.

Once again the Fifth U.S. Circuit Court blocked the way. Suits brought against a local school board to gain admission to a public school, said the Court, are not suits brought against the State to compel the State to *do* something. On the contrary, the Court continued, their purpose is to make State officials *stop* doing something which unlawfully denies people their Constitutional rights.

The difference is subtle and profound. But it is plain fact that, in public education as in voting and public housing, Negro Americans are not seeking any novel or special privileges for themselves. They are not trying to compel the nation's Federal, State, and local governments to do anything for them which these governments are not already doing for other Americans. They ask only that these governments *not* do things that deny to Negroes the rights which the Constitution promises to all Americans.

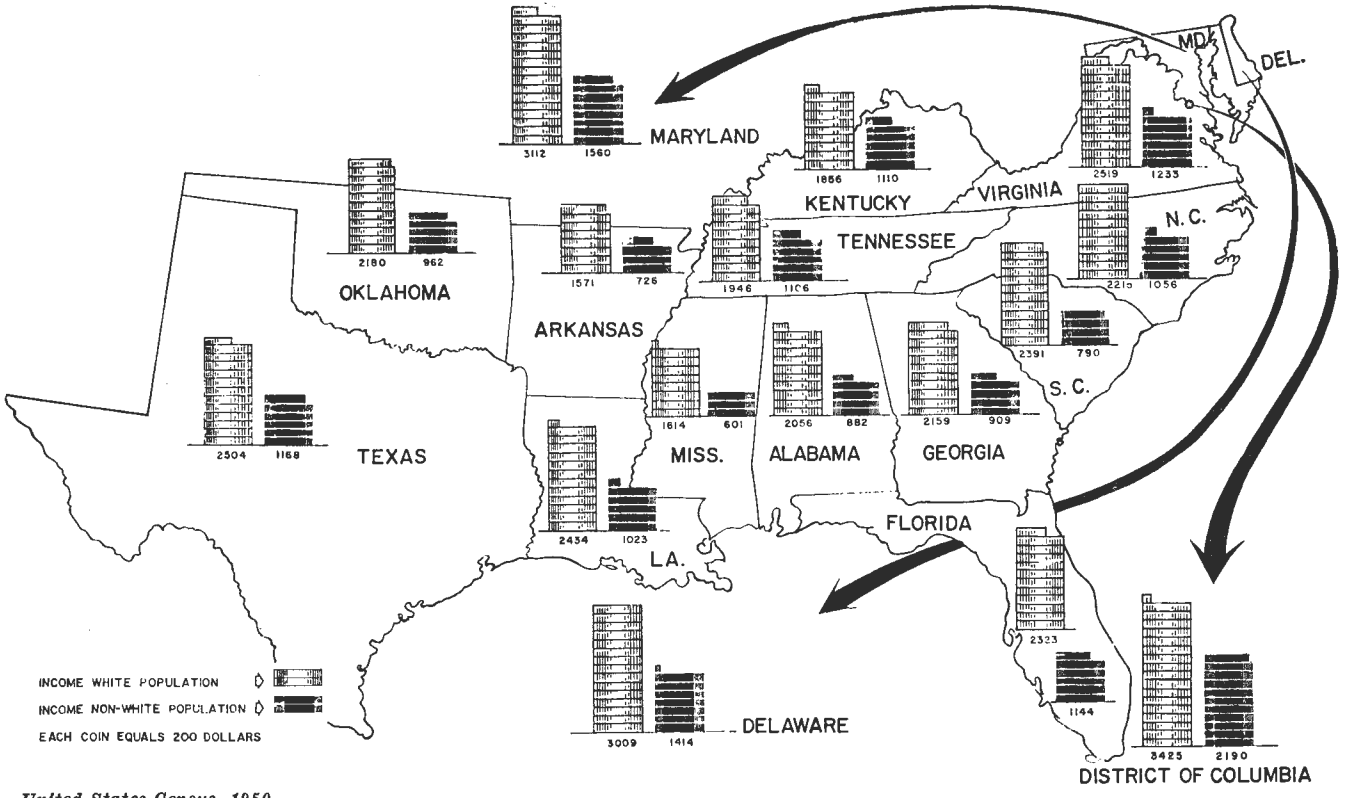
THE PHILOSOPHICAL BASIS OF THE COURT DECISION

What the Supreme Court and lower Federal courts have been reaffirming is a principle embedded not only in U.S. law but, even more deeply, in American democratic philosophy.

The materialistic philosophy championed by totalitarians asserts that human beings are chance products of blind physical forces and hence are possessed of no natural rights whatever, but only of such privileges as may be granted them by the state. The United States of America was founded on the opposite concept of the nature of man. Our first premises are that a Creator exists, and that every human being is endowed by his Creator with certain inalienable rights. Not granted by the state, these rights may not rightfully be denied by the state, because they are God-given elements of human nature, present at birth and essential to human fulfillment. This century's world revolution of colonial and subject peoples is evidence that the deepest innate needs and urges of his nature impel every human being—black or yellow no less than white—toward life, liberty, and the pursuit of happiness.

But human freedom is not absolute. Every man's freedom ends where another's begins. Men can live happily together, the Founding Fathers agreed, only if every man will respect every other's fundamental rights, and restrain his own impulses accordingly.

But honest men may honestly differ, as Americans have in the school segregation controversy, about whose rights and which rights are paramount in any given conflict. To resolve such differences peaceably is the purpose of law; the alternative is anarchy. It was such a resolution that the Supreme Court made in 1954.



United States Census, 1950

CHART VI. Comparison of White and Non-white Income, Families and Unrelated Individuals

CHAPTER II. WHAT THE PEOPLE DID

In his recent book, *Image of America*, the French scholar-priest R. L. Bruckberger observed:

> The great revolution of modern times, the only one that has essentially changed the forms of society, was carried out, not by Russia, but by America, without fanfare, quietly, patiently, and laboriously, as a field is plowed furrow by furrow.

Father Bruckberger was writing about the whole great Second American Revolution—industrial and social—of the 20th century. But his observation may be applied accurately to that phase of the revolution which was speeded by the Supreme Court's school decision.

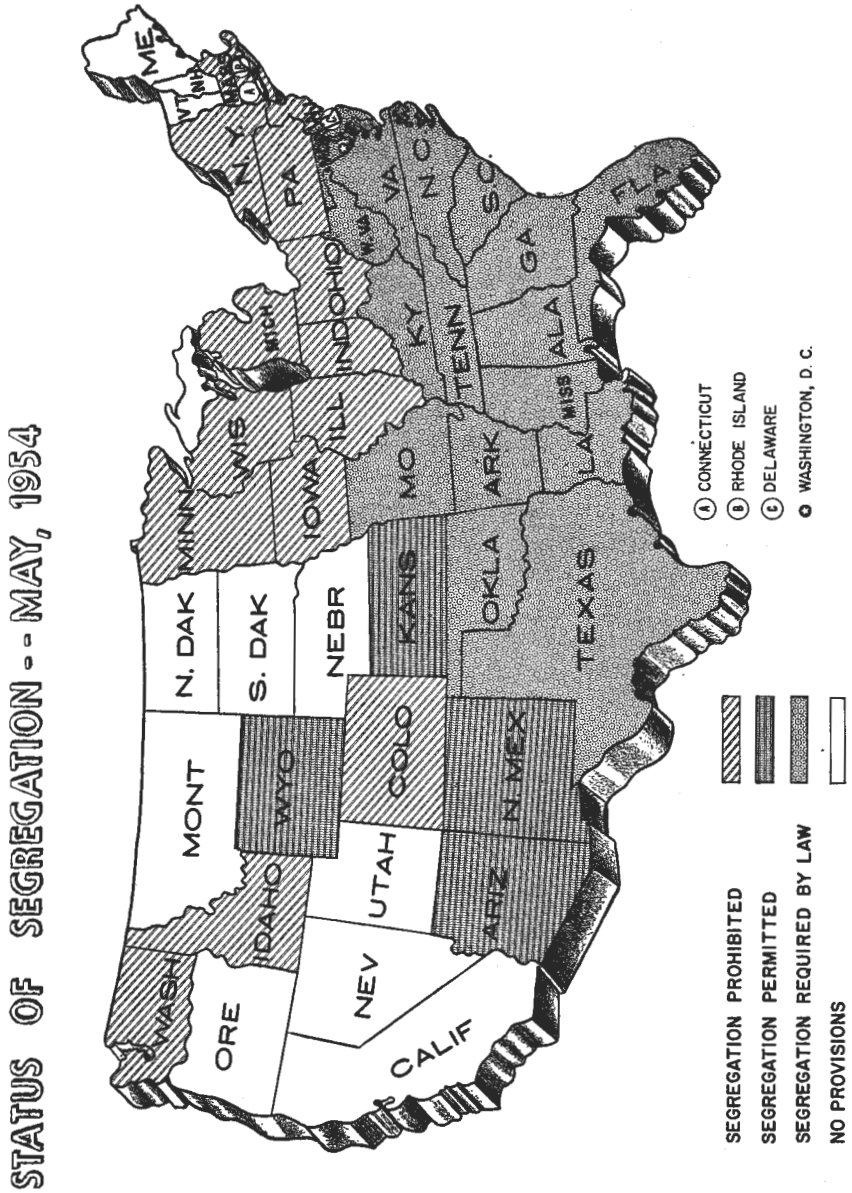
Most of the headlines have gone to those comparatively few white Americans who—in Little Rock, Clinton, Nashville, and elsewhere—set out to demonstrate their racial superiority and disrespect for law by beatings, bombs, mob action, and defiance of the Supreme Court. But most Americans who oppose the Court ruling have restricted themselves to the democratic rights which the Court itself has often affirmed: the rights to criticize an unpopular Court decision, to seek to persuade others, and to offer orderly legal resistance.

And countless other Americans have, "without fanfare, quietly, patiently, and laboriously," gone about the task of reorganizing their emotions and their school systems in obedience to the law of the land.

It was a gigantic task that the Court set them, and a national one. Racial discrimination is not a Southern invention. Long before the South began establishing its first public school system after the War Between the States, school segregation began in the nonslave States of the North. The Supreme Court dictum of 1896 which asserted the constitutionality of "separate but equal" schools, and which was erased by the Court of 1954, was based largely on such earlier State court decisions as that in the case of *Roberts* v. *City of Boston.* Here, in 1849, it was decided that the capital of abolitionism could lawfully continue to segregate its Negro schoolchildren.

In 1954, when the *School Segregation Cases* were decided, no less than 17 States plus the District of Columbia were maintaining dual public school systems by compulsion of State (or District) law. Within these systems were thousands of schools with nearly 11 million pupils, about one-fourth of whom were Negro. This realm of compulsory segregation included the whole South, plus the Border and Western States of Delaware, Maryland, West Virginia, Kentucky, Missouri, Arkansas, Oklahoma, and Texas.

CHART VII. Status of Segregation, 1954



In addition there were three States—Arizona, Kansas, and New Mexico—in which many school districts were maintaining separate white and colored schools by permission of State law. The searchlight of the decision also turned up a few communities—in California, Ohio, and elsewhere—that were segregating their schoolchildren in outright defiance of State law.

Well aware of the mountainous problems that would be involved in reorganizing these school systems, the Supreme Court delayed its implementing decision for a full year, and then mildly required that the reorganization proceed "with all deliberate speed." Federal district courts were assigned to decide, in disputed cases, whether a community was making a "prompt and reasonable start toward full compliance" with the law. Once such a start has been made in good faith, the ruling stated, the district court may allow additional time for fulfillment. In providing for gradual transition, the courts "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 . . ., and revision of local laws and regulations which may be necessary in solving the foregoing problems."

THE PACE AND PATTERN

Five American cities and scattered school districts elsewhere began to merge their dual school systems without waiting for the Supreme Court's implementing order. Among the smaller communities that began in 1954 were Fayetteville and Charleston, Ark., Newark and Dover, Del., and 22 counties in West Virginia. The five cities that set the pace and the pattern for much of the desegregation that would follow were Washington, D.C., Baltimore, Md., Wilmington, Del., and St. Louis and Kansas City, Mo. All five had high percentages of Negro population. But all in greater or less degree had long since begun to eliminate compulsory racial discrimination from such areas of community life as parks, playgrounds, theaters, restaurants, transportation, jobs, and professional organizations. And all five enjoyed the strong State and local leadership in favor of obedience to law, that proved to be an essential factor in successful desegregation everywhere.

Baltimore and Washington desegregated at one stroke, and without much special community preparation after the May 1954 decision. Baltimore's operation was the simplest: never having established school attendance zones except in cases of overcrowding, it simply announced that every student could attend the school of his choice, provided it was not overcrowded. Of the city's 163 public schools, 49 were chosen by both Negro and white students or their parents in

September 1954. Of the nearly 4,000 Negro pupils who entered schools with more than 46,000 white students, most were kindergartners or first graders who happened to live near the schools. Only a few hundred Negroes chose to attend formerly all-white junior and senior high schools.

The Washington operation involved an elaborate reshuffling of the city's school districts, to establish new neighborhood districts without regard to race. Having always districted their schools, and with the school population approaching its 1959 proportions of three Negroes to one white, Washington authorities found it impracticable or unnecessary to permit as much freedom of student choice as Baltimore was allowing, and as many other communities would in the future. Children already enrolled in a city school who now found themselves in a new school zone had the option of continuing in the old school or entering the new one. There was no choice, however, for children new to the system, or for those just entering junior or senior high school. But with the strong backing of the District Commissioners and President Eisenhower ("I propose to use whatever authority exists in the Office of the President to end segregation in the District of Columbia * * *"), the move met only minor resistance. When the schools opened in September 1954, nearly three-fourths of them enrolled both white and Negro pupils, and nearly one-fourth had teachers of both races.

As many another community was to discover, Washington soon found that unification of its two school systems made sense from more than one standpoint. Great waste and inefficiency had been the price of duplicating facilities and administration; a Negro school might be grossly overcrowded while a nearby white school was only half full. Just before unification, the city's Negro schools were at 107.9 percent of capacity, while its white schools were at only 77.7 percent.

When school officials of 13 States and the District of Columbia met at Nashville on March 5 and 6, 1959, to report their desegregation experiences at the national conference called by this Commission, the Washington Superintendent of Schools, Dr. Carl F. Hansen, testified to another value of unification. It enabled, he said,

> . . . the board of education, school officials, teachers, pupils, parents, citizens, and civil organizations . . . to meet together and work together and exchange views without fear or self-consciousness or the defensiveness which the old system fostered.

Dr. Hansen further pointed out that under the dual system,

> the simple claim for better equalization of space, teachers, and resources led to intrafamily squabbling that prevented progress and improvement. Child was set against child, group against group. This was the pattern of social and civic disunity that was shaped by the matrix of the dual system. It is hard to imagine

that opponents of desegregation would want really to return to the clumsy, provocative, and inefficient system of education which had been tolerated so long in the Nation's Capital.

* * *

Wilmington, St. Louis, and Kansas City all chose to desegregate piecemeal, after careful planning and special programs of preparation for students, teachers, parents, and the community at large.

In Wilmington, the National Association for the Advancement of Colored People urged that the changeover be total and immediate. Its request was rejected, and a 3-year plan adopted, beginning with elementary schools. These opened in September without significant opposition, and the expected rash of transfer requests did not develop. At the end of the first year, NAACP officers complimented the board of education for proceeding as it had.

St. Louis, with about half of Missouri's Negro pupils enrolled in its public schools, adopted a 2-year plan, beginning in September with junior and teacher colleges and such special citywide schools and classes as those for handicapped children. In February 1955 it proceeded with high schools (except technical) and adult education classes, and in September it threw open all the doors. Kansas City, with a similar two-year plan, adopted a more liberal transfer policy. But St. Louis eased the mandatory attendance rule in its new school zones by permitting students to continue in their old schools until graduation and allowing transfers in cases of overcrowding.

Results of banishing compulsory racial discrimination from the public schools of these and other cities and towns will be reported in a later chapter. The most interesting fact to be noted here is that the calm and successful desegregation in these 5 cities, with a combined 1950 population 31 times that of Little Rock, passed without wide public notice outside their own borders.

THE SOUTH RESISTS

Against this record of successful transition in border cities and communities stands the massive resistance—and the far greater difficulties—of the South.

Despite massive Negro emigration, the States of the Deep South probably still stand first, as they did in 1950, in percentages of Negro population. In 1950 whites were actually outnumbered by Negroes in 158 counties of 11 States. But the difficulty did not and does not lie in numbers alone. Many a Southern city is comparable in size and in percent of Negro population with one or more of the five cities reported above. The great difference was that, as Baltimore's Superintendent Fischer observed, "This was the biggest single step our community has ever taken toward desegregation, but it was in no sense

a change of course. We simply kept moving in the same direction in which we had been moving for many years." Southerners, with a way of life built on strict segregation, were asked to take the hardest step first. Understandably, they balked.

Even before 1954, some Southern States anticipating the Supreme Court ruling had created legislative committees to plan legal ways and means of escape. Such committees and plans burgeoned after the Court decisions.

Georgia called for impeachment of Supreme Court justices and declared the Fourteenth and Fifteenth Amendments invalid. Florida proposed to set aside the Court ruling by constitutional amendment. Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, South Carolina, Tennessee, and Virginia invoked the doctrine of interposition, asserting the right of a State to interpose its sovereignty to prevent or arrest contested action by the Federal Government within its borders.

For communities that might prefer no public schools at all to racially mixed ones, eight States provided for legal closing of their schools. The Arkansas and Virginia school-closing statutes (except those relating to presence of Federal troops) have been declared unconstitutional by federal courts. The same fate overtook an Arkansas provision for leasing public school buildings to private organizations. To let public school students attend private, nonsectarian, segregated schools, Arkansas, Alabama, Georgia, Louisiana, North Carolina, and Virginia authorized tuition grants payable from public funds. But at this writing, no actual payment of such grants had been made, and their constitutionality awaited judicial decision. Administration of the "pupil placement" laws enacted by eight Southern States (see p. 125) awaited similar decision.

The difficulties of transition are compounded in Southern rural areas, where the school is often the center of community social life, where community pressures on school officials are direct and rigorous, and where the freedom of choice easily granted in large cities is difficult or impossible. According to the 1950 census, Negroes in the six Deep South States had little more than half the median education of their white neighbors, and in five of these States had well under half the median income.

North and South, in the United States as in Africa, many a Negro has proved himself a first-rate human being. But two centuries of slavery, followed by a century of poverty, discrimination, fear, guilt, resentment, contempt, and overly protective paternalism, are hardly conducive to the development of a group's full human potential. It was a northern Negro educator who, telling how he had gone one

morning to watch the opening of a new school on the outskirts of a big Southern city, said to a member of this Commission's staff:

I stood on the steps as the children came to class. I watched those little boys and girls, so many of them in dirty, ragged clothes, carrying their shoes to put on when they went into the new school building. I saw their uncombed, tangled hair, and I remembered the shacks and tenements and broken homes they had just come from. I found tears streaming down my face, for them and for the white people, too. For a moment—just a moment—I put myself in the shoes of a white parent, and I knew that even one who believed in brotherhood, even one who thought the Supreme Court was right, would look at those little Negro children and say "No, not now, not with them, not my child, not yet."

CHAPTER III. THE FEARS AND THE FACTS

In July 1955, a university seminar for Kentucky educators and school board members listed the following principal desegregation fears of both whites and Negroes.

Whites feared that:

(1) their children might be taught by Negro teachers;
(2) school associations would result in social relationships to be deplored because of low Negro standards of health and morals;
(3) school standards would be dragged down by poor Negro scholarship.

Negroes feared that:

(1) desegregation would be conducted in the usual pattern of white supremacy, with Negroes expected only to obey orders;
(2) white leaders would refuse to work with true Negro leaders, but only with their accustomed Negro political henchmen;
(3) Negro teachers would lose their jobs.

Surprisingly, the prospect that Negro children might be abused by white teachers and pupils was not found to be a primary Negro fear.

HAVE SCHOLASTIC STANDARDS BEEN LOWERED?

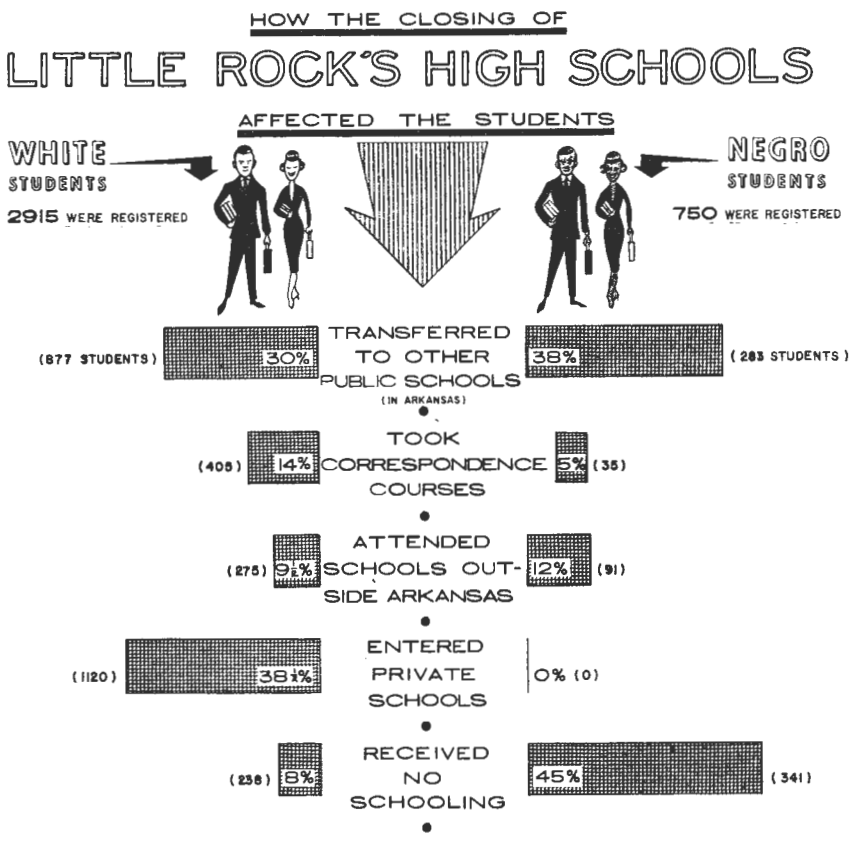
This Commission's study has been based on conviction that the law of the land must be obeyed, and that the American system of public education must be preserved unimpaired, and even improved, during the process of readjustment. First consideration will be given, therefore, to the question of whether the admission of Negroes to formerly white schools has resulted in a lowering of scholastic standards and achievement.

The overwhelming testimony of the public school officials at the Commission's Nashville conference was that there has not been such a lowering.

No scientific evidence has been found to indicate that Negroes—or members of any race—are inherently inferior to members of any other race. Anthropologists and psychologists who still assert that such racial differences may exist have become exceedingly rare.

There was general agreement at Nashville as elsewhere, however, that many Negro children are handicapped in their schoolwork. They

CHART VIII



are handicapped, the educators at Nashville declared, not by any inherent racial inferiority, but often by low cultural standards at home, sometimes by inferior training in a separate and unequal Negro school, and frequently by the lack of ambition which comes from the knowledge that few of them can hope to rise far in a white-dominated society.

But no nation in history can match American experience in educating similarly handicapped children. First, beginning about 1850, came the flood of immigrants from the peasant stock of Ireland and of southern and eastern Europe. Then there were the children of the poor who began staying on in school after compulsory attendance laws were passed. A similar problem arose in many parts of the country when rural schoolchildren were brought into consolidated schools with children who had had superior educational opportunity in urban schools.

Baltimore's Superintendent John Fischer has said:

> The problem of educating all the children of all the people is not new. We have been working at it for more than a century. Each time the doors of the schools have been opened without reservation to a larger group, the argument has been heard anew that this will ruin the schools and society as well. But somehow both continue to survive—as some of us believe, all the better for what has occurred.

Superintendent Carl Hansen, at Nashville, reported that the overall standards of Washington, D.C.'s school system have not gone down since desegregation, but up. This had happened despite the fact that a continuing migration of Negroes to the Capital, plus the normal exodus of white families to the suburbs, had been steadily raising the proportion of Negro students in Washington schools to its 1958 level of nearly 75 percent. For Dr. Hansen, this was proof enough of Negro educability, despite cultural and economic poverty.

In a Stanford Achievement Test in 1959, some 8,000 Washington sixth-graders proved themselves above the national standards in five out of six subjects. In 1957, the city's sixth-graders had been below the national standards in all six subjects, and in 1958 they matched the standard in only one.

Baltimore, too, reported Superintendent Fischer, has made a general effort to improve its schools, resulting in better schooling for both whites and Negroes. But desegregation as such, he declared, "has no more effect on academic standards than it has on the yardstick by which a pupil's height is measured." As a general rule, he observed, what matters in scholastic achievement is not the color of a student's skin but the level of his cultural background.

In Louisville, Ky., records of school achievement by race have been kept for many years. A study made after 2 years of desegregation showed that in desegregated schools there had been a substantial rise in Negro performance and a slight improvement among whites. Similar improvement, though perhaps less marked, had appeared in the city's schools that remain all white or all Negro. Reporting these facts at Nashville, the Louisville superintendent, Dr. Omer Carmichael, explained the betterment in all-Negro schools by saying that Negro teachers were working to refute his expressed opinion that, on the average, they were not as competent as whites.

Reports of scholastic standards maintained or bettered since desegregation were also received at Nashville from principals or superintendents of schools in Wilmington, Del., Oklahoma City, San Angelo, Tex., Logan County, Ky., Hobbs, N.Mex., Leavenworth, Kans., and for West Virginia as a whole from the assistant State superintendent, Dr. Rex M. Smith.

The Nashville conferees did agree, however, that Negro students as a group unquestionably rank lower scholastically than whites as

a group. Despite gifted exceptions, most of those entering formerly white schools for the first time need at least temporary special attention. The popular way to give it is to divide students not according to color or sex, but according to scholastic performance. Washington's "four track" system, for example, divides high school students into four ability groups, each with a program especially tailored to its needs.

Such grouping is comparatively easy for large schools and cities, and difficult for small ones. But after a two-year study of American high schools, Harvard's President-Emeritus James B. Conant has concluded that there are too many of them anyway. He urges that small schools, understaffed and underequipped, be consolidated. Many a U.S. community has been maintaining a small, uneconomic school for a handful of Negroes. By closing 163 such schools through desegregation, Oklahoma has reported a saving of $750,000 which could be used now to give its remaining schools more and better teachers and equipment.

WHAT ABOUT SOCIAL RELATIONSHIPS?

One answer to the fear of social mixing is that Negroes have shown themselves to be no more eager to rush the process than whites. Five years after the Supreme Court decision, in the 17 States and District of Columbia where compulsory segregation had been the rule, 93 percent of all Negro students were still attending all-Negro schools. Many of them, to be sure, in States and communities still resisting desegregation, had no choice in the matter. But where the doors of formerly white schools had been thrown open, city after city and school after school has reported that most Negroes simply do not choose to enter.

Experience has also shown that excitement over desegregation is mostly among parents rather than students, who soon learn to accept each other as a matter of course. Mixed schools report overwhelmingly that, while Negroes and whites may range from indifferent to friendly with each other in classrooms, athletics, and other student activities, they almost never mix on dates or at dances. In fear of such mixing, some districts have banned all school social activity. But after nearly 5 years of desegregation in Washington, only one case was known of marriage between a Negro and a white who had attended the same school.

Problems of discipline have been presented by desegregation, but in general they have proved to be less serious than many school administrators anticipated. Here, again, most school officials ascribe such problems not to race, but to a cultural background shared by many whites as well as Negroes. "No Negro child," says Super-

intendent Fischer of Baltimore, "has ever brought into any of our schools a problem that had not already been presented somewhere by a white child."

WHAT ABOUT NEGRO TEACHERS?

When desegregation began in Wilmington, Del., one Negro teacher who was to have an all-white first grade visited the children and their parents at home before school opened. At the end of the year, the parents requested that she be allowed to go on to the next grade with their children.

Few of the nation's Negro teachers have had so happy a desegregation experience. In large cities they have generally kept their jobs, sometimes teaching mixed classes. But desegregation of teaching staffs has in general lagged behind that of pupils. And especially in rural areas where small Negro schools were closed, some Negro teachers have lost their jobs. In Oklahoma, 344 Negro teachers were displaced by the closing of 163 Negro schools. Kentucky reported 31 school districts with fewer Negro teachers after desegregation. A recent survey revealed that West Virginia had 98 fewer Negro teachers and principals than in 1954—a reduction of about 10 percent. The Commission's Pennsylvania Advisory Committee reported that, of the State's 500 school districts with Negro pupils, only 56 employed any Negro teachers.

Litigation in the 19 Northern and Western States that have fair employment practices acts prohibiting racial discrimination shows that, as it affects Negro teachers, such discrimination remains a nationwide problem. But discrimination here is difficult to prove; a white principal may be genuinely convinced that a white applicant is better qualified than a Negro applicant for the same job. Opinions about the relative ability of Negro and white teachers, group for group, remain mixed.

Most of the Commission's State Advisory Committees reporting on the problem of teacher discrimination emphasized the need for time to achieve community enlightenment.

WHAT ABOUT NEGRO-WHITE COOPERATION?

Like those of whites, some Negro fears about desegregation have failed to materialize. In some communities, militant Negroes and their organizations have been shunned. More often, as throughout the States of Maryland and Kentucky, responsible Negro leaders have been invited to share the planning and responsibilities as members of biracial committees. Most of them, in turn, have proven to be notably sympathetic toward the problems involved for both races, and moder-

ate to extremely cautious in their proposals. In Hot Springs, Ark., for example, a biracial committee decided that the best way to launch desegregation was to confine it, at first, to a high school course in auto mechanics.

Of community planning and preparation in general, it may be said that it does not guarantee successful desegregation. But the record indicates that, when the community as a whole is consulted and prepared, the chances of a smooth transition are improved.

CHAPTER IV. THE RECORD AND THE FUTURE

Five years after the Supreme Court school decision, the statistical record of compliance was as follows:

Some start toward compliance with the Court's decision had been made in 11 of the 17 compulsory-segregation States of 1954. In the District of Columbia, some other large cities, and many smaller communities, complete desegregation had been achieved. Six States remained adamantly noncompliant.

Of the 11 more or less complying States, 8 (Delaware, Kentucky, Maryland, Missouri, Oklahoma, Tennessee, Texas, West Virginia) had 1950 nonwhite populations constituting less than 20 percent of the whole; the nonwhite populations of the 3 others (Arkansas, North Carolina, Virginia) were between 20 and 30 percent of the whole.

Of the six flatly noncomplying States, five (Alabama, Georgia, Louisiana, Mississippi, South Carolina) had nonwhite populations of more than 30 percent, and that of the sixth (Florida) was over 20 percent. It should be noted that, except in Oklahoma with its many Indians, the U.S. Census classification of "nonwhite" is for all practical purposes "Negro."

Some move toward desegregation had been made by 1959 in all of the biracial school districts of Maryland and West Virginia, in almost 90 percent of those in Oklahoma and Missouri, and in 70 percent of those in Kentucky. From there the percentages ranged down to 25 in Delaware, 17 in Texas, and insignificant fractions in Arkansas, North Carolina, Tennessee, and Virginia.

In sum, few more than one-fourth of all the biracial school districts in the 17 States had even begun to desegregate. Of these, about 3 percent had acted under the order of a lower Federal court, and there were others which had proceeded under threat of litigation or after suit had been filed.

The record by school districts tells only part of the story, since percentages of Negro population vary greatly among districts within a State. Just as most of the districts that had moved toward compliance were located in States with a smaller percentage of Negroes, so within each State it had generally been the districts having the smallest percentages of Negroes that had made a start. In addition, some of the districts that were classified as desegregated on the strength of

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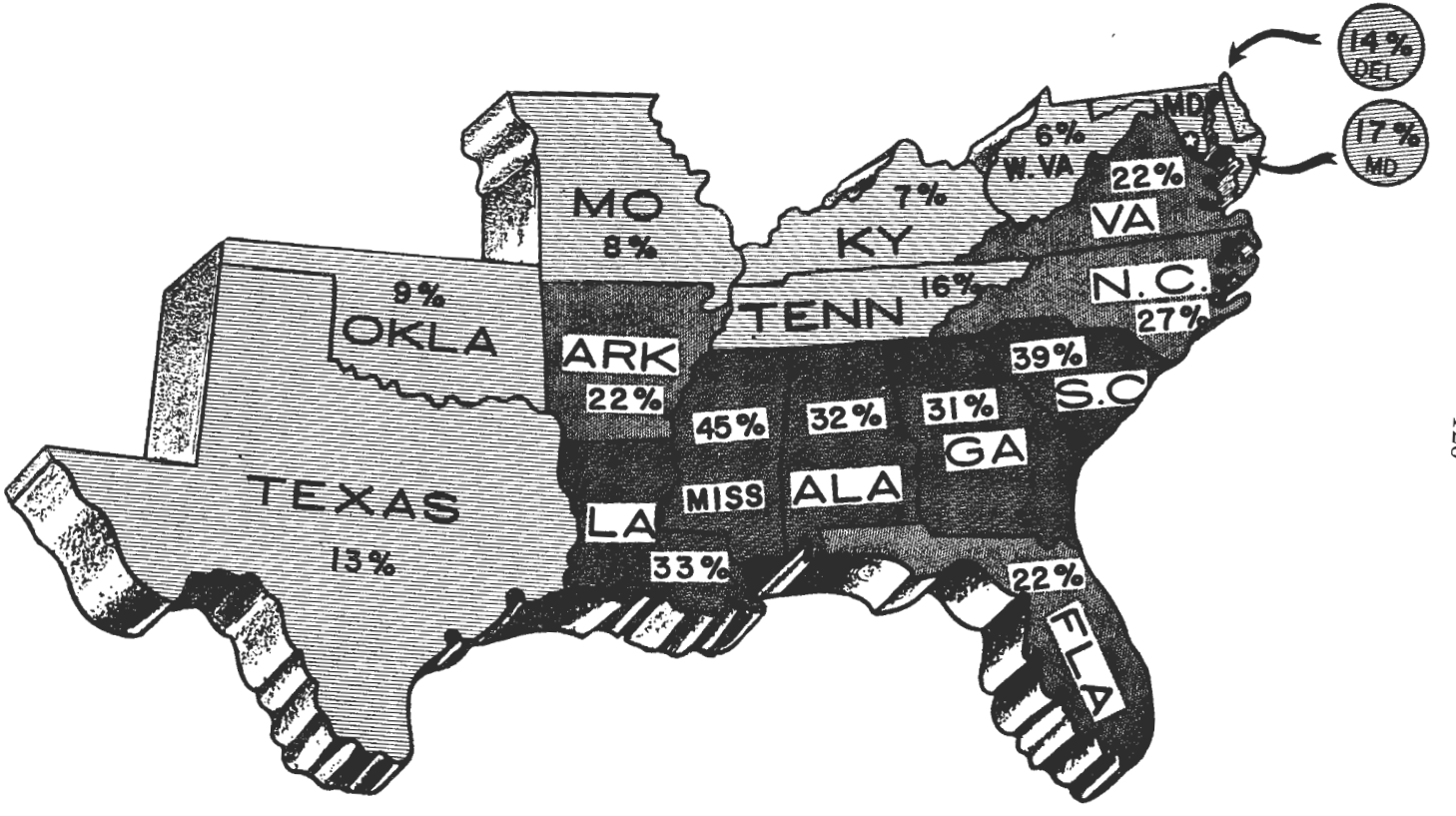
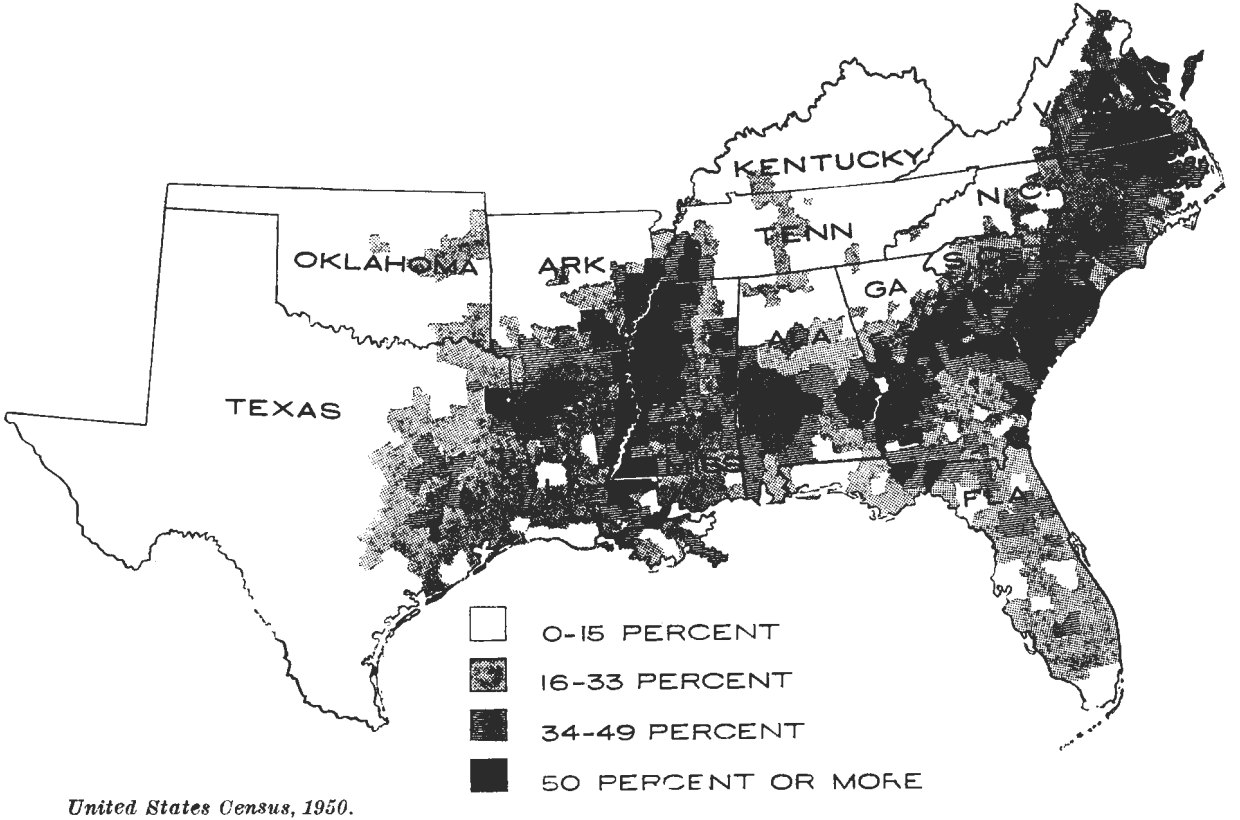
CHART IX. Non-white Population by States



United States Census, 1950.

CHART X. Non-white Population by Counties



United States Census, 1950.

having adopted a transfer plan had not in fact enrolled a single Negro student in a white school. In others, by reason of selective placement, the number of Negroes in formerly white schools was small indeed.

HARD QUESTIONS AND UNCERTAIN ANSWERS

The 5-year record was dismaying, but not necessarily discouraging. God's justice, as Thomas Jefferson warned of slavery, cannot sleep forever. But no reasonable citizen, and least of all the Supreme Court justices themselves, expected or wanted the great change to be made overnight. Few issues in American history have so clearly demanded exercise of the democratic process of education, discussion, and persuasion by which the consent of the governed, or their will to seek constitutional change, is shaped and registered.

But to what specifically, and when, are the governed asked to consent? The goal is clear, but for those disposed to move cautiously, if at all, the way is murky. How deliberate may "all deliberate speed" become? Precisely what manner of start will be judged "prompt and reasonable?" What if anything, short of total desegregation, is "full compliance?" Because of differing decisions by the lower Federal courts charged with answering these questions in specific cases, conscientious school officials and other citizens may reasonably be bewildered. Their confusion is all the more damaging because voluntary desegregation reached its peak in 1956. Since then a growing proportion of starts have been under court order, and the trend seems likely to continue.

A PROMPT AND REASONABLE START

In the first years after the Supreme Court decision, the lower courts were liberal in finding that "a prompt and reasonable start toward full compliance" had been made if a school board had exhibited any activity whatever pointing toward compliance. The formation of a citizens committee to study the problems of desegregation, or study and planning by a school board itself, was held sufficient. Courts allowed school boards 6 months or more to prepare plans. In one Tennessee case, a board was allowed 6 months even though it had had the problem before it for 5 years without taking positive action.

In another instance, in Virginia, failure for 2 years to take any action resulted in an injunction ". . . to dispel the misapprehensions of school authorities as to their obligations under the law." Later, however, the court allowed the same school board to present a plan involving a 6-month delay. Significantly, the plan, which was approved in due course, proposed constructive action within the time limit.

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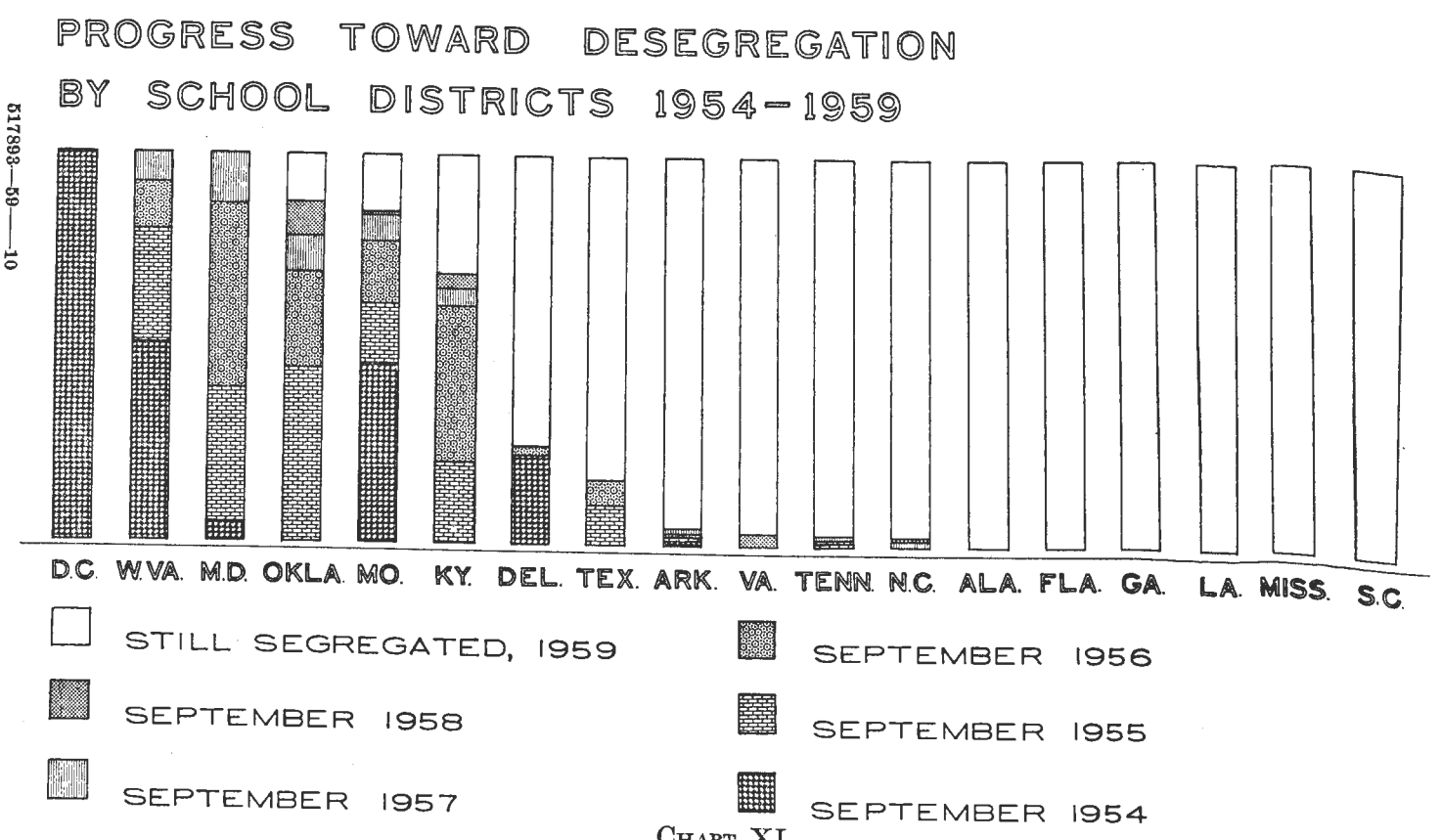


CHART XI

The percentage of school districts that began desegregation each year is shown here. School districts in which only Negroes or whites were enrolled have not been included in computing the percentages

District courts in some cases have entered only general orders, without time limits, which have not resulted in a start of any kind. Two of the original *School Segregation Cases* decided in 1954 may be cited as examples. In the Clarendon County, S.C., case, upon reconsideration after remand, an injunction was entered to be effective "from and after such time as they [the members of the school board] may have made the necessary arrangements for admission of children to such school on a nondiscriminatory basis with all deliberate speed." This was in 1955. The case was retained on the docket for entry of further orders and nothing more appears to have happened.

The School Board of Prince Edward County was the Virginia defendant in the 1954 *School Segregation Cases*. Upon remand from the United States Supreme Court a similar, indefinite order was entered.

The plaintiffs in the Prince Edward County case, however, were more persistent than those in South Carolina. Upon motion to order their admission to Prince Edward schools in September 1956, the District Court withheld the order because public opinion opposed it and because it would lead to the closing of the school under State law then in effect. The court of appeals reversed the decision and instructed the district court to order the school board to make a prompt and reasonable start. The district court then fixed 10 years following the Supreme Court's 1955 implementing decision as the time for such compliance. The court of appeals reversed this order on May 5, 1959, because the school authorities had taken no action whatever in 4 years and contemplated none. As a result of this decision, the board of supervisors of the county refused to appropriate any funds for operation of public schools in 1959–60. The school board thereupon applied to the Supreme Court for review of the appeals court decision, asking that it take judicial notice of the calamitous result.

In deciding an appeal from Little Rock which reached it in 1958, the Supreme Court forcefully reaffirmed its ruling that mere local hostility to desegregation cannot be considered justification for delay. However, such tangible factors as overcrowded schools, building programs in process, disadvantage of midyear entrance, and preparation of professional personnel, pupils and community, have been held by lower Federal courts to be sufficient, singly and in combination, to justify a short and definite deferment.

FULL COMPLIANCE

What, short of the unification of a dual school system, would be held to constitute full compliance?

Several lower courts have stated that abolishing discrimination does not necessarily mean that white and Negro children shall be "mixed" in the schools. Nor does it require that Negro schools be abolished if attendance at such schools is voluntary. The fact that a school may be attended only by members of one race because only one race lives within the attendance area has been adjudged not constitutionally objectionable, unless the area has been deliberately zoned for this purpose.

On the positive side, a desegregation plan that does no more than permit a Negro to apply for transfer from the Negro school to a white school nearer his home has been judicially approved. Under such a plan, it would appear that the local school board could continue to maintain white and Negro schools indefinitely, and assign pupils to them as it chose.

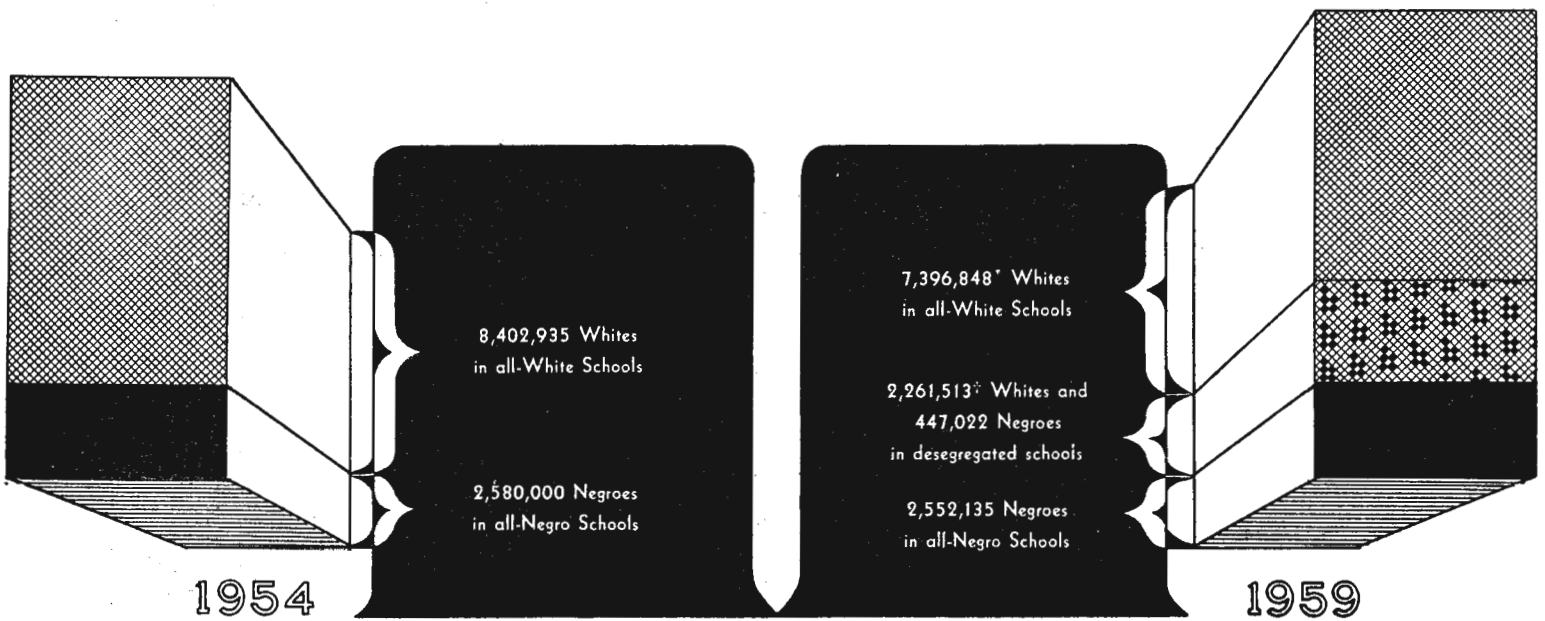
The North Carolina "Pearsall plan" seems to operate this way in practice. So far as this Commission was able to ascertain, the school boards of North Carolina have unanimously exercised their discretion by assigning *all* white students to white schools and *all* Negro students to Negro schools. Only a handful of Negroes, in three cities, have had their applications for transfer to a white school accepted.

Final court decision on such plans and on the administration of the "pupil placement" laws enacted by eight Southern States was, at this writing, yet to come. The Alabama placement statute grants local school boards authority to assign pupils to one school or another on a basis of no less than 17 nonracial criteria, ranging from "availability of transportation" to the "morals, conduct, health, and personal standards of the pupil." The Supreme Court upheld the law as valid on its face, but recognized that in some future proceeding it might be declared unconstitutional in application.

The action of two Virginia school boards in applying nonracial criteria to applications for transfer had recent court examination. The school boards of Arlington County and of the city of Norfolk adopted several nonracial criteria for deciding on applications for transfer from Negro to white schools. The Arlington County Board had found reasons to reject all such applications. Upon examination, the Court found that four of them had been denied without legal basis.

The Norfolk board had accepted 17 of 151 applicants for transfer and asked that their admission be deferred until September 1959. The district court denied the motion to defer admission and approved the rejection of the other 134 applications. But it reserved for further consideration questions concerning the validity of all the standards, criteria and procedures adopted by the board, many of which had

NUMBER OF PUPILS AFFECTED BY DESEGREGATION



This chart combines the totals from the 17 Southern and Border States and the District of Columbia.

The 447,022 Negro pupils in school systems that desegregated between 1954 and 1959 represent 15 percent of the total Negro enrollment, as shown here. However, approximately half of them, either because of residential segregation or for other reasons, are still in all-Negro schools. See Table 13.

*An unknown number of white pupils in Missouri are in desegregated schools but have been included in the top panel because of insufficient data.
†This division is actually larger than shown, because an unknown percentage of Missouri's white pupils are in desegregated schools.

Data from Southern Education Reporting Service, May 15, 1959.

not been applied in the 134 rejected cases. On appeal, the order was affirmed as to the admission of the 17 applicants and remanded as to the 134. The district court again approved the action of the board in denying the 134 applications as not capricious, arbitrary or illegal, and found all the board's standards, criteria and procedures not unconstitutional on their face.

TABLE 13.—*Status of segregation-desegregation, 1958–59, in 11 States and District of Columbia*

	Enrollment			Negroes Enrolled in Desegregated Schools	Percent of Total Negro Enrollment
	Total	White	Negro		
Arkansas	419,971	316,441	103,530	76	0.07
Delaware	73,551	60,141	13,410	5,717	42.63
District of Columbia	111,756	28,623	83,133	68,421	82.30
Kentucky	585,857	546,149	39,708	11,468	28.88
Maryland	556,290	432,485	123,805	37,840	30.56
Missouri	787,000	708,300	78,700	74,135	94.20
North Carolina	1,063,000	749,000	314,000	13	.004
Oklahoma	542,000	507,000	35,000	8,351	23.86
Tennessee	790,000	652,540	137,460	90	.07
Texas	1,955,425	1,692,615	262,810	3,750	1.43
Virginia	827,500	623,935	203,565	51	.03
West Virginia	464,402	439,324	25,078	6,259	24.9
Total	8,176,752	6,756,553	1,420,199	216,171	15.22

An appeal was taken also by the unsuccessful applicants in the Arlington case. The court of appeals remanded with direction to the district court to require the school board to reexamine the applications, which it could do more freely as a result of the invalidation of Virginia's school-closing law. In so doing, the court of appeals stated that evidence in the record showed that the Negro applicants for transfer had been subjected to tests not applied to white students seeking transfer. The school board again rejected all applicants, but the district court heeded the admonition of the court of appeals. It ordered 12 applicants admitted because, in being rejected on account of overcrowding of a school or for scholastic deficiency, they had been held to more strict requirements than were applied to white students.

DELIBERATE SPEED

Cases involving plans for gradual desegregation have provided varying answers to the question of what "deliberate speed" may be under varying conditions. Six-year, 7-year, and 12-year plans have received court approval. But another court rejected both a 12-year and a 4-year plan as being too deliberate. Many more court decisions will be needed to clarify the deliberately imprecise phrase "with all deliberate speed."

CHAPTER V. THE PROBLEM OF FEDERAL GRANTS

The United States Government is the greatest patron of education in world history. While operating schools of its own for Federal employees and wards, it spends far more in grants to other publicly supported and privately supported institutions of learning, for their general support and for research programs and special projects. It also makes grants to individuals for graduate study and research.

For these educational purposes, in fiscal 1957, the Government spent $1,997,825,000. The National Defense Education Act of 1958 added another $115,300,000 to this yearly outlay, and the appropriation for the National Science Foundation was increased by half for fiscal 1958, to a total of $49,750,000. The principal recipients of these Federal grants are the nation's colleges and universities. More than $1 billion of the fiscal 1957 expenditure went for higher education.

To this Commission, with its congressional assignment to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," these facts present an inescapable question:

Can the Federal Government, in law and in conscience, continue to grant public funds to institutions that deny the equal protection of the laws to certain citizens by refusing them admission because of their race, color, religion, or national origin?

The chief and perhaps only Federal aid disbursed directly to public elementary and secondary schools by statutory directive goes to those in areas in which the Government has acquired land for its own uses. To compensate the local governments for taxes lost thereby, and for the expense of educating children in some way connected with the Federal enterprise, Public Laws 874 and 815 authorize Federal payments for the construction and operation of local public schools.

In fiscal 1958 local governments in the 17 segregating States, including the 6 States still flatly noncompliant with the Supreme Court's school decision, received just under $48 million for school operation. In 1951–58 localities in the same States received just over $300 million for school construction.

In response to a questionnaire from this Commission, the Department of Health, Education, and Welfare stated its policy in this matter as follows:

> Broadly, within the provisions of these acts, these Federal payments are treated as local taxes for use by local educational agencies in accordance with

the laws of the State. Both acts contain specific prohibitions against Federal direction, supervision, or control of the school program.

As may be inferred from the general policy stated previously, it is our view that to withhold these payments from an otherwise eligible school district because of the existence of a pattern of racial segregation in the schools of such district would interpose the Department between the State and local school officials and the Federal district court in a manner not contemplated in the orders of the Supreme Court.

The Department of Health, Education, and Welfare has announced its general policy on grants to noncompliant schools as follows:

(1) Under the Supreme Court decision on segregation in reference to public elementary and secondary education, it is the Federal judiciary, and not the executive branch of the Federal Government, which is to determine how compliance with the Supreme Court mandate is to be brought about and what constitutes compliance in good faith.

(2) Judicial implementation of the Supreme Court decision, in the manner charted by the Court in its decree, and the meeting of the urgent, overall educational needs of our country, can go forward at the same time.

(3) For the executive branch to exercise the power, on the basis of its own determinations as to the requirements of the Supreme Court mandate, to reserve or withhold funds necessary to progress in meeting educational needs, might interfere with such progress and would in the long run interfere with the responsibilities of the Federal judiciary.

The chief and perhaps only Federal aid disbursed directly to designated institutions of higher education by statutory directive goes to land-grant colleges and universities under the Morrill-Nelson and Bankhead-Jones Acts.

The statute authorizing financial assistance to these State colleges and universities seems to be the only one governing Federal educational grants that specifically forbids racial discrimination. But it further provides that this requirement may be satisfied by separate colleges for white and colored students. This provision was, of course, nullified by the school decision of 1954—which, the Supreme Court later made clear, definitely applies to tax-supported institutions of higher education.

By September 1958 more than half of the 208 white public colleges and universities in the 17 segregating States had admitted Negro students. But among the colleges and universities that had not done so were all those in Georgia, Mississippi, South Carolina, and (except for one Negro matriculant who was promptly expelled) Alabama. Yet these latter were still receiving their land-grant payments from the U.S. Government.

And these and many other colleges and universities, public and private, were still receiving a multiplicity of other Federal grants. Among them were a number whose admission policies were at least suspect of being in violation of the Supreme Court decision of 1954.

CHAPTER VI.

FINDINGS AND RECOMMENDATIONS

The Problem

In 1954 the Supreme Court of the United States held that compulsory racial segregation in public schools is a denial of the equal protection of the laws under the Fourteenth Amendment to the United States Constitution, and of the due process of law required by the Fifth Amendment. In so holding, the Court did not require racial integration in the schools. What the Court did hold is that publicly supported schools must be opened to all races on a nonsegregated basis.

The requirements of this declaration of constitutional principle have been stated clearly by the late Judge John J. Parker of the United States Court of Appeals for the 4th Circuit in the case of *Briggs* v. *Elliott:*

> What it (the Supreme Court) 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 (132 F. Supp. 776 (1955)).

The Commission based its study of legal developments constituting a denial of the equal protection of the laws in the field of public education upon two fundamental premises:

(1) The American system of public education must be preserved without impairment because an educated citizenry is the mainstay of the Republic and full educational opportunity for each and every citizen is America's major defense against the world threat to freedom.

(2) The constitutional right to be free from compulsory segregation in public education can be and must be realized, for this is a government of law, and the Constitution as interpreted by the Supreme Court is the supreme law of the land.

The problem, therefore, is how to comply with the Supreme Court decision while preserving and even improving public education. The ultimate choice of each State is between finding reasonable ways of ending compulsory segregation in its schools or abandoning its system of free public education.

Information, Advisory, and Conciliation Services

Background

The Commission's studies, and particularly its conference with school officials from districts in border States and a few in the South

that have in some measure desegregated since 1954, demonstrate that when local school officials are permitted to act responsibly in adopting plans that fit local conditions the difficulties of desegregation can be minimized. A variety of plans have proved to be successful, ranging from the merger of the former Negro and white school systems into one integrated system (particularly in communities where the Negro population was small and the cost of maintaining separate systems considerable) to the gradual Nashville plan that began in the first grade and is proceeding at the rate of one grade a year, with voluntary transfer permitted to any child assigned to a school where his race is in the minority.

In *Shuttlesworth* v. *Birmingham Board of Education*, 358 U.S. 101 (1958) the United States Supreme Court upheld as valid on its face the Alabama pupil placement law on the assumption that the law would be administered in a constitutional manner. Eight Southern States have adopted pupil placement laws as a means of meeting the test of nondiscrimination. This is another possible method by which compliance may be achieved.

In many instances desegregation has been used by the local community as the occasion to raise its educational standards. In many instances remedial programs have been adopted for the handicapped, and advanced programs established for gifted students. Such programs were described to the Commission at its Nashville conference by the superintendents from Wilmington, Del.; Washington, D.C.; and San Angelo, Tex. St. Louis, Mo., has adopted a similar program. It is important that any transition should not result in the lowering of educational standards for either the white or Negro student. If possible, it should result in an improvement of educational standards for both; a number of school officials report that this has already happened in their communities.

In the transition to a nondiscriminatory school system, a carefully developed State or local plan is better than a plan imposed by a court for the immediate admission of certain litigants, or a plan imposed by any outside agency. The Supreme Court and the Federal lower courts have made it clear that they will consider sympathetically any reasonable plan proposed in good faith. This seems to be an area in which the principle of State's rights can most effectively express itself through local option in meeting this problem. If State governments do not permit local school officials to develop such plans for good faith compliance, the effectiveness of the school system in the State as a whole will be impaired. By permitting such local option a variety of methods of transition can be developed that take into account the varying circumstances in different areas of the State.

Findings

1. The ease of adjustment of a school system to desegregation is influenced by many factors including the relative size and location of the white and Negro population, the extent to which the Negro children are culturally handicapped, segregation practices in other areas of community life, the presence or absence of democratic participation in the planning of the program used or preparation of the community for its acceptance, and the character of the leadership in the community and State.

2. Many factors must be considered and weighed in determining what constitutes a prompt and reasonable start toward full compliance and the means by which and the rate at which desegregation should be accomplished.

3. Desegregation by court order has been notably more difficult than desegregation by voluntary action wherein the method and timing have been locally determined.

4. Many school districts in attempting to evolve a desegregation plan have had no established and qualified source to which to turn for information and advice. Furthermore, many of these districts have been confused and frustrated by apparent inconsistencies in decisions of lower Federal courts.

Recommendations No. 1 (a) and 1 (b)

Therefore, the Commission recommends: 1(a) That the President propose and the Congress enact legislation to authorize the Commission on Civil Rights, if extended, to serve as a clearinghouse to collect and make available to States and to local communities information concerning programs and procedures used by school districts to comply with the Supreme Court mandate either voluntarily or by court order, including data as to the known effects of the programs on the quality of education and the cost thereof.

1(b) That the Commission on Civil Rights be authorized to establish an advisory and conciliation service to assist local school officials in developing plans designed to meet constitutional requirements and local conditions; and to mediate and conciliate, upon request, disputes as to proposed plans and their implementation.

ANNUAL SCHOOL CENSUS

Background

The primary problem of equal protection of the laws in the field of public education is desegregation of public school systems in which separate schools for white and Negro children have been maintained by compulsion of State law. The Commission's study of this problem necessarily required public school enrollment figures, by race of students and type of school attended, for all school districts in the 17

States and the District of Columbia where compulsory segregation had been the rule.

The Commission found that the United States Office of Education of the Department of Health, Education, and Welfare, which formerly collected and published such information, ceased doing so with the school year 1953–54. It was necessary, therefore, to secure such data directly from State and local officials or from secondary sources. As a matter of policy the keeping of records by race has been discontinued in the States of Kentucky, Missouri, Oklahoma, West Virginia, and in some parts of Maryland.

A study such as that of the Commission requires complete and authoritative factual data. But because there is a possibility that school records of the race of students might be used in a discriminatory manner in recommendations to colleges and universities and to prospective employers, the Commission cannot request the maintenance of permanent school records by race.

Findings

1. No agency of the United States Government, other than this Commission, has collected data either on public school enrollment by race since the school year 1953–54, or on the existence of segregation or nonsegregation by policy or practice in the public schools of the nation.

2. The public school study of the Commission has been rendered difficult by the lack of such information within the Federal Government and by the policy, adopted by some States and school districts that maintained racially segregated schools immediately prior to May 17, 1954, to discontinue recording the race of pupils.

Recommendation No. 2

Therefore, the Commission recommends that the Office of Education of the Department of Health, Education, and Welfare, in cooperation with the Bureau of the Census of the Department of Commerce, conduct an annual school census that will show the number and race of all students enrolled in all public educational institutions in the United States, and compile such data by States, by school districts, and by individual institutions of higher education within each State. Further, that initially this data be collected at the time of the taking of the next decennial census, and thereafter from official State sources insofar as possible.*

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*Commissioner Johnson:

I have agreed to this recommendation with the understanding that it does not suggest or require that public educational institutions maintain school records by race and that the recommended school census can be taken without the maintenance of such records.

SUPPLEMENTARY STATEMENT ON EDUCATION

By Vice Chairman Storey and Commissioners Battle and Carlton

Although the portion of the report dealing with public education contains much interesting material, the text preceding the Findings and Recommendations is to a large extent argumentative and colored by the author's views of the sociological and philosophical aspects of the school integration problem. It is based largely upon information supplied by school officials from five large "border" cities which have integrated their schools. These officials appear to take pride in their accomplishment and constitute special pleaders for their cause. Little acknowledgment has been given to different conditions found in large areas of the country where the problem is most acute.

Further study and investigation should be made of the areas where school integration efforts run counter to long-established customs and traditions that formerly had legal sanction.

This tremendously serious and complex problem will not be solved by hasty action but must have the most careful and sympathetic consideration, with due regard for the way of life of large numbers of loyal Americans.

PROPOSAL TO REQUIRE EQUAL OPPORTUNITY AS A CONDITION OF FEDERAL GRANTS TO HIGHER EDUCATION

By Chairman Hannah and Commissioners Hesburgh and Johnson

More than $2 billion a year of Federal funds go for educational purposes and to educational institutions. The principal recipients of these funds are the nation's colleges, universities, and other institutions of higher education. Whether tax-supported or privately financed, they receive Federal grants and loans both for their general support and capital improvements as well as for research projects, special programs, and institutes.

Discriminatory admission policies and other practices are known to exist in a number of such institutions. None of the Federal agencies administering these educational assistance programs require proof or an attestation of nondiscrimination by the institutions as a condition for the receipt of Federal funds.

With its duty to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," the Commission was compelled to ask whether it is consistent for the Federal Government to aid and support educational programs and activities in institutions of higher education which are not open to all citizens on an equal and nondiscriminatory basis.

While Congress has not required such conditions for these grants,

the operations of the Federal Government are subject to the constitutional principle of equal protection or equal treatment.

The Supreme Court has held racial discrimination in public education to be a denial of equal protection. In regard to public institutions of higher education the courts have required the immediate admission of qualified students without discrimination. The reasons for the gradual elimination of racial discrimination in elementary and secondary schools do not obtain in the field of higher education. There, immediate equality of opportunity for qualified students of all races is possible and necessary.

Although the equal protection clause of the Fourteenth Amendment applies only to State action, "it would be unthinkable," the Supreme Court has held, "that the same Constitution would impose a lesser duty on the Federal Government."

We believe that it is inconsistent with the Constitution and public policy of the United States for the Federal Government to grant financial assistance to institutions of higher education that practice racial discrimination.

We recommend that Federal agencies act in accordance with the fundamental constitutional principle of equal protection and equal treatment, and that these agencies be authorized and directed to withhold funds in any form to institutions of higher learning, both publicly supported and privately supported, which refuse, on racial grounds, to admit students otherwise qualified for admission.

ADDITIONAL PROPOSAL BY COMMISSIONER JOHNSON

While joining in the above proposal, I recommend that the policy set forth apply to all educational institutions that receive Federal funds, including public elementary and secondary schools. My reasons are set forth in my closing statement at the end of this report.

SEPARATE STATEMENT ON CONDITIONAL FEDERAL GRANTS FOR HIGHER EDUCATION

By Vice Chairman Storey and Commissioners Battle and Carlton

We oppose the recommendation that Federal agencies be authorized to withhold all public funds from institutions of higher learning (public and private) which refuse, on racial grounds, to admit students otherwise qualified for admission for the following reasons:

1. The Commission has agreed that the preservation and improvement of education is a matter of great national interest, and is a fundamental principle within which the problems of equal protection must be evaluated. Therefore, we cannot conscientiously endorse a program which might well undermine that principle.

2. Present problems of equal protection pertaining to education fall within the sweep of the Fourteenth Amendment, an area long since preempted by the courts. We cannot endorse a program of economic coercion as either a substitute for or a supplement to the direct enforcement of the law through the orderly processes of justice, as administered by the courts.

3. Such a proposal by this Commission—as an agency of the Federal Government—would drastically affect the administration of privately owned institutions of higher education. Such action goes beyond the scope of the Commission's duties.

4. Our staff studies were directed toward understanding and evaluation of equal protection problems in public and secondary schools, not private schools upon any level, and not institutions of higher education, whether public or private.