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WASHINGTON, D.C. --- The President's March 24th statement on elementary and secondary school desegregation has made it clear that his Administration "intends to carry out the Supreme Court's mandate of an immediate end to legally sanctioned dual school systems" but "much more, however, is necessary," the United States Commission on Civil Rights said in a statement issued today with the unanimous approval of the Commissioners.

The Commission said it was issuing the statement because it "believes that the experience and information we have gathered over the years concerning the issues discussed in the President's statement provide a sound basis for analysis and comment that can contribute to their clarification and be of help to educators, other public officials, and concerned Americans generally. It is in this spirit that we speak out now."

Cautioning that the problems of racial isolation in the Nation's schools cannot be resolved solely through cautious adherence to a narrow construction of existing law, the Commission said the courts have only set the minimum and not the maximum mandate to accomplish school desegregation.

"In education, as in other areas of national concern, it is the responsibility of the Congress and the Executive Branch to act beyond this minimum, using the broad authority provided under the Constitution.

"Thus it is not sufficient to say that local school officials who have not maintained legally compelled separate systems may desegregate their schools if they choose to. The necessity of desegregation must also be urged and the resources made available to accomplish it," the Commission declared.

It said it feared that the President's statement, particularly its sharp distinction between de jure and de facto segregation, "well may have the net effect, though unintentional, of signaling a major departure from the policy of moving toward integrated schools and that open society of which he spoke so well in his statement."

While the problem of school desegregation is one of enormous difficulty it is not beyond solution, the Commission said. It added that it is convinced of the ability and will of the American people to respond affirmatively to a call to end the injustice that school segregation represents.

"This call requires a major investment of resources, the commitment of public and private officials on the Federal, State, and local level--indeed of all Americans--and above all, the continuing example of courageous moral leadership

from the President of the United States."

The Commission's analysis of the President's statement deals with several specific issues--de jure and de facto school segregation, enforcement of school desegregation, the burden placed on schools as instruments of social progress, the importance of racial integration as a factor in assuring quality education, busing, neighborhood schools, and Federal assistance to communities in desegregating.

A sharp distinction between de jure and de facto school segregation was drawn in the President's statement which contended that under the former there is a positive duty to end segregation, while under the latter school authorities are not constitutionally required to take any positive steps to correct racial imbalance, the Commission said.

"This statement represents a strict interpretation of existing Supreme Court decisions," the Commission said, but it also noted the Court had expressly recognized the inherent inequality of all segregation noting only that the sanction of it by law gave it greater impact.

"In a sense,therefore, the President's sharp distinction between de jure and de facto segregation tends to blunt what many think is a crucial thrust of Brown (the Supreme Court school decision of 1954).

The Commission also expressed doubt that de facto segregation is as widespread a phenomenon as many believe, and noted that in many cases school segregation that appears to result from accidental housing patterns, actually results in large part from decisions by school and other officials.

"Thus the categorical distinction between de jure and de facto segregation is not as clear-cut as it would appear. Upon closer examination, there is probably little legal substance to the concept of de facto segregation."

The Commission took the view that Government has the moral as well as the legal responsibility to undo the segregation it has helped to create and maintain and said "there is no statute of limitations by which Government in its many forms can be exonerated from its past misdeeds or relieved of its current obligations."

The Commission urged that the President's Fiscal 1971 budget request for substantial increases in resources for civil rights enforcement of the Department of Justice and the Department of Health, Education, and Welfare be approved and that the attention of these two departments be directed specifically to the problem of apparent de facto segregation.

"We believe that to accept without investigation the notion of widespread fortuitous and ingenuous school segregation and to determine policy on that basis would be a serious mistake."

The Commission said that in discussing enforcement of school desegregation, the President's statement was largely silent concerning the means that will be used to bring about an end to dual school systems. This raises the fear that litigation which has proven "frustratingly slow," will, in fact, continue to be substituted for administrative enforcement under which "progress has accelerated enormously," the statement declared.

Recalling that in its September 1969 report on "Federal Enforcement of School Desegregation" it had characterized the Administration's reliance on litigation as a "major retreat in the struggle to achieve meaningful school desegregation," the Commission asked that the President issue a clear statement of policy on this issue.

It also warned that the proposed reliance to be placed by the Administration on local discretion and good faith of local school administrators in carrying out the Supreme Court's mandate is not justified by the experience of the past 16 years.

In responding to the suggestion that too much is being asked of the school as an instrument of social change, the Commission said the schools filled this role in educating the children of immigrants and integrating them into American society.

The same is not being done today for the children of the Nation's ghettos and barrios, the Commission added.

"To be sure, the problems facing the schools may be more difficult than those they faced in earlier days when they succeeded so well. But these problems cannot be viewed as insoluble, nor can we relieve our schools of the burden, heavy as it may be, of being the chief instrument by which they will be resolved...

"It should be a national priority of the highest order to provide our schools with the necessary resources--adequate facilities, better teacher training, and the like--to bear this burden....There simply is no other institution in the coutnry so equipped to do the job."

On the importance of school integration as a factor in assuring quality education for the Nation's school children, the Commission said it has been established that desegregation is fundamental to the achievement of equal educational opportunities.

"The key question now is not the relative merits of desegregation but how to accomplish it....It is true, as the President points out, that the adult community has failed to achieve for itself the kind of multi-racial society that we are seeking to achieve in schools.

"The failure of the adult community, however, only highlights the necessity of insuring that our children receive the kind of training in integrated school environments that will equip them to thrive in the multi-racial society they will enter....If we delay this training until they enter the adult society, we will have been too late."

The Commission said the President had raised the issue of busing and cautioned that "we must proceed with the least possible disruption to our children."

Busing, said the Commission, has become an emotionally charged word as the issues involved have been the subject of considerable misunderstanding, but that it is neither a new or unique technique, and its use is not limited to facilitating desegregation.

Every day of every school year, 18 million pupils--40 percent of the Nation's public school children--are bused to and from school, and the overwhelming majority of such busing has nothing to do with desegregation or achieving racial balance.

In most of our cities the techniques necessary to accomplish desegregation are relatively simple and busing creates no hardship, the Commission declared.

"In the Commission's view, the emphasis that some put on the issue of busing is misplaced. As most Americans would agree, it is the kind of education that awaits our children at the end of the bus ride that is really important."

On neighborhood schools the Commission said:

"In his statement, the President emphasized the desirability of maintaining the neighborhood school principle. For several reasons, the Commission questions whether this should be one of the cornerstones upon which national educational policy rests."

The Commission pointed out that the principle of neighborhood schools is not immutable and cited as examples special schools for handicapped and gifted children which are not restricted to neighborhood pupils, and schools where the principle has been abridged in order to escape racial integration.

Changing patterns of urban life have changed the concept of neighborhoods as the self-contained, cohesive communities they may once have been and large educational units frequently make possible the offering of a broader curriculum and the provision of new and expensive equipment that are not economically possible in schools which serve small numbers of students.

"In short, adherence to the neighborhood school principle under current conditions not only tends to interfere with efforts at desegregation, but also has little bearing on efforts to improve the quality of education and in some cases may even thwart those efforts."

Resolution of the problem of school desegregation ideally and ultimately lies in residential desegregation, and such desegregation can be accomplished through laws and policies designed specifically to secure an open housing market and administered with education and purpose, the Commission said.

"This does not mean, however, that efforts to desegregate the schools should await the day when neighborhood desegregation has been achieved," it noted.

Finally, the Commission called for a further official clarification on the usage of the one and a half billion dollars the President has committed over the next two years to carry out his school policies.

Two purposes were specified in the President's message--improving education in racially impacted areas and assisting school districts in meeting special problems incident to court ordered desegregation.

"It is not clear whether these two purposes are considered mutually exclusive--whether school districts not under court order would be eligible for assistance under this program to promote desegregation or whether the President's proposal assumes that so-called de facto segregation is with us to stay.

"If the latter, then the proposal may well have the effect of providing built-in financial incentives for the perpetuation of racial segregation in schools not under

court order and transform an acceptance of the reality of de facto segregation into a self-fulfilling prophesy."

The U.S. Commission on Civil Rights is an independent, bipartisan, factfinding agency created by Congress in 1957.

Rev. Theodore M. Hesburgh, C.S.C., President of the University of Notre Dame, is Chairman of the Commission. Other members are: Stephen Horn, Vice Chairman, Dean of Graduate Studies and Research, American University, Washington, D.C.; Frankie M. Freeman, attorney, St. Louis; Maurice B. Mitchell, Chancellor of the University of Denver; Robert S. Rankin, Professor Emeritus of Political Science, Duke University, Durham, N.C.; and Manuel Ruiz, Jr., attorney, of Los Angeles.

April 9, 1970

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