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DESEGREGATION AND THE CITIES—THE TRENDS AND POLICY CHOICES

PREPARED BY THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE



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FOREWORD

One of the useful functions a Congressional committee can perform is to provide a forum for expression of viewpoints on important national issues. Few issues will influence the future of American society more profoundly than the question of whether or not we can overcome the forces of segregation and inequality in our urban centers. The following report, by committee consultant Gary Orfield, offers one perspective on where the nation stands today. Orfield, a political scientist at Brookings Institution and the University of Illinois, raises a number of issues for possible consideration by Congress and the executive branch. The views expressed are those of the author alone. The report is published for the information of the committee and interested citizens. I hope it will stimulate further discussion of one of our most important social problems.

HARRISON WILLIAMS, JR.,
Chairman.

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Dear Mr. Chairman:

Last year Senator Brooke and I undertook to gather information on the state of the law and the actual progress being made in the area of desegregated education. One result of our work was a series of Congressional Record inserts providing information on enforcement efforts, important court decisions, experiences of school districts and other pertinent facts dealing with desegregation.

As part of that same effort, our Committee employed Gary Orfield, a political scientist from Brookings Institution and the University of Illinois to prepare a paper on Desegregation and the Cities. I believe that this paper which represents Mr. Orfield's view of the problem is an important contribution to the dialogue which has been taking place here in the Congress over the last several years on the subject of desegregation.

Because I believe this paper should receive wide distribution, I am transmitting it to you for printing as a Committee document.

With best regards,

Sincerely,

Jacob K. Javits
Ranking Minority Member

The Honorable Harrison A. Williams, Jr.
Chairman
Senate Committee on Labor and Public
Welfare
4230 Dirksen Office Building
Washington, D.C. 20510

Desegregation and the Cities—The Trends and the Policy Choices

(By Gary Orfield)

During the 1960's the problems of the cities received active attention from Congress and the Executive Branch for a few years. Increased awareness of the defects of city life and the momentum of the Southern civil rights movement helped produce a spate of new programs and new urban policies. The poverty program, the Elementary and Secondary Education Act, Model Cities, the 1968 housing programs, and enactment of a federal fair housing law all reflected a belief that the national government should provide leadership and assistance, though they failed to spell out any coherent strategy of urban development. The policies tried to upgrade troubled neighborhoods through special targeted assistance, to increase the voice of poor people in government, and to breach the ghetto walls through fair housing and home ownership programs.

These efforts, begun with great enthusiasm in the mid-1960's, were all in trouble by the early 1970's. The support for change was dissipated by conflict over Vietnam and by racial polarization growing out of the ghetto upheavals of the 1965–68 period and the emergence of the black power movement. Influential academics contributed to the climate of skepticism with research and analysis arguing that existing programs were failing and that successful social and educational reforms are extraordinarily difficult. Soon the promising new subsidized housing programs would be blighted with evidence of widespread mismanagement and corruption.

One last eloquent expression of the spirit of the 1960's came in the 1968 report of the National Commission on Civil Disorders. That report, graphically describing the rapid crystallization of separate and unequal, racially defined, urban societies, warned of future racial troubles. The dominant racial issue in the 1968 election, however, grew not out of the prophecy of the Kerner Commission but from the extraordinarily successful third party campaign of George Wallace.

Wallace's major promise was to slow desegregation enforcement, and busing was a special target.[1] The issue soon entered the major party campaigns and advocates found themselves on the defensive.

During the past eight years Congress and the Executive Branch have devoted much attention to proposals to prevent urban school desegregation as well as to finding answers to the problems of spreading segregation and inequality in massive ghettos and barrios. The Kerner Commission recommended that the nation simultaneously pursue strategies of ghetto improvement and of integration. In fact,

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[1] Daniel A. Mazmanian, "Third Parties in Presidential Elections" (Washington: Brookings Institution, 1974), pp. 85–87.

we have pursued a policy of cutting back on many urban assistance programs and not enforcing our civil rights laws.

Although many argue that ugrading the inner city would be preferable to desegregation, the budget figures show that this is a receding priority. The national housing goals established in 1968 have not been met and there has been only one program to produce subsidized housing for poor people since the Presidential moratorium in January 1973.[2] This program, known as "section 8", was established in 1974 and has produced only 7300 new or substantially rehabilitated dwellings to this point. The most important compensatory education program, ESEA Title I, received 7 percent less money (in dollars of constant value) in fiscal year 1976 than it received in its first year. Allowing for inflation, this program has shrunk by a seventh since 1973.[3] At the same time revenue sharing and block grants have become increasingly important resulting in a spreading out of funds to all areas of the country, regardless of need, and diluting funds for the cities. As the urban crisis has intensified, distribution formulas have been changed to give the suburbs a growing share of federal grant funds.

Federal agencies have done little to study the trend of spreading segregation in this decade. The Census Bureau has not analyzed urban segregation trends since its work for the Kerner Commission and is only beginning to plan such work for the 1980s.[4] HUD programs continue to be operated without analysis of their impact on segregation, in spite of court decisions finding past HUD programs partially responsible for patterns of racial segregation.[5] HEW collected no school segregation statistics for the 1975–76 school year and only belatedly decided to collect such data for this year after pressure from Congress and civil rights organizations.

During 1973, a federal court found HEW guilty of intentional nonenforcement of the 1964 Civil Rights Act in the schools of the Southern and Border states.[6] Federal Judge John Sirica reached a similar conclusion about HEW's record in the North and West in the case of *Brown* v. *Mathews*, (Civ. Action 75–1068, July 20, 1976). The declining activity in investigating Northern segregation is apparent in the following table.

TABLE I.—*Compliance reviews initiated in northern and western school districts*

Year:	*Number*
1969	16
1970	15
1971	11
1972	9
1973	1

Source: Center for National Policy Review, "Justice Delayed and Denied," p. 46.

As the Supreme Court made the Constitutional requirements for urban desegregation increasingly clear, HEW did less and less. Congress,

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[2] Memorandum from Secretary George Romney to HUD Regional Administrators, Jan. 8, 1973.

[3] Statistics prepared by the Congressional Research Service. See full table in "Desegregation and the Cities: Part XI," Congressional Record, May 27, 1976, p. S 8154.

[4] Letter from Census Bureau Director Vincent P. Barabba to Senator Jacob Javits, May 27, 1976.

[5] *Gautreaux* v. *Romney*, 448 F. 2d 731 (1971); *Shannon* v. *HUD*, 436 F. 2d 809 (1970); HUD could provide no current information on the impact of its major housing programs in 1976. (Letter from Carla Hills to Senator Edward Brooke, May 29, 1976).

[6] *Adams* v. *Richardson*, 351 F. Supp. 636; 480 F. 2d 1159.

through the enactment of amendments in 1974 and 1976 diluted HEW's civil rights enforcement authority so that HEW now cannot withhold federal funds to require transportation of students beyond the school nearest their home.

Even in case-by-case litigation, the Justice Department moved into opposition on a number of the most important school cases. Justice argued for delay of rural Southern desegregation in 1969 (*Alexander* v. *Holmes*, 369 U.S. 19), against city-wide desegregation in the South in 1971 (*Swann* v. *Charlotte-Mecklenburg*, 402 U.S. 1), and against a similar order in the North in 1973 (*Keyes* v. *School District No. 1, Denver, Colo.*, 413 U.S. 189). The Justice Department also opposed civil rights litigants in the most important recent Supreme Court housing case, concerning intentional segregation of federally subsidized housing in the Chicago metropolitan area (*Hills* v. *Gautreaux*, No. 74–1047).

The failure of the legislative and executive branches to adequately recognize and remedy the problem of spreading *de jure* segregation of our cities has left the burden almost completely on the courts. It has been in courtrooms, not in hearings or in agency reports that the evidence of intentional segregation has been received and analyzed. Since administrators and experienced legislators have refused to act, it has been judges who have had to craft solutions to government-sanctioned segregation.

This paper will attempt to pose the issues and policy choices in a legislative framework. First, it will review statistics on segregation trends. Second, it will briefly summarize the law of school and housing desegregation. Third, it reports on current federal enforcement efforts. In the remaining sections it analyzes barriers to integration and outlines first steps toward a Congressional policy supporting urban desegregation.

PART I: TRENDS IN SEGREGATION

Our metropolitan areas continue to show very high concentrations of blacks in all parts of the country and of Latinos in a number of cities. There is a continued rapid expansion of ghetto and "barrio" boundaries. Although black suburbanization increased in the 1960's and 1970's, today segregation of blacks is on a scale never before encountered in our cities.[7] The wall of racial separation may be becoming slightly more permeable on the way out, but the trends indicate that the great majority of blacks and many Latinos will be segregated into the indefinite future. Harvard Professor Thomas Pettigrew recently estimated that, projecting the rate of residential desegration of the 1960's, "racial desegregation in housing would effectively take hold in about four to five centuries." [8]

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[7] Earlier ethnic groups tended to cluster but to experience diminished geographic concentration over the generations. Blacks experienced increasingly intense segregation. As late as 1910, for instance, Italians were more segregated than blacks in Chicago. (Allan H. Spear, "Black Chicago" (Chicago: University of Chicago Press, 1967), pp. 44–19.) Formation of the ghetto system after World War I in major cities brought unprecedented levels of forced racial separation. For comparative figures of contemporary concentration of big city ethnic populations see Avery M. Guest and James A. Week, "Ethnic Residential Segregation: Patterns of Change," American Journal of Sociology, Vol. 81 (March 1976).

[8] U.S. Commission on Civil Rights, "*Milliken* v. *Bradley:* The Implications for Metropolitan Desegregation," 1974, p. 65.

School segregation tends to be more severe than housing segregation for several reasons. First, central city whites tend to be much older than central city blacks and Latinos and have proportionately far fewer school age children.[9] Second, many whites but few minority families send their children to parochial and private schools in big cities.[10] Third, more than two-fifths of all black children live in female-headed families, usually with income levels so low that no escape from ghetto housing is possible.[11] Thus the concentration of minority children in central city schools is usually much higher than the city's percentage of minority residents. The problem is exaccerbated by a marked tendency for young white families to leave central cities.[12]

Merely to prevent worsening of central city school segregation, it would be necessary to accelerate substantially minority suburbanization and to generate a significant in-migration of white families into central cities. At the present time, there is no national policy or effort to accomplish either objective.

Trends in housing segregation

The record of the 1960's, reflected in the 1970 Census, suggests that the mere existence of fair housing laws cannot be expected to make more than a very marginal impact on housing segregation. Although the federal law was only enacted in 1968, regulation of some sectors of the housing market began in Connecticut in 1949 and by 1959 several states had fair housing laws covering private housing.[13] President Kennedy's 1962 executive order against housing discrimination covered a significant fraction of the new housing market. By 1963 there were state laws in a number of the nation's largest states and city ordinances in a growing list of major cities. The states covered included Massachusetts, New York, California, Pennsylvania, Michigan, and several others.[14] Since some of the state and local enforcement agencies actually possessed more extensive enforcement powers than those eventually granted to HUD, there should have been a visible impact in the form of changing housing patterns in some major states by 1970.

The 1960's was a period conducive to change in other respects. The 1960's, in contrast to the 1970's saw both low unemployment and a substantial increase in black income relative to that of white families. It was a period of rapid movement to a large supply of new suburban housing and of mortgage financing that was far more favorable than during this decade. It was the decade of the most powerful integrationist movement in American history and of enactment of major civil

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[9] U.S. Department of Agriculture Economic Research Service/."Social and Economic Characteristics of the Population in Metro and Nonmetro Counties, 1970," p. 15.

[10] Diane B. Gertler and Linda A. Barker, "Statistics of Nonpublic Elementary and Secondary Schools, 1970–71" (Washington: GPO, 1973), pp. 14–17.

[11] U.S. Bureau of the Census, "The Social and Economic Status of the Black Population in the United States 1973" (Washington: GPO, 1974), p. 72. Only 56 percent of black children, in contrast to 89 percent of white children lived with two parents in 1973.

[12] Larry H. Long, "How the Racial Composition of Cities Changes," Land Economics (August 1975), pp. 263–64.

[13] Milton R. Konvitz with Theodore Leskes, "A Century of Civil Rights" (New York: Columbia University Press, 1961), pp. 236–237.

[14] Duane Lockard, "Toward Equal Opportunity" (New York: Macmillan, 1968), pp. 24, 118.

rights legislation at all levels of government. The polls showed a widespread black desire to live in integrated neighborhoods.[15]

Yet, in 1970, the black percentage of surburban residents remained about what it had been twenty years earlier.[16] The percentage of nonwhite residents rose in virtually every major city.[17] The changes were the most rapid and dramatic in the older central cities of the East.[18] Even as the ghettos and the barrios expanded, the financial burden of maintaining services in the older cities grew more and more onerous.[19]

Block-by-block analysis of changes in residential patterns during the 1960's by University of Wisconsin scholars Karl Taeuber, Annemette Sorensen, and Leslie Hollingsworth, Jr. showed clearly that segregation remained very high in 1970. In the great majority of the 109 cities studied, more than eight-tenths of all black residents would have had to move to achieve completely integrated neighborhoods. Though there were small declines in segregation during the 1960's within most central cities, ten actually saw segregation become more intense.[20] When the entire metropolitan community was considered, the segregation level was even higher in nine-tenths of the Northern urban complexes.[21]

The fact that the basic information on residential segregation comes from Census data collected only once a decade means that the residential segregation statistics are hard to interpret. Minority residents may be living on predominantly white blocks either because a block is stably integrated or because it is beginning to undergo transition from part of a white neighborhood to part of a ghetto or barrio. In the past, most communities which appeared integrated in one Census were segregated in later Censuses.[22] Thus, what appears to be a slight decline in segregation could actually turn out to be a slight increase in the rate and range of ghetto expansion. This means that the figures derived from the 1970 Census probably tend to present an overly optimistic picture of the rate at which housing integration is occurring.

The suburbs around most big cities showed gains in the 1960's in minority group residents but the white population was growing so rapidly that the percentages remained about the same. The relatively large growth in black suburbanization was limited to a handful of metropolitan areas during the 1960's, particularly the New York, Los Angeles, Washington and Cleveland areas.[23] Detailed studies of black

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[15] Surveys conducted during the '60s showed the following trend of black preferences for living in a mixed neighborhood as opposed to a black neighborhood:
Blacks preferring mixed neighborhoods: 1963, 64 percent; 1966, 68 percent; 1969, 74 percent. (Source: Peter Goldman, "Report from Black America" (New York: Simon and Shuster, 1971), p. 179.

[16] Long, pp. 263–65.

[17] *Ibid.*, pp. 263–64.

[18] U.S. Bureau of the Census, "United States Summary, Final Report, General Demographic Trends for Metropolitan Area, 1960 to 1970," PHC (2)–1, pp. 4–5.

[19] Advisory Commission on Intergovernmental Relations, "Regional Decision Making: New Strategies for Substate Districts" (Washington: GPO, 1973), p. 7.

[20] Annemette Sørensen, Karl E. Taeuber, and Leslie J. Hollingsworth, Jr., "Indexes of Racial Residential Segregation for 109 Cities in the United States, 1940 to 1970," Institute for Research on Poverty Discussion Papers, 1974, pp. 7–9.

[21] *Ibid.*

[22] Otis Dudley Duncan and Beverly Duncan, "Stages of Succession," in Robert K. Yin (ed.), "The City in the Seventies" (Itasca, Ill.: Peacock Publishers, 1972), pp. 65–69.

[23] Albert I. Hermalin and Reynolds Farley, "The Potential for Residential Integration in Cities and Suburbs," American Sociological Review, Vol. 38 (October 1973), p. 599.

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suburbanization in some metropolitan communities showed that it was usually happening on a segregated basis.[24] In Los Angeles, Washington, Newark, and other cities the central city ghettos were simply growing out into some inner suburbs. Elsewhere old black subdivisions or small towns were becoming focal points for the development of small suburban ghettos. Perhaps the most worrisome trend was the tendency for some communities that had pioneered suburban open housing to be defined by realtors as transitional communities and used as focal points for channeling black homebuyers seeking to escape ghetto conditions.[25] The data demonstrated, according to Prof. Karl Taeuber, that "the suburbanization to date has occurred with the same racially discriminatory channeling of black residents into selected localities that characterizes central cities." [26]

An important Urban Institute Study, "The Urban Predicament," has produced discouraging information on trends in segregation on a metropolitan basis. In contrast to earlier research, this 1976 study by Frank deLeeuw, Ann Schnare, and Raymond Struyk, devised two measures to show whether entire metropolitan complexes were moving toward less intense residential separation. Each of the indices showed that segregation had increased between 1960 and 1970 in the metropolitan areas of the four major states which were analyzed. If such a trend is confirmed by further research and appears in the 1980 Census data policy-makers would be faced with the fact that fair housing is such a weak influence that it could not even forestall an increase in the momentum of racial segregation.

Economic exclusion of black families from the suburban housing market is a very serious problem for many low-income families, but it is not a sufficient explanation for the intense segregation observed in most metropolitan areas. Exclusionary zoning, minimum lot sizes, and many other land use and building code requirements tended to price most families of all races out of the market for new housing by the early 1970s.

It is a mistake, however, to look only at the average price of new housing in evaluating the possibility of access to the suburbs. The great bulk of surburban housing at any time was built years earlier. Particularly in the inner suburbs the price may be much lower.

University of Michigan Professor Reynolds Farley examined the housing statistics in metropolitan Detroit to determine how much of the racial segregation could be explained by differences in income. His calculations show that three-fourths of the city's blacks would live in the suburbs if income were the only consideration. Even in the large industrial suburbs with relatively low cost housing near big auto plants employing many black workers, blacks were almost totally excluded.[27]

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[24] This pattern was evident in studies of the Detroit metropolitan area by Prof. Reynolds Farley of the University of Michigan, of the Washington area by the Washington Center for Metropolitan Studies, and by Solomon Sutker and Sara Smith Sutker in the St. Louis metropolitan area.

[25] This trend has been observed in the St. Louis suburb of University City, in the Washington suburb of Prince George's County, Md., in the New York suburb of Teaneck, N.J., and elsewhere.

[26] Taeuber, "Racial Segregation: The Persisting Dilemma," p. 95.

[27] See note 24, *supra.*

Harvard University economists John F. Kain and John M. Quigley have found that confinement to the ghetto housing market where there are often few suitable opportunities for purchase of a family home largely accounts for the fact that blacks are far less likely than whites with similar incomes to be homeowners. This means that black families receive far less estate tax shelter and is a major reason why black families accumulate less wealth than similarly situated white families.[28]

Existing housing in the suburbs is far more segregated than it should be if income had determined population distribution. That segregation now has a self-sustaining momentum since escalation of housing costs in recent years has now priced a large majority of whites and an even larger majority of blacks out of the market in new subdivisions. Moreover, black families denied the opportunity to build up an equity through previous home ownership or through ownership of inferior ghetto housing stock face rapidly increasing down payment costs on existing homes.

With few exceptions, the old patterns of confinement, steering, ghetto expansion and racial transition continue to hold. There is little in the dynamics of the urban dual housing markets that suggest any break in the picture. The federal enforcement effort, to be discussed later in this paper, has had little discernible effect. Without major policy and administrative changes there is no likelihood that the development of integrated neighborhoods will obviate the need for school busing.

Trends in school segregation.—When the Supreme Court ruled against school segregation in 1954, a substantial majority of the nation's black children attended school in the seventeen states of the South and the Border region where total racial separation was required by state law.[29] In a number of other states there had been state laws permitting official segregation until shortly before the Court acted.[30] Not until after World War II were there court decisions against the common practice of open segregation of Mexican Americans in some parts of the Southwest. The law, in many instances, had to come to terms with conditions of total and degrading segregation.

Until the end of the 1960's the task of breaking this kind of school pattern and repairing its continuing effects were the central problems in school desegregation. Only sporadic local attention was given to the cities. Even in the cities where the local civil rights movements demanded desegregation, the demands tended to focus on ending gerrymandering, using vacant space in white schools to relieve over-

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[28] John Kain, ed., "Progress Report on the Development of the NBER Urban Simulation Model and Interim Analyses of the Housing Allowance Programs" (Cambridge, Mass.: National Bureau of Economic Research, 1974), pp. 179–181.

[29] There were segregation laws in the following States, Maryland, Illinois, West Virginia, Oklahoma, Missouri, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Tennessee, Kentucky, and the District of Columbia.

[30] There were State laws authorizing operation of separate but equal schools in New Mexico and Wyoming in 1954, in Indiana until 1949, and in New York until 1938. Practices of State school officials in New Jersey, Illinois and some other states accepted the operation of racially defined schools in some districts, schools set aside for black children only. (U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools," 1967, pp. 42–43.)

crowded black schools, pairing black and white schools across ghetto boundaries, and other relatively modest proposals. Rarely was there a demand for total systemwide desegregation.

Many of the largest urban school systems in the North and West didn't even collect and publish racial statistics. Sometimes it was not permitted by state law. Not until 1968 did HEW collect and release this information on a nationwide basis.

The statistics showed both rapid progress in dismantling the dual school system of the South and intense and unchanging segregation in the urban North. By 1970 Southern schools had become more integrated than those in the North and West. By 1972 a Southern black pupil was 53 percent more likely than his Northern counterpart to be attending a predominantly white school.[31] From 1964 through the early 1970's Southern integration soared while the North remained virtually untouched.

The most recent available segregation statistics are from the 1974–75 school year and were released by HEW in response to a request from Senators Jacob Javits and Edward Brooke.[32] (HEW did not collect any statistics during the 1975–76 school year.)

HEW statistics on trends in segregation of blacks and Latinos in the 1970's show modest declines in segregation of blacks, very largely confined to the South, and general increases in segregation of Latinos. Both groups, however, remain very highly segregated in most regions.

The following analysis of enrollment trends is limited to those school districts that filed enrollment statistics in each of the five school years from 1970–71 to 1974–75, districts which contain more than nine-tenths of black students and almost three-fourths of those with Spanish surnames. Although the statistics covered some 6.1 million black children and 1.9 million Latinos in 1974, they omitted some small districts (which tend to be less segregated) and thus may tend to somewhat overstate the absolute level of segregation.[33] By examining the year-to-year trends from the same group of school districts, however, it is possible to clearly discern the basic trends affecting most minority students, particularly those in the urban school systems.

The statistics show that the gap between the South and the North continues to widen. The South, which was the most segregated region of the country through the 1960's is now the most integrated, by a large margin. More than 44 percent of Southern blacks were in predominantly white English-speaking schools by 1974. In the most segregated regions, the Midwest and the Northeast, the figure was only 19 percent. The Northeast is the only region of the country where segregation became more extreme during the 1970's. The only significant positive change occurred in the Southern and Border states.

The regional differences are even more dramatic when one examines cases of extreme segregation. In the Midwest 45 percent of all black children are in 99–100 percent minority schools. Such schools contain

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[31] HEW Office for Civil Rights, News Release, Apr. 12, 1973.

[32] Senators Brooke and Javits made the request in a Mar. 30, 1976 letter to Martin Gerry, Acting Director of the Office for Civil Rights. They reelased the summary statistics and a brief summary of the results on June 20, 1976. The following section of this paper is drawn from that summary.

[33] The statistics for fall 1974 were still not complete and edited for all the districts in the spring of 1976. New York City, for example, had still not filed reports on some schools.

about a third of the black students in the Northeast and a fourth in the West. In the South, however, where virtually all black students were in such schools in the late 1950's, only one in seven remained in 1974. Similarly, proportionate concentration of black students in schools with more than 90 percent minority enrollment is more than twice as high in the Northeast and Midwest than in the South.

The statistics show clearly that the desegregation enforcement effort in the South has had a major and lasting impact, making the region that was far the most segregated into the pioneer of educational integration. Much of the change in the Southern and Border states during the 1970's is the direct result of busing plans.

Busing plans did not always require significant additional busing. Much of the desegregation in the South was accomplished, particularly in rural areas, by turning existing buses in different directions. Since the South had been serving its dual school system with a set of overlapping segregated bus systems, the process often brought a reduction in the previous level of busing outside the big cities.[34] An HEW-financed computerized analysis of school enrollment and transportation plans across the country in 1972 showed that very substantial desegregation could be achieved in most school systems by rerouting existing buses.[35] Since 52 percent of all American school children rode buses to school in 1972–73, the real question was often not whether a child would be bused but where.

While the South achieved large increases in integration, often with little changes in the level of busing, the North and West showed no overall decline in segregation in the 1970's. Very modest improvements in the West and Midwest were offset by significant increases in segregation in the Northwest.

TABLE 2.—PROPORTION OF BLACK CHILDREN IN PREDOMINANTLY MINORITY PUBLIC SCHOOLS, 1970–74

[In percent]

	1970	1972	1974
National	70.6	67.6	66.8
South	62.1	56.2	55.5
Border and District of Columbia	78.5	75.1	71.9
Northeast	78.7	79.6	81.0
Midwest	83.2	81.5	80.6
West	74.3	73.6	73.4

Note: The statistics in this table are based on enrollment reports from districts estimated to contain approximately 92 percent of the Nation's black students in 1972–73.

Source: HEW Office for Civil Rights, May 1976.

The gap between the older urbanized states of the East and the Midwest and the desegregated states of the South was even more dramatic in the cases of intense segregation. While less than a fourth of the black children of the South were in schools with more than 90 percent minority pupils, almost two-thirds of blacks in the Midwest were intensely segregated.

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[34] Eldridge J. Gendron, "Busing in Florida: Before and After," Integrated Education, March–April 1972, pp. 3–5.

[35] Lambda Corporation, "School Desegregation With Minimum Busing," report submitted to HEW, Dec. 10, 1971.

TABLE 3.—PROPORTION OF BLACK CHILDREN IN INTENSELY SEGREGATED SCHOOLS (90 TO 100 PERCENT MINORITY ENROLLMENT)

[In percent]

	1970	1972	1974
South	34.2	25.7	23.4
Border and District of Columbia	63.9	61.8	58.4
West	50.5	46.9	45.1
Northeast	52.5	54.6	57.8
Midwest	64.4	62.9	62.2
National	46.4	42.0	40.5

Note: The statistics in this table are based on enrollment reports from districts which contained an estimated 92 percent of the Nation's black enrollment according to universe projections based on 1972–73 enrollment reports.

Source: HEW Office for Civil Rights, May 1976.

Black students outside the South are particularly dependent upon a relatively small number of big cities. Latino children are also substantially more concentrated in these systems than Anglos. If the existing demographic trends continue, a growing number of these districts will become largely minority and largely low-income in their enrollment patterns.

TABLE 4.—*Percentage minority enrollment in selected large city systems, 1974–75*

	Percent
Cities:	
Los Angeles	58
Chicago	71
Philadelphia	66
Detroit	74
Dade (Miami)	56
Baltimore	72
Cleveland	60
District of Columbia	96
St. Louis	70
Atlanta	85
Newark	89

Source: HEW Office for Civil Rights, "Elementary and Secondary School Civil Rights Survey, fall 1974."

HEW enrollment statistics revealed not only that segregation of blacks remained very high outside the South, but also that the rapidly growing population of Hispanic children was confronting very high levels of segregation and that this segregation was continuing to worsen in the 1970's. By 1974, Spanish-surname children in HEW's sample of districts were actually more likely to attend predominantly minority schools than black children. While the national figures for blacks had been improved by the civil rights drive in the South there had been no similar campaign for Latino desegregation. The proportion of Latino children in minority dominated schools was stable or rising in every region of the country.

Half of the Latino children were enrolled in schools where 70 percent or more of the children came from minority groups. Hispanic children were less likely than blacks to be in schools with 90–100 percent minority students, but this trend was developing in some regions. Most striking was the rapid increase from 12 to 21 percent of Latino children in intensely segregated schools in the Midwest during this four year period.

TABLE 5.—PERCENTAGE OF LATINO CHILDREN IN PREDOMINANTLY MINORITY SCHOOLS, 1970–74

	1970	1972	1974
National	64.2	65.2	67.4
Northeast	84.2	83.1	84.2
South	72.6	72.3	72.8
Midwest	52.6	53.4	57.1
West	48.5	51.4	56.3

Note: The statistics in this and the following tables are based on enrollment, figures from districts estimated to contain 74 percent of the Nation's Latino students at the time of HEW's last universe projections, covering the 1972–73 school year. The data covers an estimated 87 percent of Latino enrollment in the Northeast, 82 percent in the South, 66 percent in the West, and 62 percent in the Midewst. The border State region is not reported because of low Latino enrollment and a low percentage coverage.

Source: HEW Office for Civil Rights, May 1976.

TABLE 6.—PROPORTION OF LATINO CHILDREN IN INTENSELY SEGREGATED SCHOOLS (90 TO 100 PERCENT MINORITY ENROLLMENT)

[In percent]

	1970	1972	1974
National	29.0	29.2	30.0
Northeast	50.0	50.5	53.8
Midwest	11.7	15.0	20.9
West	14.6	14.2	15.7
South	36.1	35.5	34.1

TABLE 7.—*1974 enrollment of Latino children in schools with 70 percent or more minority children*

	Percent
National	50.0
Northeast	71.7
South	56.8
Midwest	40.8
West	34.9

Source: HEW Office for Civil Rights, May 1976.

The school statistics reinforced the message of the housing statistics. There was no chance that the problem of segregation would spontaneously go away or that naturally integrated neighborhoods would begin to produce naturally integrated schools because a national policy of fair housing had been declared. Desegregation on a significant scale was taking place only where an explicit decision had been taken, by federal agencies or courts, to enforce integration. Elsewhere, conditions were stagnant, at very high levels of segregation, or even worsening. The segregation affected not only the millions of black children in the nation's ghettos but also the Puerto Ricans, Mexican Americans and other Hispanic groups finding a place in the old central cities.

Does school desegregation increase residential segregation? The white flight controversy.—When school desegregation litigation is filed to end high levels of *de jure* segregation some scholars argue that the result is only to accelerate the residential resegregation of the central city. The long-standing and steep decline of central city white population and the more rapid fall of white public school enrollment in our older central cities has been a major concern of students of urban policy and of local leaders since World War II. These patterns continue to hold and are now at the stage of transforming the racial character of entire cities and entire large urban school systems.

There have been many reasons for the emergence of this strong pattern, of course. Low cost, low down payment subdivisions drew away from the cities many young white families in the post-war period. A vast migration of blacks from the South and Latinos from Puerto Rico, Mexico, Cuba, and elsewhere produced spreading minority concentrations. The decline of city services and the rise of city crime and city taxes intensified the trends. The massive movement of manufacturing and commercial jobs to the suburbs was a major force drawing out those who were allowed to buy suburban housing. There were many other influences.[36]

Today the influence of migration has greatly declined. In the 1970's there may even be net black migration to the South and a net return migration to Puerto Rico. (Although illegal immigration of other Latino groups does continue to be a major influence.) Black birth rates have declined sharply but the Latino birth rate still remains far above the national average.[37] The disproportionate minority population growth now reflects, in good measure, the fact that the minority population is much younger in many central cities.

The most important single factor increasing the racial concentration in central cities has nothing to do with the demographics of the minority community. Minority percentages in the schools are rising largely because of the rapid decline in numbers of white children. This decline reflects both continued rapid flight to the suburbs and the aging of the urban white population.[38] If these trends continue, the nation's older cities, particularly in the East and Midwest, can be expected to develop overwhelmingly black and Hispanic school systems.

During the past year there has been intense discussion of a claim by sociologist James Coleman that implementing school desegregation plans speeds the migration of big city whites to suburbs. Coleman's April 1975 article has frequently been cited in Congress as proof that busing has failed.[39] This argument has carried particular force because of Coleman's famous 1966 study on the educational impact of desegregation.

Coleman's study and his results are actually far more limited than is commonly believed and both the research and the policy conclusions have been attacked by a number of social scientists working on school desegregation. First of all, Coleman's study is neither an analysis of educational change nor of the impact of busing on white flight. It is merely an analysis of patterns of change in enrollment statistics. Coleman observes a statistical relationship between growing numbers of black students in schools and increasingly rapid declines in white enrollment. Second, the study has nothing to do with court orders.

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[36] HEW National Center for Education Statistics, "Statistics of State School Systems," accompanying letter to Senators Edward Brooke and Jacob Javits from W. Vance Grant, Apr. 14, 1976.

[37] U.S. Bureau of the Census, "Persons of Spanish Origin in the United States, March 1973." Current Population Reports, Series P–20, No. 259, January 1974.

[38] Reynolds Farley, "Residential Segregation and Its Implications for School Integration," Law and Contemporary Problems, Vol. 39 (Winter 1975), pp. 164–193, reprinted in "Desegregation and the Cities, Part VII," Congressional Record, May 20, 1976, pp. S7646–S7651.

[39] Coleman's research has been published, in successive versions, in many different publications. For a relatively current summary of the results and interpretation of the policy implications, see: Social Policy, January–February 1976. This special issue includes Coleman's article "Liberty and Equality in School Desegregation," and a number of articles by other scholars working on this issue. A selection of these articles and other important commentaries on the debate can be found in "Desegregation and the Cities, Part III," Congressional Record, May 11, 1976, pp. 86875–86887.

Indeed, most of the large cities Coleman studied have never had a court order nor have engaged in busing on any scale. Third, Coleman's findings on white flight do not apply to the great majority of American school districts. Coleman's research finds a substantial white flight problem only in the 22 largest school systems.

A number of scholars have criticized both Coleman's method of research and his interpretations of the findings.[40] Professor Christine Rossell of Boston University studied plans which had actually been implemented and found no significant change in the previously existing enrollment trends.[41] Parents interviewed in a number of Florida districts with large-scale busing plans showed little tendency toward white flight, according to Professors Everett Cataldo, Douglas S. Gatlin, and Michael Giles of Florida Atlantic University. This study found a small increase in private school enrollment but only in the first year of desegregation and only when a white child was transferred to a school with more than 30 percent black enrollment. Whether or not a child was bused made no difference.[42] Coleman's methods and conclusions were hotly criticized by Professors Thomas Pettigrew of Harvard and Robert Green of Michigan State. Among other things, they argued that the data showed that metropolitan desegregation plans were highly stable and that Coleman should have recommended this approach if his central concern was stable integration.[43] Coleman concedes that such plans produce stable integration but opposes them on legal and philosophic grounds completely unrelated to his white flight research. (An important recent article by Noel Epstein documents Coleman's mistaken belief that the courts have ordered busing in districts with very little evidence of de jure segregation.[44])

The Coleman article, which has been described as the death knell of busing, actually amounts to a widely disputed argument about the short-run statistical relationship between the presence of more blacks in schools and the rate of white enrollment decline. If one concedes Coleman's argument one explains only a small fraction of urban white flight. If the courts were convinced that Coleman was right and that they should stop desegregating large city school systems, Coleman would not predict stability or integration in the central city, but only a slightly slower outward movement of the ghetto. The end result would be the same. The steady and rapid spread of segregation is very evident in large cities like Chicago, which never had a desegregation order and Atlanta, where the black leadership agreed to a "compromise" foregoing busing and very rapid white flight occurred anyway.

The fierce debate over Coleman's theory about the first year impact of desegregation has obscured a much more important research consensus. Both Coleman and his critics agree that demographic forces of

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[40] Reynolds Farley, "School Integration and White Flight," in Gary Orfield (ed.) Symposium on School Desegregation and White Flight (Washington: Center for National Policy Review, 1975), pp. 1–20.

[41] Christine H. Rossell, "School Desegregation and White Flight," Political Science Quarterly (Winter 1975–76), pp. 675–695.

[42] Michael W. Giles, Everett F. Cataldo, and Douglas S. Gatlin, "Desegregation and Private Schools," Social Policy (January–February 1976), pp. 46–48.

[43] Thomas F. Pettigrew and Robert L. Green, "School Desegregation in Large Cities: A Critique of the Coleman 'White Flight' Thesis," Harvard Educational Review (February 1976).

[44] Noel Epstein, "The Scholar as Confuser," Washington Post, February 15, 1976.

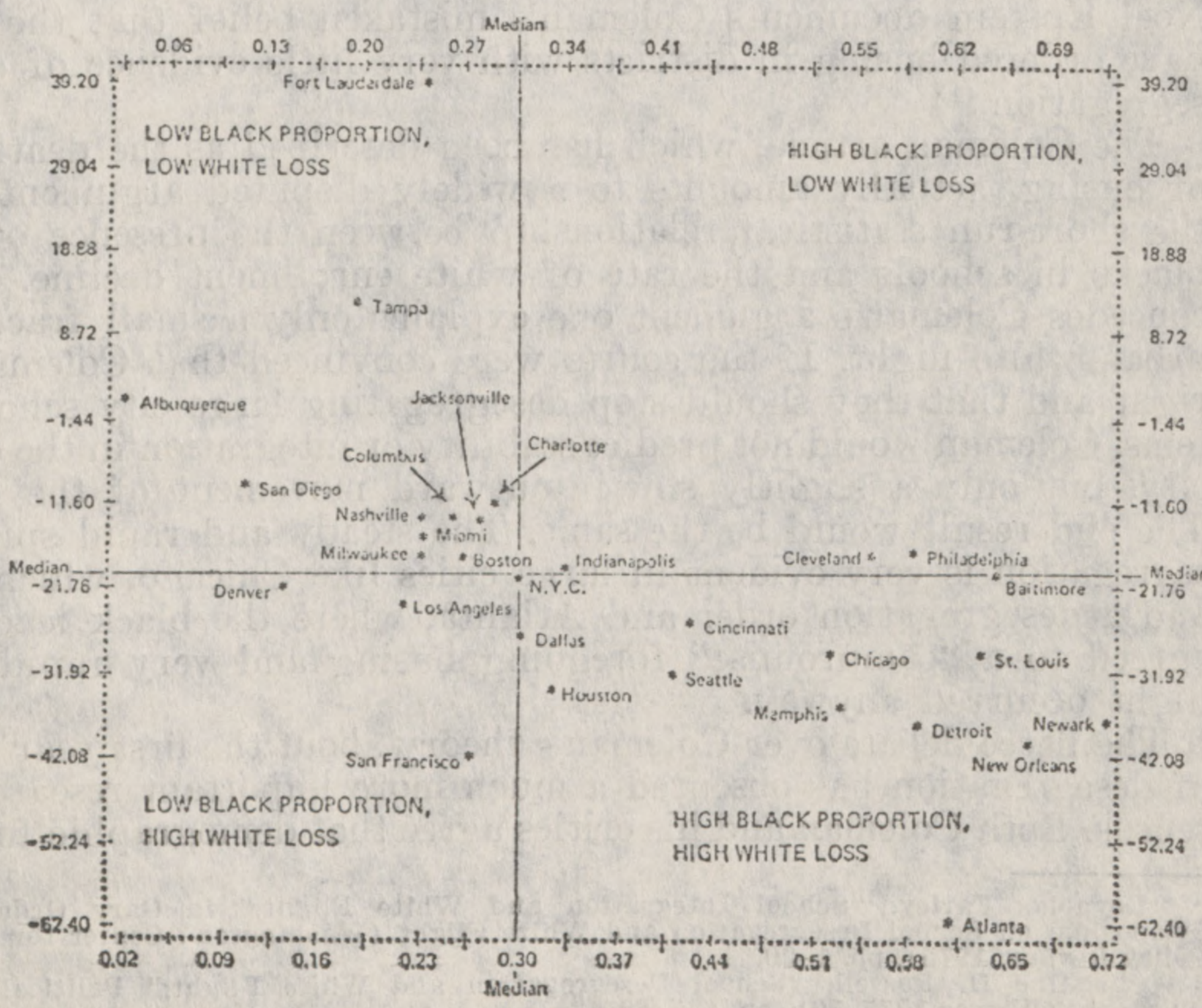
spreading segregation are very strong in the central cities and that their long-run effect is vastly greater than the possible impact of a school desegregation controversy. The movement toward black and Hispanic school systems in the older cities, with few whites and declining numbers of middle class minority children, is deep and rapid.

Short of basic policy changes to redirect demographic movements, in other words, the only real long-term choice in our older central cities may well be between massive segregation and some form of metropolitan desegregation. The white flight research, in other words, underlines the message emerging from research on housing segregation patterns. Segregation is continuing to spread.

Coleman and his critics reached the same conclusion on another issue of great importance—the stability of metropolitan desegregation. Because some states have county-wide school systems, metropolitan desegregation was implemented years ago in a number of the nation's largest school systems including almost all of Florida's rapidly growing urban centers, Charlotte, North Carolina, Nashville, Tenn., Las Vegas, Nev., Greenville, S. Carolina, and others. These systems, after virtually total desegregation, tended to hold white students better than many big city systems that remained almost completely segregated.

FIGURE I

Scatter Diagram of Proportion of Black Students in 1968 and White-Enrollment Losses, 1968–1973



Source: Pettigrew and Green, p. 37.

PART II: THE LAW

Constitutional law and school desegregation.—Beginning with *Brown* v. *Board of Education* twenty-three years ago, the Supreme Court has developed a clear set of general principles of school desegregation law. The 1954 *Brown* case, 347 U.S. 483 (1954), established the principle that schools segregated as a result of state action were "inherently unequal" and that this system must be changed. The Court's implementation decision the next year, however, concluded that the law should be applied flexibly and "with all deliberate speed" in individual localities. *Brown* v. *Board of Education*, 349 U.S. 294 (1955). Three years later, in the face of aroused resistance in Little Rock, the Court held that Constitutional rights must not be sacrificed because of the threat of local mob resistance. *Cooper* v. *Aaron*, 358 U.S. 1 (1958).

Not until 1968, fourteen years after the initial decision, did the Supreme Court move toward a clear definition of the goal of the desegregation process. In *Green* v. *New Kent County School Board*, 391 U.S. 430 (1968), the Court ruled that it was not enough to offer an opportunity for integration. In a system that had imposed segregation school officials had "the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." The next year, in *Alexander* v. *Holmes*, 396 U.S. 19 (1969), the Supreme Court laid to rest the "deliberate speed" doctrine, ordering immediate integration in 30 Mississippi districts.

The Court established the basic framework of urban desegregation law in a series of decisions from 1971 to the present. The 1971 decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), spelled out the obligations of cities in states with histories of official segregation. In these cities, the Court concluded unanimously, it was not enough to merely adopt a neighborhood school system. Cities which had imposed segregation had a constitutional obligation to end it, to produce schools that were actually integrated. Transporting students, the Court held, was an appropriate remedy, even in a large metropolitan district like Charlotte-Mecklenburg.

Not until 1973 did the Supreme Court decide its first case on segregation in a city outside the South. In *Keyes* v. *School District No. 1*, 413 U.S. 189 (1973) the Supreme Court established a standard of proof for showing *de jure* segregation outside the South, held that districts with *de jure* segregation in the North have the same obligation as those in the South, and ordered the desegregation of Mexican-American as well as black children. The Court ruled that wherever intentional segregation was proved in a significant part of a city the entire city must be presumed to be unconstitutionally segregated in the absence of evidence to the contrary. It held that intentional segregation in one area had reciprocal impacts on school and housing decisions in other parts of a community.

The *Keyes* decision meant that in most cities where litigation was filed federal judges would be empowered to order desegregation out to the city boundaries. The next question that arose concerned the

cities where judges found no remedy was possible inside the central city because the entire school system had become a racially identifiable institution in the metropolitan area. In such cases, judges faced a choice between the constitutional imperative of desegregation and the constitutional rights of autonomous local school systems. After the Supreme Court deadlocked on this issue in 1973, in the Richmond case, it reached a determination in the 1974 Detroit litigation, *Milliken* v. *Bradley*, 418 U.S. 717 (1974).

The Supreme Court, in the *Milliken* decision ruled that the lower courts had no authority to order desegregation across city-suburban boundary lines unless the lines had been established for segregationist reasons or policies of *de jure* segregation were responsible for the fact that white and minority children usually attended school on opposite sides of that boundary line. The sharply divided Court held, by a 5–4 margin, that desegregation in largely black schools would fulfill constitutional requirements even where the long-established demographic trends showed that there would be few white students remaining in the central city in a few years.

The decision set a very important limit to the powers of the lower federal courts. Another sign of limits to judicial power came in the 1976 decision, *Pasadena City Board of Education* v. *Spangler*, —— U.S. —— (1976). This decision held that the District Court had exceeded its authority in intervening years after the first order to require further school board action to overcome resegregation caused by demographic changes. Underlining one element of the 1971 *Swann* decision, the Supreme Court said that the duty of the courts was limited to initially disestablishing the dual school system. Once this job was finished, the high court reiterated, judges should not intervene again unless there were new constitutional violations.

The responsibilities and the limits of the federal courts in urban desegregation cases are now relatively clear. Contrary to popular beliefs, the courts may only act against *de jure* segregation. In most cases that have been tried, *de jure* segregation has been found but in some, including Grand Rapids and San Jose the judge held that the segregation was *de facto* and dismissed the case. The findings of various forms of unconstitutional action in a number of individual cases are summarized in the following table:

TABLE 8.—CONSTITUTIONAL VIOLATIONS FOUND IN SELECTED SCHOOL DESEGREGATION CASES

Case name and citation	Construction of new schools	Expansion of existing schools	Closing of schools	Changing attendance zones	Creation and/or utilizing feeder patterns	Open enrollment	Controlled transfer policy	Faculty segregation	Curriculum segregation college prep versus vocational	Busing	Failure to end de jure segregation	Other (see app. II)	City government	County government	State government
Johnson v. San Francisco Unified School District, 339 F. Supp. 1315 vacated on other grounds, 500 F. 2d 349 (9th Cir. 1974)	X	X		X				X							
Spangler v. Pasadena City Board of Education, 311 F. 2d 510 (C.D. Calif. 1970)	X	X	X	X			X	X		X	X	X			
Keyes v. School District No. 1, 413 U.S. 189 (1973) [Denver, Colo.]	X	X		X	X		X	X		X	X	X			
Evans v. Buchanan, 379 F. Supp. 1218 (D. Del. 1974) Wilmington—New Castle County) also 393 F. Supp. 428, aff'd 423 U.S. 963 (1975)				X							X				
United States v. School District 151, 286 F. Supp. 786 (N.D. Ill. 1968) aff'd 404 F. 2d 112 (7th Cir. 1968) [Cook County, Ill.]	X			X			X	X		X					
United States v. Board of School Commissioners of the city of Indianapolis, Ind., 368 F. Supp. 1199 (7th Cir. 1974)	X	X		X				X					X		X
Martin v. Evansville-Vanderburgh School Corp., 347 F. Supp. 816 (S.D. Ind. 1972)				X			X			X					
Downs v. Board of Education of Kansas City, Kans., 336 F. 2d 988 (10th Cir. 1964)				X	X		X	X							
Newburg Area Council v. Board of Education of Jefferson County, Ky., Haycraft v. Board of Education of Louisville, Ky., 489 F. 2d 925, reversed and remand, 510 F. 2d 1358 (1974)				X			X				X	X			
Vaughns v. Board of Education of Prince Georges County, 355 F. Supp. 1034, 1038, 1044, 1051 (D. Md. 1972)				X		X	X				X				
Morgan v. Kerrigan, 509 F. 2d 580 (1st Cir. 1974) cert. den., 421 U.S. 963 (1975) [Boston, Mass.]	X			X	X	X	X	X	X	X	X	X			
Berry v. School District of city of Benton Harbor, Mich., 505 F. 2d 238 (6th Cir. 1974)				X				X	X			X			
Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich. 1971) aff'd 484 F. 2d 215 (6th Cir. 1973), reversed, Milliken v. Bradley, 418 U.S. 717 (1974) [Detroit, Mich.]				X						X					
Davis v. School District of the city of Pontiac, Mich., 309 F. Supp. 734 (1970) (E.D. Mich. S.D. 1970)	X			X				X							
Oliver v. School District of Kalamazoo [Nos. 74–1104 and 74–1105] (6th Cir. Dec. 9, 1974) fact findings at 368 F. Supp. approx. 155 [Kalamazoo, Mich.]	X			X				X				X			
Booker v. Special School District No. 1, Minneapolis, Minn., 351 F. Supp. 799 (D. Minn. 1972)	X	X		X			X	X							
United States v. State of Missouri, 363 F. Supp. 739 (1973)											X	X			
United States v. School District of Omaha, Nebr., 521 F. 2d 530 (8th Cir. 1975)	X			X	X	X	X	X	X			X			
Kelly v. Guinn, 456 F. 2d 100 (9th Cir. 1972); cert. den., 413 U.S. 919 (1973) [Clark County, Nev.]	X	X	X					X				X			X

TABLE 8.—CONSTITUTIONAL VIOLATIONS FOUND IN SELECTED SCHOOL DESEGREGATION CASES—Continued

Case name and citation	Construction of new schools	Expansion of existing schools	Closing of schools	Changing attendance zones	Creation and/or utilizing feeder patterns	Open enrollment	Controlled transfer policy	Faculty segregation	Curriculum segregation college prep versus vocational	Busing	Failure to end de jure segregation	Other (see app. II)	City government	County government	State government
Fuller v. Volk, 230 F. Supp. (D. N.J. 1964); vacated on other grounds, 351 F. 2d 323 (3d Cir. 1965) [Englewood, N.J.]				X											
Blocker 4. Board of Education of Manhasset, N.Y., 226 F. Supp. 408 (E.D. N.Y. 1964)				X			X								
Branche v. Board of Education of Hempstead, N.Y., School District No. 1, 204 F. Supp. 150 (E.D. N.Y. 1962)							X								
Hart v. Community School Board, 512 F. 2d 37 (2d Cir. 1975) [New York City, N.Y.]	X			X	X										
Olson v. Board of Education of Union Free School District No. 12, 250 F. Supp. 1000 (E.D. N.Y. 1966), appeal dismissed, 367 F. 2d 565 (2d Cir. 1966) [Hempstead, N.Y.]				X											
Brinkman v. Gilligan, Dayton Board of Education (6th Cir.) 503 F. 2d 368 (1974)				X			X	X							
Clemons v. Board of Education of Hillsboro, Ohio, 228 F. 2d 853 (6th Cir. 1956); cert. den., Board of Education of Hillsboro v. Clemons, 350 U.S. 1006 (1956)				X											
Dowell v. School Board of Oklahoma City Public Schools, 219 F. Supp. 427 (D. Okla. 1963), aff'd 375 F. 2d 158 (10th Cir. 1967) cert. denied 387 U.S. 931, 338 F. Supp. 1256 (1972)							X		X						
United States v. Board of Education, 150 No. 1, 429 F. 2d 1253 (10th Cir. 1970) (Tulsa, Okla.) Later remedy litigation at 459 F. 2d 720 (10th Cir. 1972)	X	X					X	X			X				
Hoots v. Commonwealth of Pennsylvania, 359 F. Supp. 807 (W.D. Pa. 1973)													X	X	
Arvizu v. Waco I.S.D., 495 F. 2d 499, Prior decision 373 F. Supp. 1264 [Waco, Tex]						X		X			X				
Cisneros v. Corpus Christi Independent School District, 467 F. 2d 142 (5th Cir. 1972) affirming 324 F. Supp. 599 (S.D. Tex. 1970)	X	X		X			X	X		X		X			
Flax v. Potts, 464 F. 2d 865 (5th Cir. 1972), 333 F. Supp. 711; 450 F. 2d 1118 vacated, cert. denied 409 U.S. 1001 (1972), [Fort Worth, Tex]	X			X				X			X				
Morales v. Shannon, 516 F. 2d 411, [Uvalde, Tex]	X			X							X				
United States v. Midland Independent School District, Midland, Tex., 519 F. 2d 60 (5th Cir. 1975)				X			X								
United States v. Texas Education Agency, 467 F. 2d 848 (5th Cir. 1975) [Austin, Tex.]	X	X		X			X	X							
Hobson v. Hansen, 269 F. Supp. 401 (1967) [Washington, D.C.]				X				X	X		X	X			

Source: U.S. Commission on Civil Rights, June 2, 1976.

Once a constitutional violation is proven, the courts must desegregate the school district. Desegregation must be thorough within the affected district, but, except in extraordinary circumstances, the courts may neither intervene continuously after desegregation is accomplished nor cross school district lines to achieve metropolitan integration.

Statutory law and school desegregation.—The decisive event in desegregation of Southern schools was not a court decision but the enactment of the 1964 Civil Rights Act. This act required HEW to cut off federal aid funds from school districts which continued to practice unconstitutional segregation. At the same time, the 1964 law authorized the Justice Department to intervene in school cases. When HEW made clear its intention to enforce the law and the Justice Department showed that non-compliance with HEW guidelines might trigger a federal lawsuit, both the executive branch and the courts greatly accelerated the enforcement process. In the first year of guidelines enforcement much more was accomplished than in a decade of litigation. By the late 1960's desegregation in the rural South was nearing completion.[45]

Congress has devoted a great deal of time during the past ten years to annual struggles over urban school desegregation policy. Each year there has been one or more amendments to education bills or appropriations measures that have passed at least one house and have been intended to restrain either HEW or federal court enforcement activities. Since 1970 the Senate has joined the House in enacting a complex set of "anti-busing compromises." [46] Most of the legislation has had no discernible impact. The compromises have usually consisted of sharp restraints on the courts accompanied by language such as "except as constitutionally required." Since the courts never order desegregation unless they conclude that it is constitutionally required, the legislation was meaningless.[47]

During the past three years, however, Congress has enacted several measures that have had a definite impact on the desegregation process. The Education Amendments of 1974 contained two important sections. The first, the Esch amendment, directed the courts to minimize busing, as opposed to all other approaches, in achieving desegregation.[48] The courts have attempted to comply with this law and to order busing only when the remedies given higher priority cannot accomplish thorough desegregation.[49] Since many courts were following a similar procedure before the law was enacted, it has not brought a dramatic decline in the amount of busing in new desegregation plans.

A second provision of the 1974 law forebade HEW to order busing children beyond the next closest schools. Although HEW had never "ordered" busing but only withheld funds when districts were un-

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[45] Gary Orfield, "The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act" (New York: John Wiley, 1969); Leon E. Panetta and Peter Gall, "Bring Us Together" (Philadelphia: Lippincott, 1971.

[46] The history of this legislation is described in a summary prepared by the Congressional Research Service, which appears in "Desegregation and the Cities, Part XV," Congressional Record, pp. S8896–S8898.

[47] Frank Thompson and Daniel Pollitt, "Congressional Control of Judicial Remedies: President Nixon's Proposed Moratorium on 'Busing' Orders, "North Carolina Law Review, Vol. 50, 1972.

[48] The Esch amendment, titled "Equal Educational Opportunities and the Transportation of Students," appears in Title II, Public Law 93–380.

[49] Lesley Oelsner, "Levi Believes the Courts Try to Heed Busing Law," New York Times, June 17, 1976.

constitutionally segregated, HEW's Office for Civil Rights complied with the provision. This restriction was made both more clear and more absolute by enactment of the 1975 Byrd Amendment to a supplemental appropriations bill. This amendment prohibited any HEW requirements for busing.[50] HEW has complied with the restriction. (In fact, it was not enforcing urban desegregation earlier at any rate.[51]) The law did, however, prove to be a major constraint on HEW after a 1976 federal court decision ordered the agency to resume school desegregation enforcement in the North and West.

The sum total of Congressional accomplishments to date in developing urban desegregation policy has been a successful drive to remove HEW, the one alternative to judicial processes, from the enforcement process and to direct the courts to assign the lowest possible priority to busing. Since HEW was not enforcing desegregation in the cities before Congress acted and since the courts generally were trying to minimize busing, legislation has made little difference. Its chief significance, if the Byrd amendment becomes part of permanent legislation, is that it restrains the development of any positive executive branch involvement in developing desegregation plans if a future Administration wished to provide such leadership. There remains a major question about the constitutionality of federal legislation which now requires HEW to continue providing federal subsidies to school systems openly violating constitutional requirements.[52]

Housing desegregation law.—Congress and the Supreme Court both acted in 1968 to establish a national policy of an open market for housing. Congress established a national fair housing policy and set up a complex mechanism of investigation and conciliation in HUD. The 1968 Civil Rights Act also authorized Justice Department litigation against patterns and practices of housing discrimination.[53] The Supreme Court, in *Jones* v. *Mayer* recognized a broad right of citizens to go directly to federal court and sue against segregationist practices in the housing market.[54] In 1968, in other words, all three branches of government agreed on the proposition that individuals confronting segregation in housing should have a remedy.

Previous experience in the states and experience since 1968 on a national level, however, have demonstrated that the problem of housing segregation does not yield to case-by-case enforcement procedures. On the more complicated and more important issues of positive action for integrated housing, there is only a sketchy framework of national policy. The most important statement is the directive in the 1968 fair housing law that all federal housing and urban development programs shall be administered "in a manner affirmatively to further the purposes of this title." The purpose of the title was "to provide, within constitutional limits, for fair housing throughout the United States."[55] The failure to act on this broad directive for affirmative action will be discussed later in the paper.

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[50] The Byrd amendment was included in Public Law 94–2061, enacted over President Ford's veto. (The President vetoed the appropriations bill on fiscal grounds.)

[51] National Center for Policy Review, "Justice Delayed and Denied" (Washington, 1974).

[52] Many Senators had argued that such spending was unconstitutional even before the passage of the 1964 Civil Rights Act. This argument was made with reference to the Biden and Byrd amendments by Senator Hubert Humphrey, Congressional Record, September 26, 1975, pp. S16904–S16906. The Civil Rights Commission concluded in 1975 that such legislation is "probably unconstitutional." (*Ibid.*, p. S16906.

[53] Public Law 90–284, Title VIII.

[54] *Jones* v. *Mayer*, 392 U.S. 409 (1968).

[55] Public Law 90–284, Title VIII, Sec. 801, Sec. 808 (d).

Litigation on broader issues of housing discrimination and suburban exclusion has not been notably successful in recent years. There are a number of cases finding HUD and local public housing authorities administering federal urban programs guilty of *de jure* segregation of housing. The cases have failed to precipitate national action by HUD, however. Far the most important of these cases is the recently decided Supreme Court case, *Hills* v. *Gautreaux*, —— U.S. —— (1976), in which the Court recognized the authority of the Federal district court in Chicago to order some limited metropolitan housing desegregation given the special circumstances of the Chicago case. This decision grows out of a decade of litigation in Chicago and has no immediate impact elsewhere.[56]

Litigation on broad problems of suburban exclusion has made very little headway in the federal courts. The Supreme Court has sustained broadly construed zoning powers even when they are used in a way which effectively excludes the great bulk of minority families on economic grounds. It has made it difficult to establish standing to challenge zoning decisions and has sustained referendum procedures that tend to exclude public housing from many communities. It has sustained growth restraint policies that tend to exclude everyone not already in a community, even if the community has very few minority residents. It has rejected efforts to overturn property tax financing of local schools, though this is often a major justification for land use policies that exclude low and moderate income families from suburbia.[57] Formation of any national policy on these issues rests with Congress.

Until the issues of positive action to produce housing integration are addressed administratively and legislatively no significant change in housing patterns can be expected. Unless there is a substantial revival of housing subsidy programs, a positive policy for residential integration of low income black and Latino families is inconceivable. Much of the legal framework for an effective policy of residential integration is yet to be built.

PART III: ENFORCEMENT

The 1964 Civil Rights Act and the 1968 fair housing law created new federal enforcement procedures and assigned new civil rights responsibilities to HEW, HUD, and the Justice Department. For the first time the major federal agencies were responsible for acting against segregation in the nation's cities.

Although the executive branch enforcement activities had a very powerful impact on the desegregation of the rural South, none of the agencies has mounted a sustained or concerted campaign against illegal segregation in the cities of the North and West. In fact, there is considerable evidence to show that as urban segregation has expanded and the courts have tightened legal requirements, the desegregation efforts of government civil rights staffs have diminished and energies have been redirected toward other concerns. Housing desegregation programs have operated at a very low level, with most of the small staff devoted to processing of a few individual cases and very little

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[56] The decision and reactions to it are reprinted in "Desegregation and the Cities," Part II, Congressional Record, May 5, 1976, pp. S6574–83.

[57] *James* v. *Valtierra*, 91 S. Ct. 1331 (1971); *Village of Belle Terre* v. *Borass*, 42 LW 4475 (1974); *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973). The *Rodriquez* decision is reprinted in the Congressional Record, Apr. 5, 1973.

effort to measure or to change the racial impact of federal urban programs. The record in enforcing the requirements of the Supreme Court's urban school desegregation decisions has been even more limited.

Nonenforcement of school desegregation law.—Long before Congress acted to limit HEW's enforcement responsibilities the agency had stopped employing its fund cutoff procedures to encourage urban school systems to comply with Supreme Court desegregation decisions. The compliance machinery was very seldom used on behalf of desegregation after the Nixon Administration announced a policy of reliance on litigation for enforcement in the schools. The prohibition on busing plans became unambiguous when President Nixon announced a policy of detemined executive branch opposition to this approach in 1971 and threatened to fire any administration official supporting business requirements.[58]

HEW's record of non-enforcement of the requirements of the *Swann* decision was so clear that the Federal District Court and the Court of Appeals for the District of Columbia Circuit both found the department guilty of intentionally neglecting its duties under the 1964 Civil Rights Act. In the *Adams* v. *Richardson* cases the courts held that no argument of administrative discretion could justify HEW's record and issued unusual orders directing HEW to comply with its own procedures within specified time limits.[59] HEW did not attempt to appeal the decisions to Supreme Court.

Later a civil rights montoring agency, the Center for National Policy Review, obtained access to HEW's files on Northern and Western districts through Freedom of Information litigation. An exhaustive review of the extensive files documented HEW's failure to employ its enforcement machinery in the North and West. After issuance of the Center's report, "Justice Delayed and Denied," HEW Secretary Caspar Weinberger defended HEW's inaction by citing the intense public opposition to urban school desegregation in the North.[60] Later several major civil rights groups filed suit to attempt to force HEW to enforce the law, Judge John J. Sirica decided this case, *Brown* v. *Weinberger* last July. He held that HEW officials had "failed in their duties under both Title VI and their own regulations."

The Justice Department's record in urban school desegregation was almost as inconsequential. The Department filed its first cases in the North and West in 1968, including the important Pasadena and Indianpolis decisions. It filed no new cases after the Supreme Court's first decision affecting non-Southern cities, in 1973. More important, it opposed civil rights groups before the Supreme Court in a number of the leading cases after 1968. In 1969, in *Alexander*, the Department argued for delay in the rural South. Before the 1971 *Swann* decision, the Justice lawyers argued against city-wide desegregation in Charlotte. They urged the Supreme Court to order partial desegregation of the Denver schools before the 1973 *Keyes* decision. Justice opposed metropolitan desegregation in both the *Richmond* and *Detroit* cases, the two cases which divided the Court most closely. On a number of occasions, in other words, Justice officials have drawn on the power granted by the 1964 Civil Rights Act to oppose civil rights groups.

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[58] Congressional Quarterly, Aug. 28, 1971, p. 1829.
[59] *Adams* v. *Richardson*, 351 F. Supp. 636; 356 F. Supp. 92; 480 F. 2d 1159.
[60] Washington Post, Sept. 6, 1974.

Housing discrimination enforcement.—When Congress debated the fair housing law in 1968 most of the discussion concerned the range of coverage of the law and the nature of enforcement procedures.[61] After a long Senate filibuster fight and House passage following the assassination of Martin Luther King, Jr., it seemed as if fair housing had been firmly established as national policy. Many people assumed that housing would gradually become integrated.

After the law was passed, however, problems became apparent. The enforcement machinery Congress provided was exceptionally cumbersome and almost toothless. Adequate resources were never provided to staff more than a minimal compliance effort. Most important, HUD and the other federal agencies with urban programs paid little or no attention to the more important requirements for building concern with housing integration into the administration of their general programs.

The procedure for handling housing discrimination complaints is byzantine. It means that so much time is necessary to act against discrimination that there is often no realistic alternative to accepting segregation. Most families searching for housing need housing quickly. Very few can afford to wait a year or more for an endless bureaucratic and judicial process. If a young black family, for example, complains to HUD about discrimination, the complaint first goes to the regional office, then it is often sent to a state agency with a severe backlog of its own.[62] When it comes back to HUD months often pass before there is an investigation by the tiny enforcement staff and an attempt at conciliation. Even if the discrimination is clear and the landlord or realtor obdurate, HUD can do nothing more than talk. Eventually, the case may be referred to the Justice Department for possible litigation.

The HUD program has been small and has low visibility. HUD originally asked Congress for $12 million for the first year expense of starting an enforcement program. Congress provided only $2 million for enforcement nationwide. Through the current fiscal year HUD has never come close to its original projected first year budget, in dollars of constant value. Support for fair housing enforcement is scheduled to shrink substantially in the next fiscal year.[63]

Investigation of housing complaints rests primarily with HUD's regional office staff. Less than one hundred investigators are now provided to deal with housing segregation throughout the country. This is a smaller investigatory staff than was available five years ago.[64] In the face of pervasive segregation and spreading ghettos and barrios, fewer than two people per state are allotted for the enforcement program. In terms of overall staffing of its fair housing program, HUD has asked for a reduction of 47 staff positions at the Washington office where the more important affirmative aspects of enforcement policy are concentrated.[65]

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[61] The debate stretched on for several months at the beginning of the 1968 Session. See Congressional Quarterly, January–April 1968 for summary of debate as it developed.

[62] The statute requires HUD to refer cases to state and local agencies with "substantially equivalent" fair housing laws. HUD has chosen to define many state laws as equivalent.

[63] Information accompanying letter from Secretary Carla Hills to Senator Edward Brooke, May 29, 1976.

[64] *Ibid.*

[65] *Ibid.;* Secretary Hills asserts that this reduction is justified by the end of special projects employing temporary staff the previous year.

Given this small level of effort it is not surprising that a national survey showed that most people had not heard about the law and probably would not know how to file a complaint if they felt victimized by discrimination.[66] Nor is it surprising that HUD has been unable to handle promptly even a small number of complaints. Many HUD complaints remain within the enforcement bureaucracy six months or more.[67]

The minute nature of the national commitment to ending housing segregation is even more evident when one examines the role of the Department of Justice in enforcing the 1968 law. The housing industry is extremely fragmented, with hundreds of thousands of realtors, builders, rental agents, and others who have an opportunity to discriminate. Between the passage of the federal fair housing law in 1968 and April 1976, the Justice Department obtained a total of 195 consent decrees setting housing cases throughout the United States. This is the only sanction available in the absence of voluntary conciliation by the violator. In the average year, in other words, Justice lawyers have settled 23 cases. In eighteen states the Department had yet to obtain its first consent decree. In eight others, including Michigan, there had been a single decree during this eight year period.

TABLE 9.—*Cases settled by consent decree from passage of 1968 fair housing law to April 1976*[1]

State:	*Number*
Texas	19
California	13
Georgia	17
Ohio	15
North Carolina	13
Maryland	14
Louisiana	12
Florida	11
Illinois	11
South Carolina	8
Tennessee	8
Alabama	7
Virginia	7
Pennsylvania	5
Missouri	5
Mississippi	4
Colorado	4
District of Columbia	4
New York	3
New Jersey	3
Arkansas	3

[1] The States of Massachusetts, Kansas, Wisconsin, Oklahoma, and Connecticut had two cases each during this 8-year period. A single case was resolved in Michigan, Indiana, Washington, Wyoming, West Virginia, and Arizona. In 18 States there were no consent decrees at all.

Source: Department of Justice, Civil Rights Division, April 1976.

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[66] The survey was part of a review of fair housing compliance in a representative study of fifteen cities designed by HUD. Judith A. Haig, "A Study to Determine the Extent of Compliance Among Developers/Sponsors with Equal Housing Advertising Guidelines and Affirmative Marketing Regulation," prepared for HUD by Jaclyn Incorporated, Providence, R.I., April 1976, p. 39, draft report.

[67] HUD, "Title VIII Aging Report Through February 1976," in "Monthly Status Summary of Title VIII Activity," March 1976.

ABLE 10.—NUMBER OF HOUSING CASES FILED AND NUMBER OF CONSENT DECREES WON BY THE DEPARTMENT OF JUSTICE

	Cases filed [1]	Consent decrees [2]
Year:		
1968	5	1
1969	26	2
1970	38	25
1971	38	39
1972	15	24
1973	62	37
1974	31	34
1975	36	33

[1] Includes a small number of cases not related to enforcement of 1968 fair housing law.
[2] 11 of the decrees supplemented or amended earlier decrees against the same defendants.

Source: Civil Rights Division, Department of Justice, 1976.

The simple statistics of the Justice Department enforcement program do not fairly reflect the scope of the effort the Department's miniscule staff has attempted to make. Most of the cases deal with developers or rental agents of major projects or apartment complexes. Typically the consent decrees contain not only some relief for those proven to be victimized by discrimination but also agreement to an affirmative action plan for future operations. Neither the courts nor the Justice Department, however, have the administrative capacity to carefully monitor compliance with the agreements. At any rate, given the extreme fragmentation of the housing market and the vast number of decision makers, these efforts can have only very marginal impact. Given the pervasiveness of discrimination in the housing market a staff of several hundred lawyers and HUD compliance officials would doubtless be necessary to create even a modest risk of prosecution for segregationist housing practices.[68]

The record of HUD and the Justice Department is poor even by the most narrow definition of their responsibilities under Title VIII of the 1968 Act. When one considers the broader responsibilities under that statute and the 1964 Civil Rights Act to end discrimination in federally-subsidized programs and support the development of nondiscriminatory housing practices, the record is even more discouraging. Although HUD has been found guilty of a history of intentional housing segregation by federal courts (and has conceded such efforts in the past), it does not now even possess information on whether its current operations in the housing market are tending to increase or diminish segregation.[69] The U.S. Commission on Civil Rights and others have, for instance, reported that some HUD programs have had

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[68] One recent report of the continuing intensity of segregationist practices grew out of housing testing conducted by the New York Times, June 28, 1976.

[69] President Nixon, in a message to Congress of June 29, 1971, recognized the continuing effect of federal policies sanctioning residential segregation:

"Residential separation of racial minorities was, and is, another characteristic of the social environment which has been influenced by federal housing policy. Until 1949, FHA officially sanctioned and perpetuated community patterns of residential separation based on race by refusing to insure mortgages in neighborhood[s] not racially homogeneous. The effects of this policy have persisted for many years after its reversal and are still evident in metropolitan areas today." H.R. No. 92–136 (June 29, 1971).

the impact of encouraging white flight from the cities and ghetto expansion.[70] Since HUD has failed to collect and analyze racial data on its major programs in recent years, it cannot even determine whether or not federal programs continue to have this impact. Without such information it is obviously impossible to plan administrative policies to support integration.[71]

Even within the HUD civil rights office there is a dismaying lack of effort and administrative follow through in enforcing standards incorporated in the department's own regulations. After years of struggle over development of advertising and marketing regulations, the results have been extremely disappointing.

One of the most important goals of fair housing groups has been the development of "affirmative marketing" plans to assure that minority group buyers and renters are informed of and welcomed to housing produced with HUD assistance. Two recent studies of the HUD affirmative marketing enforcement efforts report that the Department is not succeeding in this objective. The studies, funded by HUD, show that the federal agency frequently fails to implement its own requirements and that it passively accepts widespread failure of housing producers to abide by their own plans. In some places, in fact, HUD-assisted housing continues to go on the market with advertisements clearly discouraging minority buyers. While investigators found compliance with advertising standards in many cities they reported that 88 percent of the ads for HUD-assisted housing in Houston used "words, phrases, sentences or visual aids that could have been discriminatory" as did 38 percent of the St. Louis ads.[72]

A HUD-financed review of affirmative fair housing marketing plans on file at nine HUD Area Offices was completed last January. The researchers reported that, in most cases, HUD was not even collecting the data necessary to make any evaluation of the developer's performance. Most of the reports on housing sales did not contain the necessary data and were not current. Records on rentals were handled in an even worse fashion. In the Atlanta office, for example, officials were responsible for monitoring more than 600 plans but had collected any useful data on only 24. Only fourteen of those had the essential information for evaluating project accomplishments.[73]

The researchers reported that HUD officials were reluctant to try to force compliance with data requirements. It found that developers were negligent in providing information and that federal officials seldom went out to check on projects through site visits. It also reported that the attitudes and personal behavior of sales and rental agents appeared to be more important that the formal requirements in actually achieving integration.[74]

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[70] U.S. Commission on Civil Rights, "Home Ownership for Lower Income Families," 1971.

[71] Secretary Hills reported in May 1976 that HUD continues to collect data that could potentially be analyzed to determine the racial impact of various HUD programs but she could supply no such analysis. (See Hills to Brooke letter, May 29, 1976.)

[72] Judith A. Haig, "A Study to Determine the Extent of Compliance Among Developers/Sponsors With Equal Housing Guidelines and Affirmative Marketing Regulations" (Providence: Jaclyn, Inc., 1976), p. 20.

[73] Mark Battle Associates, Inc. and National Committee Against Discrimination in Housing. "Affirmative Fair Housing Marketing Techniques: Final Project Report," prepared for HUD, Jan. 23, 1976, p. 27.

[74] *Ibid.*, p. 12.

Another study prepared for HUD in 1976 attempted to take the analysis further by directly examining the perspectives and actions of HUD Developers and Sponsors. This study, by Jaclyn Inc. studied 100 plans in 14 cities. It found the plans generally vague and it reported that developers seldom made contact with community groups working for fair housing. The author concluded that "plans are viewed largely as paperwork." [75]

Although many developers, particularly those operating in HUD programs, pledged that they would contact community agencies for help in informing potential minority buyers about the new housing, 85 percent of the relevant local agencies in the cities studied had never been contacted by a single developer. Most of the contacts that were made were limited to two cities and most concerned rental rather than home buying opportunities.[76]

The real estate and marketing firms handling sales and rentals for HUD developers were audited by black and white testers to find out whether they were engaged in clearly discriminatory practices. More than 60 percent did engage in some form of discriminatory treatment of black buyers or renters at the initial contact.[77]

This brief discussion of the record of enforcement activity by HUD and the Justice Department in handling complaints and monitoring affirmative marketing can only introduce some aspects of a very complex issue. It should be sufficient, however, to demonstrate that the federal agencies are making only a very small effort and that they face pervasive segregationist practices in a very fragmented market. Existing policies and existing administrative resources are unlikely to make any discernible dent on the pattern of spreading housing segregation.

Residential segregation has wide and devastating impacts on black families. It sharply restricts access to the suburban job sites where most new jobs are being generated. This is particularly true for manufacturing jobs which are located in widely scattered plants not accessible by mass transit from the central city. When a black family is denied a chance to buy a house in the suburbs and must continue to rent in the city, it is frozen out of the one way most American families accumulate wealth—by building an equity in property with a rapidly increasing value. New developments offer particularly attractive opportunities since they often have low down-payment financing and their values increase particularly rapidly.

A recent psychological study by Dr. William Grier and his associates at Wayne State University studied the impact of housing discrimination in depth in a number of families. The researchers found that for black adults who conformed to all of the basic success values of the white society to be humiliated by denial of their right to live in a community congruent with their achievements was highly traumatic. It could effect marriages, racial feelings, feelings of confidence and self-esteem and many other aspects of life. An awareness of the fact or the possibility of such discrimination is still a constant

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[75] Haig, pp. 16–17.
[76] *Ibid.*, p. 24.
[77] *Ibid.*, pp. 28–29.

reality for millions of Americans. Surely removal of this great barrier to participation in the mainstream of American life should have a far higher priority. It is hard to imagine a more counterproductive social policy than one of opening the door of segregation halfway, encouraging blacks to run through it as fast as they can, and then slamming it back in the face of those running the fastest.

PART IV: DOES BUSING WORK

The courts have concluded that most urban school segregation is unconstitutional. There is no evidence either in studies of residential demographics or in research on the impact of fair housing laws to suggest that natural integration of neighborhoods will significantly reduce school segregation in the foreseeable future. In the absence of any alternative approach to eliminating illegal segregation, it is necessary now to closely examine the evidence on the impact of urban court-ordered desegregation.

The impact can be measured in a variety of ways. First, the evidence is unambiguous that desegregation plans incorporating busing do diminish segregation. Many large urban districts in the South which once had highly segregated schools now have few or no schools where black children are in the majority and none which are virtually all-black.

TABLE 11.—PERCENTAGE BLACK STUDENTS IN PREDOMINANTLY BLACK SCHOOLS IN SYSTEMS IMPLEMENTING DISTRICT-WIDE DESEGREGATION PLANS

District	Percent in black majority schools, 1970	Percent in black majority schools, 1975
Broward—Fort Lauderdale, Fla	47.9	16.0
Hillsborough—Tampa, Fla	71.6	1.7
Duval—Jacksonville, Fla	74.4	36.3
Nashville-Davidson, Tenn	75.0	32.6
Denver	38.2	25.6
Clark—Las Vegas, Nev	37.7	2.0

Source: HEW Office for Civil Rights, May 1976

Urban desegregation plans normally substantially reduce segregation and they are normally implemented without any significant violence. Assistant Attorney General Ben Holman recently reported that the Community Relations Service's involvement in scores of desegregation cases has demonstrated that this important racial change usually takes place without any discernible increase in violence. In the cases where there have been problems, most of the difficulty has been among parents, not school children.[78] Holman reported that there is considerable experience with techniques which reduce tension and help ease peaceful desegregation.[79] The violence surrounding the desegregation of two Boston high schools is the rare exception and should not be considered part of the normal cost of desegregation.

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[78] Letter from Assistant Attorney General Ben Holman to Senator Brooke, June 10, 1976, reprinted in Congressional Record, June 26, 1976.
[79] *Ibid.*

The violence issue has not been extensively researched. The 1975 hearings of the Senate Juvenile Delinquency subcommittee showed that school violence is a severe and growing national problem, whether or not there is desegregation and public opinion polls have shown deep public concern with this trend. When the U.S. Commission on Civil Rights asked almost a thousand school superintendents whether or not there had been a serious disruption when the local desegregation plan was implemented, however, 82 percent reported none. More than nine-tenths of the problems occurred in the South. Only one fifteenth of the desegregating districts reported that extra police assignments had been necessary. Most of the systems which received additional police protection reported that they were back to normal within two months. Only a handful of the superintendents said that educational activities had been disrupted for more than two weeks. Even if one assumes that the superintendents underestimated their local problems, it is clear that violence is usually a relatively minor problem in the desegregation process. Local officials do often report, however, that what fights do occur shortly after desegregation tend to become extremely salient in the community, even if similar incidents within a single racial group were commonly ignored.

Most evaluations of school desegregation concern the educational effects of bringing white and black students together. A basic argument, made very frequently in Congress, is that desegregation harms the educational process and does no good in terms of improving the test scores of black students. It would be much better, critics assert, to put money used for busses into educational programs.

The most important part of this criticism is the claim that the busing plans are fruitless because they don't raise the achievement levels of minority students. This argument has been particularly important since the publication of a highly influential article, "The Evidence on Busing," in 1972.[80] David Armor, a Rand Corp. researcher asserted in this study that busing plans were educational failures.

This study produced front page headlines in many major newspapers and has been repeatedly cited in Congress as proof that busing does not work. Research reviewing the scholarly literature and coming to the opposite conclusion was largely ignored.[81]

It is very important to understand that Armor and a number of other critics of desegregation have employed an unusual standard to evaluate school desegregation. Armor's article is based on the premise that school busing should be considered a failure unless it eliminates the large gap in the annual rate of academic progress between white and blacks in the first year of the desegregation process. In reviewing several earlier research projects as well as his own study in the Boston area Armor found that this gap did not disappear. Though black children in integrated schools usually did somewhat better than their counterparts in ghetto classrooms, the gap between black and white achievement growth was not closed.

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[80] David Armor, "The Evidence on Busing," Public Interest (Summer 1972).

[81] The first major scholarly response to the Armor study was Pettigrew, Useem, Norman, and Smith, "Busing: A Review of 'The Evidence,'" Public Interest (Winter 1973).

If the same standard were employed to judge other educational programs the results would be similar. In fact the evidence of a limited positive impact from desegregation is stronger and more consistent that the evaluation results for compensatory education, smaller student-teacher ratios, bilingual instruction for Latino children. Operation Headstart, Title I, or any of the other major educational innovations.[82] The point is that in announcing that busing is a failure the critics have been applying a standard that could be used to claim that all major educational programs are failures.

At the present stage of social science research it is wrong to expect scientific proof that particular policies work. Measurement and evaluation of impacts of social programs require solution of research problems of enormous complexity.

The truth is that there are very few propositions that are securely established in the social science disciplines and that evaluation research is still a more primitive stepchild of the disciplines. Although complex and impressive statistical techniques have been developed, the measures on which the statistics are based remain crude and highly uncertain. There is very little established knowledge about the teaching and learning processes, only competing, changing, and unproven theories. Thus, in making the argument that busing should be abandoned unless it can be proved to have a rapid and decisive educational impact one is employing a standard that no other educational policy can meet and that social science cannot even measure adequately.

Although research on the educational impact of desegregation is far from satisfactory and there has been no major national study for more than a decade, summaries of the scores of local studies and the existing cross-district research permit reasonably confident assertions on some points of real importance to the national policy debate:

1. desegregation does not damage the educational process for either white or minority children.
2. sending a child to school on a bus has no educational impast—the educational issue is desegregation, not busing.
3. Most studies find some positive gains for minority children in desegregated schools but most of the studies also have severe methodological weaknesses.
4. the educational value of desegregation appears not to be related to race *per se* but to the fact that desegregation plans typically put many lower class minority children in predominantly middle class schools.

Few findings in social science are so well established as the fact that desegregation does not harm the educational process, yet few are so little publicized. Scores of studies constructed in very different ways have produced remarkably consistent evidence that desegregation does not harm children's education. Even busing critic David Armor agrees with this finding.[83] Most studies show no impact at all on middle class white children. Sometimes when educational improvements are im-

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[82] Among the many discussions of the very limited results of major educational evaluation research is: Harvey A. Averch and Associates, "How Effective Is Schooling? A Critical Review and Synthesis of Research Findings" (Santa Monica: Rand Corp., 1972).

[83] Senate Committee on Labor and Public Welfare, Hearings, Equal Educational Opportunities Act of 1972, 92d Cong., 2nd sess., 1972, p. 1196.

plemented with desegregation the scores of both groups rise. Professor Nancy St. John, in her recent book summarizing the findings of many local studies, found some evidence that the scores of white children bused into ghetto schools increase, but cautioned that this may be because of the special characterization of children who participate in such programs.[84] In a major study of 550 schools in the South, Robert Crain and other scholars at the National Opinion Research Center found that both whites and blacks tended to have the highest scores in schools with very substantial integration.[85]

Busing itself appears to have a negligible impact on the educational process. During the 1973–74 school year 52 percent of the nation's school children were bused to school and higher percentages in the private schools. Busing in the U.S. increased 3.1 percent a year during the five years after the Supreme Court's 1971 busing decision, precisely the same rate at which it was increasing the five years before the decision. The highest levels of busing and most of the increase in busing during the '70's was concentrated in states and regions where there were virtually no court orders. The most rapidly growing sector of publicly financed busing in the recent past has been public busing of private and parochial school children. Such busing more than quadrupled between 1955–73 as the result of a sustained campaign to obtain busing privileges.[86] Obviously busing is a very common and popular way to get to school, except when it is tied to desegregation.

In many American school districts desegregation may not even require much additional busing. Since a great many school systems already operate large bus fleets, segregation can frequently be greatly diminished merely by changing the routing of existing buses. A 1971 study commissioned by HEW showed, through computerized analysis of more than two dozen school systems, that segregation could usually be virtually eliminated with very small additions to bus fleets. It also showed that existing bus routes were not neutral but tended to exaggerate segregation.[87] In the South many largely rural districts experienced substantial declines in busing when desegregation was implemented.[88] In some central city districts with virtually no bus fleet, of course, desegregation plans can require substantial changes. The additional costs of implementing an urban desegregation plan are usually only 1–2 percent of a school system's budget.[89] The real issue is desegregation, not busing.

The two best contemporary summaries of the many studies of desegregation and test scores in various communities both report that most studies show gains for minority children after integration. Meyer

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[84] Nancy St. John, "Social Desegregation Outcomes for Children" (New York: John Wiley, 1975), reprinted, in part, in "Desegregation and the Cities, Part IV," Congressional Record, May 12, 1976, pp. S7045–7052; this particular finding is reported at S7048.

[85] Robert Crain and Associates, "Southern Schools: An evaluation of the Effects of the Emergency School Assistance Program and of School Desegregation" (Chicago: National Opinion Research Center, 1973). Summary of findings appears in "Desegregation and the Cities, Part XIX, Congressional Record, June 29, 1976, pp. S11056–57.

[86] This section is based on tables from the National Center for Education Statistics accompanying letter from W. Vance Grant to Senators Brooke and Javits, Apr. 14, 1976.

[87] Lambda Corporation, "School Desegregation With Minimum Busing," report submitted to Department of Health, Education, and Welfare, Dec. 10, 1971.

[88] Gendron, "Busing in Florida."

[89] Senate Select Committee on Equal Educational Opportunity, "Toward Equal Educational Opportunity," 1972, p. 208.

Weinberg's 1975 article, "The Relationship Between School Desegregation and Academic Achievement: A Review of the Research," concludes that "overall, desegregation does indeed have a positive effect on minority achievement levels." [90] Nancy St. John's 1975 book "School Desegregation Outcomes for Children" reports a similar finding in most studies but warns that the most sophisticated research tends to have more inconclusive results.[91] While the research has been disappointing and the evidence certainly falls short of scientific proof, it is a more impressive body of positive findings than can be marshalled for the great majority of educational programs. Busing is usually presented as a very expensive approach that should be replaced by some other, unspecified, means of improving ghetto education. The evidence shows that it is cheap, as educational reforms go, and shows somewhat more hopeful educational results than most of the popular policies.

Stepping back from the world of social science research to reports from professional educators and journalists, there is another body of evidence that desegregation is working. Given the weakness and the narrow focus of the research, these reports deserve serious attention. In Minneapolis, Pasadena, Boston, and elsewhere the movement away from neighborhood schools has enabled school officials to offer parents options for specialized education programs.[92] This approach is now being followed in the development of plans for Milwaukee, Cincinnati and other districts facing desegregation.[93] In many districts desegregation stimulates the development of social studies courses more accurately reflecting the contribution of each major ethnic group to American life and to the local community. In some schools desegregation has brought development of new teaching methods which permit teachers to better respond to the wide range of abilities present in any class.[94] Charlotte, North Carolina School Superintendent Dr. Rolland Jones recently spoke of the changes he sees emerging after a half decade of busing:

> On the whole our integration program is a success. It has broadened the curriculum. It has given the students a better self-image. It has increased their self-determination. It has multiplied learning experiences. Oh yes, tension increased after desegregation but our students are learning to cope and this too is an educational advantage for students. . . .
>
> Not very many of us really believe Charlotte-Mecklenburg will ever go back to the old days, even if we could legally do so.[95]

It is not possible to prove scientifically at the present time that bus-

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[90] Meyer Weinberg, "The Relationship between School Desegregation and Academic Achievement: A Review of the Research," Law and Contemporary Problems (Spring 1975), pp. 240–270; reprinted in "Desegregation and the Cities, Part IV," May 12, 1976, cited above, note 84.

[91] St. John.

[92] Minneapolis responses are described in articles from the Minneapolis Tribune and the Milwaukee Journal printed in "Desegregation and the Cities, Part XI," Congressional Record, May 25, 1976, pp. S7884–88; Boston's Phase II plan, incorporating many educational changes is described in Washington Post, Mar. 22, 1975 and New York Times, Mar. 22, 1975; Pasadena's educational program is described in U.S. Commission on Civil Rights, "School Desegregation in Ten Communities," 1973, pp. 122–125.

[93] Some of the Milwaukee educational plans for the fall 1976 desegregation were outlined in Milwaukee Public Schools, "Planning for September," March 1976: Cincinnati's efforts to begin desegregation through voluntary enrollment in special educational programs is reported in Citizen's Council for Ohio Schools, "Desegregation in Ohio: Background for Current Litigation," January 1976, p. 4.

[94] Ina Schlesinger and Michael D'Amore, "Children in the Balance," selection reprinted in "Desegregation and the Cities, Part V," in Congressional Record, May 13, 1976, pp. S7234–39; this subject is also discussed in articles inserted in "Desegregation and the Cities, Part XIX, June 29, 1976, pp. S11044–57.

[95] Dr. Rolland W. Jones, "Thoughts on Integration," reprinted in "Desegregation and the Cities, part VIII," Congressional Record, May 21, 1976 pp. S7776–77.

ing has decisive educational benefits. Recent months, however, have brought the publication of several important new reports.

New national studies.—Three important new sources of national data relevant to the debate became available in 1976. The first, the National Assessment of Educational Progress, provides only indirect data. Since it is the only source of national achievement statistics over a period of years, however, the information is highly interesting. The basic finding is that in science and reading achievement, the record for young black students in the South is strikingly good. While this cannot be attributed to integration directly, a strong inference is justified. Young blacks in the South are far more likely to attend integrated schools than young blacks elsewhere. The fact that there has not been a similar positive trend for Southern whites suggests that the gains cannot simply be attributed to general improvements in Southern schools.

The National Assessment's March 1976 report, "Science Achievement: Racial and Regional Trends, 1969–1973," reported that the South was the only region where science scores were not declining. This was because Southern black children were not declining while the rest of the country was. In fact, young black Southerners actually showed a 2.8 percent increase during the four year period. Young blacks outside the South declined 3.5 percent in average score. The performance of black students was best in schools with large white majorities.[96]

The message of the science report was reinforced by the National Assessment's September 1976 report, "Reading in America: A Perspective on Two Assessments." This report showed that the reading achievement scores of American primary school students had begun to rise in the 1971–75 period. The gains, however, were almost all in the South. The scores of young blacks were increasing four times as fast as those of young whites. White scores were still higher but the gap was shrinking substantially.[97]

More direct information on desegregation impacts was generated by two new multiyear studies of conditions within desegregated schools. Educational Testing Service's July 1976 report, "Conditions and Processes of Effective School Desegregation," produced clear findings that certain kinds of school practices were related to successfully integrating schools. The factors identified included efforts to teach children directly about the contributions of each racial group and to understand racial conflicts and the assignment of children to integrated groups for study and play activities within the school. Strong leadership by the principal, positive teacher attitudes toward integration and successful strategies for minimizing conflict all produced more positive results. The study produced substantial evidence to show that school desegregation makes the most substantial impact where school personnel seriously try to make it work.[98]

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[96] National Assessment of Educational Progress, "Science Achievement: Racial and Regional Trends," 1969–73, Background Report No. BRS–1 (Washington: GPO, 1976), pp. 10, 25–26.

[97] National Assessment of Educational Progress, "Reading in America: A Perspective on Two Assessments," Reading Report No. 06–R–01 (Washington: GPO, 1976), pp. 10, 25–26.

[98] Garlie A. Forehand, Marjorie Ragosta, and Donald A. Rock, "Final Report, Conditions and Processes of Effective School Desegregation" (Princeton: Educational Testing Service, 1976). This report also lead to the development of Forehand and Ragosta's "Handbook for Integrated Schooling," now available from the U.S. Office of Education.

Dr. John Coulson's report, "National Evaluation of the Emergency School Aid Act (ESAA)," reports on a sophisticated multi-year measurement of the effects of desegregation, particularly in a substantial sample of Southern schools. This second year report was completely separate from the ETS study but there were important parallel findings. Leadership by principals made a difference and the social aspect of desegregation worked best when classroom seating was integrated. Each year's research found some evidence that schools that made a conscious effort to make desegregation work had higher achievement test gains.[99] Both of these major studies, in other words, concluded that the way desegregation was implemented made an important difference.

PART V: POLICIES TO SUPPORT INTEGRATION

Are there alternatives to segregation?—Segregation is now so intense and so massive in most of our major metropolitan areas that there is no simple answer, no case-by-case procedure that is likely to reverse it or even to break the momentum of growing ghettos and barrios. Producing integration in the cities is likely to be every bit as difficult as the transformation of the South during the 1960's and 1970's.

Segregation is now built into the practices and expectations of urban development. The expectation is, for example, that more than token residential integration is a transitional phenomenon, something that occurs as a neighborhood changes from a white community to a part of a ghetto. In part these destructive changes are rooted in the problem of segregation in local schools. Since there are usually only a few areas of good quality reasonably priced housing outside the ghetto open to black families in a given metropolitan area, integrated communities do tend to attract disproportionate numbers of minority buyers and renters. The fact that the newcomers have more school-age children than the older families who have been living in a community for some time, means that the local school tends to change character far faster than the neighborhood as a whole.

This means that white homebuyers and renters often face a choice between many virtually all-white communities and a few areas with rapidly increasing numbers of minority families and more rapidly changing schools. Often the choice is perceived as not a choice between segregation and integration, but as a choice between commitment to a white neighborhood or to a neighborhood seen as certain to become all-black or Latino. These expectations are, of course, self-fulfilling.

To break this pattern, the central needs are for much broader integration and for school policies which prevent the spread of segregated education. Coordinated housing, land use, and civil rights enforcement policies are needed to begin substantial integration in a much wider spectrum of communities. Many tools might be employed in such an effort, an effort whose ultimate success would require cooperation between a variety of federal agencies, the courts, many state and local

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[99] John Coulson, "National Evaluation of the Emergency School Aid Act (ESAA)" (Santa Monica: System Development Corporation, 1976). The full report, by Coulson and several associates is, "The Second Year of the Emergency School Aid Act (ESAA) Implementation" (Santa Monica: System Development Corp., 1976). Further intensive analysis of this data to study conditions of successful desegregation appears in Jean B. Wellisch and associates, "An In-Depth Study of the Emergency School Aid Act (ESAA) Schools: 1974–1975" (Santa Monica: System Development Corp., 1976).

officials and private groups. Most of all, it would require national leadership in Congress and the executive branch to explain to the public the dangers of our steady movement toward segregated societies and the ways in which we can work toward the broadly shared goal of integrated cities with naturally integrated schools.

Housing.—There is a widespread assumption that it would be easier and less controversial to integrate housing than to desegregate schools. This belief is reflected in public opinion surveys.[1] This may arise from the fact that the public is familiar with the methods for achieving rapid, thorough school integration but public discussion of the kinds of changes necessary to create substantial housing integration in a generation or two have yet to begin.

Changing housing patterns and policies is a very different kind of problem than desegregating schools. Public schools are official bodies which have always had the responsibility of assigning students and determining attendance zones. Desegregation can be accomplished by a judge ordering the school officials to assign students in a different manner. The housing market, in fundamental contrast, is overwhelmingly private and extremely fragmented. A community has one school board but often hundreds of realtors, mortgage bankers, rental agents, builders, and others who influence housing decisions. With the exception of a portion of the small public sector of the housing market, no one has the power to tell people where they must live though many make decisions about where certain people and groups may not live. Even if the Supreme Court determined that the Constitution required that a community must be integrated there is no one who would have the power to do it.

The problem of integrating housing is one of changing the incentives and penalties that condition behavior of various participants in the market, removing some of the institutional constraints on the market and increasing the ability of government to construct large numbers of subsidized housing units in locations where they will contribute to integration. The process would involve considerable limitations on the power of individual local governments, particularly in the great metropolitan centers.

The first relatively uncontroversial step toward a policy of housing integration could be a decision to make the existing enforcement process somewhat more credible. This would require providing HUD with sufficient staff to make the program visible and rapidly responsive across the country and with enforcement powers to act to end proven discrimination. Providing several investigators, on the average, for each state, authorizing HUD to initiate its own complaints and conduct its own testing, and empowering HUD to issue cease-and-desist orders might help turn an almost incomprehensible bureaucratic tangle into a structure capable of responding while the victim was still on the housing market. Grants to state agencies might also help.

The incentives could be changed somewhat by increasing the penalty for violations. At the present time many realtors think they are taking

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[1] Gallup Polls in 1973 and 1975 show, for instance, that more than four times as many people favor putting low income housing in middle income neigbhorhoods as favor busing, though neither alternative is popular. (Gallup Opinion Index, October 1973, p. 14; February 1976, p. 10).

a business risk by complying with the law while violations are very unlikely to be caught and involve no significant penalty in most cases at any rate. We would not expect compliance with any other important law without real penalties. Congress should set a stiff minimum penalty with sharp increases for second violations. Federal agencies responsible for supervising lending institutions should design and enforce strict sanctions against institutions unfairly denying credit. If we believe that segregationist practices dividing American society are a serious problem we should have penalties that create some risk for violators.

While reinforcing the case-by-case process would be a useful step, more significant progress would require a variety of positive actions. An excellent beginning would be a serious White House and HUD drive to implement the requirement of Title VIII of the 1968 fair housing law that all federal agencies with urban programs administer them in a way that furthers the goal of desegregated housing. Compliance with this law has been so weak, for instance, by the federal financial regulatory agencies that several civil rights groups recently sued them to try to force them into action.[2] Since the requirement greatly complicates the job of agency officials, implementation will probably require strong and persistent leadership by the Secretary of HUD and the White House. Initial steps within HUD should include:

(1) collection and analysis of data to show the racial impact of existing programs.

(2) program-by-program policy directives to end segregating effects of program application and to reinforce applications which tend to expand or stabilize residential integration.

(3) requirement of full reports and specific, closely monitored affirmative marketing programs for the sale or rental of federally insured or federally subsidized housing produced by private builders and privately marketed.

(4) Community-wide reviews of compliance with civil rights requirements by administrators of HUD programs by federal and local administrators examining effects of all programs on a single community.

(5) vigorous enforcement of the housing provisions of the Community Development program and insistence that this housing be marketed under affirmative action programs.

(6) development of special incentives and priorities for metropolitan fair share housing programs.

(7) strong encouragement of rehab programs which tend to stabilize existing integrated neighborhoods and attract whites back to predominantly nonwhite areas.

Serious students of the issue believe that much stronger steps would be required to make a real breakthrough on housing desegregation. The very rapid rise in the costs of housing and mortgage money, increasingly severe exclusionary zoning, and the shrinkage of subsidized housing programs are intensifying the barriers to desegregation. These developments are tending to close the entrance gate to new developments to everyone except the affluent and those who have a large, infla-

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[2] The suit was filed on Apr. 26, 1976 by ten major organizations including the NAACP, the National Urban League, the League of Women Voters, and the National Committee Against Discrimination in Housing. (Ernest Holsendolph, "Federal Agencies Sued on Housing," New York Times, Apr. 27, 1976.)

tion-produced, equity in an existing home. This means that the effect of past job discrimination and a history of excluding blacks from low down payment postwar suburbs have continuing effects in the composition of our urban communities. Meanwhile the rising costs of government have led suburban political leaders to adopt increasingly stringent zoning and land use requirements to exclude low and moderate income families. Studies including Anthony Downs' important 1973 book. "Opening Up the Suburbs" and the U.S. Commission on Civil Rights' 1974 report, "Equal Opportunity in Suburbia," conclude that we need new institutions of housing construction, independent of local jurisdictions and new financial incentives to communities to accept families who need schools and other services.[3]

Neither the executive branch nor Congress has yet devised a national policy to speed housing integration although various possible approaches have been proposed. The Model Cities legislation was amended to prevent its possible use for this purpose. Proposals to limit suburban powers of exclusionary zoning, to provide financial incentives for dispersion of subsidized housing, or to require construction of federal facilities and plants doing federal work near sources of low income housing have all died in committee.[4] The positive elements that did survive in the 1974 Housing and Community Development Act (principally the requirement of a Housing Assistance Program and the endorsement of "spatial deconcentration of housing opportunities for persons of lower income") have not been effectively enforced.

Long-range issues.—Over the long run the precondition for successful and lasting urban integration will be the willingness of Congress and the executive branch to develop both requirements and policies of assistance for metropolitan school and housing integration policies in communities where the problems cannot be resolved within central cities.

With mutually supportive school and housing policies, supported by firm administrative leadership there could be very substantial movement toward an integrated urban society in a generation without imposing excessively heavy burdens on any segment of our metropolitan areas. Given the existing climate of racial polarization it hardly seems realistic to discuss this issue at length here. Some day, however, it must be faced.

Improving school desegregation: Policy options.—Barring a sudden and drastic redirection of housing policy, we will have segregated schools and school desegregation litigation for a long time to come. Even if Congress has no wish to encourage school integration, it should be possible to devise a set of policies that would make the desegregation process work somewhat better where it is inevitable anyway. In its 1972 report, "Toward Equal Educational Opportunity," the Senate Select Committee on Equal Educational Opportunity proposed a number of thoughtful policy changes to ease the process. A number of Members of each House have submitted legislation in recent years with similar goals. Even if Congress does not construct a national policy for educational integration, it could support local officials who must

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[3] Anthony Downs, "Opening Up the Suburbs: An Urban Strategy for America" (New Haven: Yale University Press, 1973); U.S. Commission on Civil Rights, "Equal Opportunity in Suburbia," 1974.

[4] Congress' record in this field is discussed in Michael N. Danielson, "The Politics of Exclusion" (New York: Columbia University Press, 1976), pp. 236–242.

comply with the law and help local school systems implement educationally effective plans for the transition.

There are four modest ways in which the federal government could help urban school districts confronting desegregation—(1) assumption of transitional costs, (2) support for a multi-year program of educational change and teacher retraining, (3) provision of expert assistance, and (4) development of a framework of law taking one small step toward metropolitan cooperation. While these initiatives would not solve the problem, they would significantly diminish the intense pressures of the transition to desegregation and significantly increase the chance that something of real value would come from the process.

Although busing plans do not cost large fractions of school budgets they can produce a financial crunch the first year. Since no money has normally been budgeted for desegregation and a school district may confront sudden costs of rapidly purchasing a number of new busses, there can be a financial problem at the very time the local uproar over the plan reaches its peak.

Confronting this situation, local officials have three choices and all of them are bad. (1) They can take money away from existing programs. (2) They can cut corners on implementing desegregation. (3) They can ask for a tax increase in an emotional and aroused community. Often the result is a decision to cut back money for new programs and to cut corners on the first year's integration budget. This produces resentments within the school system and in affected communities and also tends to produce a desegregation plan that maximizes practical difficulties of adjustment for families. (School hours are staggered, for instance, to permit more busing without buying more buses). Sometimes there are not spare buses to pick up kids on a bus that breaks down on the way to school. If a tax increase is necessary it only deepens local resentment and spreads the impression that busing will be a large long-term expense.

A number of localities and some state governments have urged federal assumption of desegregation costs. Several have even gone to federal court to attempt to force such payments. While the legal argument demanding payment may not be persuasive, the social and educational argument for federal assumption of the costs of the transition are powerful.

A new section of the 1972 Emergency School Aid legislation should be drawn to authorize payment of all first year transition costs directly related to implementation of a court order or a comprehensive voluntary desegregation plan. This fund should pay for purchase of new buses and maintenance facilities, for needed alterations in buildings to permit servicing of children from different age groups, for special police protection at the opening of school, and for the beginning of in-service training of teachers and administrators. These grants should not be competitive, they should go by right to a school district, once its spending is fully audited to show that the costs were above normal expenditures and were essential part of compliance with the court order. Districts receiving eventual reimbursement from State funds for buses and other expenditures should be required to return the reimbursement to a revolving fund set up under this title. This transition assistance should be limited to a single year.

Congress has enacted legislation, the Ashbrook amendment, prohibiting use of federal funds for busing in spite of appeals from many

school officials and local leaders in communities facing court orders. The restriction did not prevent the busing of a single child, it merely increased the pressures on local officials. This policy should be promptly reversed.

The political problems of desegregation and most of the visible community uproar come between the court order and first months of integration in most communities. Media attention is concentrated very intensely on this period. One year we hear about marches in Charlotte, another about an anti-busing mass movements in Pontiac, a third about bombing of buses in Denver, and, more recently, about a community upheaval around two Boston high schools. We get a good view of the height of the social and political conflicts in the cities where the transition is most difficult, but only fleeting glimpses of the long process of building integrated education in schools.

The existing Emergency School aid program doesn't effectively assist either the transition or the long period of reorientation and adaptation in the schools. In addition to a new section underwriting transition costs, the legislation should provide funds for the design and implementation of a four or five-year plan of educational retraining and reorganization. This program should aim at providing the help needed by the key people in the school system—the principals and the teachers. This program could be adequately funded by a $.5 billion annual appropriation. Given the national uproar over the issues, this would be a modest price for providing the tools to assure a better education at the end of the bus ride.

The Emergency School program, as it is now operated, tends to provide short-term, often unfocused, assistance to school systems, money that is often too little and too late for the transition crisis and inadequate for the long campaign of educational change. The funding for this program has always been inadequate, peaking at 249 million dollars in fiscal 1973 and declining substantially since then. By 1976, falling appropriations and rising inflation have combined to reduce the value of the annual federal contribution by 31 percent.[5]

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[5] The following table, prepared by the Congressional Research Service at the request of Senators Brooke and Javits, shows the trend in funding both the Emergency School program and a related program under Title IV of the 1964 Civil Rights Act:

APPROPRIATIONS FOR SELECTED FEDERAL EDUCATION PROGRAMS—FISCAL YEARS 1965-76, EXPRESSED IN TERMS OF BOTH CURRENT AND CONSTANT DOLLARS

	Emergency School Aid Act: Appropriation—		Title IV, Civil Rights Act: Appropriation—	
	Current	1965	Current	1965
Fiscal year:				
1965	0	0	$6,000,000	$6,000,000
1966	0	0	6,275,000	6,109,453
1967	0	0	6,535,000	6,164,015
1968	0	0	8,500,000	7,738,196
1969	0	0	9,250,000	8,041,152
1970	0	0	12,000,000	9,885,360
1971	$75,000,000	$58,770,825	16,000,000	12,537,776
1972	75,000,000	56,186,850	14,600,000	10,937,707
1973	249,000,000	178,579,312	21,700,000	15,562,980
1974	236,493,000	157,319,164	21,700,000	14,425,209
1975	215,000,000	129,444,190	26,700,000	16,075,162
1976	215,000,000	122,391,010	26,700,000	15,198,014

During the last session, the Senate adopted an additional program of assistance for the creation and operation of "magnet schools" intended to increase the voluntary element of the desegregation process by offering special educational programs, but the conference committee reduced this to a small $25 million pilot program.

The long-term portion of the revised Emergency School Aid Act should be built around the development of an educational plan by local officials for making desegregation work. Once a court or a state or federal civil rights agency identifies constitutional violations in a school system, a planning grant should immediately be made available to the school board. If, as frequently happens, the school board refuses to plan because of an almost always mistaken view that they will win an appeal, the funds should be provided to a broadly based community group.

Once a school district develops a comprehensive plan for excellent integrated education and a court order comes down, there should be a multi-year commitment of Emergency School funds, contingent only on fulfillment of the agreed yearly objectives. In addition, the legislation should grant the district far more latitude than is now present in using Title I and other federal categorical funds in carrying out the plan. A good desegregation plan eliminates the concentrations of low-children which are now the basis for targeting Title I payments. Under the present law, minority children receiving special reading training in a ghetto school may lose it when they are transferred to an integrated school. In a school district which is thoroughly integrated and has a well thought through educational plan, the entire district should be considered the target population so long as the money supplements normal school programs and there is full community participation in framing the plan.

One of the striking things about school desegregation is the very limited degree to which school districts learn from the experiences of other communities and the findings of researchers. There is an urgent need to share information and expertise about various desegregation approaches. This should include provision of assistance in designing plans. Congress could provide a national clearinghouse for information, with resources to send experts to cities beginning desegregation and to arrange visits for educators and community leaders from cities starting the process to communities that have passed through the transition and learned from the experience. If such a center is established, it is extremely important that it not be politicized. For this reason Congress should perhaps specify that the clearinghouse policies be determined by a bi-partisan commission drawn from leaders of national education organizations, representatives of civil rights organizations, and scholars from schools of education, law schools, and other relevant university departments.

One aspect of the legislation known as the National Educational Opportunities bill which would provide a national right of open enrollment for minority students on a metropolitan basis could have positive results. Although open enrollment plans have very rarely produced substantial desegregation, this provision could have the dual advantages of moving Congress from a completely negative posture and highlighting the inherently metropolitan nature of the desegregation problem in many urban centers.[6]

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[6] The bill, H.R. 10146 (94th Cong., 1st sess.) was discussed in House hearings in late 1975. (House Committee on Educational and Labor, Subcommittee on Elementary, Secondary, and Vocational Education, Hearings, National Educational Opportunities Act of 1975, 94th Cong., 1st sess., 1975.

The plan would involve a particularly easy form of desegregation. All transfers would be voluntary and would involve highly motivated families who are searching for better education. The number of transfers would almost surely be so small that the impact on the enrollment of any one suburban school system would be negligible. Similar plans would have been implemented already in several metropolitan areas without difficulty. All costs to the school systems would be paid by special federal grants. The program could help to dissipate fears, stereotypes, and misunderstandings on both sides of the racial line. It could give many educators valuable training in preparing for the more far-reaching desegregation that might later be ordered by a federal court.

There are problems with other provisions of the legislation but the particular provisions described above could be a constructive first step for Congress. It would begin integration on a small scale in many communities where the issue is still not in the courts. It would be an indication of positive support for the goal of integrated education that might help defuse some of the bitterness of the busing debate and begin to concentrate attention on integrating the schools. However, this legislation could not and should not try to prevent the courts from ordering more comprehensive plans to combat unlawful segregation.

A variety of other proposals merit support as ways of making the desegregation process work better. To avoid needless misunderstandings and conflicts between minority groups, bilingual education legislation should be amended to give high priority to preservation of bilingual programs in desegregated schools. Similarly, several Members of Congress have observed that there is an urgent need for better research on the desegregation process. No comprehensive national study has been done in more than ten years and we have very limited information on what happens after the first year in desegregated schools. Research following the process over several years and concentrating on the question of why some schools handle it so much better than others might produce many useful findings. A substantial targeted appropriation for this purpose and a specific Congressional directive—like that which has now produced the National Institute of Education study of Title I—could produce very helpful findings.

These modest steps would not end segregation nor would they diminish the responsibility and the authority of the federal courts. They would be first steps toward rational national consideration of the major legislative and executive initiatives necessary to reverse the momentum of urban segregation.

The meaning of doing nothing.—A choice to do nothing to integrate our schools and our housing is a choice for segregation. Our cities are not stable, but are always changing. Our demographic patterns now have a very powerful built-in impulse toward spreading segregation and inequality. We are moving rapidly toward longer and longer lists of central cities with continually diminishing ability to finance decent schools and with schools very largely populated by blacks and Latinos. The prediction of the Riot Commission is coming true, most rapidly in the urban schools of the North and West. A decision not to act is a decision for the deepening division of American society.

The problem will not go away and it will not cure itself. As was true in the South, we will not have substantial movement until Congress moves to commit the federal government to building integration. As was true in 1964, action by Congress could begin to move the issues from the courts to the school board meeting rooms. It could help to temper racial polarization and to mobilize the talents of our educational leadership in building successful integration.

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