U. S. COMMISSION ON CIVIL RIGHTS

STATEMENT OF THE COMMISSIONERS ON FEDERAL ENFORCEMENT OF SCHOOL DESEGREGATION

Two months ago, the Attorney General and the Secretary of Health, Education, and Welfare announced a number of changes in the manner in which their Departments would in the future enforce the laws requiring desegregation of elementary and secondary schools. The statement of the Attorney General and the Secretary of HEW affirmed a commitment "to the goal of finally ending racial discrimination in schools, steadily and speedily...." Prior to this announcement, the Commission, in telegrams to the President, the Attorney General and the Secretary of Health, Education, and Welfare had urged that no action be taken to slow the pace of school desegregation.

The Commission withheld any public comment on the July 3 announcement until the staff of the Commission had had a chance to complete a thorough analysis and until the Department of Justice and the Department of Health, Education, and Welfare had had an opportunity to take action consistent with their statement.

> -----Since July 3, the House of Representatives has passed the Whitten Amendment, a measure that would restrict the Department of Health, Education, and Welfare's ability to enforce Title VI of the Civil Rights Act of 1964 by requiring it to accept freedom-of-choice plans for school desegregation and may well affect the acceptability of freedom-of-choice plans in the courts as well. The amendment was not opposed by the Administration in the House.

Also since that time, court orders have been entered and desegregation plans accepted which in our opinion postpone meaningful desegregation from 1969 to 1970, and the Secretary of HEW and the Department of Justice have taken the unprecedented step of requesting the courts to postpone effective school desegregation in Mississippi from this school year to 1970 and have also accepted delays in South Carolina and Alabama. To be sure, administrative actions were taken by HEW during the past several years and again this year to postpone school desegregation in various districts. These were made under the standards of the Guidelines and only under most exceptional circumstances. But it should be emphasized that what we are concerned with here is the Government's going into court at its own initiative and asking affirmatively for a postponement.

At the time the procedures were announced, the Attorney General is reported to have said that he preferred that the Nation watch what he did rather than focus on what he said. It is with this in mind that we find ourselves especially disheartened by the recent actions of HEW and of the Department of Justice in the cases in Mississippi, South Carolina, and Alabama. For the first time since the Supreme Court ordered schools desegregated, the Federal Government has requested in court a slow-down in the pace of desegregation. This request is particularly difficult to understand since as recently as July 3 the Secretary of HEW and the Attorney General announced that delays in desegregation beyond September 1969 would be granted only where a school district sustained "the heavy factual burden of proving that compliance with the 1969-70 time schedule cannot be achieved...." In Mississippi, however, the Secretary of HEW and the Attorney General urged delay on their own initiative. In South Carolina and in Alabama, the Government took other action to delay desegregation. Certainly those who have placed their faith in the processes of law cannot be encouraged.

We acknowledge that the Department of Justice, in some areas, has sought court orders compelling desegregation this Fall. Eight such suits have been filed in Georgia. But each of these suits was necessitated when the school district reneged on a promise already made to HEW. One can only speculate on whether the July 3 statement and the Government's action in Mississippi encouraged this reneging.

But the problems caused by these new procedures and recent actions, however, are likely to be dwarfed by the probable effects of the Whitten Amendment, if passed by the Senate and approved by the President.

Our analysis of the new procedures and recent actions has now been completed, and a copy is attached to this Statement. Based upon it, we make the following findings:

1. The new procedures and recent actions involving Federal efforts to bring about school desegregation appear to be a major retreat in the struggle to achieve meaningful school desegregation. See pp. 31 to 56 of the Report.

2. The statistics purporting to show the present extent of school desegregation which were contained in the July 3 joint statement of the Attorney General and of the Secretary of the Department of Health, Education, and Welfare give an overly optimistic, misleading and inaccurate picture of the scope of desegregation actually achieved. In fact, in a number of Southern States, relatively little desegregation of elementary and secondary schools has been accomplished in the last 15 years. See pp. 8 to 12, 35 and 36 of the Report.

3. One of the major fallacies in the claim of substantial desegregation is that many districts have violated the terms of the assurances they have signed, or of the court orders that have been entered against them. Adequate personnel is necessary to police compliance. Congress has ordered HEW to treat the North and the South equally in its enforcement efforts. As a result of this Congressional directive, the Department of Health, Education, and Welfare has recently reduced the number of its personnel working for desegregation of elementary and secondary schools in the Southern and Border States, and has increased the number of its personnel working on such problems in the North and West. In the past, we have found that its staff was inadequate to police the compliance of school districts in the South, and the reduction in personnel can be expected to further restrict its compliance efforts in that region. Although HEW has requested 75 additional employees from Congress, it is unlikely that these additional personnel will be sufficient to remedy this problem. See pp. 9 to 13, 30, and 47 to 51 of the Report.

4. Court orders to desegregate have not generally been as effective a means of desegregating elementary and secondary schools as administrative proceedings backed by the threat of a fund cutoff. One reason is that a number of Federal judges in the South have been unsympathetic to the necessity of eliminating racial segregation in elementary and secondary schools. As a result, they have been insensitive to the requirements of the appellate courts which Congress has set over them, and have by their direct actions and tolerance of the actions of others significantly retarded the pace of school desegregation in the cases before their courts. In addition, it is more difficult, under current law, to enforce a school board's compliance with a court order than it is to enforce, by the threat of withholding Federal funds, a school board's compliance with an HEW-approved voluntary plan. See pp. 31 to 46 of the Report.

   Accordingly, emphasis upon court orders rather than administrative proceedings as the vehicle of Federal efforts to desegregate schools can be expected to slow the pace of school desegregation. The situation is further aggravated by the limited Department of Justice personnel available to bring lawsuits as well as the laudable newly announced policy of extending desegregation efforts from the South into the North and West. See pp. 47 to 51 of the Report.

5. Although use of the threat of withholding Federal funds has proved to be the most effective means of enforcing school desegregation, the actual termination of funds, when not followed by Department of Justice litigation to enforce immediate desegregation, reportedly results in disproportionate harm to black students and their teachers. We recommend that the Department of Justice promptly bring lawsuits to require immediate desegregation as soon as a district's Federal funds have been finally terminated. We also recommend that Title IV of the Civil Rights Act of 1964 be amended to permit the Department of Justice to initiate school desegregation suits without the necessity of receiving a specific complaint —— as is now the requirement. See pp. 31 to 33 of the Report.

6. Since passage of the Civil Rights Act of 1964, Congress has given inadequate support to HEW's attempts to enforce school desegregation —— appropriations have been limited and some unnecessary restrictions placed on HEW's operating procedures. In part, the inadequacy of HEW's enforcement efforts in the past five years stems from the inadequacy of this support. HEW's request for additional personnel is now pending before the Senate and we urge its approval.

7. Passage of the Whitten Amendment, which would require the acceptance of freedom-of-choice plans, would slow or halt the progress of school desegregation. We believe that there is a serious chance that its passage would reverse some of the limited gains already made. See pp. 25 and 26 of the Report.

8. As we had previously found in our 1967 report, Southern School Desegregation: 1966-67, freedom-of-choice, since it places the full burden of desegregation upon the shoulders of black parents and their children — those who are politically, economically, and socially least able to bear it -- is not an effective means of desegregating elementary schools in the Southern and Border States. See pp. 14 to 26 of the Report.

Because freedom-of-choice requires affirmative action by black parents before their children can attend an integrated school, its use, as a practical matter, has encouraged local

> white citizens to engage in campaigns of intimidation and economic retaliation against black parents willing to take such action. Similarly, white students and teachers frequently harass and punish the black children whose parents have chosen to send them to the formerly white-attended school. Consequently, many black parents are literally afraid to send their children to formerly white-attended schools; as to them, the "freedom" to choose the school their children will attend is illusory. See pp. 20 to 23 of the Report.

Fifteen years have passed since the Supreme Court decided that the right of black children to attend the same schools attended by other children was guaranteed by the Constitution. Five years have passed since Congress, in the Civil Rights Act of 1964, also declared that segregation violated the law of the land. But segregation is more than just simply a violation of the law. In 1967, we issued a Report, Racial Isolation in the Public Schools, which concluded that racial isolation, whether caused by de jure segregation, discriminatory housing patterns, or other factors, resulted in serious educational harm to the children of minority groups. Conversely, integration significantly boosted the educational achievement of these children. If this Nation truly respected the rule of law, if it truly cherished each of its children, the last vestiges of segregated education would have disappeared years ago. Instead, segregation continues as the pattern, and not the exception, of education in many States.

At this point, we can do no more than echo the words written recently by Justice Black:

> ... /T/here are many places still in this country where the schools are either "white" or "Negro" and not just schools for all children as the Constitution requires. In my opinion there is no reason why such a wholesale deprivation of constitutional rights should be tolerated another minute.

Similarly, we agree with Federal Judge Hoffman that:

> For an American who is devoted to his country and wants to believe in the intelligence and good-will of its citizens it is very painful to contemplate and difficult to understand continued resistance to school desegregation.

While progress has been slow, the motion has been forward and this is certainly no time to create the impression that we are turning back but a time for pressing forward with vigor. This is certainly no time for giving aid and comfort, even unintentionally, to the laggards while penalizing those who have made commendable efforts to follow the law, even while disagreeing with it. If anything, this is the time to say that time is running out on us as a Nation. In a word, what we need most at this juncture of our history is a great positive statement regarding this central and crucial national problem where once and for all our actions clearly would match the promises of our Constitution and Bill of Rights.

Thus, we are deeply concerned over the directions recently being taken in Federal efforts to desegregate elementary and secondary schools. We are committed to the purpose for which this Commission was created: to act as an objective, bipartisan factfinding agency and to continually apprise the President and the Congress of the facts as we see them. We speak out now since we believe our Government must follow the moral and legal principles and promises on which our Constitution and laws are based and meet the high expectations to which the people of this country have addressed themselves.

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September 11, 1969

ADDITIONAL STATEMENT
BY
VICE CHAIRMAN-DESIGNATE HORN

Civil rights is a national problem. Progress and blame can be shared by those in all three branches of our Government under several administrations and by people in all parts of our country.

Under the previous administration, the Department of Health, Education, and Welfare permitted 67 school desegregation plans submitted by districts in Southern States to be delayed for final implementation until September, 1970. Under the current administration, 51 school desegregation plans have been delayed for final implementation until September, 1970.

The easier tasks have been done. The most difficult problems still remain. All who serve in each of the three branches of our Federal Government and, indeed, all Americans should face up to them.

GSA DC 70-2965