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BUSING IS NOT REALLY THE ISSUE

JAMES C. HARVEY*

Busing virtually replaced "law and order" as the most emotion-laden "issue" during the 1972 election campaign. Though the election is over and Richard Nixon has been reelected, busing remains a concern of many Americans. However, it is not busing *per se* that disturbs so many people, particularly whites, but that small part of bus transportation utilized to bring about public school desegregation.[1] It is that aspect of school desegregation that has aroused the ire of much of the public in all parts of the country. A noted legal scholar has written:

> For if busing as such is a false issue, it has come to symbolize the real one: namely, what is the proper objective of federal policy toward racial concentration—or separation, or isolation is the public schools, and beyond that, what are the proper priorities of federal policy in primary and secondary education?[2]

Transportation at public expense provided for pupils to attend public schools dates back to 1869 in Massachusetts. By 1919 all states were using tax revenues to transport students to public schools. Since that time, and down to the present, rural communities and smaller school districts have transported a higher proportion of their students than the larger and more urban school districts.[3]

Furthermore,

> Up to the present, pupils have been transported for generally accepted economic, logistic, general, and special educational reasons; e.g., school reorganization and consolidation, distances in rural and suburban areas and poor public transportation, for special cooperative educational and vocational training services, and the transportation for handicapped or other special groups of students.[4]

In spite of all the hue and cry about the costliness of busing, the cost of transportation (for all reasons, including desegregation) represents about 5

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[1] Greenberg, "Integration or Segregation," 118 *U. Pa. L. Rev,* 940.

[2] Bickel, "Busing: What's To Be Done," 167 *The New Republic* 21.

[3] MARC Busing Task Force, 1972 *Fact Book on Public Transportation* 9; see also U.S. Commission on Civil Rights, 1972 *Your Child and Busing* 3.

[4] MARC Busing Task Force, *supra,* at 9.

percent of all the funds expended on public education. It is also interesting to note, moreover, that only about 3 percent of the students being bused are for the purposes of desegregation. In addition, there is ample evidence that pupils were and are being carried greater distances for a longer time and at greater expense to racially segregated schools than to desegregated ones.[5] Indeed, busing to desegregate has significantly lowered the total number of students and miles bused in some instances.[6] Black students, not white pupils, have generally been the ones transported for desegregation purposes.

As the U. S. Commission on Civil Rights has pointed out:

> The school bus is familiar to every American. For decades, it has been viewed as a convenience, even a necessity, for the education of the nation's children. Whether brought up in big cities, suburbs, or rural areas, millions of Americans—at one time or another—were bused to and from school and thought little about it. Traditionally, busing has caused little upset or controversy, for everyone understood the benefits, in the form of better educational opportunity, well warrant the minor inconvenience which a bus ride involves. Scenes of picketing and protest over busing were rare, and occurred only when parents demanded more, not less busing.
>
> In recent years, the situation has changed radically. The school bus has been nullified as representing a needless waste of money, a threat to the safety of children, and a health hazard. Busing of children has been condemned, not as a relative inconvenience but as an absolute evil.[7]

By no means then has all busing been condemned. In the great majority of instances it is not only condoned but heartily approved. The only part of busing that arouses so much emotion is that very small percentage relating to school desegregation.

This limited aspect of busing has only become a matter of major concern in the past few years.[8] It is worthwhile to examine briefly some of the more significant federal court decisions in recent years in order to understand the legal context of this so-called issue. In May, 1968, the United States Supreme Court in *Green, et al. v. County School Board of New Kent County, et al.*[9] struck down the "freedom of choice" approach to

[5] *Id.* at 10; see also Congress Quarterly, Inc., 1972 *Education of a Nation* 32.

[6] NAACP Legal Defense and Educational Fund, 1972 *It's Not The Distance, "It's the Niggers,"* 19.

[7] U.S. Commission on Civil Rights, *supra*, at 3.

[8] A part of this section is excerpted from Harvey and Holmes, "Busing and School Desegregation," *Phi Delta Kappan*, May, 1972, at 540-542.

[9] 88 S.Ct. 1689 (1968).

school desegregation being followed by a rural Virginia County school board. In effect, the Court held that further delays were no longer acceptable in those border and Southern states still operating legally sanctioned dual school systems. Freedom of choice methods were held inadequate if they did not terminate school segregation as rapidly as other approaches would. Furthermore, school officials were charged with the affirmative duty to take whatever steps were necessary to eliminate racial discrimination "root and branch."[10] Although not all freedom of choice plans were ruled unconstitutional by the Court, as they had generally been prepared, such plans were invalidated. However, in spite of the broad sweep of this decision, so-called Northern de facto segregation was not included in its coverage.[11]

In 1969 the United States Supreme Court in *Alexander, et al. v. Holmes County Board of Education, et al.*[12] once again made clear its intentions about dual school systems in this case arising out of Mississippi. Ironically, the federal government intervened this time on the side of the defendants. This was to be an approach often adopted by the Nixon Administration. The Court in a per curiam opinion held that the continued operation of racially segregated public schools under the guise of "all deliberate speed" was no longer constitutionally permissible. School districts still operating dual school districts were ordered to terminate them at once and change over to unitary systems.

Since housing patterns were largely segregated, it soon became evident that transportation was at least one major tool available for the desegregation of public schools. One writer recently noted that:

> Deep problems are involved in busing children to achieve desegregation—particularly when inordinately long distances are involved, or when students are shifted from a perfectly good school to one that may be inferior. But until such things as housing patterns are radically modified, busing—within reasonable limits—remains one of the few tools immediately available for desegregating America's schools. And we would do well to remember that nearly 20 million pupils are now being bused without apparent harm.[13]

Busing as a tool for achieving desegregation was at issue in *Swann v. Charlotte-Mecklenberg Board of Education.*[14] As in *Alexander* the Nixon

[10] *Id.* at 1694.
[11] *N. Y. Times*, May 28, 1968, Sec. 1, p. 33, col. 4.
[12] 396 U.S. 19 (1969).
[13] Kriss, "The Split-Level Presidency," *Sat. Rev.*, March 11, 1972, at 32.
[14] 91 S.Ct. 1267 (1971).

Administration and the Justice Department intervened on the side of the defendants in support of the so-called neighborhood school concept.[15] In this instance, the United States Supreme Court unanimously upheld the constitutionality of busing as a means by which dual school systems could be terminated. However, as previously, the justices ruled that *Swann* did not apply to de facto segregation based on neighborhood patterns in the North.[16]

Like the federal district court, the Supreme Court in *Swann* held that the assignment of children to the school nearest their homes would not produce an end to the dual school system. Therefore, school desegregation plans could not be limited to "walk-in" schools. The Court pointed out that:

> All things being equal, with no history of discrimination, it might be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation.[17]

At the same time, the Supreme Court did not require any degree of racial balance or mixing and did not automatically eliminate all-black schools. Nevertheless, the court did hold that the mere existence of all-black schools created a presumption of discrimination and that federal district courts might rely on racial quotas as a guide in preparing school desegregation decrees (as a starting point toward finding a remedy). In addition, pairing and noncontiguous school zones were ruled to be permissible tools to achieve desegregation.

However, there remained little doubt that:

> Despite the promise of the occasion, the Court fell short of pronouncing definite standards for school desegregation. The approach taken in Chief Justice Burger's opinion was to vest considerable discretion in district court judges, without providing them with any explicit guidelines as to when or how to use it. While more definite standards may be implied in the Court holding, the opinion's language leaves several questions unanswered.[18]

In spite of the ambiguities in the *Swann* decision, one of the chief problems in the South was its enforcement. The Department of Health, Ed-

[15] Since housing is usually segregated, the term neighborhood school is a code word generally meaning a preference for segregated schools.

[16] See *Fiss*, "The Charlotte-Mecklenburg Case—Its Significance for Northern School Desegregation," 38 *U. Chi L. Rev.* 697-709 for the possible impact on segregation in Northern public schools.

[17] 91 S.Ct. 1282 (1971).

[18] "The Supreme Court, 1970 Term," 85 *Harv. L. Rev.* 75.

ucation, and Welfare had very rarely required busing prior to the decision. Moreover, late in 1971, the U. S. Commission on Civil Rights charged that few changes had been required by HEW which adequately reflected the *Swann* decision.[19] A year later, there is little likelihood that the Commission would change its evaluation of HEW policies.

There is the additional problem of the flight of whites to the suburbs from the cities. The effect of this population shift has been to lessen any chances for racially mixed schools, as the suburbs have generally formed their own school districts. Inner cities are becoming increasingly black with the suburbs predominantly white. This change has taken place in the South as well as the North. Moreover, public school segregation still exists on a major scale not only in the South,[20] but inside Northern and Western cities as well.

A rather significant decision was made by a federal district judge in February, 1970, affecting the public schools in Pontiac, Michigan. In *Davis v. School District of the City of Pontiac, Inc.*[21] the court ruled that:

> . . . the Pontiac Board of Education has intentionally utilized the power at their disposal to locate new schools and arranged boundaries in such a way as to perpetuate the pattern of segregation within the city and thereby, deliberately, in contradiction to their announced policies of achieving a racial mixture in the schools, prevented integration.[22]

The district court ordered the Pontiac school board to integrate the faculties, students, and administrators by September, 1970. Moreover, boundary lines for attendance purposes were to be revised and busing was to be utilized to achieve a maximum degree of integration.

The implementation of the Pontiac decision was delayed, and it was appealed to the U. S. Court of Appeals at Cincinnati. This court upheld the decision of the lower court. The district court finally issued an order on August 10, 1971, for busing to go into effect for the fall term in the Pontiac school district. Opposition to the busing decree quickly mounted in the white community and some buses were burned. Nevertheless, the order was implemented and in October, 1971, the United States Supreme Court declined to review it. That action had the effect of validating the district court's order.[23]

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[19] "School Desegregation," *Civil Rights Digest*, December, 1971, at 9.

[20] See Southern Regional Council, *et al.*, 1972 *It's Not Over in the South—School Desegregation in Forty-Three Southern Cities Eighteen Years After Brown.*

[21] 309 F. Supp. 734 (E.D. Mich., S.D. 1970).

[22] *Id.* at 741.

[23] *N. Y. Times*, October 27, 1971, Sec. 1, p. 1, col. 2.

In the meantime, in *Keyes v. School District Number One, Denver, Colorado*,[24] a federal district judge ruled that while the Denver school system did not have a de jure segregation policy except in three schools, nevertheless, it was pursuing some practices similar to de facto segregation policy with respect to black and Hispano children in others. The judge held that:

> The evidence establishes, and we do find and conclude, that an equal educational opportunity is not being provided at the subject segregated schools within the district. The evidence established this beyond doubt. Many factors contribute to the inferior status of these schools, but the predominant one appears to be the enforced isolation imposed in the name of neighborhood schools and housing patterns.[25]

The Denver school board failed to produce an acceptable plan and in May, 1970, the federal district judge decreed that Denver must desegregate 15 minority schools by 1972 and make changes at two others (all had at least 70 percent Spanish-American or black students). There would be free transfers and open enrollment, with space guaranteed and compensatory education programs available for minority pupils. The Judge declared that mandatory busing to the extent possible should be avoided, but ruled that "it may well be necessary to effectuate much of the Court's plan."[26]

The Denver case was appealed by the school board to the United States Court of Appeals for the Tenth Circuit.[27] This court upheld the district court only in the case of the three schools shown to be segregated as a result of official actions. Therefore, the district court order pertaining to the other schools was invalidated.[28]

The *Keyes* case has since been appealed to the United States Supreme Court and a decision is expected sometime before the end of this term of the court. Apparently the high court has decided to come to grips with the question as to whether or not to end school segregation caused by housing patterns. If the court should decree that de facto segregation is also unconstitutional, busing will probably be necessary to implement the decision.

Meanwhile, an even more far reaching aspect of public school desegregation has come to light in the past several years in dealing with schools

[24] 313 F. Supp. 61 (U.S.D.C., D. Colo., 1970).
[25] *Id.* at 83.
[26] *Id.* at 96-96.
[27] 445 F.2d 990 (10th Cir. 1971).
[28] *Id.* at 1007.

on a metropolitan area-wide basis. On January 10, 1972, a federal district judge issued what may become a landmark decision in *Bradley v. School Board of the City of Richmond, Virginia.*[29] Interestingly enough, the Richmond school board joined with the black plaintiffs during the court hearings. The court decreed that before September, 1972, the city of Richmond public schools and those of Henrico and Chesterfield counties in the suburbs to be merged into a single metropolitan school district. The judge held:

> . . . that the duty to take whatever steps are necessary to achieve the greatest degree of desegregation in formerly dual school districts by the elimination of racially identifiable schools is not circumscribed by school district boundaries created and maintained by the cooperative efforts of local and central state officials. The court also concludes that meaningful integration in a bi-racial community, as in the instant case, is essential to equality of education, and the failure to provide it is violative of the Constitution of the United States.[30]

As in *Swann,* implementing the *Bradley* decision would require a large amount of busing as a viable tool for desegregation. Moreover, as before, the court pointed out that a large number of pupils were bused to public schools each day which demonstrated that it was a normal happening.[31] The lawyers for the plaintiffs claimed that the Richmond decree could have a nation-wide effect, particularly in the Northern cities.[32] The euphoria of victory was somewhat short-lived, however, as the U. S. Court of Appeals, Fourth Circuit, overturned the lower court decisions on June 5, 1972.[33]

The court held that:

> When it became clear that state imposed segregation had been completely removed within a school district, further intervention by the district court was neither necessary nor justifiable, and in absence of any constitutional violation in the establishment and maintenance of three school districts in Virginia or any unconstitutional consequence of such maintenance, it was not within the district judge's authority to order consolidation of such separate political subdivisions of the commonwealth.[34]

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[29] 338 F. Supp. 67 (E.D. Va. 1972).
[30] *Id.* at 79-80.
[31] *Id.* at 77.
[32] N. Y. Times, January 13, 1972, Sec. 1, p. 32, col. 1.
[33] 462 F.2d 1058 (4th Cir. 1972) petition for cert. filed, 41 U.S.L.W. 3211 (U.S. Oct. 5, 1972).
[34] *Id.*

This decision is now on appeal to the United States Supreme Court.

Another case affecting a metropolitan area came out of Detroit, Michigan. On September 27, 1971, in *Bradley v. Milliken* the federal district court held that illegal segregation existed in the Detroit public school system as a result of policies followed by the state of Michigan and the Detroit Board of Education.[35] A few days later, on October 4th, the judge ordered the defendants and plaintiffs to develop and submit plans of desegregation—for "Detroit only" and a "metropolitan plan." Both sides submitted plans, but the judge ruled that all of them were inadequate. He concluded that relief from segregation could not be examined within the geographical confines of the city and thus a metropolitan approach had to be considered.

Once again, a number of plans were submitted to the judge. On June 14, 1972, he ruled that all were unacceptable except one—calling for a three-county consolidation (Wayne, Oakland, and Macomb).[36] This region included Detroit and 53 suburban school districts. The judge then appointed a panel to prepare a detailed plan within 45 days to provide for a maximum amount of actual desegregation. Part of the overall plan would go into effect in the fall of 1972, and it was to be in a state of complete implementation by the fall of 1973. As might be expected, a considerable amount of busing would be required—a two-way process of black and white pupils.

In alluding to the need for busing the judge noted that:

> Transportation of children by school bus is a common practice throughout the nation, in the state of Michigan and in the tricounty area. Within appropriate time limits it is a considerably safer, more reliable, healthful and efficient means of getting children to school than either car pools or walking, and this is especially true for younger children.[37]

The federal judge, Stephen J. Roth, soon became perhaps the most hated man in Michigan. Contrary to popular belief, he was very conservative, but he had been swayed by the NAACP's evidence that banks, savings and loan associations, and other mortgage and loan associations in Detroit often "red-lined" neighborhoods. This meant that blacks could not obtain mortgages in certain areas. He had also learned that the Federal Housing Administration and the Veteran's Administration used mortgage policies to encourage "harmonious"—i.e.—all blacks on all-

[35] 338 F. Supp. 582 (E.D. Mich., S.D. 1971).
[36] 345 F. Supp. 914 (E.D. Mich., S.D. 1972).
[37] *Id.* at 926.

white neighborhoods.[38] Judge Roth had also noted that the Detroit public school system had built new schools in either all-black or all-white neighborhoods which perpetuated segregated pattern.[39]

In spite of the uproar, on July 11, 1972, as a result of the study by the panel, Judge Roth ordered the Detroit school officials and the State of Michigan to purchase 295 buses to carry out the first phase of the plan. However, on request of the defendants, pending a full hearing, the United States Court of Appeals in Cincinnati stayed the district judge's order.[40]

On December 8, 1972, after several months of suspense, a three judge panel in Cincinnati unanimously upheld the authority of Judge Roth to carve out a large new school district for the metropolitan area of Detroit. The court tied the blame for the situation in Detroit to the State of Michigan.[41] At the same time, the Sixth Circuit Court expressly disagreed with the Fourth Circuit Court which had denied that the State of Virginia had been responsible for the segregation in Richmond and had overturned the district court's decree to consolidate the city and suburban school districts.[42]

The Sixth Circuit Court decision did call for new district court hearings to prepare the exact shape of the new metropolitan district. In the meantime, however, the order to purchase 295 new buses was vacated, "subject to the right of the District Court, in its discretion, to consider the entry of another order requiring the purchase of school buses at the appropriate time."[43]

The court left no doubt that a considerable amount of busing would be necessary to implement the metropolitan plan. Since the Richmond and Detroit decisions at the Court of Appeals level are in conflict, the resolution of the issue now lies with the United States Supreme Court.[44] Whatever that court decides will have a major impact on whether or not the white flight to the suburbs will continue as a means of avoiding public school desegregation. A metropolitan area solution for the heavily populated regions of the United States cannot be viable without a large degree of two-way busing.

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[38] Serrin, "The Most Hated Man in Michigan," *Sat. Rev.*, August 26, 1972, at 14.
[39] *Id.* at 15.
[40] Cong. Quarterly, Inc., *supra*, at 33.
[41] Bradley, *et al.*, v. Milliken, *et al.*, No. 72-1809-72-1814-F.2d (6th Cir. 1972); also see *The Washington Post*, December 9, 1972, Sec. A, p. 1, col. 3 and *N. Y. Times*, December 9, 1972, Sec. 1, p. 42, col. 1.
[42] Bradley v. Milliken, at 67.
[43] *Id.* at 69.
[44] On January 15, 1973, the U.S. Supreme Court agreed to rule on the Richmond case this term.—*Jackson Daily News*, January 15, 1973, Sec. A, p. 1, col. 3.

While the federal courts have been ruling in cases concerning the use of busing as a tool in desegregation, the more visible "political" departments in the national government have also been and are being affected by the "issue." The year 1972 was a major election year, and it was inevitable that the storm over busing would spill over into congressional and presidential politics.

While Congress was in session during 1972, a number of proposals were introduced to halt busing by law and by Constitutional amendment. President Nixon also made some legislative proposals calling for a moratorium on all new busing orders and for the redirection of $2.5 billion in educational authorization for compensatory education.[45]

Some of the very Congressmen who had always given their support to Civil Rights bills in the past were in the forefront to stop that part of busing that lead to desegregation. Apparently they were reacting to pressures from their constituents, particularly whites. A number of blacks also oppose busing, but they are probably in the minority. At least one of the reasons for opposition among some blacks is that for the most part it has been black children who have been bused for desegregation purposes until recently.

The House of Representatives proved more amenable to restrictive legislation than the Senate in 1972. Proposed constitutional amendments and President Nixon's proposals did not reach the House floor, however. Of the various bills introduced, the Higher Education Act which contained busing restrictions, was the only one to become law in 1972. It called for a halt for 18 months on any busing ordered by the federal courts until all appeals have been exhausted.[46] President Nixon signed the bill but regarded it as inadequate. He scolded Congress for its failure to act on his proposal.

In August, 1972, the House of Representatives passed a much more stringent anti-busing bill. Though it contained no funds for compensatory education and went beyond anything he proposed, the President supported the bill. Among other things, this legislative proposal prohibited the busing of students in the sixth grade or below to a public school to a school other than the one nearest, or next to the nearest their homes. In addition, it prohibited the busing of pupils in grades seven through twelve unless it was shown "by clear and convincing evidence" that no other

[45] "Anti-Busing Funds, 30 *Cong. Quarterly Weekly Report* 749; see also NAACP Legal Defense and Educational Funds, *supra.*

[46] "Senate Approves School Anti-Busing Compromise," 30 *Cong. Quarterly Weekly Report* 1241.

method among seven mentioned remedies would end segregation. The bill also provided that a busing plan could be required only in conjunction with one or more of the seven remedies. Finally, it stipulated that previous desegregation orders could be reopened and be brought into line with the provisions in the bill.[47]

Fortunately, however, there was enough opposition from a coalition of Northern Democrats and liberal Republicans to prevent the passage of this stringent piece of legislation. This group, through resort to the filibuster, was able to prevent a vote on the bill in the Senate. Three unsuccessful attempts to cut off debate were attempted.[48]

In the meanwhile, busing reared its ugly head in presidential politics and opposition to it paid dividends for both George Wallace (who left the campaign trail after being wounded) and President Nixon. The first important test came in Florida. Busing was obviously an important concern when many Floridians went to the polls on March 4, 1972, to vote in the Democratic presidential primary. Florida is considered perhaps the most progressive of the Southern states. George Wallace noted for his attack on busing was the front runner with 42 percent of the vote. Moreover, 74 percent of the voters approved a proposal that the U. S. Constitution be amended to ban busing to achieve racial balance—something no court had ever ordered as such. At the same time 79 percent voted yes on the question: "Do you favor providing an equal opportunity for quality education for all children regardless of race, creed, color, or place of residence and oppose a return to a dual system of public schools?"[49] The incongruity of the vote on the two proposals apparently escaped many voters. The busing referendum gave some of them a chance to register their prejudices, while the other question seemed to permit a salving of conscience for having done so.

As one writer noted:

> Unfortunately, the housing issue did more than benefit the candidates who rode it the hardest. It also demonstrated again what happened when race that historic divider of the nation and drag on a region's progress is injected into Southern politics.[50]

On May 4th, Tennessee voters followed the lead of those in Florida by overwhelmingly approving an amendment to the U. S. Constitution to

[47] "House Approves Strict Curb on School Busing," *id.* at 2111.
[48] "Anti-Busing Bill Shelved," *id.* at 2699.
[49] Hooker, "Busing, Governor Askew, and the Florida Primary," *27 New South* 24.
[50] *Id.* at 29.

ban busing. Just to show that not only the South was affected by this "issue," Michigan—in the midst of the controversy in Detroit—gave its support to George Wallace as the front runner in the Democratic presidential primary just after the attempt on his life. He received 51 percent of the votes.[51]

Nevertheless, at the Democratic National Convention in July, the Democrats nominated George McGovern for President. He was favorable to busing as a viable tool if necessary to achieve school desegregation, and he had attacked efforts to turn back the clock on the national commitment to provide equal opportunities for all Americans.[52] Moreover, the members of the convention approved a platform which stated: "Transportation is another tool to accomplish desegregation. It must continue to be available according to Supreme Court decisions to eliminate legally imposed segregation and improve the quality of education for all children."[53]

President Nixon sailed through the Republican presidential primaries and easily won renomination at the Republican National Convention. Typical of his statements on busing was the following made in Texas on April 30, 1972:

> When you bus children, particularly young children away from their neighborhood school into an unfamiliar neighborhood, whether they are black or white, it leads to inferior education. It also has some other disadvantages.
> It divides communities, it creates hostility among people that didn't exist before. I think that for that reason we have got to find more effective means to have equality of educational opportunity for all Americans than to use busing.[54]

The participants at the Republican National Convention adopted the following statement on school desegregation and busing as a part of the party platform:

> We are committed to guaranteeing equality of educational opportunity and to completing the process of ending de jure segregation.
> At the same time we are irrevocably opposed to busing for racial balance. Such busing fails its stated objectives;—improved learning opportunities—while it achieves results no one wants—division within

[51] Serrin, "They Don't Burn Buses Anymore in Pontiac," *Sat. Rev.*, May 24, 1972, at 8.
[52] "Campaign Issues," 30 *Cong. Quarterly Weekly Report*, 2222.
[53] "Democratic Platform," *id.* at 1738.
[54] "Campaign Issues," *id.* at 2222.

communities and hostility between classes and races. We regard it as unnecessary, counter-productive and wrong.[55]

The NAACP Legal Defense and Educational Fund took issue with contention of the Nixon Administration and the Republican Party platform that busing divided communities. Indeed it asked:

> Who has disrupted communities, imposed hardships, and torn us apart as a people?
> It is not the Federal judges who have exercised judicial restraint.
> It is not black citizens who are still trying to secure equal educational opportunities for their children.
> It is not the school bus.
> It is the present administration which has used the power and majesty and authority of the President's office to stir dissension, confusion, and uncertainty among us by politicizing the busing issue.[56]

Nevertheless, President Nixon was reelected for another four years. While an incumbent President generally enjoys certain advantages in such an election campaign, and despite the obvious blunders committed by McGovern and his staff, there is little doubt that busing was an "issue" that helped Nixon to magnify the extent of his victory. One of the major reasons why so many white union workers who traditionally favor Democratic presidential candidates voted for Nixon was their dislike for real school desegregation and busing was the appropriate code word. Perhaps Julian Bond, when speaking at the recent Civil Rights Symposium in Austin, Texas, put the matter most succinctly: "It was not the bus, it was us."

1973 promises to be another turbulent year as opposition to busing continues. From the standpoint of the federal courts alone, busing seems certain to remain on the agenda. It may prove difficult to convince the Supreme Court that much of the public school segregation outside the South in the cities, such as in the Denver case (largely de facto)[57] constitutes a violation of the Equal Protection Clause of the Fourteenth Amendment. There is also doubt that the Supreme Court will decide to uphold the ruling of the Court of Appeals in the Detroit case and reject that of the Court of Appeals in the Richmond case. Yet a favorable decision seems the only way to desegregate the schools in the metropolitan areas as

[55] "Text of Platform Adopted by Republicans at Miami Beach," *id.* at 2159.
[56] NAACP Legal Defense and Education Fund, *supra*, at 44.
[57] It is difficult to see how de facto segregation can exist without the involvement of government, however.

the inner cities are becoming increasingly black in population. If the court did rule in favor of metropolitan area districts with the consequent busing, it might serve to curtail to some extent the white flight to the suburbs, since the suburbs would no longer provide a haven from integrated schools.

However, there is the additional problem as to what President Nixon and Congress will do. He has threatened to support a constitutional amendment if he did not obtain the kind of legislation he sought. Moreover, there will probably be many efforts in the Congress itself for legislation and/or a Constitutional amendments to curb busing. If this sentiment succeeds, there is little question that it will serve to undermine our court system and the meaning of the Equal Protection of the Law in the Fourteenth Amendment. As long as housing is largely segregated in the United States, it is difficult to see how continued desegregation can occur without busing. If busing is halted, it may mean that school desegregation will also end. Even if a large number of people, largely white, do not want real school desegregation, does that mean that the Fourteenth Amendment must therefore be meaningless? Only time will tell. But obviously, busing is not the real issue.