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Mississippi Council on Human Relations

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NOTES FROM THE STATE OFFICE

The Council is seeking a new director since Joan Bowman is no longer with us. Applications should contain a resume and a letter stating the applicant's concept of the work of the Council, program ideas for development and a list of references.
The Executive Committee is preparing a job description, requests for information and applications should be addressed, in writing, to Rev. J.W. Carroll, President
Mississippi Council On Human Relations
424 South Tenth St.
Oxford, Mississippi 38655

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The Tombigbee Council on Human Relations has just published a lively and fascinating report on West Point. Its purpose:"to be helpful to the people of West Point who care about improving an unsatisfactory situation, and also perhaps educational for persons in other places." Written by Mrs. Donna Myhre, Executive Secretary of the Tombigbee Council, it explores carefully the reactions of citizens of a community in chronic tension. If you would like a copy: "WEST POINT MISSISSIPPI-A REPORT" Drawer KX, Tombigbee Council on Human Relations, State College, Miss. 39762. (There's no price printed but this is a new vigorous council and a donation to cover expenses of mailing and handling would probably be greatly appreciated.)

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About This Issue: On the pages following will be found an analysis of the Supreme Court decisions on "busing" in school desegregation. It was prepared by Miss Winifred Green, Director of the American Friends Service Committee's Southeastern School Desegregation Project. We have devoted so much space because there is already much misunderstanding about the decision which will probably affect every school district in Mississippi.

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The Supreme Court on May 3 upheld the right of juries to pronounce life or death but did not rule on the death penalty as "cruel and unusual punishment." This leaves the eight Mississippians on death row in uncertain status (six are black, two are white.) One man has been fighting for his life since 1964 which was the same year Mississippi held its last execution.

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We still have a number of copies of the Southern Regional Council Special Report, "Augusta, Georgia and Jackson State University-Southern Episodes In A National Tragedy." If you would like a copy for your own use, your public library or organizational records, please drop a note to the Council office. Free while they last.

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THE SUPREME COURT'S SCHOOL DESEGREGATION DECISIONS

A SUMMARY AND ANALYSIS

The Supreme Court decisions of April 20, 1971 represent a major victory for those who favor thorough and realistic school desegregation in the South. The opinions project a middle-of-the-road tone, but when the operative rulings on the contested issues actually before the Court are examined, it becomes apparent that civil rights attorneys got almost everything they asked for.

I. The Main Issue -- Pupil Assignment

The Central issue in the cases was the assignment of pupils, and the basic questions were the extent to which one-race schools could be tolerated in formerly dual systems with a racially mixed student body, and the extent to which the federal courts could order non-contiguous attendance zones and additional busing to eliminate such schools. In the Mobile case, the Fifth Circuit had rejected the use of non-contiguous zoning even where substantial numbers of all-Black schools would result; it had announced a goal of minimizing the number of all-Black or nearly all-Black schools only to the extent consistent with "maintaining the neighborhood concept of the school system." In the Charlotte case, the Fourth Circuit held that only a "reasonable" amount of busing could be required to implement such zoning, while throwing out a district court plan which effectively desegregated all of the Charlotte schools by the use of substantial busing. In both cases, petitioners represented by attorneys from the N.A.A.C.P. Legal Defense and Educational Fund, Inc.,

asked the Supreme Court to require the elimination of all single-race schools, even where that required non-contiguous zoning and substantial busing, unless this was impossible as a practical matter. The Justice Department supported both the Fourth and Fifth Circuit decisions, thus following President Nixon's announced policy that neighborhood school zoning would mark the limit of federal desegregation requirements.

On the issue of one-race schools, the Court held that the existence of "some small number" of such schools in a system "is not in and of itself the mark of a system which still practices segregation by law." However, the Court went on to say that federal courts "should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools." More specifically, the Court declared a "presumption against schools that are substantially disproportionate in their racial composition."

This language is of considerable generality; it does not resolve the concrete issues of busing and non-contiguous zoning. The Justice Department, and even the school board lawyer, had agreed that one-race schools were matters of concern; the real question was whether the neighborhood school principle would have to give way when it produced such schools. On the other hand, the attorneys for Black citizens seeking full integration had conceded that geography might compel that existence of some single-race schools, at least in the short run -- for example, where a three-hour bus trip would be needed to achieve a racially mixed student body.

It is in its discussion of "Remedial Altering of Attendance Zones",

that the Court concretely deals with the neighborhood school question. Its answer is straightforward. If all other things were equal, neighborhood attendance zones might be the most desirable system. But where there has been segregation by law, other things are not equal The system of segregation must be undone, even by arrangements which are "administratively awkward, inconvenient and even bizarre." Therefore, " w e hold that pairing and grouping of non-contiguous school zones is a permissible tool and such action is to be considered in light of the objectives sought." Here the Administration position that desegregation remedies may not extend beyond neighborhood zoning is squarely rejected.

The disposition of the busing issue follows almost inevitably from this ruling. If non-contiguous zones are to be established, children must be transported from the zone in which they live to the zone where their school is located. "We find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school." The limitations upon the extent of busing are risk to the health of the children and significant impingement on the educational process. There is no mention of cost or administrative inconvenience as acceptable limiting factors.

In the light of this discussion, the resolution of the two cases was clear. In the Charlotte case, the sweeping district court order which had desegregated every school in the system by the use of satellite zoning between central city and outlying areas, implemented by massive busing, was reinstated. In the Mobile case, the Court of Appeals plan was rejected because "inadequate consideration was given

to the possible use of bus transportation and split zoning." Another and more important legal ruling was reversed by implication as well: the President's announcement of March 24, 1970, that the Constitution did not require desegregation beyond the limits of the neighborhood school.

II. Peripheral Issues

The Court dealt with a number of other issues in its four desegregation opinions. In McDaniel v. Barresi, it ruled -- as had been expected -- that local school officials do not violate the Constitution when they adopt full racial balance as a goal of school zoning. They are not required to go this far, but they may if they wish. In North Carolina Bd. of Education v. Swann, the Court ruled the North Carolina Anti-Busing Law unconstitutional. This followed naturally from the holding in the Charlotte case that busing was sometimes required as a remedy for official segregation.

In the Charlotte opinion itself, the Court reaffirmed its earlier position that racially balanced assignment of faculty and staff was required as a desegregation remedy. In an important dictum, it stated that the lower courts should oversee school construction plans in districts undergoing desegregation so that "future school construction and abandonment is not used and does not serve to perpetuate or re-establish the dual system." Agreeing with the lower federal courts, the Court rejected the argument that Title IV of the Civil Rights Act of 1964 in any way limited the power of the federal government or of the courts to remedy past official segregation; that statutory provision, the Court held, was meant solely to limit federal power to un-

do purely accidental "de facto" segregation. Finally the Court ruled, again in agreement with most lower federal courts, that in desegregating the schools the race of students must be taken into account, and that limited use could be made of racial ratios and quotas in devising remedies for past official segregation.

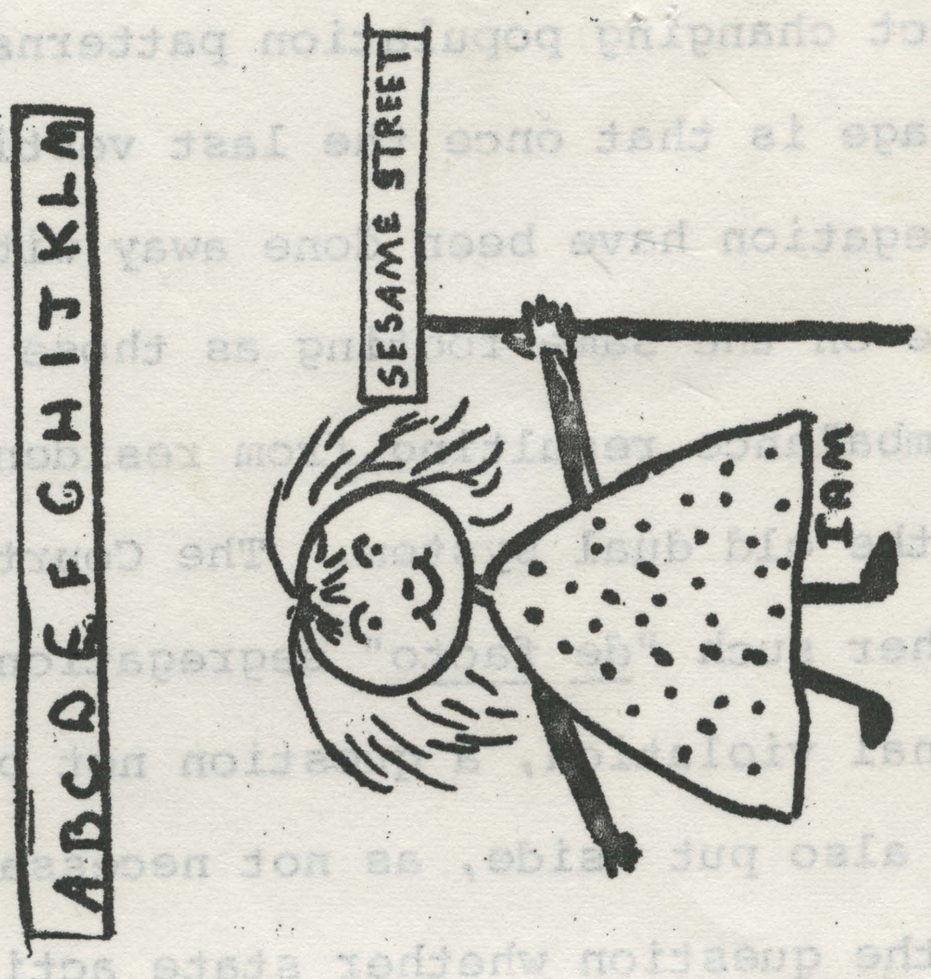
The Court concluded its Charlotte opinion by holding that where adequate remedies for past segregation have finally been implemented, the federal courts will not continue to require readjustment of attendance zones to reflect changing population patterns. The thrust of this concluding passage is that once the last vestiges of the old system of official segregation have been done away with, southern school districts will be on the same footing as those in the North, and subsequent racial imbalance resulting from residential shifts will not be tainted by the old dual system. The Court did not speak to the question of whether such "de facto" segregation could itself amount to a constitutional violation, a question not presented by these cases. The Court also put aside, as not necessary for the decision of these cases, the question whether state action by public officials other than school authorities -- for example, housing officials -- which resulted in racial imbalance in the schools would condemn that racial imbalance as unconstitutional.

Fulbright !

on the conduct of foreign relations & the making of war

"to those of us who have developed an appreciation of people in high places for doing stupid things, there is much to be said for institutional processes which compel people to think things over before plunging into action."

- J. William Fulbright
from the Memphis Commercial-Appeal
Apr. 17, 1971



MISSISSIPPI COUNCIL
ON HUMAN RELATIONS
108 SOUTH PRESIDENT ST.
JACKSON, MISS. 39201

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Mr. J. S. Hartin
Box 25
University, Mississippi 38677