

CHAIRMAN POWELL. I have one comment. I do not agree with you that the Commissioner does not have the power to withhold funds.

It was in 1954 when I started the Powell amendment and Mr. Daniels held extensive hearings on it. The Civil Rights Act, title VI, section 601 states:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

It goes ahead and even spells out that "Each applicant for a grant for the construction of educational television facilities is required to provide an assurance that it will, in its broadcast services, give due consideration to the interests of all significant racial or ethnic groups within the population to be served by the applicants."

What I am trying to say is that I would like to submit to you this brief I have had prepared for a knowledgeable person on your staff to look over and then get a reply to me. I believe you do have some authority, and I would like to ask Mr. Daniels, whether he is a lawyer or not, what he feels about it.

(The brief referred to follows:)

A LEGAL OPINION ON BOOKS FOR SCHOOLS AND TITLE III OF THE
CIVIL RIGHTS ACT

I. THE COMMISSIONER OF EDUCATION HAS THE AUTHORITY TO PROHIBIT OFFICIAL CONDUCT WHICH POURS FEDERAL FUNDS INTO THE PURCHASE OF BOOKS AND OTHER MATERIALS DESIGNED TO PERPETUATE SEGREGATION AS A WAY OF LIFE

A. Section 601 of Title VI of the Civil Rights Act of 1964 provides: "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Under Section 602, all Federal Departments and Agencies which extend Federal financial assistance are directed to issue rules, regulations, and orders, designed to effectuate Section 601. The regulations governing programs of the Department of Health, Education and Welfare are contained in Title 45 CFR part 80. Section 80.3 of the Department's regulations provides in relevant part:

"(b) *Specific discriminatory actions prohibited.*—(1) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin—

"(B) provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

"(C) subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program; . . ."

If this House Committee finds that certain school purchasing policies have a deleterious affect on children of one race, then such children have been provided a service "which is different . . . from that provided to others under the program" and have been subjected to a "separate treatment" in the receipt of that service. Where school systems have consciously limited books to be purchased to those which reinforce negative Negro stereotypes, deny the contributions of Negroes to American history or which portray only white youngsters and ways of life, the learning climate established for Negro children is, massively infected. The consistent exclusion of portrayals of Negroes "generates a feeling of inferiority as their status in their communities that may affect [Negro children's] hearts and minds in a way unlikely every to be undone." *Brown v. Board of Education*, 347 U.S. 483, 494.

B. Existing regulations confirm the power of the Commissioner to issue such guidelines. Title 45 of the Code of Federal Regulations, Part 80, contains the regulations, under Title VI of the Civil Rights Act, which detail "Nondiscrimination in Federally Assisted Programs of the Department (of HEW)."