

I should say to you that we are exploring with our attorneys the nature of our obligation in this area.

I am delighted to have your brief which I am sure will be helpful to us. I hope we can get ourselves into the posture of being constructive here without denying the point that Mr. Bell made earlier in this hearing, which is an essential point that we have to keep in our minds, the local control of education, the curriculum, and the materials of education.

(Mr. Howe's brief follows:)

BOOKS IN SCHOOLS AND THE TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The question presented is whether the use of certain textbooks or other teaching materials can result in noncompliance with the requirements under title VI of the Civil Rights Act of 1964. This question cannot be confined to textbooks and teaching materials which are purchased with Federal funds because, if a school system receives Federal financial assistance under a program of the Department of Health, Education, and Welfare in support of its elementary or secondary education, discrimination in any of the elementary or secondary programs of that school district is prohibited. This is indicated in the illustrative application of the Health, Education, and Welfare Regulation set out in 45 CFR 80.5(b) which states that under the various programs of aid to elementary and secondary education "discrimination by the recipient school district in any of its elementary or secondary schools in the admission of students, or the treatment of its students in any aspect of the educational process is prohibited."

Therefore, if the use of certain textbooks or other materials is a violation of title VI, the question must be raised regardless of whether such books or materials have been purchased with the aid of Federal funds, and, secondly, the compliance problem brings into question the extension of any Federal financial assistance through the programs of the Department of Health, Education, and Welfare for elementary and secondary education in the school district.

While we recognize that discrimination can result from the use of some books and materials, in the situations generally cited, an extremely subjective judgment would have to be exercised in each individual case. These judgments probably cannot be made without overstepping in the very difficult area of Federal control of teaching materials. Aside from legal questions, enforcement would be time consuming and diversionary of compliance resources which are needed in areas where the discrimination has a more serious and immediate impact.

Chairman POWELL. Mr. Bell?

Mr. BELL. Mr. Chairman, I would certainly want to concur on that last point. I think that is the basic thrust of the Elementary and Secondary Education Act. We would be falling down in our responsibility if we ignored this fact.

However, I think we should push all we can in the direction the chairman mentioned, within bounds of what we can do. I still think there is a great deal we can do.

Chairman POWELL. Do my colleagues have any point to make? If so, please proceed.

Mr. Daniels?

Mr. DANIELS. I agree that you have no authority to dictate the contents of school textbooks nor should the Office of Education exercise control over the selection of such textbooks. However, I want to get to your statement on page 2 where you say that under title II of the act \$100 million is provided for fiscal year 1966, specifically, for textbooks, library books, audiovisual and other instructional material.

Will you tell this committee exactly how that money has been disbursed by your office and for what purpose? Give us a breakdown of the expenditures.

Mr. HOWE. You will find in the tables submitted with my testimony a breakdown by States indicating the percentage of the money that