I have completed this review, and I unhesitantly reaffirm my advice that the 1966 Guidelines are fully consistent with and supported by Title VI of the Civil Rights Act of 1964 and the decisions of Federal courts.

In addition to the analysis of court decisions in my memorandum of March 7, 1966, to Commissioner Howe, the pertinent decisions are discussed in a statement entitled "Authority for the 1966 School Desegregation Guidelines." That statement served as an attachment to a letter of May 24, 1966, from Commissioner Howe to Senator Fulbright. More recently the Courts of Appeals for the Fourth and Fifth Circuits have handed down decisions in *Wheeler* v. *Durham City Board of Education* (No. 10,460, C.A. 4th, July 5, 1966) and *Davis* v. *Board of School Commissioners of Mobile County* (No. 22,759, C.A. 5th, August 16, 1966). These reaffirm principles upon which the Guidelines are based, particularly the fact that teacher desegregation is an essential part of the desegregation plans. Further, in the *Mobile* case, the Court pointed out as one of the principal legal defects in the plan there under review "the fact that even as to those grades which, under the plan, have actually become 'desegregated' there is no true substance in the alleged desegregation. Less than two-tenths of one percent of the Negro children in the system are attending white schools."

The Deputy Attorney General recently submitted to Congressman Howard W. Smith, Chairman of the House Rules Committee, a letter requested by him regarding faculty desegregation. The Chairman had asked whether this Department has authority, under title VI of the Civil Rights Act of 1964, to require a school district maintaining a dual school system to desegregate its faculty as a necessary part of desegregating its school system. The Department of Justice responded with a letter dated October 4, 1966, and an attachment citing numerous judicial decisions in which the courts had required school districts, as a part of school desegregation plans, to cease hiring and assigning faculty on the basis of race and in many cases to assign teachers for the express purpose of overcoming the effects of past discrimination. The letter concluded with the following sentence: "For the foregoing reasons we conclude that section 601 [of the Civil Rights Act of 1964] applies to the desegregation of faculty and staff of school systems that have been racially segregated, and that section 604 [of the Civil Rights Act of 1964] does not preclude such application."

It should be noted, on the other hand, that the Report of the Senate Committee on Appropriations (pp. 71 and 72, Report No. 1631, 89th Cong., 2d Sess.) questioned whether the Guidelines are consistent with legislative intent on the ground that they allegedly require assignment of pupils in order to overcome racial imbalance. The Committee apparently felt that the definition of "desegregation" in section 401(b) of the Act, and the provision of section 407(a) which provides that "nothing herein shall empower any court or official to require the transportation of students to overcome racial imbalance," were intended to be applicable to actions under title VI and that the Guidelines required action to overcome such imbalance.

We are satisfied that the Guidelines do not require action "to overcome racial imbalance." It should be noted, however, that section 402 specifies that the definitions it contains are "[a]s used in this title" [IV], and also that title VI does not contain the defined word "desegregation" or the word "desegregate." It is therefore difficult to conceive of a court holding that, as a legal matter, the title IV definition is controlling in title VI. Moreover, the context of the quoted language in section 407(a) indicates that it concerns only desegregation actions brought by the Attorney General, and not the refusal or termination of Federal financial assistance under title VI. The Senate Appropriations Committee Report, however, is based upon statements made by Senator Humphrey in response to questions asked by Senator Byrd of West Virginia.

Some time ago my staff prepared a statement showing that an examination of the colloquy in context demonstrates that Senator Humphrey was not referring to requirements applicable to school districts which have been maintaining dual school structures, but only to what would be imposed in *de facto* situations which courts have held not to violate the constitutional rights of students. In fact, Senator Humphrey emphasized that the provision in question simply embodied the substance of *Bell* v. *School City of Gary*, 324 F. 2d 209 (C.A. 7th, (1963), cert. den. 377 U.S. 924). (110 Cong. Rec. 12715-12717, June 4, 1964)

The Guidelines are consistent with Senator Humphrey's explanation because he made clear at that time that the amendment did not prevent action "for the