at hand. When in December the Fifth Circuit Court of Appeals announced its opinion in *United States* v. *Jefferson County*, (Civil Action No. 23345, December 29, 1966), the Senator's office agreed that it would be appropriate to include references to that decision in our memorandum. The corrected and printed version of the court's opinion did not become available, however, until almost three weeks later. By that time a motion for rehearing by the full court had been filed by the school boards concerned, which motion has now been granted.

Although the present rehearing of this case makes it inappropriate to cite it as definitively controlling authority, we have not found it necessary to revise the analysis of the law we developed prior to the motion for rehearing, and indeed prior to the release of the *Jefferson County* decision itself. This is because our analysis is based primarily on previously issued leading decisions and other key authority. Accordingly, it seems appropriate to transmit this memorandum without awaiting any further court decision. We have taken up the various points in the order raised by Senator Stennis.

1. THE PURPOSE OF TITLE VI AS CONSTRUED IN THE LIGHT OF COMMENTS ON "RACIAL BALANCE" BY SENATOR HUMPHREY

In discussing proposed amendments to the then pending bill, Senator Humphrey, as floor manager for the bill, made various comments to the effect that it was not intended to require "racial balance" in schools. Senator Stennis quotes some of these comments on page 2 of his letter, and expresses concern that the policy they reflect may not be being observed in the Office of Education.

The court decision Senator Humphrey referred to in the quoted remarks was handed down in a case dealing with the alleged racial separation of children in the public schools of Gary, Indiana. *Bell* v. *School City of Gary*, 213 F. Supp. 819 (N.D. Ind. 1963), aff'd 324 F. 2d 209 (7th Cir. 1963), *cert. den.* 377 U.S. 924 (1964). The issue there was whether the school board could be required to bus children away from neighborhood schools where they were racially isolated, or to redraw the school attendance zones, so as to correct the racial imbalance. The court found that the school zones were based on reasonable nonracial criteria and held that because the school board had therefore not deliberately segregated the schools, it had no affirmative duty to desegregate them.

It is clear from Senator Humphrey's comments on this case quoted by Senator Stennis that racial balance or imbalance in schools was being discussed in connection with the bill only in the context of de facto segregation, where racial separation in the schools results fortuitously from housing patterns and geographic factors. In the quoted remarks, Senator Humphrey indicated that the bill was not designed to require the "busing of children to achieve racial balance," and that "natural factors such as density of population, and the distance that students would have to travel" would be considered legitimate factors in determining school attendance zones. 110 Cong. Rec. 12717 (1964). Nothing in the policies of the Office of Education under the Act has been contrary to this understanding of its purpose.

Nowhere in these remarks of Senator Humphrey's, nor elsewhere in the legislative history of the Act, is there any indication that the question of racial balance was considered to arise at all in the case of school districts where students have been assigned to schools on a racial basis, rather than on the basis of natural factors. In such cases, it seems clear that in order to end racial discrimination as required by Title VI it is necessary to eliminate in an orderly way the dual structure of schools based on race, in those districts where this work has not yet been completed. In fact, although Title VI applies to all kinds of discrimination based on race, color, or national origin in any institution or program receiving Federal assistance, it is clear that the continued operation of the dual school structure, held unconstitutional in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), was one of the major reasons Congress felt that Title VI was necessary.

2. THE EFFECT OF THE DEFINITION OF "DESEGREGATION" IN SECTION 401(b) OF THE ACT

Senator Stennis next refers to the definition of the word "desegregation" provided in Title IV of the Act, which includes a provision that the term as used in Title IV "shall not mean the assignment of students to public schools in order to overcome racial imbalance." The Senator inquires as to the legal