

faculty, transportation and activities. This case was brought by the Attorney General pursuant to Title IV of the Act, upon written complaint from an aggrieved parent of a student in the system seeking relief.

One of the major purposes of the fund termination provisions of Title VI was to bring about voluntary compliance with the requirements of the Constitution as interpreted and applied by the courts. See the general statements by Congressman Celler, at 110 Cong. Rec. 2467 (1964), and by Senator Pastore, id. at p. 7062. With respect to public schools, it was obviously intended to encourage the voluntary desegregation of illegal dual school systems without the necessity of hundreds of additional court cases being brought by individuals, or by the Attorney General under Title IV. The Office of Education would therefore be failing to carry out the intent of Congress if it did not seek to have a full blown voluntary desegregation plan implemented in each dual-structure district. There is no indication in the legislative history of the Act that the Congress intended Federal funds to flow unconditionally to each dual-structure school district unless and until a Negro student applied for admission to a white school and was turned down.

Senator Stennis next refers to the *Singleton* (1966) decision and to *Kemp* as upholding free choice plans. As the quotations he gives show, free choice is considered permissible "at this stage in history" or "at this stage." But it would be incorrect to believe that it follows that a free choice plan will always meet constitutional requirements. As the quotation from the *Clark* case given above shows, free choice is only "tentatively accepted", and may be "cast aside by the courts" if it does not meet such requirements.

The guidelines reflect the same view. Free choice is acceptable if it works to bring about reasonable progress in student desegregation from one school year to the next, but even then, because free choice is intended only to bring about a transition, it is not expected to be used indefinitely. In the sentence following that in which the court in *Singleton* said that free choice is acceptable at this stage, it is stated, "In the long run, it is hardly possible that schools will be administered on any such haphazard basis." 355 F.2d at 871.

Senator Stennis next quotes from the majority opinion of the Fourth Circuit in *Bradley v. School Board of the City of Richmond*, 345 F.2d 310, 316 (4th Cir. 1965) to the effect that "a general intermixture of the races in the schools" is not required under the Constitution. It is believed that this quotation means no more than that "racial balance" in the schools may not be required. This language is interpreted by some, however, to mean that if no Negro student applies under free choice to attend a white school, and the schools remain totally segregated, the Constitution is nevertheless satisfied because the choice was offered. If this interpretation was intended, then it is in conflict with key statements of both the Fifth and Eighth Circuits.

In the 1966 *Singleton* decision, the Fifth Circuit said:

The Constitution forbids unconstitutional state action in the form of segregated facilities, including segregated public schools. School authorities, therefore, are under the constitutional compulsion of furnishing a single integrated school system. Administrative problems may justify an orderly transitional period during which the system may be desegregated several grades at a time.

This has been the law since *Brown v. Board of Education*. Misunderstanding of this principle is perhaps due to the popularity of an oversimplified dictum that the Constitution "does not require integration." 355 F.2d at 869.

In the *Kemp* case, the school board argued that as long as Negro students were not required to attend Negro schools their constitutional rights were not violated. The Eighth Circuit stated that it could not "accept the position advanced by the Board", and pointed out that it was "logically inconsistent with *Brown* and subsequent decisional law on this subject." 352 F.2d at 21.

Senator Stennis also quotes from *Goss v. Board of Education*, 373 U.S. 683 (1963). In that case, the Supreme Court ruled out a provision in a desegregation plan based on nonracial attendance zones. Under this provision, a student had been permitted to transfer from his neighborhood school, if students of his race were in a minority there, to attend a school where students of his race constituted a majority. This so-called "minority to majority" transfer rule had been typically used by white students to transfer out of nearby schools attended predominantly by Negro students, so that they might cross town to predom-