

COMMUNICATIONS

The Media Get the Message

The Federal Communications Commission was worrying about media monopolies long before Spiro Agnew ever left Maryland. Last week the FCC finally moved to curb joint broadcasting-publishing companies that it considers to hold "undue influence on local public opinion." It promulgated a rule forbidding the owner of any TV station, AM-FM radio operation or newspaper to acquire another outlet in the same community.

At the same time, the FCC proposed for future action a drastic follow-up regulation that would break up existing multiple-media combines in local markets. The second measure—which faces a long and undoubtedly contentious inquiry before it can take effect—would require present owners to reduce their holdings to one communications property per city within five years.

Backers of the FCC proposal point to the eleven U.S. cities where the only TV station is controlled by the sole publisher. Opponents contend that such a regulation might ultimately defeat the FCC purpose of diversifying editorial voices in the nation. In some areas, the economics of one-building ownership keep a marginal paper in business or allow for a more forceful joint news operation. The issue is packed with legal and economic complexities. FCC proposals are frequently emasculated by broadcast-industry lobbyists and their friends in Congress, and those that survive to become regulations are subject to judicial review.

THE KENNEDYS

Chappaquiddick (Contd.)

The official inquiries and public explanations concerning last July's Chappaquiddick tragedy have produced more questions than answers about Senator Edward Kennedy's role in the accident that killed Mary Jo Kopechne. The findings of the last round, an inquest on Martha's Vineyard in January, have yet to be made public. Now it seems that some new disclosures—and possibly more trouble for the Senator—are imminent. District Attorney Edmund Dinis last week requested that a grand jury look into the case, a move that increased the likelihood that the entire Chappaquiddick affair may soon be aired in open court.

Rumors about further legal action against Kennedy began to fly when Justice James Boyle filed the inquest transcript and his own report last February. Promptly impounded, the documents were brought to Boston, where Superior Court Chief Justice G. Joseph Tauro ordered them locked in an office safe. The next day Kennedy's lawyer, Edward Hanify, asked to see the transcript of his client's testimony. Before this first request could be acted upon, however, Hanify filed a second pe-

tition, whose contents are unknown because he asked that it be impounded. The second petition apparently concerned Boyle's report and was quickly granted. Late in February, Hanify examined inquest documents, presumably including the Boyle report, which was available only to District Attorney Dinis, the state's attorney general, those named in the report as having possible responsibility for Mary Jo's death, and their counsel.

Accusatory Proceeding. The inquest rules specified that no documents were to be released to the public if a possibility existed of further proceedings against any of those involved in the accident. Thus Hanify's concern and the delays in printing the transcript led many to surmise that Boyle had recommended

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EDWARD KENNEDY
The doubts linger.

a grand jury inquiry. Further action was delayed by the absence of Dinis, who was vacationing in Portugal.

Returning early in March, Dinis was ushered into the room where the inquest records were kept and shown Boyle's report. Twenty minutes later, he emerged looking disturbed and promising to return. He has yet to go back, but last week he wrote Justice Tauro and requested that the Kennedy case go before a special session of the grand jury that will convene next week.

His request, which was promptly granted, renews the possibility that Kennedy will be indicted, perhaps for "driving to endanger," perhaps even for manslaughter. A grand jury is usually a closed accusatory proceeding, and Dinis need only convince twelve of the 23 jurors that an indictment is warranted in order to obtain one. If that happens, the subsequent trial might not only lay to rest lingering doubts about the Kopechne case—but whatever remains of Kennedy's presidential hopes as well.

CIVIL RIGHTS

Desegregation Yes, Integration No

Unquestionably, it was time for Richard Nixon to be heard from on the subject of school desegregation. The Administration's attempt to delay court-ordered desegregation in Mississippi, the firing of a determined liberal who headed HEW's civil rights division, the President's own repeated criticism of busing children to force integration—all had raised confusion about just where the White House stood on one of the nation's most serious and emotion-laden issues. In an 8,000-word statement, the President last week delivered his message: desegregation yes; integration no. Where official barriers to desegregation exist, Nixon would oppose them. Where positive measures are required to promote racial balances, he would demur.

Lawyer Nixon carefully reviewed the judicial decisions involving desegregation, beginning with the Supreme Court's historic 1954 *Brown v. Board of Education* ruling. He concluded that where segregation exists *de jure*, by law or manipulation by authorities, the impediments must be removed. "There is a constitutional mandate that dual school systems and other forms of *de jure* segregation be eliminated totally," he said. Even in those cases, however, he argued that school boards should have some flexibility to meet their special problems. Where segregation exists *de facto*, as a result of housing patterns, the Supreme Court has not yet insisted on affirmative action to ensure school integration. Said Nixon: "*De facto* segregation, which exists in many areas both North and South, is undesirable but not generally held to violate the Constitution."

No More than Necessary. While the President reaffirmed his belief that the *Brown* decision "was right in both constitutional and human terms," he emphasized that he does not intend to press any harder toward desegregation than the Supreme Court requires. In a characteristic bit of Nixonian philosophy, he observed: "If we are to be realists, we must recognize that in a free society there are limits to the amount of coercion that can reasonably be used."

Nixon went on to spell out some of the policies that he has directed his Administration to follow. Overall, they reflect his willingness to have desegregation brought about at the local level whenever possible, rather than imposed from Washington. "Primary weight," he said, "should be given to the considered judgment of local school boards—provided that they act in good faith and within constitutional limits." Neighborhood schools "will be deemed the most appropriate base" for an acceptable school system, and "transportation of pupils beyond normal geographical school zones for the purpose of achieving racial balance will not be required."

Nixon did add a sweetener. He proposed that \$1.5 billion in federal funds be made available to "racially impacted areas" over the next two fiscal years to help desegregating school districts meet their special needs for classrooms, teachers and teacher training—and to improve the quality of education "where *de facto* segregation persists." Some of the money would also be used to explore "innovative new ways of overcoming the effects of racial isolation." These would include integrated activities with children from other schools, ranging "all the way from intensive work in reading to training in technical skills, and to joint efforts such as drama and athletics."

What effect would Nixon's pronouncement have on segregation now? Most experts agreed that since Nixon stuck to existing court decisions, the results would be greatest in the rural South, where *de jure* segregation persists in some areas. Once that ended, so would all school segregation there, since residential segregation is negligible. In larger Southern cities, the consequence could be a marked slowdown in desegregation, since putting an end to *de jure* segregation alone would still leave neighborhood schools reflecting the extensive housing segregation of the urban South. In such cases, where there is both *de jure* and *de facto* segregation, Nixon would eliminate *de jure* segregation "without insisting on a remedy for the lawful *de facto* portion." Northern *de facto* segregation would continue unless the Federal Government insisted on the kinds of limited, part-time integration that Nixon proposed.

Beyond that, there were some inconsistencies and elisions in the statement. While Nixon noted that the number of black children in desegregated Southern schools doubled in 1969 from fewer than 600,000 to nearly 1,200,000—40% of the black school population—he neglected to say that this achievement resulted from enforcement of the federal guidelines that his Administration has now abandoned. He quoted a Supreme Court ruling that dual school systems must be terminated "at once," but then he spoke of allowing Southern school districts the opportunity to demonstrate "good faith." In fact, authorities in most of the old Confederacy have desegregated as slowly as federal pressure would allow.

Malignant Cycle. Yale Law Professor Alexander Bickel, whose writing on desegregation Nixon admires, had doubts about that phrase. "I trust that Nixon doesn't mean that you can have a district where nothing has been done excused because it has shown good faith," he said. But Bickel found the message "hardheaded and well-intended, a fair statement of the case law and a realistic appraisal of the situation." Johns Hopkins' Dr. James Coleman, author of a well-known study on the educational effects of integration and an expert whom Nixon consulted before is-

suing the statement, disagreed. "I think the consensus of recent court decisions is stronger than the message," said Coleman. "I was quite disappointed in the enforcement section." Both Bickel and Coleman, however, welcomed the pledge of \$1.5 billion. No one knows where that money is coming from or exactly how it will be apportioned. "That has not been finalized yet," Nixon told Senator Edward Kennedy last week.

Perhaps the gravest flaw in Nixon's argument was his conclusion that past desegregation policy "all too often has proved a tragically futile effort to achieve in the schools the kind of multiracial society which the adult community has failed to achieve for itself." It is indeed possible that too much has been made of the school's role. But Nixon himself observed that the school "is a place not only of learning but also of living



PRESIDENT NIXON
A dry legalistic document.

—where a child's friendships center, where he learns to measure himself against others, to share, to compete, to cooperate." If Nixon is to meet his stated goal of "a free and open society," with equal opportunity for blacks and whites, there must be significant changes in hiring, housing practices, higher education and other vital sectors. Still, in the broadest human terms, perhaps the best place to break the malignant cycle of discrimination and racial separation is in the schools, among young children.

Court Interference. Nixon shrewdly made use of some black complaints when he denounced the "smug paternalism" of whites who assume that a black school is automatically inferior to a white one. That assumption, he said, "inescapably carries racist overtones." Black separatists, in fact, do favor having their own schools, and some others have become skeptical of integration as a panacea. But most blacks

still want it, or at least demand a genuine choice in the matter (see EDUCATION). Marian Wright Edelman, director of the Washington Research Project, found Nixon's "appeal to black separatists' feelings" clever but irrelevant. "In effect," she said, "this is a separate but equal policy, nothing more than an endorsement of continued segregation." As New York Psychologist Kenneth Clark saw it, "This is a denuding, a significant slowing down of the momentum that has been building all too slowly since 1954."

An Appalling Comment. Nixon's statement is a political document, clearly aimed at placating his key constituencies in Northern suburbs and Southern cities, which will be least affected by the course he aims to take on desegregation. It bears the stamp of a top White House political aide, Harry Dent, a Southerner whom he inherited from South Carolina's Strom Thurmond. Not only did Nixon avoid consulting his Commissioner of Education, Dr. James Allen, a liberal New York Republican, but the White House also dissuaded Allen from releasing an earlier memorandum of his own, expressing the view that integration is essential to equal opportunity in the schools.

Allen's advice would have done Nixon little good, since the President had set out to influence the long-range trend of judicial decisions on desegregation, a trespass on the separation of powers doctrine in spirit if not in law. He denounced at some length the ruling of a Los Angeles trial judge in a lawsuit that is still in progress. Nixon described as "probably the most extreme judicial decree so far" a Superior Court command that the city school district establish nearly precise racial balance throughout its 561-school system. (Coleman calls Los Angeles "a smug Northern district that hasn't done a thing about the segregation there.") Superior Court Presiding Judge Joseph Wapner, who did not take part in the Los Angeles ruling, found it "appalling that the President would use his office to comment on a case pending in our courts."

Nearly a century ago, the era of Reconstruction after the Civil War ended with the Compromise of 1877. Southern Democrats broke an electoral deadlock and allowed Republican Rutherford B. Hayes to become President in exchange for removal of federal troops from the last two occupied Confederate states, Louisiana and South Carolina. Now President Nixon has proclaimed the Compromise of 1970 in order to soothe the South and placate resentful whites elsewhere. By political measurements, he is accurately responding to a prevailing mood. While the President might have renewed his dramatic post-election "bring us together" promise in a television address or a speech to a joint session of Congress, he produced instead a dry legalistic document, filled with debating points and lacking urgency or compassion.