

Constitutional Crisis: I

By ANTHONY LEWIS

When President Nixon made his television speech on busing, most of his audience must have believed that the Supreme Court had ordered massive busing to balance the racial makeup of public schools, and that millions of children across the country were being bused for that purpose. Those were the assumptions that seemed to underlie the President's urgency, his call for an immediate legal moratorium on busing.

But the assumptions are false. The facts are otherwise.

First, the figures. The Department of Health, Education and Welfare says it has no tabulation of children who are taking school buses because of a desegregation plan—children, that is, who would not have been riding a bus to school anyway. But H.E.W. does have figures on the number of bus-riding pupils in major districts that have desegregation plans with busing this year, and comparable figures for last year. The difference roughly shows the increase attributable to court orders or plans.

In Charlotte, N. C., for example, which produced the leading Supreme Court decision on the issue, 46,076 children rode the buses to school a year ago; this year there are 46,849. In Dallas the figures are: 5,079 last year, 12,154 now.

In all the districts for which H.E.W. has those comparable figures, the total increase in the number of children traveling by bus this school year is 126,810. That is out of some 46,000,000 children in American public schools. In short, so far as these figures show, less than three-tenths of 1 per cent of public school pupils have been affected by busing orders related to desegregation.

Second, the law. The Supreme Court has never found in the Constitution a requirement that schools or any other public facility be racially balanced. What it declared eighteen years ago in *Brown v. Board of Education* was something very different: the right to be free of legally imposed segregation.

In the Charlotte case last April, Chief Justice Burger quoted from the *Brown* opinion the central passage disapproving the old doctrine of deliberate separation of the races. The Chief Justice said the lower court in the Charlotte situation had used population ratios only as a "starting point" to overcome the entrenched vestiges of a segregated system. He added:

"If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse."

ABROAD AT HOME

What has happened, in the view of many qualified lawyers, is that some lower courts have gone wrong. They have not heeded Chief Justice Burger's admonition against raising racial balance to the status of a constitutional right. They have slurred the distinction between school segregation imposed by deliberate policy and one-race schools resulting from neighborhood patterns. They have called for busing to overcome both situations.

In these circumstances, public concern about busing is wholly understandable. The suburban family that thinks its children are going to be taken fifty miles by bus every day to an inner-city school may well be frightened. And it is clear enough that many Americans today do think just that, however baseless lawyers may believe their fears to be.

A President interested in leading his country past such a divisive problem might have made it the occasion for an imaginative program to deal with the difficulties of race and public education in our cities. That would mean money, lots of it, and a recognition that money is not enough—that we do not know how to reach many children in our urban environment. It would mean commitment and effort.

But instead of trying to deal with the social and educational failure of inner-city schools, the source of so much of the concern about busing, he chose over a two-year period to make busing itself the issue. He chose politics.

Even the other night, when he talked to the country on television, Mr. Nixon could have sought to defuse the issue. He could have done so by explaining and assuring. He might, for example, have said that our national effort to end segregation has been a noble and necessary one—as it has—but that we must not be insensitive to other values. He might have expressed confidence in the ultimate judgment of the Supreme Court.

What he did do was to raise fantasy devils in the minds of his listeners—intractable judges, "social planners who insist on more busing even at the cost of better education." He projected himself as the white knight who would save the people from the courts and from the Constitution.

It would be hard to imagine a more cynical or a more dangerous use of Presidential power in our democracy, with its legal tradition, than to challenge the idea of law. It is up to the lawyers now, and the others who care, to understand that the issue is no longer busing: It is the legal order.