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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 1 etc.

OLIVER BROWN, ET AL., *Appellants,*
v.
BOARD OF EDUCATION OF TOPEKA, SHAWNEE COUNTY, KANSAS, ET AL.

DOROTHY E. DAVIS, ET AL., *Appellants,*
v.
COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.

HARRY BRIGGS, JR., ET AL., *Appellants,*
v.
R. W. ELLIOTT, ET AL.

FRANCES B. GEBHART, ET AL., *Petitioners,*
v.
ETHEL LOUISE BELTON, ET AL.

AMICUS CURIAE BRIEF OF THE ATTORNEY GENERAL OF FLORIDA

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STATE SCHOOL BOARD REGULATIONS

MISCELLANEOUS

Preliminary Statement

This amicus brief filed by the Attorney General of the State of Florida pursuant to permission granted by the Court in its decision of May 17, 1954, in the above cases, contends that the Court should resolve its implementation decision in favor of the propositions stated in questions 4B and 5D.

The Court will find from a study of this brief that a sincere and thorough effort has been made by the Attorney General of Florida to present reasonable and logical answers to questions 4 and 5. These answers are respectfully submitted by way of assistance to the Court and are based upon a scientific survey of the factual situation in Florida, embracing practical, psychological, economic and sociological effects, as well as an exhaustive research of legal principles.

However, in filing this brief in answer to the hypothetical questions propounded, the Attorney General is not intervening in the cause nor is he authorized to submit the State of Florida as a direct party to the instant cases. Neither can his brief preclude the Florida legislature or the people of Florida from taking any legislative or constitutional action dealing with the segregation problem.

Part One

A discussion of the reasons for a period of gradual adjustment to desegregation to be permitted in Florida with broad powers of discretion vested in local school authorities to determine administrative procedures.

A. The Need For Time In Revising The State Legal Structure

There is a need for reasonable time and planning by State and local authorities in any revision of the existing legal structure of the State of Florida, (which now provides an administrative framework for the operation of a dual system of public schools) in order to provide a legal and administrative structure in which compliance with the Brown decision can be accomplished in an orderly manner.

Examples of Florida constitutional, statutory, and state school board regulatory provisions related directly or indirectly to segregated public schools are set forth in Appendix B.

The basic change which must be made if Florida is to comply with the non-segregation decision is either a repeal or revision of Article XII, Section 12, of the Florida Constitution, which provides:

> "*White and colored; separate schools.*—White and colored children shall not be taught in the same school, but impartial provision shall be made for both."

This provision in the basic law of Florida has been in existence since 1885. During the past 69 years it has been rigidly observed and has provided the foundation for an intricate segregated public school system, in accord with social customs which cannot be changed overnight without

completely upsetting established school administrative procedure in school planning, transportation, teacher employment, capital outlay, districting, scholastic standards, public health, school discipline as well as many other facets of the tremendously complicated school structure in Florida.

Assuming that the basic law of Florida pertaining to a dual system of schools (Art. XII, Section 12, of the Florida Constitution) is rendered nugatory by the decision of this court in the Brown case, the Florida legislature must revise the entire School Code of Florida to the extent that the present code is predicated upon a dual system of education, and all administrative procedures which have developed under said code are grounded on the fundamental principle of a segregated system. A simple repeal of the various statutory and administrative procedures now provided for the operation of the school system (which may prove to be in conflict with the Brown decision) could only result in the creation of a vacuum in methods of school administration. The consequent immediate inrush of turbulent ideas into this vacuum without legal guidance or administrative regulation might well cause a tornado which would devastate the entire school system.

This system has grown through the years since the establishment of the "separate but equal" doctrine by the Court in the *Plessy v. Ferguson case (163 U.S. 537)*, into a mammoth and intricate system of public education in Florida involving the annual expenditure of $138,895,123.15 and the welfare of 650,285 children. We do not believe that this system, which took over half a century to develop, can be transformed overnight.

The bare mechanical process of enacting legislation requires reasonable time for study by legislative committees, the time depending upon the complexity of the problem, and must conform to the legally established time for convening the legislature. On a problem of the magnitude of the one at

issue, the study of legislative committees must be preceded by exhaustive study on the part of school officials and citizens' educational committees in order that the legislature may have the benefit of their recommendations.

I. EXAMPLES OF LEGISLATIVE PROBLEMS

(a) Scholarships

An example of the type of legislative problem which must be considered by school officials and the legislature is contained in Section 239.41, Florida Statutes.[1]

This law at present provides for 1,050 scholarships of $400 each year for students desiring to train for the teaching profession.[2]

According to the State Department of Education, awarding of the scholarships is done on a basis of county representation, race, and competitive test scores of psychological and scholastic aptitude. A compilation of the scores of the 740 white twelfth grade applicants in the Spring of 1954 yielded an average score of 340. Compilation of the 488 Negro twelfth grade applicants yielded an average score of 237. In the previous year, 1953, 664 white applicants made an average score of 342 while the Negro applicants made an average score of 237. This difference is classified as very significant, and should be interpreted as meaning that factors other than chance explain the different results between white and Negro scores.

In view of the wide divergence in achievement levels between the white and Negro races, as demonstrated by the scholarship examinations, and desiring to make these scholarship opportunities available to students of both races, it

1. See page 218, Appendix B.
2. See page 235, Appendix B.

was recognized that provision would have to be made whereby Negro students would not have to compete against white students for these awards. Therefore, the legislature of Florida provided that the scholarships should be apportioned to white and Negro applicants according to the ratio of white and Negro population in the counties. Only in this way can Negro students in this state be assured of receiving a proportionate share of state scholarships awarded on the basis of competitive examinations.

If the Court's decision in the Brown case is to be interpreted that no distinction can be made on the basis of race in the operation of Florida's school system, it is apparent that Section 239.41, Florida Statutes, will have to be revised if the state is to continue its policy of encouraging Negro as well as white students to enter the teaching field.

It is apparent that the overall problem of teacher shortages cannot be solved immediately by law. It can be solved eventually by provisions such as Section 239.41, Florida Statutes, which is calculated to encourage a larger number of people to qualify themselves as teachers. If Section 239.41, Florida Statutes, is revised, however, to preclude immediately any recognition of a difference in scholastic achievement between Negro and white applicants for teacher scholarships, such revision would make it virtually impossible for the great majority of Negro students in Florida to receive scholarships, and from an economic standpoint they form the group of potential teachers who need such assistance most.

The problem can be solved, however, by time, without working an undue hardship on Negro students or creating an even greater shortage of teachers in Florida.

Dr. Gilbert Porter, Executive Secretary of Florida State Teachers Association had this to say on the subject in addressing a meeting of Negro teachers in Tallahassee on August 19, 1954:

> "It is of no avail to blind ourselves to the marked difference in scholastic achievement between white and Negro students. This difference is not our fault, but it is there and must be recognized. If the doors to the state white universities were thrown open to Negro students today, it would make little difference because a great majority of Negro students could not pass an impartial entrance examination. We, as Negro teachers, can provide the only solution to this dilemma if given a reasonable amount of time, but it will mean an absolute dedication to his work on the part of every Negro teacher. Negro teachers can close the gap between Negro and white students if they will work hard enough. We have come a long way already in closing that gap and it can be closed completely within the foreseeable future if we will work hard enough. Any Negro teacher who is not willing to dedicate himself to this purpose should step out of the way because he is standing in the way of the progress of our race. Either we must remove this difference in scholastic standing or admit that we are inferior—and I will die and go to the hot place before I will ever admit that I am inferior."

Whatever is done by school officials and the Florida legislature to fit the Florida teacher scholarship act (Sec. 239.41, Florida Statutes) into the framework of the new concept of a non-segregated school system enunciated by the Court, should take into consideration the human rights and legal equities of members of the Negro race who would like to enter the one professional field which is now open to them on a large scale, and which they are now not only invited but urged to enter on a basis of absolute economic and professional equality. A strict legal application of the principle that no distinction can be made on the basis of race in public schools would necessarily have to ignore practical and human factors as they now exist which are of fundamental importance to the operation of a public school system in Florida. One thing is apparent. No equi-

table and workable solution can be found unless sufficient time is permitted by the Court in the application of its decree abolishing segregated schools, to allow for an abatement of the problems involved and an equitable adjustment by the school system to so drastic a change in its basic structure.

(b) Powers and Duties of County School Boards

The problems which will necessarily confront the Florida legislature in revising the provision of Section 230.23, Florida Statutes,[1] alone, are so involved and complicated if practical questions of school administration are to be considered, that no immediate solution is feasible.

Section 230.23, Florida Statutes, provides the powers and duties of county school boards and establishes a framework within which they may authorize schools to be located and maintained. It provides in part:

> "Authorize schools to be located and maintained in those communities in the county where they are needed to accommodate as far as practicable and without unnecessary expense all the youth who should be entitled to the facilities of such schools, separate schools to be provided for white and Negro children; and approve the area from which children are to attend each such schools, such area to be known as the attendance area for that school . . . "

Bearing in mind that this provision of the law has been followed throughout the development of the Florida school system and the location of schools decided in accord with its intent, a simple repeal of this provision would provide no systematic guide or formula for local school boards to follow in attempting to redesign and reorganize the dual sys-

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1. See page 217, Appendix B.

tem now in operation, which at present involves real estate estimated to be valued at $300,000,000 and a current building program now under way involving from $90,000,000 to $100,000,000,[1] into a single non-segregated system.

The conversion of this $300,000,000 school plant into a non-segregated system will clearly take a great deal of planning if the old primary factor of racial segregation is removed in school location, construction and operation.

The State Department of Education reports[2] that:

> "Florida provides annually $400 per instruction unit for Capital Outlay needs which for the 67 counties totaled $9,451,600 in 1953-54 and has been computed at $10,199,448 for the 1954-55 estimate. This money is spent in each county according to the needs recommended by a state-conducted school building survey. With the help of these individual county surveys it was estimated as of January, 1954 that $97,000,000 will be needed to provide facilities for white children and $50,000,000 will be needed to provide facilities for Negro children. Since the activation as of the effective date January 1, 1953 of a Constitutional Amendment providing for the issuance of revenue certificates by the State Board of Education against anticipated state Capital Outlay funds for the next thirty years more than $43,000,000 in state guaranteed bonds have been issued to provide additional facilities for both races. By the fall of 1954 there will have been a total of $70,000,000 of these bonds issued and in the foreseeable future the total will be $90,000,000 to $100,000,000. At the present time 2182 classrooms are under construction as a result of the issuance of these bonds."

The planning included in making necessary surveys, acquisition of sites, financing and engineering involved in the present construction program, although performed at top speed under the compulsion of a critical shortage of school

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1. See page 188, Appendix A.
2. See page 187, Appendix A.

buildings in Florida, is a continuing process and requires several years to carry out successfully.

Much of this school planning with regard to the allocation and use of existing structures as well as new construction will have to be re-evaluated and revised in accord with the entirely new and basic change to a non-segregated system.

These facts, when considered in the light of the overcrowded conditions now prevailing in many Florida schools, must be studied by the legislature and school officials in any effort to provide adequate administrative means of complying with the Court's decision. According to the State Department of Education, during the school year 1953-54, *eighty-one schools in 18 Florida counties were forced to operate double sessions because of the lack of classroom space and trained teachers.* In many instances to integrate immediately in particular schools would mean overcrowding of school facilities resulting in serious administrative problems too numerous to detail.

When these problems are further complicated by the drastic change in the legal framework of segregated schools in Florida, it is apparent that such factors should be recognized by the Court and sufficient time allowed for their orderly solution.

(c) State Board of Education and State Superintendent

A third example of the complex problems which will confront school officials and the Florida legislature in revising the framework of laws within which the school system can operate efficiently in compliance with the Brown decision is found in Sections 229.07,[1] 229.08,[2] Florida Statutes, relating to the authority and rule-making powers

1. See page 215, Appendix B.
2. See page 216, Appendix B.

and duties of the State Board of Education; and Sections 229.16[3] and 229.17[4] relating to the duties of the State Superintendent of Public Instruction.

Although these provisions may not directly relate to segregated schools, they have in each instance been enacted and administered in accord with the basic provision of Florida law requiring a dual school system, and some revision will be necessary in the administrative powers granted therein in order to insure compliance with the Court's decree.

Specific problems in this regard are found in State Board Regulations adopted April 27, 1954 (page 154, State Board Regulations, page 219, Appendix B) related to the calculation of instruction units and salary allocations from the Foundation Program; State Board Regulation adopted March 21, 1950 (page 164, State Board Regulations, page 220, Appendix B), related to Administrative and Special Instructional Service; State Board Regulation adopted March 21, 1950 (page 171, State Board Regulations, page 221, Appendix B), related to units for supervisors of instruction; State Board Regulation adopted July 3, 1947 (page 28, State Board Regulations, page 226, Appendix B), related to School Advisory Committees; State Board Regulation adopted March 21, 1950 (page 148, State Board Regulations, page 228, Appendix B), related to the qualifications, duties and procedure for employment of supervisors of instruction; State Board Regulation adopted July 3, 1947 (page 156, State Board Regulations, page 232, Appendix B), related to isolated schools, State Board Regulation adopted July 21, 1953 (page 225, State Board Regulations, page 235, Appendix B), related to the distribution of general scholarships; State Board Regulation adopted July 3, 1947 (page 229, State Board Regulations, page 242, Appendix B), related to State Supervisory Services.

3. See page 216, Appendix B.
4. See page 217, Appendix B.

II. DISCUSSION OF LEGISLATIVE ATTITUDES

In setting out these examples of legislative problems which will require reasonable time for solution, we do not intend to imply that the members of the Florida legislature are at present willing to accept a desegregated school system. In fact, from such information as is now available on this point there is reason to believe that members of the Florida legislature are to a large extent unsympathetic to the Court's decision in the Brown case. A survey of leadership opinion regarding segregation in Florida conducted by the Attorney General included the following statement in the survey report (page 126, Appendix A):

> "Although the 79 members of the state legislature who returned questionnaires constitute almost 45% of the 176 legislators and legislative nominees, to whom the forms were sent, generalizations as to the entire membership of the legislature on the basis of their responses are entirely unwarranted. Any attempt to predict the action of the legislature at its next session would be even more presumptuous. The responses of these legislators to two special questions asked of them are presented below as a matter of interest, however.
>
> "The legislators were asked to indicate which of five possible courses of action should be followed at the next session of the legislature. The percentage checking each course, and the details of the five courses of action, are shown in Table 20 (Appendix A). The legislators were also asked whether they believed that there is any legal way to continue segregation in Florida schools indefinitely. Of the 79 respondents, 34.20% replied 'yes', 25.31% replied 'no' and 39.32% answered 'Don't know' or gave no answer."

Table 20, Appendix A, indicates that 40.5% of the members of the legislature who responded to the questionnaire wanted to preserve segregation indefinitely by whatever means possible.

It is even more significant that the Florida legislature in its 1951 session amended the appropriations act for the State Universities to provide that in the event Section 12 of Article 12 of the Florida Constitution shall be held unconstitutional by any court of competent jurisdiction or in the event the segregation of races as required by Section 12, Article 12 of the Florida Constitution should be disregarded, that no funds under the appropriations act shall be released to the Universities (page 683, Journal of the Florida House of Representatives, May 10, 1951). This amendment contained in Chapter 26859, General Laws of Florida, 1951, was vetoed by the Governor.

On the other hand, it is not our purpose to imply that the Florida legislature will refuse to take any action to provide a framework of laws designed to implement the Court's decision. Only the legislature itself under our form of government can determine what course of action it will pursue and we know of no way it can be coerced in making this determination except through the will of a majority of the people voiced through the ballot.

One thing seems apparent, however, under these circumstances. The Court upon equitable principles ought to extend to our legislature a reasonable period of forbearance during which the normal processes of legislative authority can be afforded time and opportunity to implement the Court's decision. The great multitude of problems the decision has created in the legal structure of our school system should warrant the Court in granting our legislature full opportunity to revise our school laws.

Such a period of forbearance is in keeping with the spirit of confidence which, under our system of democracy, is essential to maintain among the three branches of government. It is in keeping with the spirit of confidence which must be maintained between state governments and the Federation of States which has delegated to this Court

its judicial authority. A fundamental precept in the practical workings of this spirit of confidence is the use of persuasion rather than coercion or compulsion. We believe that this Court will not attempt to use its powers of coercion precipitately and prematurely against any state whose legislature has not had time to revise its basic school laws to meet the requirements of transition.

Our Florida legislature under our Constitution does not convene again until April, 1955 for its biennial 60-day session.

Even at that session there may not be known the terms of the implementation pattern, since they are dependent upon whether the Court acts prior to April, 1955. Furthermore, whether the necessary spade-work and drafting of legislation to adequately provide for the transition can be accomplished within said session is largely a matter of conjecture, so multitudinous and complex are the problems.

We reiterate: the State, having so long relied on and lived under the Plessy doctrine, should have no unseemly haste visited upon its legislature in trying to meet the needs of transition, especially when it is considered by many to be, at best, a "bitter pill" for the legislature to swallow. Rather, the reasonable, considerate and tempered course would be to allow our legislature a requisite and ample period of time to study, debate and enact implementation legislation. This we believe the court from innate principles of equity will allow.

B. The Need For Time In Revising Administrative Procedures

In addition to the problem of statutory revision, the Court should consider the need for time in adjusting the literally thousands of administrative policies and regulations of local school boards and school superintendents which have been formulated within the framework of law to meet local conditions in each of the 67 counties of Florida which will have to be revised and reorganized to conform to new legislative enactments resulting from the Brown decision. It is apparent that considerable time must be allowed before workable administrative policies of this kind can be evolved. Speaking to a group of Negro leaders in Jacksonville on July 30, 1954, Florida State School Superintendent Thomas D. Bailey, said:

> "As I see it, the ultimate problem is to establish a policy and a program which will preserve the public school system by having the support of the people. No system of public education will endure for long without public support. No program of desegregation in our public schools can be effective, unless the people in each community are in agreement in attempting it."

School board members, school trustees and school superintendents are elective officials in Florida. They are obviously well aware that any administrative policies they adopt implementing state laws enacted pursuant to the Brown decision must meet with at least some degree of acceptance on the part of the people in the community if they are to prove workable.

I. EXAMPLES

(a) Transportation

Perhaps the best example of this type of problem is the practical difficulties which will be encountered in converting the present dual school bus transportation system into a single system.

During the school year 1953-54 Florida's school system operated 2212 buses. These buses traveled 30,910,944 miles to transport 209,492 pupils at a cost of $4,506,667 (see page 186, Appendix A). These figures may be compared with Florida Greyhound Lines, the largest motor bus common carrier in Florida, which operates 175 buses in the state. A court order merging Florida Greyhound Lines with a competing line would necessarily allow a considerable period of time for revising routes and schedules to avoid duplication and insure maximum service to the public, but such a merger would be relatively uncomplicated compared to the problems involved in merging Florida's dual school bus system.

The problems of merging what amounts to two bus systems into one system without regard to race are obviously complicated. Hundreds of bus routes and schedules will have to be revised in line with the school redistricting which must take place. In accomplishing such a drastic revision of bus routes and schedules the *paramount factor in school bus transportation, i.e., safety,* must be considered at all times in the light of the fact that *discipline among the passengers is directly related to safety.* Discipline on school buses is maintained by one person, the driver. The ability of the driver to maintain discipline and a reasonable degree of safety while transporting mixed racial groups which may be antagonistic must clearly be considered in re-routing and re-scheduling school bus routes. Such consideration on the part of local school boards will require degrees

of time in direct ratio to the complexity of the local situation in relation to the size and distribution of the Negro population and the intensity of opposition to desegregated schools on the part of the citizens.

(b) Redistricting

The redistricting of school attendance areas along normal geographic lines on the basis of a single school system rather than a dual system as it now exists is another problem which will require a great deal of time in proper planning and execution.

(c) Scholastic Standards

Perhaps an even greater problem which will confront school officials on both the state and county level is the maintenance of scholastic standards in the intermingling of two groups of students so widely divergent on the basis of achievement levels. According to the State Department of Education (see page 190, Appendix A):

> "A comparison of the performance of white and Negro high school seniors on a uniform placement-test battery given each spring in the high schools throughout the State of Florida is shown in Table 4, page 196, Appendix A. The number of participants corresponds with the total twelfth grade membership during the five-year period, 1949-1953. This table shows, for example, that on all five tests 59% of the Negroes rank no higher than the lowest 10% of the whites. On the general ability scale, the fifty percentile or mid-point on the white scale corresponds with the ninety-five percentile of the Negro scale. In other words, only 5% of the Negroes are above the mid-point of the white general ability level. Studies of grades at the University of Florida indicate that white high school seniors with placement test percentile ranks below fifty have less than a 50% likelihood of making satisfactory grades in college. While factors such as size of high

school, adequacy of materials, economic level, and home environment are recognized as being contributing factors, no attempt is made here to analyze or measure the controlling factors.''

In some large schools it is possible to divide students in the same age groups into different classes, taking into consideration their achievement level, but smaller schools do not have sufficient classroom space or teachers to make such a division possible. In the latter class of schools it is clear that an immediate and arbitrary intermingling of students falling into such widely divergent achievement level groups could only result in lowering the scholastic standards of the entire school and adding to the problems of discipline and instructional procedures. The Negro students would suffer if compelled to compete against white students of the same age but whose achievement level was 2 or 3 grades higher and the white students would be seriously retarded.

This problem is not insoluble and it is not advanced as a reason for permanent segregation in the schools. It is, however, a problem which must be taken into consideration by school officials in any attempt at integration of the races in the schools and it is a problem which will require careful planning, new techniques, and a great deal of time if it is to be solved without doing serious harm to both races and to the school system.

(d) Health and Moral Welfare

Still another example of school administrative problems in achieving an integrated school system is related to health and moral welfare. Writing in the Readers Digest, September, 1954, page 53, Mr. Hodding Carter, Editor and Publisher of the Delta Democrat Times, Greenville, Mississippi, said:

> "If only because of economic inequalities, there is a wide cultural gap between Negro and white in the South, and especially in those states where dwell the most Negroes. These heavily Negro states are also largely agrarian. Among the rural and small-town Negroes, the rates of near-illiteracy, of communicable diseases, of minor and major crimes are far higher than among the whites. The rural Negro's living standards, though rising are still low, and he is still easy-going in his morals, as witness the five to ten times higher incidence of extramarital households and illegitimacy among Negroes than among whites in the South. The Southern mother doesn't see a vision of a clean scrubbed little Negro child about to embark on a great adventure. She sees a symbol of the cultural lags of which she is more than just statistically aware."

Specifically, with regard to Florida, the State Board of Health reports that during the year 1953 there was a total of 58,262 white births in the state, of which 1,111 were illegitimate. During this same period there was a total of 21,825 Negro births of which 5,249 were illegitimate. Percentagewise, this means that 1.9% of white births in Florida during 1953 were illegitimate and 24% of Negro births were illegitimate[1].

According to the State Board of Health there was a total of 11,459 cases of gonorrhea reported in Florida during 1953 of which 10,206 were among the Negro population.[2] We feel that this cultural gap should be honestly recognized by both white and Negro leaders as a problem requiring time for solution rather than an arbitrary and blind refusal to admit that it exists or that it is related to public school administration.

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1. Annual Report, Florida State Board of Health for 1953, Supplement No. 1, Florida Vital Statistics.
2. Annual Report, Florida State Board of Health 1953, Supplement No. 2, Florida Morbidity Statistics 1953, Table No. 5, page 25.

C. The Need For Time In Gaining Public Acceptance

There is a need for time in gaining public acceptance of desegregation because of the psychological and sociological effects of desegregation upon the community.

I. A SURVEY OF LEADERSHIP OPINION

A sincere and exhaustive effort has been made by the Attorney General of Florida to ascertain, as accurately as possible, the feelings of the people of Florida with regard to segregation in public schools. This survey was authorized by the Florida Cabinet which allocated $10,000 for the purpose. This effort was made primarily for the purpose of obtaining information which would be of use to the Court in formulating its final decree in the Brown case.

In making the survey and study, every possible precaution was taken to insure its impartiality and scientific accuracy. It was made with the advice and under the supervision of an interracial advisory committee composed of individuals chosen on the basis of their professional standing in the field of education; specialized knowledge which would be helpful in making such a study; reputation for civic-mindedness and impartiality and because they were willing to devote their time without pay in carrying out a task so enormous in scope in the brief time available. A more detailed explanation of the scientific methods and techniques employed in making this study is given with the

complete survey report itself, which is made a part of this brief and included as Appendix A. The General Conclusions of this report are as follows:

II. GENERAL CONCLUSIONS

1. On the basis of data from all relevant sources included in this study, it is evident that in Florida white leadership opinion with reference to the Supreme Court's decision is far from being homogeneous. Approximately three-fourths of the white leaders polled disagree, in principle, with the decision. There are approximately 30% who violently disagree with the decision to the extent that they would refuse to cooperate with any move to end segregation or would actively oppose it. While the majority of white persons answering opposed the decision, it is also true that a large majority indicated they were willing to do what the courts and school officials decided.

2. A large majority of the Negro leaders acclaim the decision as being right.

3. Only a small minority of leaders of both races advocate immediate, complete desegregation. White leaders, if they accept the idea that segregation should be ended eventually, tend to advocate a very gradual, indefinite transition period, with a preparatory period of education. Negroes tend to advocate a gradual transition, but one beginning soon and lasting over a much shorter period of time.

4. There are definite variations between regions, counties, communities and sections of communities as to whether desegregation can be accomplished, even gradually, without conflict and public disorder. The analysis of trends in Negro registration and voting in primary elections, shows similar variations in the extent to which Negroes have availed themselves of the right to register and vote. At least some of these variations in voting behavior must be ac-

counted for by white resistance to Negro political participation. This indicates that there are regional variations not only in racial attitudes but in overt action.

Regional, county and community variations in responses to questionnaires and interviews are sufficiently marked to suggest that in some communities desegregation could be undertaken now if local leaders so decided, but that in others widespread social disorder would result from immediate steps to end segregation. There would be problems, of course, in any area of the state, but these would be vastly greater in some areas than in others.

5. While a minority of both white and Negro leaders expect serious violence to occur if desegregation is attempted, there is a widespread lack of confidence in the ability of peace officers to maintain law and order if serious violence does start. This is especially true of the peace officers themselves, except in Dade County. This has important implications. While it is true that expressed attitudes are not necessarily predictive of actual behavior, there seems little doubt that there is a minority of whites who would actively and violently resist desegregation, especially immediate desegregation. It has been concluded from the analysis of experiences with desegregation in other areas, "A small minority may precipitate overt resistance or violent opposition to desegregation in spite of general acceptance or accommodation by the majority."[1]

6. Opposition of peace officers to desegregation, lack of confidence in their ability to maintain law and order in the face of violent resistance, and the existence of a positive relationship between these two opinions indicates that less than firm, positive action to prevent public disorder might be expected from many of the police, especially in some communities. Elected officials, county and school, also show

1. Kenneth B. Clark, "Findings," Journal of Social Issues, IX, No. 4 (1953), 50.

a high degree of opposition. Yet it has been pointed out, again on the basis of experience in other states, that the accomplishment of efficient desegregation with a minimum of social disturbance depends upon:

A. A clear and unequivocal statement of policy by leaders with prestige and other authorities;
B. Firm enforcement of the changed policy by authorities and persistence in the execution of this policy in the face of initial resistance;
C. A willingness to deal with violations, attempted violations, and incitement to violations by a resort to the law and strong enforcement action;
D. A refusal of the authorities to resort to, engage in or tolerate subterfuges, gerrymandering or other devices for evading the principles and the fact of desegregation;
E. An appeal to the individuals concerned in terms of their religious principles of brotherhood and their acceptance of the American traditions of fair play and equal justice.

It may be concluded that the absence of a firm, enthusiastic public policy of making desegregation effective would create the type of situation in which attitudes would be most likely to be translated into action.[1]

7. In view of white feelings that immediate desegregation would not work and that to require it would constitute a negation of local autonomy, it may be postulated that the chances of developing firm official and, perhaps, public support for any program of desegregation would be maximized by a decree which would create the feeling that the Court recognizes local problems and will allow a gradual transition with some degree of local determination.

8. There is a strong likelihood that many white children would be withdrawn from public schools by their parents

1. Experience shows that where the steps listed above have been taken, predictions of serious social disturbances have not been borne out.

and sent to private schools. It seems logical, however, that this practice would be confined primarily to families in the higher income brackets. As a result, a form of socio-economic class segregation might be substituted for racial segregation in education.

9. It is evident that a vast area of misunderstanding as to each other's feelings about segregation exists between the races. White leaders believe Negroes to be much more satisfied with segregation than Negroes are and Negro leaders believe that whites are much more willing to accept desegregation gracefully than whites proved to be. Hence a logical first step towards implementing the principle set forth by the Court, and one suggested by both whites and Negroes, would seem to be the taking of positive, cooperative steps to bridge this gap and establish better understanding between the two groups.

10. Although relatively few Negro leaders and teachers show concern about the problem, white answers indicate that Negro teachers would encounter great difficulty in obtaining employment in mixed schools. To the extent that desegregation might proceed without parallel changes in attitudes towards the employment of Negro teachers in mixed schools, economic and professional hardships would be worked on the many Negro teachers of Florida.

11. Since 1940, and particularly since 1947, the State of Florida has made rapid and steady progress toward the elimination of disparities between white and Negro educational facilities as measured by such tangible factors as teacher salaries, current expenditure per pupil, teacher qualifications, and capital outlay expenditure per pupil.

12. In spite of the current ambiguity as to the future of dual, "separate but equal" school facilities the State is proceeding with an extensive program of construction of new school facilities for both white and Negro pupils, with a

recommended capital outlay of $370 per Negro pupil and $210 per white pupil. Both this and the previous finding indicate that, while these steps have been taken within the framework of a dual educational system, there is a sincere desire and willingness on the part of the elected officials and the people of Florida to furnish equal education for all children.

13. Available achievement test scores of white and Negro high school seniors in Florida indicate that, at least in the upper grades, many Negro pupils placed in classrooms with white pupils would find themselves set apart not only by color but by the quality of their work. It is not implied that these differences in scores have an innate racial basis, but it seems likely that they stem from differences in economic and cultural background extending far beyond the walls of the segregated school, into areas of activity not covered by this decision.

14. Interracial meetings and cooperative activities already engaged in by teachers and school administrators in many counties demonstrate steps that can be, and are being taken voluntarily and through local choice to contribute to the development of greater harmony and understanding between whites and Negroes in Florida communities.

The specific findings of this survey regarding leadership opinion as expressed through mailed questionnaires are:

1. White groups differ greatly from each other in their attitudes towards the Court's decision, ranging from nearly unanimous disagreement to a slight predominance of favorable attitudes. (See Table 2, page 136, Appendix A)

2. White groups also differ from each other in willingness to comply with whatever courts and school boards decide to do regardless of their personal feelings. (See Table 4, page 139, Appendix A)

3. Peace officers are the white group most opposed to desegregation. (See Table 3, page 138, Appendix A)

4. Almost no whites believe that desegregation should be attempted immediately. (Table 2, page 136, Appendix A)

5. A large majority of both Negro groups are in agreement with the Court's decision declaring segregation unconstitutional. (Table 3, page 138, Appendix A)

6. While only a small minority of both Negro groups believe that desegregation should be attempted immediately, an even smaller minority would oppose attempts to bring about desegregation or refuse to cooperate. (Table 2, page 136, Appendix A)

7. Only a minority of whites in all groups believe that opponents of desegregation would resort to mob violence in trying to stop it. A larger proportion, but still a minority, believe that serious violence would result if desegregation were attempted in their community in the next few years. (Table 5, page 140, Appendix A)

8. A yet smaller minority of both of the Negro groups anticipate mob violence or serious violence as a result of steps towards desegregation. (Table 5, page 140, Appendix A)

9. The majority of all white groups are not sure that peace officers could cope with serious violence if it did occur in their communities, replying either "no" or "don't know" to the question. (Table 6, page 141, Appendix A)

10. A much smaller proportion of both Negro groups expresses doubt as to the ability of law enforcement officials to deal with serious violence. (Table 6, page 141, Appendix A)

11. The majority of most of the white groups believe that peace officers could maintain law and order if minor violence occurred. (Table 7, Appendix A)

12. The Negro groups did not differ greatly from the white groups in the proportion believing that police could cope with minor violence. (Table 7, Appendix A)

13. Only 13.24 per cent of 1669 peace officers believe that most of the peace officers they know would enforce attendance laws for mixed schools.

14. A majority of the members of all white groups except peace officers, (who were not asked): radio station managers; and ministers, believe that most of the people of Florida and most of the white people in their communities disagree with the Court's decision. (Table 8, Appendix A)

15. In the five white groups asked, from one-fourth to one-half of the respondents believed that most of the Negroes in their community were opposed to the desegregation ruling. (Table 8, Appendix A)

16. A much smaller proportion of both Negro groups believe that most of the people of Florida, most of the whites in their community, and particularly the Negroes in their communities are in disagreement with the principle of desegregation. (Table 8, Appendix A)

17. Only a small minority of all groups, white and Negro believe that immediate assignment of children to schools on the basis of geographical location rather than race would be the most effective way of ending public school segregation. (Table 9, Appendix A)

18. All groups think a gradual program of desegregation would be most effective. Negroes, however, prefer that the process start within the next year or two with immediate, limited integration much more frequently than do whites. The whites prefer a very gradual transition with no specified time for action to begin. (Table 9, Appendix A)

19. Whites who expressed an opinion believe that the primary grades and the colleges are the levels on which desegregation could be initiated most easily. On the other hand, almost as many Negroes believed that segregation should be ended on most or all grade levels simultaneously as believed it should be ended first at the lowest and highest grade levels.

20. The maintenance of discipline in mixed classes by Negro teachers is regarded as a potential problem by a

majority of white principals, supervisors and PTA leaders. A much smaller proportion of Negroes regarded this as a problem, with a majority of Negro principals believing that colored teachers could maintain discipline in mixed classes. (Table 11, Appendix A)

21. A majority of all white groups believe that white people would resist desegregation by withdrawing their children from the public schools, but a much smaller proportion of Negroes, less than a majority believe that this would happen. (Table 11, Appendix A)

22. Almost two-thirds of white school officials—superintendents, board members, and trustees—believe that application of Negroes to teach in mixed schools would be rejected. (Table 11, Appendix A)

It should be noted at this point that this opinion is supported by the experience of other states where desegregation of schools has already taken place. The August 27, 1954, issue of U. S. News and World Report, page 35, states, "In the north, protests from white parents tend to drive Negro teachers out of the schools to which their children go. The same thing is expected in the South when desegregation comes to the schools there. An illustration of what happens in the North is shown by the experience of Jeffersonville, Indiana. The town lies in the southern part of the State, just across the Ohio River from Kentucky. A great deal of Southern tradition and many Southern customs have reached across the river. Jeffersonville is just completing desegregation of its schools. There have been few unhappy incidents. But there has been a greater problem with teachers than with children in the schools. There were 16 Negro teachers in Jeffersonville when desegregation was started in 1948. By 1951 their number had dwindled to 11 as school enrollments were consolidated. For the school year starting in autumn, 1951, only three Negro teachers were retained. They had achieved permanent tenure under State law, and could be discharged only for cause."

Florida now employs 19,848 persons in instructional positions not including supervisors. 4,721 of these teachers are Negroes. (Biennial Report, Superintendent of Public Instruction, State of Florida, 1950-51)

23. Nearly three-fourths of school officials believe that it would be difficult to get white teachers for mixed schools. (Table 11, Appendix A)

24. Almost half of school officials and a little over 40% of white PTA leaders believe that the people of their communities would not support taxes for desegregated schools, but only about 20% of Negro PTA leaders believe that such support would not be forthcoming. (Table 11, Appendix A)

25. In the case of all potential problems on which both Negroes and whites were questioned a smaller proportion of Negroes than of whites indicate belief that problems would arise as a result of desegregation. (Table 11, Appendix A)

26. In the case of peace officers there is a positive relationship between personal disagreement with the decision and lack of confidence in the ability of peace officers to cope with serious violence. There is an even higher positive relationship between belief that segregation should be kept and belief that peace officers would not enforce school attendance laws for mixed schools. (Table 12, Appendix A)

Regional Variations. The responses to certain items of the two largest groups polled, the peace officers and the white school principals and supervisors, were analyzed by region of the state in which the respondents lived. The 67 counties of Florida were grouped into 8 regions defined by social scientists at the Florida State University in "Florida Facts" (Tallahassee, Florida; School of Public Administration, The Florida State University).

Clear-cut regional variations in attitudes and opinions are found to exist, as is indicated by the following findings;

27. Although the majority of peace officers in all regions feel that segregation should be kept, the percentage feeling so varies from 83% in two regions to 100% in one region. (Table 14, Appendix A)

28. The percentage of white principals and supervisors who are in disagreement with the decision varies from 20% to 60% in different regions. (Table 15, Appendix A)

29. A large majority of white principals and supervisors in all regions indicate that they would comply with the decision regardless of personal feelings, but the percentage varies from 76% in Region VII to approximately 94% in Regions VI and VIII. (Table 16, Appendix A)

30. The percentage of peace officers predicting mob violence as a method of resisting desegregation varies from 20% in Region VIII to nearly 63% in Region VII (Table 17, Appendix A).

31. Percentages of both peace officers and white principals and supervisors predicting serious violence in the event desegregation is attempted vary widely between some regions (Table 18, Appendix A).

32. The majority of both peace officers and white principals and supervisors in all regions doubt that the police could maintain law and order if serious violence occurred, but there are some regional variations. (Table 19, Appendix A)

A Note on Responses of Legislators. Although the 79 members of the state legislature and legislative nominees who returned questionnaires constitute almost 45 per cent of the 176 legislators to whom the forms were sent, generalizations as to the entire membership of the legislature on the basis of their responses are entirely unwarranted. Any attempt to predict the action of the legislature at its next session would be even more presumptuous. The responses of these legislators to two special questions asked of them are presented below as a matter of interest, however.

The legislators were asked to indicate which of five possible courses of action should be followed at the next session of the legislature. The percentage checking each course, and the details of the five courses of action, are shown in Table 20.

The legislators were also asked whether they believed that there is any legal way to continue segregation in Florida schools indefinitely. Of the 79 respondents, 34.20 per cent replied "Yes," 25.31 per cent replied "No," and 39.32 per cent answered "Don't Know," or gave no answer.

III. THE DADE COUNTY REPORT

A separate intensive study was made by the Attorney General's Advisory Committee under the immediate supervision and direction of a research team from the Department of Government of the University of Miami. This study was made of the greater Miami area and some outlying sections in neighboring counties in the belief that this part of Florida might have different problems of integration from other parts of the state due to its geographic location and density of population. The results of this study are included as a part of the overall project and set out in Appendix A.

IV. DISCUSSION

The implications found in the Florida survey are many and varied but it is significant that to a remarkable extent they verify and coincide with the conclusions and observations set forth in the book by Mr. Harry S. Ashmore, "The Negro and the Schools". The book is the result of an exhaustive research study sponsored by the Ford Foundation for the Advancement of Education of the problem of segregation in the south as the title implies.

For example, Mr. Ashmore states (page 81, "The Negro and the Schools):

> "The most important factor in integration of the public schools in the non-South, finally, is community attitudes. *It is axiomatic that separate schools can be merged only with great difficulty, if at all, when a great majority of the citizens who support them are actively opposed to the move.* (Italics supplied) No other public activity is so closely identified with local mores. Interest in the schools is universal, and it is an interest that directly involves not only the tax-payer but his family, and therefore his emotions. Those who are indifferent to all other community affairs tend to take a proprietary interest in the schools their children attend, or will attend, or have attended. State influence in public education has grown in recent years in proportion to the increase in state aid, but state policies rarely are so important as local forces in the shaping of public educational policies and practices. . . .
>
> "The most meticulous house-to-house poll in any American community with a sizeable Negro population would doubtless turn up a negative response to a proposal to integrate the separate public schools. In the case of the whites this might reflect deep-seated race prejudice, or it might be no more than the normal, instinctive resistance to any marked change in the accustomed patterns of everyday living. In many cases the basis of objection might be the demonstrable fact that the great majority of American Negroes are still slum-dwellers; many a parent who proudly considers himself wholly tolerant in racial matters will object to having his child associate with classmates of inferior economic and social background. It is probable that some resistance to integration would even be recorded among Negroes, who might respond negatively out of simple fear of the unknown, or the desire to protect their children against possible overt discrimination by white classmates or teachers. The great problem for schoolmen who have been moved to consider integration by their own convictions, or by the prodding of higher authority, has been to determine whether the passive

resistance which they can readily sense will be translated into active resistance once the issue is drawn.

"In any event the superintendent who is called to take his school system from segregation to integration must be prepared to function as a '*social engineer*' (Italics supplied). He will deal on a mass scale with delicate problems of human relationships involving not only pupils and teachers but the community at large.

"These case studies demonstrate that wherever there has been an active and well-planned program to 'sell' integration to the community at large it has succeeded —but here again there is no way to measure just how difficult the selling job really was. The most notable examples are to be found in New Jersey, where a well-staffed state agency made it its business to work closely with those communities which had long practiced segregation and appeared resistant to the change required by the new constitution. Although New Jersey's Division Against Discrimination was armed with the power to withhold state funds and even to bring misdemeanor charges against school officials who refused to comply, it accomplished the integration of 40 formerly segregated school districts without invoking these powers in a single instance...

"At the other end of the scale is Cairo, Illinois, where the effort of the NAACP to force a reluctant school board to accept the state ban on segregation led to violence. Cairo in almost every aspect of its community life, may be classified as a 'sick city,' and there is no indication of anything approximating an orderly interracial approach to the problem either before or after integration became an explosive issue.

"Between these two extremes lie most of the non-Southern cities. They are, for the most part, beyond the reach of any possible decision of the Supreme Court in the test cases, for segregation in the schools of the non-South is now rarely bolstered by law, and where it is it would hardly miss the legal prop if it were struck down. Desegregation is proceeding there at a rate determined by the willingness of individual communi-

> ties to accept the change—or by the willingness of community leaders to put the issue to the test."

The same recognition of the problems involved in desegregation and the obvious need for adequate time to give local school administrators an opportunity to devise plans and means of overcoming the problems is found in the thinking of almost all authorities who have made a study of the subject.

In discussing the Problems of Desegregation, Dr. Truman M. Pierce, Professor of Education, George Peabody College for Teachers, and Director of the Cooperative Program in Educational Administration (Southern Region) had this to say (see page 91 Journal of Public Law, Emory University Law School, Vol. 3, Spring 1954, Number 1).

> "People respond well, in general, to the opportunity of discussing with each other mutual concerns and interests. Controversial subjects discussed in the public arena under skillful leadership can often be resolved with a minimum of conflict. Effective public forums on the community level provide experiences in self-government which can hardly be surpassed in satisfactions which they bring and in progress they stimulate. However, questions tinged with a high degree of emotionalism offer ready-made opportunities for rabble rousers and self-seekers to do serious harm. Consequently, the calm, sane and relatively objective approach, which can be expected from most of the substantial citizens of the average community, is essential in the types of discussion suggested. It is hardly necessary to point out that such public forums should avoid emotional binges and concentrate on the study of facts. The third principle is that responsible and public spirited citizens of both races should discuss together the facts concerning their school system and together make plans for its improvement. This does not imply that the board of education should be by-passed, for final policy must be determined by this legally constituted body.

> *"Ill-advised and hasty action, determined without benefit of a period in which calm deliberation takes place* (Italics supplied) can do more harm than good. Urgency need never take precedence over wisdom. Piecemeal and stopgap policies are likely to prove unsound and wasteful in the long run. Therefore, the final principle which is suggested is that extensive policy setting based on thorough study and careful thought should provide the framework for a thorough and comprehensive program of work extending as far into the future as is practical."

Dr. Howard W. Odum,[1] in discussing "An approach to diagnosis and direction of the problem of Negro segregation in the public schools of the South" says (Journal of Public Law, Emory University Law School, Vol. 3, Spring 1954, No. 1, page 34):

> "Final assumptions must rest upon continuing exploration, education, testing grounds for federal and state programs, and for a working balance between voluntaristic and coercive action. For, from special studies, general observations, and recorded experiences, it must be clear that all our exhibits of evidence appear as a sort of tug of war, now moving this way, now that. The real definition of the situation comes back again and again to inferences about issues, cultural values that are characteristic of the region, and to exploration and survey, projection of trends and predictions, and potentials that can be identified with alternatives. In this dilemma it would seem that never have the old classical, 'On the one hand and on the other,' and 'but also,' appeared to carry such a multitude of dichotomies, paired contradictions, major premises assumed, 'ands,' 'ors,' and 'buts,' in the loom of interaction processes. And rarely ever have we run across so many generalizations based upon so little basic research or tested observations. All of this is

1. Professor of Sociology, University of North Carolina; past president of the American Sociological Society; editor, Social Forces; author, American Sociology (1951) and other books.

relevant not only to the elemental cataloguing of facts and the appraisal of causal factors, but to the orientation of value judgments and strategy priorities."

Everyone concerned in the State of Florida with the problems inherent in any attempt to desegregate schools, whether he be a member of the legislature or a school official cannot help but be aware that any change which is undertaken from the status quo must be made with at least the passive approval of the people in the community who will be affected by the change. Mr. Ashmore (The Negro and the Schools, page 135) states:

> *"Finally, there is the hard fact that integration in a meaningful sense cannot be achieved by the mere physical presence of children of two races in a single classroom. No public school is isolated from the community that supports it, and if the very composition of its classes is subject to deep-seated and sustained public disapproval, it is hardly likely to foster the spirit of united effort essential to learning. Even those who are dedicated to the proposition that the common good demands the end of segregation in education cannot be unaware that if the transition produces martyrs they will be the young children who must bear the brunt of spiritual conflict."*

D. Intangibles In Education

This Court has recognized the validity and significance of certain intangibles in education. Quoting from the Brown decision it said "In Sweatt v. Painter, supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on 'those qualities which are incapable of objective measurement but which make for greatness in a law school'.

"In McLaurin v. Oklahoma State Regents, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ' . . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.'

"Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

The legislature of Florida was motivated by the same consideration of "intangibles" in education when it enacted Section 242.46, Florida Statutes. This law prohibits secret societies including fraternities and sororities in the public schools. The legislature and school officials recognized that in some instances fraternities generated feelings

of snobbishness on the part of the members and feelings of inferiority on the part of those not invited to join. It was considered that these feelings might in the words of the court "affect their hearts and minds in a way unlikely ever to be undone."

We believe that this Court should recognize the validity and significance in education of other "intangible considerations" which may result from a precipitate attempt to compel desegregated schools in all areas of Florida. It is obvious that children reflect in their attitudes much of the same deep-seated prejudices and antagonisms felt by their parents. In the many areas of Florida where these feelings are known to exist no school administrator could compel an immediate desegregation without the certain knowledge that he was placing the children in a situation which could only result in generating feelings of hatred, inferiority and bias which would "affect their hearts and minds in a way unlikely ever to be undone."

E. Reason for Hope

There is some reason to believe that segregated schools can be ended in Florida in an equitable manner without destroying the school system itself. But there is no reason to believe that this can be accomplished hurriedly or through the legal coercion of school officials who would thus find themselves caught in the impossible dilemma of confronting on the one hand the irresistible force of a judicial edict which must be obeyed and on the other hand the immovable object of public opinion which cannot be altered. The only hope for a solution is for this Court to restrain the use of coercive measures where necessary until the hard core of public opinion has softened to the extent that there can be at least some measure of acceptance on the part of a majority of the people.

This recognition of the need for time and tact and wisdom in bringing about a true realization of the goal set by this Court, is shared by leaders of both the white and Negro races in Florida.

Dr. Mary McLeod Bethune, founder of Bethune-Cookman College at Daytona Beach, Florida, and a recognized leader of the Negro people throughout the nation for many years, stated in a press release soon after the announcement of this Court's decree in the Brown case:

> "... The High Tribunal has put a legal foundation under a belief many of us have long held and which is clearly and concisely stated in the most basic American ideal, 'All men are created equal.'

> "In quietness and patience, people of culture receive this news, realizing the inevitable has at last come about. They also realize, however, that the absorption into our daily life of this new decision—the putting of it into practice—must represent an organic cultural assimilation which, like all social processes, will take time. But eventually the wrongs and mistakes of history are righted and remedied and inhumanities are rectified. . . . . Let us enter into this integration calmly, with good judgment. Let us give and take, working out together the best possible means we can put into action so that there may be peace and understanding, and, may I say, the spirit of brotherhood.
>
> "There is much for the Negro to do as well as the white. We must use tact and wisdom. It will take conferences, thinking and planning and working side by side. More largely than is realized, we are good, loyal, American citizens. And whether we be north, east, south or west, we shall put forth every effort to meet the requirements of our new status."

There is reason to believe that given the opportunity for voluntary local action and sufficient time an effort will be made on the part of educational leaders of both races in Florida to work together to achieve the goal set by the Court.

United States Senator Spessard L. Holland of Florida, speaking of desegregation, said in a press interview (Tampa Tribune, August 28, 1954, page 1):

> "We cannot spend all our time in vain regrets, but rather time must be spent in trying, as apparently the State Cabinet has been doing along with officials and educators of both races at the local level, to learn how to bring it about."

On July 15 and 16, 1954, the Continuing Educational Council of Florida met in Tallahassee to consider the problem of desegregation. This Council is composed of representatives from virtually all civic, labor, veteran and edu-

cational organizations in the state. Seventy members of the Council were present at the Tallahassee meeting and the future course of Florida schools in the light of the Court's decision in the Brown case was discussed for two days. At the end of its deliberations the Council adopted the following motion:

> "Based on information and reports at this time, the Council joins with the request of the State Cabinet, heretofore made, whereby the Attorney General of Florida take every step necessary to prepare and file a brief which Florida and several other states have been invited to submit when consideration is given this October to the 'when' and 'how' provisions of the Court's judgment in the recent decision holding segregation unconstitutional. It now appears that this brief should emphasize among other things the following: 1. The maximum time possible should be granted the states affected. 2. Compliance with regard to time should be on a local basis; the time requirement because of mores and conditions will vary within counties of each state. 3. Enforcement provisions of the judgment's requirements should be left to the Courts of first instance."

Additional agreements which were reached by a large majority of the Council in discussion of the Supreme Court decision on segregation were as follows:

1. "The public school system of Florida should be maintained and improved. Nothing should be done which will destroy these schools or cause them to retrogress in any way."

2. "The citizens of Florida will wish to abide by the laws of our nation, but time for necessary adjustments is essential if serious problems are to be avoided."

3. "The problems of adjustment are different in each county and in various communities within each county. Responsibility for solution of these problems rests with the citizens and authorities within these local areas."

4. "A committee from the Continuing Educational Council, with outside representation as well, is to be appointed. Its function is to suggest multiple plans by which desegregation may be implemented. Among the ideas developed would be the suggestion that local groups of white and Negro citizens make careful appraisal of existing conditions with the idea of proceeding gradually and in an orderly manner toward compliance with our National Constitution."

5. "A committee of nine representatives from the Continuing Educational Council is to meet with a representative group of State Negro leaders for the purpose of developing a joint statement to serve as a guide to both races in working out the problems ahead."

On July 30th, 1954, fifty representative Florida Negro leaders met at Edward Waters College in Jacksonville to study the problem of integration of Florida schools. As a result of this meeting a committee of nine was selected to meet with a similar committee of the Continuing Educational Council of Florida for the purpose of studying ways and means of implementing the Supreme Court's decision in Florida.

On September 10, 1954, a committee representing the Continuing Educational Council, and a committee representing the Leadership Conference, a recently convened meeting of Negro leaders, met in Tallahassee to consider jointly some of the problems posed by the recent Supreme Court decision that segregation in the public schools is unconstitutional.

After lengthy consideration and frank discussions of the various viewpoints of both whites and Negroes, the joint committees agreed upon the following motion:

"1. THAT, in a democratic society, public education is of paramount importance;

THAT the State of Florida has made significant gains

in recent years in the quality of its educational program and in the educational opportunities for all the youth of the State;

THAT the State of Florida cannot afford the educational or economic loss which would occur if we permitted a disruption of this program;

THEREFORE, we believe that we must maintain and support a strong system of public education for all the youths of the State and that the citizens of Florida in their local contacts, through constant education and study, should work for the general education of all the people as prescribed by the laws of our State and Nation.

2. THAT we endorse the filing of the proposed brief by the Attorney General for the purpose of preserving the system of public education in the State of Florida when a final interpretation has been rendered by the Supreme Court.

3. THAT we urge this Committee to continue to work on the processes necessary for ultimate compliance with the law;

THAT we encourage the organization of similar groups at the local level, i.e., school community by school community, to work toward the same objectives."

The motion was approved unanimously.

The Lakeland Ledger in an editorial August 29, 1954 said:

"In his annual speech to his home folk in Bartow on Friday, Senator Holland took occasion to talk about abolition of segregation in public schools...

"That attitude is the only one with which the problem now at hand can be solved, and it is the attitude of all clear thinking citizens in the South.

"If the process is not rushed, there will be a good chance of making the adjustment harmoniously over a period of years.

"If forces in the North that are unfamiliar with con-

ditions in the South insist upon rushing matters, there is certain to be harmful friction.

"The level-headed view such as that expressed by Senator Holland must prevail."

The Tampa Morning Tribune in an editorial August 26, 1954, said:

"In the brief which he is preparing to submit to the Supreme Court by October 1, Attorney General Ervin asks the court to go slow in ordering actual compliance with its edict of May 17 outlawing segregation. Mr. Ervin said:

'My purpose in filing the brief is to try to show the court that Florida, from practical considerations, is not ready for desegregation immediately, but that if it must come eventually, it should come only after a reasonable period of time and then only on a county to county or local basis pursuant to administrative determinations made by local school authorities. It is entirely possible that if the court will authorize this course many of the situations will not be too difficult to solve, given time to work them out.'

"That, in our view, is sound sense and should appeal to the judgment of the high court. It is apparent that a change in the existing order can be effected only through careful and patient effort, on a local basis. Also it may prove necessary to have action by the Florida Legislature to properly implement the change. The essential issue is the dividing line between federal and state authority."

The St. Petersburg Times of August 27, 1954, reported a speech by County School Superintendent Floyd Christian of Pinellas County to a meeting of Negro school teachers, as follows:

"Pinellas County Negro teachers were urged as leaders of the community 'to work patiently, calmly and sensibly' on the segregation problem so that all can con-

tinue working together for the growth of the community...

"We live under the law and must follow the law. Rioting, hatred and action would wreck our school system and is not the answer. Florida must never try to abolish public education. Turning the schools into private institutions is certainly not the answer. Any such action would prove disastrous to the quality of education and in the end would be judged by the Supreme Court as being an effort to circumvent the provisions of the Constitution of the United States.

"What I am saying is in my opinion Florida should not try to circumvent the law. Any such action would encourage an attitude of general disregard for law and in the long run will only increase the difficulties without contributing anything toward the solution of the problem...

"There is another reason why this problem will have to be approached with education and understanding. I don't believe that here in the South, where you have had separate schools for nearly a hundred years, that an immediate court decision to stop it and integrate the students can be done successfully. I don't believe you can legislate the people into doing this, they will have to be led by a systematic plan of education and this, of course, will take time."

The Ft. Myers News-Press in an editorial August 28, 1954, said:

"A number of Fort Myers citizens have received by mail this week circular letters purporting to come from the Ku Klux Klan which attempt to fan the flames of racial intolerance over the school segregation issue and make a bid for Klan recruits.

"The letters enclose an application blank for membership in the Klan returnable to an Orlando post office box. Whether they represent a bona fide recruiting drive by the Klan or just an effort of some crackpot or promoter trying to cash in on the current anxiety over prospective desegregation in the schools, the re-

cipients have no way of knowing, although Orlando always has been a hotbed of Ku Kluxism and the application blank probably is genuine.

"There is nothing doubtful, however, about the hate literature enclosed with the KKK circulars. The fat envelopes—so bulky that most recipients had to pay an extra three cents postage due—were crammed with highly inflammatory articles against the Negro race and slanders against various public officials and individuals fit only for the sewer. In the delicate situation which now confronts both whites and Negroes arising from the Supreme Court anti-segregation ruling—a situation that calls for all the calmness and clear thinking that can be mustered—outpourings such as this are not only unhelpful but dangerous."

The Orlando Sentinel in an editorial August 19, 1954, said:

"As a result of a survey recently completed by an interracial committee appointed by the attorney general, it has been made perfectly clear that even in Florida many people of both groups are not ready to send their children to the same school together, and that law enforcement agencies are not prepared to enforce such laws or to prevent the violence which would arise under such circumstances.

"The problem varies from community to community just as it does from state to state and the difficulty increases in direct ratio to the number of Negroes present. It would be a relatively simple matter to enforce desegregation in a community where there would be only one or two Negroes in a classroom, as would be the case in most northern cities. It is not so simple where the numbers of the two races are more nearly equal.

"This happens to be the case in many of our smaller north and west Florida towns, as well as in most of the rural areas of South Carolina, Georgia, Alabama and Mississippi. In some Florida cities, however, particularly in South Florida, there are relatively few Negroes and the opposition to their admittance to white schools is not so prevalent.

> "Clearly it would be unfair to expect public officials to overcome the problems of integration all at the same time without regard to the difficulties involved. The Supreme Court should take cognizance of the inherent differences among individuals as among communities and leave the problem of when desegregation can safely be accomplished to local authorities."

The Miami Herald in an editorial of May 24, 1954, said:

> "Anticipating that the United States Supreme court might end segregation in the schools, as it did last week, Florida leaders have been quietly taking stock of the state's educational resources.
>
> "They recognized that the change, when it came, would be the most momentous since the War Between the States, and no family would escape its effects.
>
> "What this study showed was that Florida has made more progress in Negro education, probably, than any other state with segregation, and is in a better position to meet the challenge of the court ruling."

These meetings and examples of editorial opinion may appear insignificant but when considered in relation to the fact that they took place in a State which still has three counties where no Negroes have registered to vote (see page 178, Appendix A), and whose peace officers are overwhelmingly opposed to desegregation in any form (see Table 3, page 138, Appendix A), they should not be ignored. *We believe that any attempt to compel an immediate desegregation in Florida schools would constitute a shock treatment so drastic that any further efforts on the part of these and similar groups would be promptly nullified.* Such efforts on the part of citizens' committees of both races can only take place as voluntary manifestations of good citizenship. They cannot take place in an atmosphere of fear and coercion.

F. Regional Variations

One of the most important factors which has emerged from our study of the segregation problem in Florida is the clear indication of marked regional variations in the intensity of the feelings of the people.

The State of Florida is unlike other Southern states in one significant respect. Geographically it is large and sprawled out over an area of a thousand miles extending from Pensacola in West Florida to Key West on the southernmost tip.

Between these two extremes can be found startling differences in the social customs and traditions of the people inhabiting the various counties.

Generally speaking, the influx of people from northern states has tended to settle in South Florida and this has altered to some extent the social pattern of South Florida counties, whereas North and West Florida counties have remained to a large extent populated by people of Florida or Southern ancestry who cling to Southern traditions and customs.

It must be emphasized, however, that this type of generalization is apt to be misleading because counties and communities may be found in South Florida where the degree of racial differences in feeling may be even more pronounced than in the northern part of the state.

These variations indicate that there may be communities

in Florida where conditions are such that local school officials would feel justified in proceeding within a relatively short time to integrate the white and Negro schools. On the other hand, there are many counties, notably those having a large Negro population, where it is apparent that any attempt to bring about immediate desegregation would result in violence and bring the school system to a complete standstill.

These variations in community attitudes and conditions preclude the practicability of any overall, statewide detailed plan, time schedule or target date for desegregation which might be evolved. We believe that whatever plan and time schedule is adopted in each community must, if it is to be workable, have been produced through the efforts of the local school officials who understand the specific problems involved and who must be willing to undertake to make the plan work. We do not believe that the courts should undertake to perform the functions of local school boards and we do not believe that this Court should insist on a plan of action which, in its efforts to guard the rights of some, must necessarily forsake the rights of all others.

G. Discussion

In suggesting an affirmative answer to question 4B, we have attempted to take into consideration the wide range and complexity of the problem. We know that from its common-sense practical aspects a successful implementation requires the blending of the best administrative and judicial techniques over a reasonable period of time which will vary in each school district or county, dependent upon the circumstances. Admitted that segregation has been held unconstitutional as a class discrimination, that does not mean that transition to the actuality of non-segregated education can be accomplished immediately or without planning and preparation and administrative actions.

The public welfare of the segregated states is involved in the transition along with administrative details. It would be unwise not to permit the exercise of reasonable regulations under the police power during the transitional period in the interest of peace in the community and good order and safety in the schools. The white people of the segregated states have too long relied upon the doctrines expressed in *Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896)* to be expected to accept complacently the new order. Our survey amply bears this out.

Therefore, we most earnestly and sincerely urge the Court to permit that degree of latitude necessary to the segregated states and the county school boards therein to bring about an effective gradual adjustment to integration so as to soften and ameliorate the transition and preserve peace and order in the communities and the

schools in the process and that these officials be accorded the discretion to make the transition successfully and *effectively* in good time and good order.

Even though it has been held the Negro child should not be discriminated against in his public education nor unduly postponed in his enjoyment of it, surely that right is not so absolute, so compelling in its nature, that reasonable administrative procedures necessary for the public welfare cannot be asserted during the transition period. If there ever was a condition which needs elasticity in the application of constitutional guaranties to meet it, certainly it is the transition period from the segregated school system to the non-segregated school system in the various schools of the South.

By a concurrent application of prudent and sensible administrative and judicial techniques the problem may eventually be solved. But the Court should always allow the states involved and their officials, both state and local, the opportunity to first work out the problem and accord to their determinations a wide degree of discretion and latitude in the integration. The Court has said in *Minersville School District v. Gobitis,* 310 U. S. 586, 60 S. Ct. 1010, 84 L. Ed. 1375, (1940), it would not make itself the school board of the country. That does not mean the Court, beginning with the court of first instance, would not always reserve the judicial authority to review and probe. It would exercise this authority where in proper cases duly brought it was alleged the county school board had not made the requisite effort in good faith to desegregate in line with appropriate criteria or factors which we believe the Court will outline in its implementation decision. Parenthetically and most earnestly, we urge the Court to accept the factors we have outlined, believing them to be essential to successful implementation in the light of problems involved.

Part Two

Specific Suggestions to the Court in Formulating a Decree

Introductory Note

We do not suggest delay merely for the sake of delay itself. We do suggest that sufficient time be permitted for a gradual effective adjustment to desegregated schools to take place in each community.

The period of time required will vary in each community dependent upon its administrative problems and the attitude of its people. The length of this period of transition in each instance can only be determined by the local school authorities subject to the review of the courts of first instance when called upon to consider specific suits brought because of a disagreement with the school authorities over admission policies.

We do not believe that any court should at any time attempt to peremptorily compel school officials to integrate schools in a community when it is apparent that such action will create hostility and resentment to such a degree that the schools cannot be operated in an orderly manner.

We believe that any attempt to establish an overall specific plan for desegregation by the United States Supreme Court as a result of recommendations of a special master would be totally unrealistic and would in effect place this Court in the position of attempting to function as the county school board of the counties affected.

We believe that the courts of first instance should also avoid any attempt to exercise administrative powers normally delegated to school officials. They should not be

required to spell out in specific detail the means by which they would require a school district to comply with the new requirements of the law. Rather, let them leave to responsible local school authorities the task of drafting plans for transition, and then apply to each such plan presented in the course of litigation the test of good faith.

Widespread white hostility to immediate, enforced integration of the public schools is a fact of life in Florida, and is just as real a factor in considering the future of public education as school finance, school construction or any other.

We ask only this; that school officials not be deprived of the right to recognize local factors related to the welfare of public schools and to exercise the same discretion in dealing with the feelings of the people regarding segregation that they would exercise in dealing with any other local condition or problem that directly affected the proper operation of the public schools.

We urge, therefore, that the Supreme Court remand these cases to the courts of first instance—in all but one of these cases federal district courts—and that it vest in the courts of first instance broad discretionary powers to determine as findings of fact (1) what should be a reasonable time for transition in any given case, and (2) whether or not specific plans for compliance with the Court's general directive prepared by responsible local school officials measure up to the broad test of good faith.

We offer the following specific suggestions for the consideration of the Court in the formulation of its decree:

Specific Suggestions

I. It is suggested that the United States Supreme Court in its implementation decision or decree adopt the procedure contemplated in questions 4 (b) and 5 (d) as stated in the footnote in the Brown decision:

> "4 (b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"
>
> "5 (d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

II. It is suggested that the United States Supreme Court in its implementation decision in the Brown case direct that the courts of first instance consider all suits brought to gain admittance to a specific school and claiming discrimination because of color, in accord with the following general directions:

A. The petitioner must affirmatively show;

(1) That admission to the school in question was requested by the petitioner within a reasonable time before the beginning of the school term.

(2) That the petitioner resides within the limits set by normal geographic school districting of the school he seeks to enter.

(3) That admission to said school was denied by the local school authorities and that all other administrative remedies such as appeal to the State Board of Education (where provided by law) have been exhausted.

B. It is suggested that the court of first instance conduct hearings, take testimony, determine the merits of the petition and the answer thereto and the equitable reasons which may exist which would justify the school authorities in refusing to approve the petitioner's application for admission to the school in question. In conducting such proceedings, the court should consider:

(1) Evidence as to whether the state school authorities and legislature have had a reasonable amount of time to reorganize the legal provisions of the state school structure to comply with the Brown decision.

(2) Evidence of good faith on the part of the school authorities in seeking to comply with the Brown decision and integrate the public schools. Such evidence should include:

(a) Efforts previously made and in progress to overcome practical, administrative problems encountered in integrating schools as proclaimed by this Court.

(b) Efforts previously made and in progress to promote citizens' educational committees and interracial committees for the purpose of improving racial relations in the community and avoiding racial antagonisms in the schools.

(3) Evidence and recommendations submitted by interracial citizens' committees which may be organized pursuant to law for the purpose of assisting the local school authorities, or evidence and recommendations submitted by impartial survey and fact-finding teams which may be created by the State Board of Education pursuant to its administrative powers.

(4) Evidence of existing administrative problems

of integration which have not as yet been solved and which would jeopardize the efficient operation of the school system if the petitioner's application for admission was granted immediately.

(5) Evidence of such a strong degree of sincere opposition and sustained hostility on the part of the public to the granting of the petitioner's application, as to give the school authorities reasonable grounds to believe that immediate approval of the petitioner's application would cause a disruption of the school system or create emotional responses among the children which would seriously interfere with their education. Such evidence should be carefully analyzed by the court to determine its validity and all evidence of this nature which might appear to be simulated or fabricated for the purpose of continuing segregated schools in the community should be rejected.

(6) Evidence that the petitioner's application was made in good faith and not for capricious reasons. Such evidence should demonstrate:

(a) That the petitioner personally feels that he would be handicapped in his education, either because of lack of school plant facilities or psychological or sociological reasons if his application for admission is denied.

(b) That the petitioner is not motivated in his application solely by a desire for the advancement of a racial group on economic, social or political grounds, as distinguished from his personal legal right to equality in public school education as guaranteed by the 14th Amendment. This distinction should be carefully drawn. This Court has ruled that segregated schools are forbidden by the 14th Amendment because they may deprive the Negro of an equal opportunity in acquiring an education. During the process of desegregating schools it should always be kept in mind that the sole legal purpose of public schools is to educate. The public school system has never been permitted under Florida law to extend its activities into the

field of public welfare or related purposes. It is not the purpose or within the legal authority of the Florida public school system to provide a direct means of improving the social, political or economic status of any group or individual except as such improvement may in time result from education itself. Public schools are not intended to provide experiments in race relations or to use children as sociological guinea pigs in the solution of problems in many walks of life which adults have not been able to solve by other means.

III. It is suggested that based upon the testimony and evidence submitted, the court of first instance may either:

(A) Order that the petitioner's application for admission to the school in question be granted forthwith, if it appears that the petition was made in good faith and that there exist no reasonable grounds for delay on the part of the school board in approving the petitioner's application for admission.

(B) Dismiss the petition if it appears that it was not made in good faith and well founded in law according to the interpretation of the 14th Amendment by this court in the Brown case.

(C) Order the school authorities to hold the petitioner's application in abeyance for a reasonable period of time to allow for further adjustment to a single school system if necessary, with directions to the school authorities to proceed to overcome as soon as possible the practical or psychological and sociological factors which prevent an immediate approval of the petitioner's application.

If the latter alternative is found to be necessary by the court it should include in its order the following:

(1) Fix a time for rehearing of the petitioner's application by the court within a stated reasonable time at which hearing additional testimony and evidence will be received and the circumstances justifying delay in approving the petitioner's application for

admission will be re-evaluated by the court in the light of altered conditions and a supplemental order entered in the case in accord with the findings of the court.

(2) Direct the school authorities to formulate and submit to the court within a reasonable time a plan designed to overcome the practical and psychological obstacles which tend to prevent an immediate integration of the schools under their jurisdiction. The effectiveness of the plan submitted and the efforts which the school authorities have made in good faith to carry it out should be considered by the court on subsequent rehearing of the case in determining whether additional delay is justified in granting the petitioner's application for admission.

Part Three

Legal Authority of the Court to Permit a Period of Gradual Adjustment and Broad Powers of Administrative Discretion on the Part of Local School Authorities.

A. Judicial Cases Permitting Time

Many decisions of the United States Supreme Court and the State Supreme Courts have recognized the necessity for granting a reasonable time in which to comply with the decree of the Court to avoid hardship or injury to public or private interests.

The present decision requires more consideration of the problem of *time* and adjustment than in the earlier cases since it is apparent that it involves a vast problem of human engineering, as contrasted to previous delays for adjustment granted in anti-trust cases, nuisance cases, and similar cases where economic problems of great magnitude confronted the courts.

I. *United States v. American Tobacco Co., 221 U. S. 106, 31 S. Ct. 632, 55 L. Ed. 663 (1911).* Recognizing the need for adjustment to its remedies in dealing with the unlawful combinations under the Sherman Anti-Trust Act, the Court, in order to avoid and mitigate possible injury to the interest of the general public, decreed the commercial combination to be illegal; and directed the Court below to hear the parties, ascertain, and determine a plan or method of dissolution, and to recreate a condition in harmony in law. To accomplish this, the Court granted a reasonable period (8 months) to effectuate its decree, while prohibiting any enlargement of the corporation's monopoly during this period.

Briefly stated, six months, with a possible extension of

sixty days, was granted in which to work out a plan for dissolving a combination found to control the tobacco industry in violation of the Anti-Trust Act of July 2, 1890 *(26 State at L. 209, Ch. 647, USC Title 15, s1)*, and creating out of the elements composing it a condition which would not be repugnant to the prohibitions of the Act.

II. *In Standard Oil Co. v. U. S., 221 U.S. 1, 31 S. Ct. 502, 55 L. Ed. 619 (1910)*, the Court again recognized the need for *time* in putting into effect its decision. In this case Chief Justice White stated that the magnitude of the interests involved and their complexity required that six months be given in which to execute a decree for the dissolution of a holding company controlling the oil industry in violation of the Anti-Trust Act of July 2, 1890, and for the transfer back to the stockholders of the subsidiary corporations of the stock which had been turned over to the holding company in exchange for its own stock.

In the area of nuisance litigation, the Supreme Court has often recognized the need for a period of gradual transition in order to effectuate decisions. In the Case of *New Jersey v. New York, 283 U. S. 473, 75 L. Ed. 1176, 51 S. Ct. 519, (1931)*, the State of New Jersey sued New York City in the United States Supreme Court for an injunction restricting the dumping of New York City's garbage into the ocean off the New Jersey coast. Injunction was granted in the opinion by Butler, J., affirming a special master's report. A decree was entered, declaring that the plaintiff State of New Jersey was entitled to an injunction as sought in the complaint; *but that before* (italics supplied) an injunction was issued, a *reasonable time would be accorded* to the defendant, within which to carry into effect its proposed plan for the erection and operation of incinerators to destroy the waste materials which were being dumped off the New Jersey coast, or to provide other means to be approved by the decree for the disposal of such materials.

Reasonable time was a question of fact to be decided upon by the same special master, after hearing and evaluating all witnesses' testimonies from each party or witnesses which the master may select to be heard. The master was then to report to the court his findings and a form of decree. On a rehearing of the case on *December 7, 1931, (284 U. S. 585, 75 L. Ed. 506, 52 S. Ct. 120)* a decree was entered by the Supreme Court prohibiting any further dumping of refuse, etc., into the ocean off the coast of New Jersey. Said decree was to become effective on and after *June 1, 1933,* and progress reports were to be filed with the clerk of the Supreme Court on April 1 and October 1 of each year beginning April 1, 1932, setting forth the progress made in the construction of incinerator plants, etc., for the final disposition of garbage and refuse, and also the amount of material dumped at sea during the periods covered by such reports.

Provision was also made in the decree that upon the receipt of said reports, and on due notice to the other party, either party to the suit could apply to the Court for such action or relief with respect to the *time* allowed for the construction, or method of operation of the proposed incinerator plants, or other means of final disposition of garbage, etc., as may be deemed appropriate. In other words, the flexibility of the decree permitted frequent re-evaluation to promote the greatest justice to all parties.

On May 29, 1933 *(289 U. S. 712)* Mr. Chief Justice Hughes announced a new order, based on the failure of New York City to comply with the decree of December 7, 1931. The defendant asked that the time for taking effect of the injunction be extended from June 1, 1933 to April 1, 1934. It was ordered that these applications be heard on November 6, 1933, that E. K. Cambell be appointed Special Master, empowered to hear witnesses, issue subpoenas, take evidence offered by interested parties, and also such as he may deem necessary to show:

(A) What shall have been done by defendant city, up to September 15, 1933, and the time reasonably required to enable it to comply with the decree.

(B) The amounts spent by the plaintiff New Jersey to prevent harm to its beaches, waters, etc., subsequent to June 1, 1933, and the damages sustained by them as a result of New York's failure to comply with the decree.

The Special Master's findings were subject to consideration, revision, or approval by the Court.

On December 9, 1935 *(296 U.S. 259, 80 L. Ed. 214, 56 S. Ct. 188)*, Mr. Justice Butler announced a new decree modifying in effect the decree of December 4, 1933. The latter decree enjoined New York City from dumping refuse off the New Jersey coast, stipulating a five thousand dollars ($5,000.00) a day penalty for failure to comply. On October 7, 1935, New York City sought a modification of the decree, and asked for a petition to have New Jersey show cause why a ruling could not be made to the effect that ten miles (10) off shore dumping is satisfactory as to non-floating material, or, in the alternative, why the Court should not modify its decree so as to permit the defendant to dump non-floating sewage as aforesaid.

Defendant's motion for leave to file was granted.

It should be noted that the original decree was handed down in 1931 and continued modification took place for some four (4) years in order to effectuate the original decree. Recognition for additional time was given each time the case reappeared before the Court.

III. The Supreme Court again recognized the need for a calm period of gradual transition to effectuate its decree, in the Gaseous Nuisance Cases in which it took some nine (9) years to implement its decrees.

The first case was that of *Georgia v. Tennessee Copper Co., 206 U.S. 230, 51 L. Ed. 1038, 27 S. Ct. 618 (1907).* In this case the State of Georgia sought to enjoin the defendant copper companies from discharging noxious gases from their works in Tennessee over the plaintiff's territory. The State alleged that such discharges were destroying entire forest, orchard, and crop lands, and that irreparable injuries were being done and threatened in five counties of Georgia. A preliminary injunction was denied, but, as there were grounds to fear that great and irreparable damage might be done, an early day was fixed for the final hearing, and the parties were given leave, if so minded, to try the cases on affidavits. Mr. Justice Holmes held that if the State of Georgia adhered to its determination, there was no alternative to issuing an injunction, *after* allowing a *reasonable* time for the defendants to complete the structures then being built, and efforts the companies were making to stop the flow of fumes and gases into Georgia. The plaintiff Georgia was permitted to submit a form of decree on the coming in of the Court in the following October.

Eight (8) years later, on May 10, 1915, the Supreme Court again heard the same case, in the *State of Georgia v. Tennessee Copper Co.* and *Ducktown Sulphur, Copper, & Iron Co., Ltd., 237 U.S. 474, 59 L. Ed. 1054, 35 S. Ct. 631 (1915).*

This case is a continuation of the earlier one, supra (1907), in regard to the nuisance of gaseous fumes harming the property within the State of Georgia. In the earlier case, hope was entertained that some practical method of subduing the noxious fumes could be devised and by *consent,* the *time* for entering a final decree was enlarged. Both companies installed purifying devices. The original defendant, Tennessee Copper and Georgia, entered into a stipulation whereby the former undertook annually to supply a fund to compensate those injured by fumes from

its works, to conduct its plant subject to inspection in specified ways, and between April 10 and October 1, not to "operate more green ore furnaces than it finds necessary to permit of operating its sulphuric acid plant at its normal full capacity." The State of Georgia agreed to refrain from asking for an injunction prior to October, 1916, if the stipulation was fully observed. Ducktown Company and the State were unable to agree, and in February, 1914, the latter moved for a decree according a perpetual injunction. Consideration of the matter was postponed upon representation that conditions had materially changed since 1907, and leave was granted to present additional testimony "to relate solely to the changed conditions," if any, which may have arisen since the case was then decided. A decree was granted restraining the Ducktown Company from continuing to operate its plant other than upon the terms and conditions set out by the Court *(Decree set forth in 237 U.S. 678, 59 L. Ed. 1173, 35 S. Ct. 752 (1915)).*

A new decree was issued April 3, 1916 in *240 U. S. 650, 60 L. Ed. 846, 36 S. Ct. 465, (1916).* This decree modified the former decrees as to the escapement of fumes, as to records to be kept in regard thereto, and also as to expense of inspection and division of costs.

The three(3) cases, dealing with the problem of escaping nuisances, cover a span of nine (9) years (from 1907 to 1916). It illustrates how long a period is required to adjust to incorporeal changes and strongly suggests that human changes obviously require greater periods, since human emotions are not as easily controlled as are gaseous materials from sulphur and copper plants. Recognition of the need of calm planning in good faith to reconcile difficult problems has often been illustrated by the Court in contexts of economic and social changes as a result of its decisions.

IV. In *People of the State of New York v. State of New Jersey and Passaic Valley Sewerage Commissioners, 256 U.S. 296, 65 L. Ed. 937, 41 S. Ct. 492 (1921),* at page 313, Mr. Justice Clarke, in refusing to grant injunction relief against the operation of sewerage disposal by New Jersey into New York Harbor, wisely stated:

> "We cannot withhold the suggestion, inspired by the consideration of this case, that the grave problem of sewage disposal presented by the large and growing populations living on the shores of New York Bay is one more likely to be wisely solved by cooperative study and by conference and mutual concession on the part of Representatives of the States so vitally interested in it than by proceedings in any Court however constituted."

This quotation strongly suggests the need for time to work out these difficult intangible relations, in an atmosphere of cooperation and reason, rather than a tremendous disruption of social and economic conditions.

V. In the case of *Martin Bldg. Co. v. Imperial Laundry Co., 220 Ala. 90, 124 So. 82,* the Supreme Court of Alabama recognized the need for time in the use of injunctive relief. In a suit by the owner of an office building to enjoin a laundry from emitting smoke over the complainant's premises, the basis of the suit was the discomfort to the building's tenants, endangering of their health, and the resulting loss of tenants. The question of the abatement of the nuisance by improved technological laundry methods had to be further considered before the Court would grant or refuse injunctive relief, in view of suggested means of reducing amount of smoke by use of stokers. This acted to delay the force of the injunctive relief sought.

B. Administrative Discretion Cases

The use of administrative discretion and its limits have often been spelled out by the Court in the areas of administrative agencies. The Court has consistently emphasized that supervision and discretion should lie with the administrative agencies in the conducting of their functons as economic and political governing boards. Such emphasis is closely related to the administrative discretion which should exist in school boards, also.

I. In *United States v. Paramount Pictures, 334 U. S. 131, 92 L. Ed. 1260, 68 S. Ct. 915, (1948),* Mr. Justice Douglas reviewed a decree in an injunction suit by the United States under the Sherman Act to eliminate or qualify certain business practices in the motion picture industry. A provision in the decree that films be licensed on a competitive bidding basis was eliminated by the Supreme Court *as not likely to bring about the desired end as involving too much judicial supervision to make it effective.* This elimination was held to require reconsideration by the district court of its prohibition of the expansion of theatre holdings by distributors and provisions for divesting existing holdings. The propriety of including in the decree a provision for voluntary arbitration of questions arising thereunder was indicated, and denial of applications for leave to intervene by persons challenging the eliminated provision for competitive bidding was upheld.

Mr. Justice Douglas was strongly opposed to the judiciary administrating industry, and favored voluntary arbitration: At page 163 he stated:

> "It would involve the judiciary in the administration of intricate and detailed rules governing priority, period of clearance, length of run, competitive areas, reasonable return and the like. The system would be apt to require as close a supervision as a continuous receivership, unless the defendants were to be entrusted with vast discretion. The judiciary is unsuited to affairs of business management; and control through the power of contempt is crude and clumsy and lacking in the flexibility necessary to make continuous and detailed supervision effective."

The implications of Mr. Justice Douglas's opposition to judicial administration of intricate and detailed rules in the economic field could readily apply to the social relationship and problems created by the recent holding in the Brown case.

II. Further evidence of the broad discretion that was permitted by the Supreme Court in administrative agencies is evidenced in the case of *Alabama Public Service Commission v. Southern Railway Company, 341 U. S. 341, 95 L. Ed. 1002, 71 S. Ct. 762, (1951).* A railroad, prohibited by state law from discontinuing trains without permission of the state public service commission was denied such permission on the ground that though the trains were being operated at a loss there was a public need for the service. Alleging that irreparable loss would result either from continued operation of the trains or from incurring the penalty imposed by state law for discontinuance without the commission's permission, the railroad sought and obtained an injunction in a federal district court against the enforcement of the statute.

The U. S. Supreme Court, through Chief Justice Vinson,

reversed the district court, and held that the federal court's exercise of such jurisdiction should, on considerations of comity, be withheld on the ground that the state law provided for review of the commission's order in the state courts and for its stay pending such review.

Some persuasive language in support of state administrative discretion appears at pages 347-348:

> "The Alabama Commission, after a hearing held in the area served, found a public need for the service. The court below, hearing evidence *de novo,* found that no public necessity exists in view of the increased use and availability of motor transportation. We do not attempt to resolve these inconsistent findings of fact. We take note, however, of the fact that a federal court has been asked to intervene in *resolving* the *essentially local problem* of balancing the loss to the railroad from continued operation of trains . . . with public need for that service... directly affected...." (Italics supplied).

More support to the *finality* of the discretion of the commission is found on page 348:

> " . . . and whatever the scope of review of commission findings when an *alleged denial* of *constitutional* rights is in issue, it is now settled that a *utility has no right to relitigate factual questions* on the ground that constitutional rights are involved. *New York v. United States, 331 U.S. 284, 334-336 (1947)....*" (Italics supplied)

More directly in point, at pages 349-350 is found the following:

> " . . . as adequate state court review of an administrative order based upon predominantly *local* factors is available to appellee intervention of a federal court is not necessary for the protection of federal rights. Equitable relief may be granted, only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state

governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts.' Considering that 'few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies,' the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case...." (Italics supplied)

And again at page 351, "It is in the public interest that federal courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of the states...."

III. Further evidence of the broad discretion permitted by the Supreme Court to state administrative agencies is found in the case of *Burford v. Sun Oil Co., 319 U. S. 315, 87 L. Ed. 1424, 63 S. Ct. 1098 (1943)*. In this case the Sun Oil Co. attacked the validity of an order of the Texas Railroad Commission granting the petitioner Burford a permit to drill oil wells on a small plot of land in the East Texas oil fields. The U. S. District Court for the western district of Texas dismissed the suit by the Company; the Circuit Court of Appeals reversed the District Court. The Supreme Court through Mr. Justice Black reversed the Circuit Court of Appeals, and affirmed the District Court.

The Supreme Court held that a federal equity court may properly decline to exercise its jurisdiction invoked because of diversity of citizenship of the parties and alleged infringement of constitutional rights; to determine the validity of a state commission order, made under the authority of a conservation statute, granting a permit to drill oil wells on certain property, adjacent to lands owned by the complainant, where the state has provided a uniform method for the formation of policy and determination of cases by

the commission and the state courts; and where the judicial review of the commission's decisions in the state courts is expeditious and adequate; and where intervention by the lower federal courts is likely to cause delay and conflicting interpretation of the state law, dangerous to the success of state domestic policies.

The Court, at page 320, explicitly states:

> "The primary task of attempting adjustment of these diverse interests is delegated to the Railroad Commission, which Texas has vested with 'broad discretion' in administering the law."

The Court points out that the Texas courts have the power of thorough judicial review of the decisions of the Railroad Commisson; and that the Texas courts are working partners with the Commission in the business of creating a regulatory system for the oil industry. The Commission is charged with *principal responsibility* for *fact finding* and for *policy making* and the courts expressly disclaim the administrative responsibility. On the other hand, orders of the Commission are tested for "reasonableness" by trial de novo before the state court, and the Court may on occasion make a careful analysis of all the facts of the case in reversing a Commission order. The state court may even formulate new standards for the Commission's administrative practice, and suggest that the Commission adopt them.

The Supreme Court recognized that the existence of problems throughout the oil regulatory field creates a possibility of serious delay which can injure the conservation program; and that it may be necessary to stay federal action pending authoritative determination of difficult state questions. It recognized that questions of state regulation of the oil industry so clearly involve basic problems of Texas policy that equitable discretion should be exercised to give the Texas courts the first opportunity to consider them.

IV Concrete evidence of the Supreme Court's adherence to complete administrative discretion is found in the case of *Far Eastern Conference, United States Lines Co., States Marine Corporation, et al. v. United States and Federal Maritime Board, 342, U. S. 570, 96 L. Ed. 576, 72 S. Ct. 492 (1952).* The suit was brought by the government to enjoin the dual rate system established by an association of steamship companies known as the Far East Conference. The companies never submitted the rates to the Federal Maritime Board for approval, as provided for in §15 of the Shipping Act *(46 USC §814).* The defense, that the issues involved were of such a technical nature calling for the application of administrative exercise as to make it improper to bypass the Board, was upheld by the Court through Justice Frankfurter.

It was held that the administrative agencies should not be bypassed by the Courts in cases raising issues of fact not within the conventional experiences of judges or in cases requiring the exercise of administrative discretion, even though the facts, after they have been appraised by specialized competence, serve as a premise for legal consequences to be judicially defined.

V. "But the courtroom is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncrasies among a people so diversified in social origins and religious alliances. *So to hold would in effect make us the school board for the country." Minersville School District v. Gobitis, 310 U.S. 586, 60 S. Ct. 1010, 84 L. Ed. 1375 (1940), at 310 U. S. 598* (Italics supplied).

Parenthetically, the Court, in this case recognizes its limitations in the abstract sciences, with this language at page 597:

> "The precise issue, then, for us to decide is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious. To stigmatize legislative judgment in providing for this universal gesture of respect for the symbol of our national life in the setting of the common school as a lawless inroad on that freedom of conscience which the Constitution protects, would amount to no less than the pronouncement of pedagogical and psychological dogma in a field where courts possess no marked and certainly no controlling competence."

Constitutional guarantees of personal liberty are not always absolutes. Government has the right to maintain public safety and good order.

Keeping the control of public education close to the local people is perhaps the strongest tradition in American education. One of the predominant characteristics of American education is the variation in local policies and procedures in terms of unique local conditions. This is in sharp contrast to the highly centralized national system of education of other countries.

VI. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." *Cox v. New Hampshire, 312 U. S. 569, 61 S. Ct. 762, 85 L. Ed. 1049 (1941) at 312 U. S. 574.*

VII. Speaking of the 14th Amendment, the U. S. Supreme Court in *Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923 (1885),* said at page 31:

> "But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, *education and good order of the people*..." (Italics supplied)

VIII. In *Euclid v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114, 71 L. Ed. 303 (1926),* it said at page 387:

> "Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even a half century ago, probably would have been rejected as arbitrary or oppressive . . . while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet new and different conditions which are constantly coming within the field of their operation . . . Laws and regulations must find their justification in some aspect of the police power, asserted for the public welfare."

C. Remarks

The aforesaid summary shows the wise recognition by the Supreme Court in the past of the need for time in effecting certain economic changes in our society in order to allow a period of healthy adjustment in sensitive areas. The cases also show a recognition of the need for adequate *local* discretion in the same areas. This line of reasoning should be applied to the even more sensitive area of desegregation which presents a vast problem of human engineering to resolve the social changes sought.

Samuel Gompers, one of America's greatest labor leaders recognized this fact some years ago when he stated:

> "One fact stands out in bold relief in history of men's attempts for betterment. That is that when compulsion is used, only resentment is aroused, and in the end nothing is gained. Only through moral suasion and appeal to men's reason can a movement succeed."

Part Four

Considerations Involved in Formulating Plans For Desegregation

A. Changes in the Law

Dr. Rupert B. Vance, Professor of Sociology, University of North Carolina, past president of the American Sociological Society, writing in the Journal of Public Law, Emory University Law School, Vol. 3, Spring 1954, Number 1, page 42, says:

> "National prohibition offers an example of a change in law which did not carry through to change in the collective behavior and attitudes of society. In spite of our respect for the Constitution, resistance increased and law enforcement was insufficient to bring about social change. This resistance assumed the form of violations, as well as evasions, of the law. Under this situation it can be said that the 18th Amendment was repealed in order to preserve respect for the law. This occurred in spite of the fact that the initial change had the support of public opinion as represented in the (1) affirmative vote of legislatures of the states, and was implemented both by (2) federal legislation, as in the Volstead Act, and (3) supporting legislation in many states. For students of social change, the contrast with a decision of the Supreme Court is impressive.
>
> "Thus, while students of law realize that social change can be and has been implemented by legal enactment and judicial decision, it is also realized that resistance to social change is of many types. Here we can say that jurisprudence, as a social science, has shared in the responsibility of determining the extent to which any desired social change is enforceable by law. Laws may be violated, and they may be evaded. Evasion

carries the implication of driving a course through gaps in the law, if not actually breaking it. Important to the courts, to public order, and to the profession is the whole field of conflict of laws. Oftentimes, the change ordered by legal enactment and judicial decision is so limited in scope that no actual evasion is drawn upon to block social change. Some times modes of adjustment may exist within the choice of individuals and groups—alternatives sanctioned in legal codes. It is in this borderline between public and private spheres of life that the doctrine of social change is of most importance to students of jurisprudence. It must be remembered that issues will be decided, not on the basis of an assumed code of ethics, *but on the basis of what is enforceable within the system of legality.*'' (Italics supplied)

B. Plans for Integration

The problem involves, among other things, the collective conscience or mores of our white citizens regarding segregation. That conscience simply stated, although of varying degrees of intensity, is that our people are not ready for desegregation. This was demonstrated conclusively by the survey which was made in Florida. This conscience is ingrained because it was nurtured and cherished throughout many generations as a way of life. It is deep-seated and its roots rest in fears of inter-marriage of the races, racial differences, superstitions, history, traditions and customs.

This community conscience until the Brown case had long years of legal sanction in the field of public education. Elimination of this legal sanction by no means eradicates the underlying collective conscience of the people in this field. *This attribute of the problem simply cannot be successfully solved overnight.*

This the Court undoubtedly appreciated by not making its desegregation decision immediately effective. Its questions and its delay of implementation indicate that it is conscious of what may be termed the equities of transition. The Court, we believe, is imbued with the need for gravity and for prudent concern in dealing with this collective conscience.

We think it realizes the need for social engineering, time, patience and community understanding. It senses the need for conditioning and education if implementation is ever to be a real success.

Free men are not automatons capable of being molded

and transformed forthwith by a new and revolutionary judicial concept which does not square with their collective conscience.

The enormity of the problem of compliance gives great pause. We do not deal with implementation of a decree against a single individual or even a minority. A successful response to the judgment requires reconciliation to it of a great majority of our people. The Court on its part needs for the enforcement of its decree the amelioration of time which is said to be a great Healer. It needs the rallying of those who will stand by the law of the land because it is such whether they agree with it or not and the patience of wise administration which eschews haste, precipitate action and premature procedures.

The Court stands not in need of the whip and the scourge of compulsion to drive our people to obedience, but rather the rational solution of time in which the loyalty, patience and understanding of the law-abiding will come forward and lead the way to peaceful, reasonable and successful compliance.

Not only to be considered is the need of reconciling this collective conscience to desegregation but others of importance to be considered include the safety of school children, the peace of the community, the mutitudinous administrative problems affected, the impact upon teachers' jobs, particularly Negro teachers', the transportation of school children, the revisions of laws and regulations, the redistricting of attendance areas, the reallocation of physical school plant facilities and others involved in the transition from a segregated school system to a non-segregated system. All require time, wise administration and patience for their solution.

Gradual effective adjustment to integration presupposes that there will be a plan. But because there is a wide variety of local conditions, no specific plan can be outlined which

would be acceptable under all conditions and in all communities.

We think integration must proceed in Florida on a county by county basis because of the fundamental differences in various areas of the state which we have attempted to demonstrate in this brief.

A great many plans for integration have been developed in Florida and other states and all of them have their adherents. A plan of gradual integration starting with the first grade and working on up through high school over a 12 year period is believed by some advocates to be the answer for their community but it is rejected in other places.

Another plan for beginning the integration process at the college level and gradually working down to the first grade can be supported by valid arguments, but it too is rejected by many educational leaders as being unworkable in some communities.

Other plans which have been advanced include a gradual reorganization of school attendance areas; designated schools whose students will be composed of volunteers from both races during the transition period; a simultaneous integration of all school grades over a period of time based on the scholastic level of the students as determined by examinations. These and many other plans are being considered by school authorities whose job it will be in the final analysis to devise a plan which will be accepted and will work in their particular school districts.

The one factor which all of these plans share in common is the need for *sufficient time* to carry them out and the one point on which agreement can be reached by school authorities who are willing to undertake a program of integration is that the plan adopted for their specific area must be unique in that it will take into consideration the exact problems of that area and no other.

If this planning and action is permitted by the Court, we believe that local school authorities should take into consideration two primary factors: first, the material aspects of integration which include the use of present school buildings, the construction of new buildings, transportation, teachers' jobs and assignments, school populations within attendance areas and the administration impracticabilities and inequities that would arise in these dislocations in any effort to effect a too hasty non-segregation; second, the intangible considerations including community thinking, customs, mores, overt acts that might result from the impact of premature integration, the scholastic standards of the schools and the feelings of children.

We realize that objection has been made to gradualism in seeking methods of integrating white and Negro schools, that delay might tend to create feelings of hostility and encourage organized opposition. The advocates of this theory apparently feel that the shock treatment is to be preferred and that if a difficult job has to be done, the quicker it is done, the better.

In this belief we are positive they are mistaken. Strong opposition already exists in the South to desegregation. It will be intensified in direct proportion to the amount of hasty precipitation and coercion that is applied.

Already there is springing up in our state opposition organizations, some of which through their literature encourage violence. Burning of crosses and circulation of hate literature are becoming more and more prevalent. But minimizing these manifestations of defiance are thousands of law-abiding citizens of both races, many influential newspapers and loyal organizations who are trying to meet the situation calmly and patiently. But their attitudes have always been buttressed on the assumption of gradualism and local autonomy. If that assumption is cut from under them by a decree of immediate desegregation or even a decree of a period of short delay which does not permit a

large degree of local determination, we frankly doubt whether we can save our public school system. This objection to gradualism may be valid in Northern states where segregation has been practiced but where the people as a whole do not share the intense feelings on racial differences which have become an ingrained part of the culture of the South.

There is no reason to think that sufficient delay in integration of the schools of Florida to allow for a period of gradual adjustment would create new problems or intensify those already existing.

The problems are already here and must be recognized realistically by anyone conscientiously seeking a solution. There is every logical reason to believe that any attempt to use the shock treatment of immediate compulsory integration of schools in Florida would only result in translating the present passive intellectual differences in thought and emotional feelings to an active, positive and violent physical resistance.

When all is said and done, it may be that about the best advice on the subject was contained in a speech by Governor David S. Walker of Florida in 1867 to a meeting of Freedmen in Tallahassee[1].

Governor Walker said:

> "The great question now to be solved, is whether two different races can live in peace together under the same government with equal political rights. In my reading of history, I do not remember any instance in which this has ever been done. But God has placed the work upon us and with His blessing we must try our best to accomplish it. In the first place, therefore, I say let each one of us of all colors resolve to cultivate kindly relations with one another and never allow our-

1. Semi-weekly Floridan, Tallahassee, Florida, April 23, 1867, page 2.

selves to be arrayed in hostility to each other—let us always speak kindly to and of one another. I have never known a man in my life who had the true principles of a Christian gentleman in him, who would wantonly wound the feelings of any human being, however humble.''

Part Five

CONCLUSION

There are two ways in which the Brown decision may be viewed by history. First, it may be considered as a seismic shock which struck without warning and engulfed a large part of the nation in a tidal wave of hate and inflamed emotions and carried away a public school system which took half a century and billions of dollars to build, or

Second, it may be looked upon as a high goal which this Court has fixed for men of good will to strive to attain and which they may attain in due course if rational consideration is given to human frailty and faith is maintained in the slow but sure upward movement of democracy.

Many think that our democracy is now face to face with the toughest job in practical government it has ever had to tackle without going to war. Some way must be found to protect the constitutional rights of a minority without ignoring the will of the majority. We think the only answer is time and the patient efforts of those who value democracy more than their personal longings and private prejudices. We hope that this court will accept this answer.

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(Appendix A)

Results of a Survey of Florida Leadership Opinion on the Effects of the U. S. Supreme Court Decision of May 17, 1954 Relating to Segregation in Florida Schools