124-A-1 SCHOOL AND/OR SCHOOL (6)
DECISION CON
Beginning May 17, 1954

G.F.

124-A-1

J NED MOORE, MAYOR
M. L SENN, CITY CLERK
D D EILAND, CHIEF OF POLICE
CLARENCE BYRD, RECORDER
JAKE BENTON, FIRE CHIEF

City Of Opp, Alabama
MUNICIPAL BUILDING
Opp, Alabama

COUNCILMEN
[illegible]Y ADAMS, SR
J. [illegible]CHANNELL, SR
[illegible] C. [illegible]RSEY
[illegible] JEF[illegible]OAT
W. FRANK JACKSON

RECEIVED
NOV 2[illegible] 1958
CENTRAL FILES

November 16, 1958

Mr. E. Frederic Morrow,
The White House,
Washington, D. C.

Dear Mr. Morrow:

Your letter of the 15th writing for the President received in this mroning's mail. Thanks for the consideration.

Your letter though somewhat short is so thought provoking that much time would have to be spent in writing to adequately express one's view of what you wrote speaking for the President.

Frankly speaking, I regard your letter as a polite evasion of answering two particular questions asked the President in my letter to him. One, What human right, including that of the right of life, liberty and the pursuit of happiness, is the negro race deprived of by affording them equal opportunities in separate or segregated schools? Two, Why has it happened in short a time as less than a decade that negroes cannot be accorded a public education in any but integrated schools? You will not doubt remember that the President implied if not outright asserted as much when answering Mr. Mr. Holston's letter from Virginia.

I take it for granted that you have had an opportunity to read Mr. Carleton Putnam's letter of October 13th to the President. Mr. Putnam's letter so aptly covers about every point raised in your letter to me that I am submitting a clipping of the publication thereof in lieu of further comment on my part. If you have not read the letter, wont you do us the favor to read it thoughtfully and without prejudice to any area of our country? By so doing you will give regard to the sensitive issue of human rights of all the people and not a mere minority, something the incumbent Supreme Court judges are not doing. I have written Mr. Putnam to acknowledge the debt of gratitude I believe the south owes for the intuition and courage manifested in the writing of his letter to the President.

It is my opinion that the decent thing now for the incumbent judges to do is to follow the example of the Ex-Attorney General and resign. It is my humble opinion that they have committed a greater sin than Mr. Brownell was guilty of.

Respectfully,

Clarence Byrd

U.S. Supreme Court's "Arrogance" As Viewed By Famous Northerner

(Editor's Note: Carleton Putnam, who wrote the following letter to President Eisenhower, is a member of the famous New England Putnam family, a native of New York City, a graduate of Princeton and Columbia, founder and president of Chicago and Southern Airlines (1933-1948), and is on the board of Delta Airlines. He recently published a widely-praised biography of Theodore Roosevelt.)

Washington, D. C.
Oct. 13, 1958

The Hon. Dwight D. Eisenhower
President of the United States
The White House
Washington 25, D. C.
My dear Mr. President:

A few days ago I was reading over Justice Frankfurter's opinion in the recent Little Rock case. Three sentences in it tempt me to write you this letter.

I am a Northerner, but I have spent a large part of my life as a business executive in the South. I have a law degree, but I am now engaged in historical writing.

From this observation post I risk the presumption of a comment.

The sentences I wish to examine are these: "Local customs, however hardened by time, are not decreed in heaven. Habits and feelings they engender may be counteracted and moderated. Experience attests that such local habits and feelings will yield, gradually though this be, to law and education."

Good Reason

It is my personal conviction that the local customs in this case were "hardened by time" for a very good reason, and that while they may not, as Frankfurter says have been decreed in heaven, they come closer to it than the current view of the Supreme Court.

I was particularly puzzled by Frankfurter's remark that "the Constitution is not the formulation of the merely personal views of the members of this court."

Five minutes before the court's desegregation decision, the Constitution meant one thing; five minutes later, it meant something else. Only one thing intervened, namely, an expression of the personal views of the members of the court.

It is not my purpose to dispute the point with which the greater part of Frankfurter's opinion is concerned. The law must be obeyed. But I think the original desegregation decision was wrong, that it ought to be reversed, and that meanwhile every legal means should be found, not to disobey it, but to avoid it. Failing, this, the situation should be corrected by constitutional amendment

Real Picture

I cannot agree that this is a matter involving "a few states" as Frankfurter suggests. The picture in reality is of a court, by one sudden edict, forcing upon the entire South a view, and a way of life, with which the great majority of the population are in complete disagreement.

Although not from the legal in fact from the practical, standpoint the North, which does not have the problem, is presuming to tell the South, which does have the problem, what to do.

To me there is a frightening arrogance in this performance. Neither the North, nor the court, has any holy mandate inherent in the trend of the times or the progress of liberalism to reform society in the South.

In the matter of schools, rights to equal education are inseparably bound up with rights to freedom of association and, in the South at least, may require that both be considered simultaneously. (In using the word "association" here, I mean the right to associate with whom you please, and the right not to associate with whom you please.)

In any case the crux of this issue would seem obvious: social status has to be earned.

Personally, I feel only affection for the Negro. But there are facts that have to be faced. Any man with two eyes in his head can observe a Negro settlement in the Congo, can study the pure-blooded African in his native habitat as he exists when left on his own resources, can compare this settlement with London or Paris, and can draw his own conclusions regarding relative levels of character and intelligence—or that combination of character and intelligence which is civilization.

Finally he can inquire as to the number of pure-blooded blacks who have made contributions to great literature or engineering or medicine or philosophy or abstract science.

We were all in caves or trees originally. The progress which the pure-blooded black has made when left to himself, with a minimum of white help or hindrance, genetically or otherwise, can be measured today in the Congo.

Bryce's View

Lord Bryce, a distinguished impartial foreign observer, presented the situation accurately in his American Commonwealth when he wrote in 1880:

"History is a record of the progress toward civilization of races originally barbarous. But that progress has in all cases been slow and gradual. . Utterly dissimilar is the case of the African Negro, caught up in and whirled along with the swift movement of the American democracy. In it we have a singular juxtaposition of the most primitive and the most recent, the most rudimentary and the most highly developed, types of culture. . .A body of savages is violently carried across the ocean and set to work as slaves on the plantations of masters who are three or four thousands years in advance of them in mental capacity and moral force. . Suddenly, even more suddenly than they were torn from Africa, they find themselves, not only free, but made full citizens and active members of the most popular government the world has seen, treated as fit to bear an equal part in ruling, not only themselves, but also their recent masters."

One does not telescope three or four thousand years into the 70 years since Bryce wrote.

I would emphatically support improvement of education in Negro schools, if and where it is inferior.

Equality of opportunity and equality before the law, when not strained to cover other situations, are acceptable ideals because they provide the chance to earn and to progress—and consequently should be enforced by legal fiat as far as is humanly possible.

Equality?

Throughout this controversy there has been frequent mention of the equality of man as a broad social objective. No proposition in recent years has been characterized by more loose thinking Few of us would care to enter a poetry contest with a top-ranking poet. And few would care to play chess with the champion.

Pin down the man who uses the word "equality," and at once the evasions and qualifications begin. As I recall, you, yourself, in a recent statement used some phrase to the effect that men were "equal in the sight of God."

I would be interested to know where in the Bible you get your authority in Scripture for the concept of potential equality in the sight of God—after earning that status, and with various further qualifications—but where is the authority for the sort of ipso facto equality suggested by your context? The whole idea contradicts the basic tenet of the Christian and Jewish religions that status is earned through righteousness and is not an automatic matter.

Frankfurter closes his opinion with a quotation from Abraham Lincoln, to whom the Negro owes more than to any other man. I too, would like to quote from Lincoln. At Charleston, Ill., in September, 1858, in a debate with Douglas, Lincoln said:

"I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and black races; I am not nor ever have been in favor of making voters or jurors of Negroes nor qualifying them to hold office. . .I will say in addition to this that there is a physical difference between the white and black races which I believe will ever forbid the two races living together on terms of social and political equality. And in as much as they cannot so live, while they do remain together, there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race."

The extent to which Lincoln would have modified these views today, or may have modified them before his death, is a moot question, but it is clear on its face that he would not have been in sympathy with the Supreme Court's position on desegregation.

Spectacle

Perhaps the most discouraging spectacle is the spectacle of Northern newspapers dwelling with pleasure upon the predicament of the Southern parent who is forced to choose between desegregation and no school at all for his child.

It does not seem to occur to the papers that this is the cruelest sort of blackmail; that the North is virtually putting a pistol at the head of the Southern parent in a gesture which every Northerner must contemplate with shame.

Indeed, there now seems little doubt that the court's recent decision has set back the cause of the Negro in the South by a generation.

He may force his way into white schools, but will not force his way into white hearts nor earn the respect he seeks.

What evolution was slowly and wisely achieving, revolution has now arrested, and the trail of bitterness will lead far.

Sincerely yours,
Carleton Putnam

25 Years Ago

November, 1933

Mrs. J. B. Hart was hostess to the Beta Delta Card Club.

Mrs M. S. Davis entertained the New Century Club.

Mr. and Mrs. G. J. Parish and son, G. J. Jr., returned from a visit in Jacksonville.

The Court Erects A Throne

The Phoenix [*Ariz.*] *Gazette*

WITH more political dexterity than judicial integrity, the United States Supreme Court has struck back at critics of its lawmaking usurpations. In doing so it has enunciated a doctrine which could alter the whole American system of government for the worse For what we believe to be the first time, the court has actually, unbelievably declared in a formal opinion that the nine justices create the supreme law of the land.

The Warren court chose the setting for its declaration shrewdly. The attempt to legitimatize seizure of legislative functions could as well have been made in some case dealing with subversion or overreaching federal control. It would have been as much at home in a case throwing open FBI files to conspirators or in another wresting control of natural resources from the states where they exist. But there a calmer public analysis of the court's new stand would have been probable The court chose an integration case in which to advance its claim.

The court's latest Little Dock decision properly divides into two parts. *The Phoenix Gazette* last Tuesday commented editorially upon the part which was material to the Little Rock situation and to integration generally. We believe the moral correctness of desegregation should be separated from the court's attempt to upset the checks and balances of government if wise conclusions are to be reached. Even the Warren court must have had a twinge of conscience on this score, for as a prelude to the second part of its opinion it remarks that, "What has been said, in the light of the facts developed, is enough to dispose of the case."

AFTER this, however, it proceeds to enunciate a doctrine which heretofore has been advanced largely by so-called liberal law school professors and young attorneys not yet grown out of a compulsion to glorify the courts as the apex of their profession. Yet in one vital way the Warren court slipped off the tether of logic, for it depended upon court precedent and public custom to defend its own violation of court precedent and public custom It never seemed to realize that if it destroys the sanctity of precedent, the one precedent upon which it relies must perish along with others

The Warren court's reasoning as advanced in its new opinion embraces these points· Article VI of the Constitution declares that the Constitution is the "supreme law of the land;" in 1803 the court under Chief Justice Marshall ruled that it is the function of the court to pass upon the constitutionality of laws; therefore the Warren court's "interpretation" of the 14th Amendment is "the supreme law of the land."

In analyzing this position it is necessary to keep two things in mind. One is that nowhere in the Constitution is there any specific authority given to the Supreme Court to interpret the Constitution. Such authority, which we believe to be necessary, depends exclusively upon the court's own precedent established in 1803 and accepted since then by public custom. The other point is that the new interpretation of the 14th Amendment which the Warren court is now defending was directly contrary to a precedent which had stood for 105 years in American courts as a whole, for 75 years in appellate courts and for 58 years with the specific blessing of the Supreme Court itself.

TWENTY-FIVE years before the Warren court re-interpreted the 14th Amendment, the Supreme Court under Chief Justice Taft had declared the former interpretation to be firmly and indisputably established under the American system of constitutional government. This is what the Warren court is now saying of the Marshall interpretation which gives the court power to rule upon constitutional questions. In other words, the Warren court relies upon one "indisputably established precedent" to excuse its violation of another.

If the Constitution means one thing for 105 years, obviously it cannot overnight mean another without a single change in wording. Yet the Warren court says that it can and does. Why? Because the nine justices think it ought to mean something else. Why do they have the right to enforce their opinion? Because whatever they decree becomes the "supreme law of the land." That is their argument. It is not good enough.

No one but the greatest extremist has attacked the authority of the Supreme Court as an institution to decide matters of constitutionality. What is under attack is the way in which the Warren court has abused this authority, willfully ignoring repeated admonitions by past supreme court justices that "it is the duty of the Supreme Court to execute the law as it finds it and not to make it." The Warren court's arrogance in declaring its own words, no matter what they are, to be the supreme law of the land, only demonstrates again that the court needs disciplining at the hands of Congress.

A Time To Change Tactics

The Richmond Times-Dispatch

FOR four years the state of Virginia has been at war with a United States Supreme Court grown arrogant and reckless in its abuse of power.

We have opposed this abuse of power because of its sinister implications, not only for Virginia and the South, but for the nation as a whole.

When nine political appointees in Washington can amend the Constitution of the United States at will, without any means of effective review; when long-established rights under the Constitution can be swept away, without any means of effective appeal, the grave danger to the nation, and to the freedom of the individual, is only too evident.

All who understand the deep and subtle question of the two races in the South, and their relationship one with the other, also realize full well the irreparable harm that has been done to that relationship.

THE tragedy is that those who will suffer are innocent victims; pawns caught in a vicious power maneuver of national, and possibly international, politics, where virtue is no substitute for votes.

Few could realize, even two months ago, the lengths to which the Supreme Court was willing to go in enforcing its school integration decree. But in their opinion of Sept. 29, the nine members left no doubt that they would impose their will on the South and the nation, without regard to legal precedent and procedure, without concern for consequences.

While our determination to resist this tyranny remains unchanged, we must now reconsider and realign our echelons of defense. We have been fighting, in effect, on the enemy's own terms, under conditions and restrictions most favorable to him, and unfavorable to us. This is suicidal. We must now find another position from which to fight, with ground for maneuver, to gather our strength and renew the battle.

OUR defense, in the long war that lies ahead, must remain fluid if it is to be effective. We must be prepared to retreat at some points in order to attack at others. These are the tactics and the strategy by which though battles are lost, wars are won—and by which our war, ultimately, will be won as well.

With these considerations in mind, we respectfully suggest to Gov. J. Lindsay Almond the appointment of a commission from the Virginia General Assembly, charged with the duty of outlining a positive school program for the Commonwealth.

We believe that the proposed commission should be composed of assemblymen in whom their fellow-members have confidence, and whose recommendations will command the respect of Virginians.

The time is growing short. We urge upon Gov. Almond the prompt appointment of such a commission.

Opp Ala

November 14, 1958.

Hon. William P. Rogers,
U. S. Attorney General,
Washington, D. C.

Dear Mr. Rogers:

There is published in The Montgomery Advertiser, Montgomery, Ala., a news item under the headline, "Local Pastors' Jailing Studied," quoting statements made by you in a news conference in Washington Yesterday. One paragraph in the item is worded as follows: "Rogers expressed concern over the increase in the volume of "hate" mail and what he called defiance of Court decisions in segregation cases. As for the bombings, Rogers said they were cowardly, "And any thoughtful, decent American is ashamed of them."

Conceding without argument that the bombings are deplorable, your utterances definitely imply that you are aware of the fact that the whole mess growing out of the effort to integrate has been engendered by the Supreme Court judges and their co-integrationists. That in the face of the fact that a majority of both white and black, and particularly in the South, prefer segregation. So then it should be no surprise to you that while thoughtful and decent Americans are ashamed of the bombings they are also ashamed of the incumbent Supreme Court judges. Neither should it be any surprise to you that items like the enclosed clipping appears in the press almost if not every day.

Yours respectfully,

Clarence Byrd

Clipping:
A time to Change Tactics
The Richmond Times-Dispatch

G.F.

RECEIVED
NOV 17 1958
CENTRAL FILES

November 15, 1958

Dear Mr. Byrd:

The President has asked me to acknowledge and thank you for your letter. He appreciates your interest in writing and submitting your views and comments regarding the sensitive issue of human rights.

As you know, he is not responsible for decisions made by the Courts of our land but is by oath sworn to uphold and defend the Constitution and the laws. Disagreement with a Supreme Court decision is a privilege of a private citizen. The Attorney General of the United States has stated, "Persons disagreeing with a decision can try to amend the Constitution, but they may not determine for themselves when they will obey the decrees of the Court and when they will ignore them. Constitutional rights must not yield to defiance or lawlessness. Free government could not exist otherwise."

The Administration is well aware of the difficulties obtaining in certain areas of the country. However, unless some Federal Statute is violated, it is not possible for the Federal Government to interfere, unless invited to do so by local authorities. The maintenance of order to permit compliance with the final orders of the court is the responsibility of each state.

You may be aware that the President stated in a recent press conference: "... I still hold, as I always held, that the true cure for our racial difficulties lies with each citizen examining himself, seeing whether he is doing his duty as is expected by our basic Constitution and legal procedures, and whether he is trying at least to obey law and logic and correct procedures rather than his own prejudices and emotions.'

Sincerely,

E. Frederic Morrow

Mr. Clarence Byrd
Box 245
Opp, Alabama

jam

J NED MOORE, MAYOR
M L SENN, CITY CLERK
D D EILAND, CHIEF OF POLICE
CLARENCE BYRD, RECORDER
JAKE BENTON, FIRE CHIEF

City Of Opp, Alabama
MUNICIPAL BUILDING
Opp, Alabama

COUNCILMEN
JERRY ADAMS, SR
J L CHANNELL, SR
R C DORSEY
RAY JEFFCOAT
W FRANK JACKSON

September 22, 1958.

Hon. Dwight W. Eisenhower, President,
Washington, D. C.

Dear Mr. President:

There is published in this morning's issue of The Montgomery Advertiser, Montgomery, Ala., your letter replying to a telegram sent you September 17th by J. Albert Rolston of Charlottesville, Va. After reading the quotation of your letter I am prompted to write you enclosing a copy of my letter of September 22nd to Mr. Rogers, Attorney General. I wish that you read the copy of my letter to Mr. Rogers to get my view.

There is also published in this morning's issue of The Montgomery Advertiser accounts of clashes in race relations in different places in the country. Like disturbances between the races have become far more numerous since the agitation for integration began.

It appears to be true, Mr. President, that the agitation for integration is most largely engendered by the NAACP about the aims and ambitions of which organization The Federal Bureau Of Investigation has given warning that they are not conducive to the best interest of our people as a whole. Does it make no difference to the executive and judicial branches of the government that that is true?

As I said to Mr. Rogers So I say to you. It has been interesting and pleasing to observe the attainments and achievements accomplished in the educational realm as well as other realms by the negro race within the last half century, and that within segregated schools. The states have spent millions of dollars through the years to provide facilities for the negroes and are still making preparation for their benefit along with that of the white race. And now, Mr. President, just why has it happened within so short a time, almost if not wholly with the six years of your time in office, that the negroes' fundamental right to a public education may not be accorded except in integrated schools?

Respectfully,

Clarence Byrd

Clarence Byrd

Copy to Mr. Rolston

COPY

Opp, Alabama,
September 22, 1958.

Mr. William P. Rogers,
Attorney General, U. S. Department Of Justice,
Washington, D. C.

Dear Mr. Rogers:

I respectfully call your attention to the enclosed newspaper clippings which I am sure you will agree with me are but a few of such as appear in the press from day to day.

It seems to be true, Mr. Rogers, that the matter of integration was ruled ormany years ago by the Supreme Court judges of the United States. Acting upon and in compliance with that ruling the people of the United States, and particularly the people of the South, have established a way of life by maintaining separate or segregated schools for the white and negro races. The two races have lived in peaceful relations through the years until recently. It has been interesting and encouraging to observe within the seventy-seven years of my life the progress that has been made in providing educational advantages and facilities as the years have passed. And it has been pleasing as well as interesting to observe the achievements the negroes have accomplished as the years have passed.

By 1954, when the incumbent Supreme Court judges made their fateful ruling, thereby themselves refusing to abide the decree of the former Supreme Court judges, there had been such progress made that the time was near, if not at hand, when it might be said that quite equal facilities and advantages were afforded both races. Subsequent to the fateful ruling of 1954 the teachers of both races in this county, Covington County, Ala., held a meeting in which the matter of integration was freely discussed. The negro teachers were unanimous in their expression that the negroes wish the continued maintenance of separate schools for their race. Approximately a year ago the writer observed a news item in the press that an officer of the NAACP, himself a negro, Miami, Fla., had made a statement saying that they of the NAACP knew that a vast majority of the negroes preferred separate schools, but some of the members of that organization believed that integration would be better for them. Therefore they, those who so believed, would contend for integration. So it goes and the end of bickering, agitation, turmoil and stife is not in sight.

And now, Mr. Rogers, let me ask you, If the Supreme Court judges refuse to abide by the rulings of the Supreme Court judges, what right has any one to expect anything but severe criticism and bitter opposition to their decrees? And especiallly in view of the fact that the incumbents are apparently demanding immediate strict obedience to their edicts even though it be by military compulsion?

Respectfully,

Clarence Byrd

G.F.

November 10, 1958

Dear Mr. Wolfe:

The President has asked me to acknowledge and thank you for your letter of September twenty-second.

As you know, he is not responsible for decisions made by the Courts of our land but is by oath sworn to uphold and defend the Constitution and the laws. At the same time he holds that the true cure for our racial difficulties lies with each citizen's examining himself to see whether he is doing his duty as is expected by our basic Constitution and legal procedures, and whether he is trying at least to obey law and logic and correct procedures rather than his own prejudices and emotions.

Disagreement with a Supreme Court decision is a privilege of a private citizen. The Attorney General of the United States has stated, "Persons disagreeing with a decision can try to amend the Constitution, but they may not determine for themselves when they will obey the decrees of the Court and when they will ignore them. Constitutional rights must not yield to defiance or lawlessness. Free government could not exist otherwise."

The Administration is well aware of the difficulties that have arisen in connection with the sensitive issue of integration. However, unless some Federal Statute is violated, it is not possible for the Federal Government to interfere, unless invited to do so by local authorities. The maintenance of order to permit compliance with the final orders of the court is the responsibility of each state.

I assure you that the President is doing all he possibly can through precept and example to see to it that all citizens are able to walk this land of ours in dignity, regardless of race, color or creed.

Sincerely,

E. Frederic Morrow

Mr. Travis Wolfe
1000 - 31st Street South
Birmingham 5, Alabama

lrs/cmf

1000 31st St. So.
Birmingham 5, Ala.
Sept. 22, 1958

Dear Mr. President:

I call on your administration to support state sovereignty and cease interference in state affairs.

We in the South have been pushed too far already.

The Supreme Court made a mistake when it declared segregation was wrong. The Court's decision didn't make integration right. How can nine men decide what's right for

-2- the people in Alabama or Minnesota? That's why we have local governments. Or do you think we should have a central government, like Russia's?

This farce has gone far enough. There is a limit to what we will take from federal tyrannists.

You have stated that you are for upholding the law — which, I suppose, means you are for integration. But remember, there is no hard and fast rule for every circumstance.

(3) How many Negroes, do you suppose, ever heard the word "discrimination" until it was planted in their minds by the U.S. Supreme Court and the NAACP?

I beg you to consider our viewpoint.

Yours sincerely,
Travis Wolfe

Calls on South To Organize—

Letters to The Journal

The Journal welcomes readers' comments on matters of current interest Such letters should be courteous and brief—not more than 300 words—and are subject to editing. Each letter must be signed.—The Editor.

HIT APPOINTMENT OF U.S. CHIEF JUSTICE

Editor,
Shreveport Journal

In 1952 we elected to the presidency Dwight Eisenhower, a military leader who had no experience in state or federal government. This President appointed Earl Warren as chief justice of the United States Supreme Court, a political leader who had not even the judicial experience of a justice of the peace

In 1954 this chief justice and the eight associate justices handed down the unprecedented integration decision, in direct violation of Section 10 of the Constitution which reads (all powers not delegated to the federal government are reserved to the several states) which he, the President, and the nine federal judges swore to uphold, protect and defend, so help them!

Moral: If you need a doctor, don't call an undertaker!

Joseph William Hanley,
304 F. St, N W, Apt. 37,
Washington 1, D. C.
and Chopin, La

NEGROES HAVE RIGHT TO THEIR OWN SCHOOLS

Editor,
Shreveport, Journal

Negroes have a right to their own schools This is the all-important fact that pro-integrationists are overlooking. If sufficient emphasis can be given to this aspect of the question, it is difficult indeed to see how any group can continue to attempt to inflict the injustice of integrated schools on the Negro child.

When Negro parents in Little Rock voted four-to-three in favor of segregation, they were voting for the all-Negro schools to which they rightfully feel their children are entitled.

It is impossible to legislate racial prejudice out of existence In fact, the more you try, the more and bitter prejudice you create To compel any child to attend a school where, in spite of the utmost vigilance on the part of the teachers, he may be subject to insult and abuse is as un-sportsmanlike, as un-Christian and un-American as anything can be.

In the interest of common decency, let's give our Negro children the haven of refuge which is the segregated school.

If every city in the South will form committees of fair-minded citizens who will emphasize the Negro's need for segregated schools, and if this very evident fact can be made clear to federal authorities, it is inconceivable that the South will continue to remain in its present state of turmoil. Let's go!

Helen Skerrett,
Baton Rouge.

Editorial:

The Bridge Is Out

The outcome of the congressional election seem to have affected President Eisenhower more severely, in some ways, than did either of his two serious illnesses. In his press conferences since Tuesday he has seemed baffled, weary and even disinterested. He appears to feel that the vote was a repudiation of him and of the things for which he has stood. He does not know what can be done to restore the fortunes of the party in 1960. In his words there is a hint that the vain campaign during the two weeks before the election may have been his last. The word in Washington is that party leadership now will be turned over to Vice-President Nixon.

If the president does indeed think that the vote was a direct repudiation of him, he is mistaken. His vast personal popularity remans very largely intact, regardless of dissatisfaction with certain foreign and domestic policies. The public has believed in him because he was thought to be beyond small and partisan politics. The people remember that he had the opportunity, at one time, to campaign for the presidency on either the Democratic ticket or the Republican ticket, and think of him as non-political to a greater degree than any other president. Perhaps the reason he has failed to transfer this popularity to the Republican party is that popularity of that kind simply is not transferable. The repudiation has been of party leaders who have tried to force on the president compromises that at times have seemed unworthy, and who have refused to let the party be remade as he would have liked to remake it.

Perhaps, at the danger of great over-simplication, it might be said that the party rode to power with a leader of enormous personal popularity and unique non-political appeal, and now that age is about to remove this leader from scene, the party is back where it was in the first place.

The party that controls the presidency is generally considered to have an enormous advantage in any presidential election because it has available candidates, including vice-president, cabinet members and leading senators, who have had great opportunities to build a reputation and become well-known to the public. But now, with time, in its inexorable way, ending President Eisenhower's political career, the other leadership of the party has been blasted into nothingness by megaton political explosions in California, Ohio and other key states. The party, so rich in leadership on November 3, is tattered and poor today.

Vice-President Nixon, it is said, will place an accent on youth, seeking young men and new ideas to rebuild the party for 1960. He himself is much older, politically, than he was a few days ago. But he is youthful, vigorous and at times capable of far-sighted decisions. His future depends on his resilience and his ability to adapt to the times and find the new men and the new issues. Great magnanamity may be required, too, since foremost among the new men is certain to be Nelson Rockefeller who, significantly enough, is an Eisenhower-type Republican.

On the road back to McKinley, the bridge is out.

G.F.

RECEIVED
GENERAL FILES

SKERRETT REALTY
448 E. STATE STREET
BATON ROUGE, LOUISIANA

TELEPHONE DICKENS 4-7744

November 11, 1958

Mr. James Haggerty,
White House,
Washington D. C.

Dear Mr Haggerty:

Enclosed is an editorial from the Baton Rouge paper which I think may be of interest to the President, since it shows that his personal popularity is still very much intact in the South as in other parts of the country.

Enclosed also is a letter which was published in the Shreveport Journal a short time ago, calling attention to the fact that an integrated school can be a very serious handicap to a negro child.

If the Federal government would set up a criterion of segregation where educational oppertunity is really equal for the two races, and integration where it is not, I believe that not only the South but the NAACP would go along with it, and we could have peace and also return to real education for all of our children.

Respectfully submitted,

Helen Skerrett

Helen Skerrett

G.F.

RECEIVED
NOV 17 1958
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November 15, 1958

Dear Mr. Neale:

The President has asked me to acknowledge and thank you for your letter. He appreciates your interest in writing and submitting your views and comments regarding the sensitive issue of human rights.

As you know, he is not responsible for decisions made by the Courts of our land but is by oath sworn to uphold and defend the Constitution and the laws. Disagreement with a Supreme Court decision is a privilege of a private citizen. The Attorney General of the United States has stated, "Persons disagreeing with a decision can try to amend the Constitution, but they may not determine for themselves when they will obey the decrees of the Court and when they will ignore them. Constitutional rights must not yield to defiance or lawlessness. Free government could not exist otherwise."

The Administration is well aware of the difficulties obtaining in certain areas of the country. However, unless some Federal Statute is violated, it is not possible for the Federal Government to interfere, unless invited to do so by local authorities. The maintenance of order to permit compliance with the final orders of the court is the responsibility of each state.

You may be aware that the President stated in a recent press conference: "... I still hold, as I always held, that the true cure for our racial difficulties lies with each citizen examining himself, seeing whether he is doing his duty as is expected by our basic Constitution and legal procedures, and whether he is trying at least to obey law and logic and correct procedures rather than his own prejudices and emotions."

Sincerely,

E. Frederic Morrow

Mr. George L. Neale
102 Stephenson Drive
Fort Oglethorpe, Georgia

jam

102 Stephenson Drive
Fort Oglet horpe, Georgia
September 27, 1958

The President of the United States
The White House
Washington, D.C.

Dear Mr. President:

It is my opinion that more and more the people from all over these United States are beginning to realize the shame in the manner the people in the South are being treated.

The Supreme Court has handed down a decision based on political thinking and reasoning. State laws that have stood the test of time and the rulings of earlier Supreme Courts have been knocked down in one stroke. The State has been shown the respect that the Federal Administration has for its rights when it was invaded by the United States Army.

No longer do we have a government of laws. The Supreme Court for any number of political reasons may read any meaning they so saw fit into any laws that we have, no matter how long these laws have stood the test of time.

Kindly read the enclosed clippings from the Sept. 26 issue of the Chattanooga News Free Press. This paper is, or I should say has been the strongest of Republician supporters. Gone forever now is any semblance of the G.O.P. in the South.

Too Bad:

Sincerely,

George L. Neale

George L. Neale

CHATTANOOGA NEWS-FREE PRESS

ROY McDONALD
President and Publisher

EVERETT ALLEN
Treasurer

LEE ANDERSON
Editor

Published Each Afternoon Except Sunday

FRIDAY, SEPTEMBER 26, 1958

Shocking Decision—It's Legal

U.S. District Judge John E. Miller, sitting in Fort Smith, Ark., yesterday delivered the South quite a shock when he gained the distinction of being a Federal judge ruling in strict accordance with the law.

Judge Miller said he could not kill off Gov. Orval Faubus' private school leasing plan, as the NAACP and U.S. Attorney General William P. Rogers demanded, because his court does not have jurisdiction to do such a thing.

It clearly does not. Judge Miller pointed out the constitutionality of the recently enacted Arkansas laws would have to be ruled on. A U.S. District Court is an improper place for such a ruling, which should come, he said, from a special three-judge court. Also involved is the constitutionality of another Arkansas statute providing specific authorization for the lease of school buildings to private agencies. There can be no argument that it is merely a subterfuge to avoid integration pressures, for it was enacted in 1875, a good many years before the current issue arose.

Judge Miller's good judgment in recognizing the legal limitations of his authority should be followed by the Warren Court. It has had no legal or constitutional authority from the beginning to seek to force an interracial sociological revolution on the South.

The Constitution excludes education from the fields under Federal jurisdiction. The Warren Court has entered the field of education as a violator of the Constitution and a usurper.

Since those who care not for the law are in positions of power superior to that of Judge Miller, his good judgment seems to have little hope of prevailing. But his ruling yesterday is vital to the South, nevertheless.

It gave encouragement to the people of embattled Little Rock on the eve of a special referendum to choose between segregation and integration. Because of the refusal to knock down the private school program which Gov. Faubus says he expects to initiate early next week, it is possible private, segregated classes will be in progress in Little Rocks' four regular high school buildings before another court ruling can prevent it. That would be a great advantage. For once classes are organized and reopened, even new usurpation by which the Warren Court might interfere with the right of a state to make a contract could be evaded by moving the operating classes to other private locations less subject to immediate attack.

There are voices here and there, in Arkansas and Virginia, being raised in complaint about the efforts to save Southern segregated schools. Always in times of pressure and difficulty there are wails from the irresolute, the weak-kneed, the surrender-minded. But always, if there is determination, there is a proper solution to the problems that beset us. Little Rock is seeking its way. In Front Royal, Va., 700 parents last night voted almost unanimously in favor of a corporation to provide private, segregated education. Already in Charlottesville, Va., private, segregated classes are open in homes and other available places.

Surrender is not necessary.

David Lawrence

Indiana Jurist Offers Court Of Constitutional Definition

WASHINGTON—Judge Norman F. Arterburn of the Supreme Court of Indiana has come forward with a novel solution to the controversy that has arisen as a result of recent decisions of the Supreme Court of the United States.

LAWRENCE

The Indiana jurist, who has served a term as chief justice under the rotating system in Indiana, was responsible for the resolution, presented a year ago at the Conference of State Chief Justices, which resulted in a comprehensive report approved last month by 36 of the state chief justices, criticizing decisions of the nation's highest court. He recommends now that there should be a new court set up by constitutional amendment which would be known as the "Court of Constitutional Definition."

In a letter to this correspondent, Judge Arterburn presents a plan which, if it had been in effect in 1954, would have prevented the present dispute on the legalities of the segregation-integration question from developing at all. His letter makes no mention of this issue but is confined solely to recent reversals of its own rulings by the Supreme Court of the United States in cases concerning Federal-state relationships.

CONCERN SHOWN

"Not only lawyers, but thinking laymen all over the nation," writes Judge Arterburn, "are disturbed by the tendency to regard the individual philosophy of the judges of the United States Supreme Court as the 'law of the land' and a substitute for stable and fixed principles of construction and interpretation of the Constitution. When long-established decisions and precedent are overturned, we lawyers and judges find ourselves in an uncharted sea with nothing to guide us, subject to the vagaries of a dislocated compass. . . .

"The framers of our Constitution did not conceive of the organic structure of our Government as a piece of putty that could be molded and shaped as times changed until it no longer resembled the original framework. They felt they were building a structure of solid permanency with the opportunity to remodel or make additions through the amending clause only. There has, however, developed in this country a legal theory that the Constitution could be stretched to meet any contingency resulting from changes in economic and social progress. Those groups use the catch-phrases and cliches of a 'living instrument,' 'growing with the times.' The framers of the Constitution would have made provisions for such 'stretching' if they had intended the Constitution to be altered other than through the amending clause. . . .

"The United States Government does say the 'Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby . . .'

"It does not say the decisions of the United States Supreme Court on such questions shall be the supreme law of the land. The exercise of such a power is one usurped by the court and, in effect, gives to the judiciary a veto power over the acts and functions of all other departments and agencies of the Government. Although the right to be the final arbiter of what the Constitution means is without any expressed grant in the Constitution, it is, nevertheless, a constitutional principle now so firmly imbedded in our legal and political thinking that its permanency cannot at this time be seriously questioned, regardless of its merits. I do not mean to intimate that I feel the principle should be eliminated or is without merit. My comment is that it is time that we gave consideration to the means and methods by which the perversion of this principle may be properly checked and held within reasonable bounds.

LIKE AMENDMENT

"A decision of the Supreme Court which, for the first time, defines and interprets the Constitution, becomes for all purposes a part of the Constitution as if written therein. Any attempt to change such a meaning by the United States Supreme Court thereafter has the same effect as amending the Constitution although not done in the method and manner provided in the Constitution. I contend that the United States Supreme Court has usurped a right to amend the Constitution by changing its established interpretation and this is done in violation of the constitutional provision for amending the same set-up for the protection of the states and the citizens thereof. Something more than 'viewing with alarm' is needed in this crisis since stable constitutional government is imperiled."

Judge Arterburn feels that the membership of such a new court should consist of a judge or former judge of a United States court, a member or former member of Congress, a governor or former governor of a state, a judge or former judge of the highest court of appellate jurisdiction of a state, and one person who, within 10 years, has not held any office in the Federal or any state government and who would be chosen by a majority vote of the other members and be made chief justice of the court. The assumption is that this would afford an opportunity for a person of outstanding legal ability to be chosen. The procedure would be that, when a question of interpretation or meaning of the Constitution arose, the "Court of Constitutional Definition" would determine the proper meaning and certify its opinion to the United States Supreme Court, which would then incorporate the opinion within its own ruling and decide the case in accordance with the interpretation given by the special court.

G.F. 124-A-1

RECEIVED
NOV 28 1958
CENTRAL FILES

November 24, 1958

Dear Mr. Anderson:

The President has asked me to acknowledge and thank you for the copy of your Resolution. He appreciates your interest in writing and submitting your views and comments regarding the sensitive issue of human rights.

As you know, he is not responsible for decisions made by the Courts of our land but is by oath sworn to uphold and defend the Constitution and the laws. Disagreement with a Supreme Court decision is a privilege of a private citizen. The Attorney General of the United States has stated, Persons disagreeing with a decision can try to amend the Constitution, but they may not determine for themselves when they will obey the decrees of the Court and when they will ignore them. Constitutional rights must not yield to defiance or lawlessness. Free government could not exist otherwise.

The Administration is well aware of the difficulties obtaining in certain areas of the country. However, unless some Federal Statute is violated, it is not possible for the Federal Government to interfere, unless invited to do so by local authorities. The maintenance of order to permit compliance with the final orders of the court is the responsibility of each state.

You may be aware that the President stated in a recent press conference:
...I still hold, as I always held, that the true cure for our racial difficulties lies with each citizen examining himself, seeing whether he is doing his duty as is expected by our basic Constitution and legal procedures, and whether he is trying at least to obey law and logic and correct procedures rather than his own prejudices and emotions.

Sincerely,

. Frederic Morrow

Mr. L. R. Anderson
Adjutant, Post No. 73
The American Legion
Homer, Louisiana

lrs/McN

RESOLUTION

American Legion Post No. 73
Homer, Louisiana

WHEREAS, the NAACP and the Warren Supreme Court are conducting a systematic campaign designed to degrade and destroy the state-controlled public educational system of the South through the device of racially integrating all Southern schools at whatever the cost; and,

WHEREAS, the State of Louisiana has provided that in the event any Louisiana child may be deprived of a public education as a consequence of the closing of a public school due to federal action to racially integrate the school, the child may be educated in a private school with the cost of his education defrayed by a state educational expense grant; and,

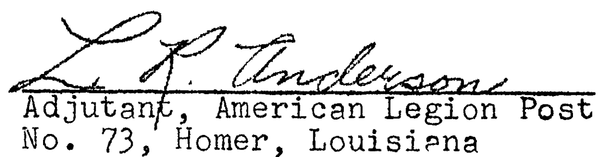
WHEREAS, it may prove desirable for private organizations and citizens to provide suitable buildings for the use of private

schools created to educate children so deprived of their opportunity for a public education;

THEREFORE, BE IT RESOLVED that the American Legion Post No. 73 offers to any white private group or organization the use of the Homer American Legion building as a facility in the operation of a private school for white children, should the need for such a school ever arise in order to maintain our segregated way of life.

BE IT FURTHER RESOLVED that copies of this resolution be sent to the State Commander, all District Commanders, and all American Legion Posts in the Fourth District.

Certified a true and correct copy of a resolution adopted by the American Legion Post No. 73, Homer, Louisiana, on Thursday, the 25th day of September, 1958.



Adjutant, American Legion Post
No. 73, Homer, Louisiana

2) G.F. 124-A-1 RECEIVED NOV 6 1958 CENTRAL FILES

A VIRGINIA EDITOR TALKS ABOUT THE SCHOOL PROBLEM

A noted Southern editor tells you why the South remains opposed to any racial mixing in public schools.

Virginius Dabney of the Richmond "Times-Dispatch," writing in "Life" magazine, explains the basis for "massive resistance."

Mr. Dabney traces Southerners' legal arguments against the Supreme Court's decision on integration; reports their fears of social and educational effects; tells how the North's experience is viewed.

Excerpts from the "Life" article by Mr. Dabney, reprinted below, give you the latest statement of the South's position.

by Virginius Dabney

Why has Virginia, with its Jeffersonian traditions, its heritage from Chief Justice John Marshall and other Founding Fathers, chosen to try to get around the U. S. Supreme Court's decision of 1954 and to close some of its schools rather than admit one Negro child to any white school?

The answer is not simple. Part of it lies in the feeling of most white Virginians—buttressed by the view of important Northern legal scholars—that the Supreme Court, for all its unanimity in that epochal decision of four years ago, sought improperly to legislate by judicial decree and flagrantly misconstrued the Fourteenth Amendment, which guarantees equal protection of the laws. Opposition to that decision has now become a matter of principle.

Another part of the answer is to be found in the widespread conviction that mixed schools are well-nigh certain, in time, to bring a mixed race through more and more intermarriage. This is especially feared in Virginia and other Southern States where the number of Negroes is large and the schools, particularly in the rural areas, are quite definitely social institutions.

And part of the answer lies in the belief that in much of Virginia integrated schools would cause such turmoil, conflict and even chaos that the efficiency of the educational system in those areas would be gravely impaired, if not destroyed.

Results of mixed schooling in various Northern and Western cities are far from reassuring to Virginians. Interracial violence in New York, Chicago, Philadelphia, Washington and other urban centers as well as the enormous percentage of crime and illegitimacy among the colored population everywhere—North and South—cause Virginians and other Southerners to reject a system which would mean mingling white and colored, especially adolescent boys and girls, on terms of social intimacy. True, the failure to provide adequate opportunities for colored citizens in the past helps to explain their almost astronomical crime rate. But the fact remains that most white Virginians cannot imagine a time when they will want to see their children thrown into close contact with them in the schools.

Americans who live in areas where the colored population is only a small fraction of the white have no conception of the South's problem. The extent of that problem is almost everywhere in direct proportion to the percentage of Negroes in the population. We are concerned here with the bulk of the colored population, not with the minority of cultivated and cultured Negroes, some of whom can hold their own in the intellectual and artistic circles of any country.

Virginians, it should be emphasized, do not feel that they are "defying the Court." They are attempting to find legal means of coping with the immense difficulties precipitated by the 1954 decision, which was rendered largely on socio-

(Continued on page 58)

Virginius Dabney is recognized as an outstanding editor and a leading spokesman of the South.

As editor of the Richmond "Times-Dispatch," one of the South's most influential newspapers, Mr. Dabney has advocated desegregation on streetcars and buses, more opportunities for Negroes.

Mr. Dabney was born and educated in Virginia. He won the Pulitzer Prize for editorial writing in 1948, was president of the American Society of Newspaper Editors last year.

. . . Court ruling halted "progress in race relations"

logical and psychological grounds and which ignored and overruled established precedents. It is vital in this connection to recall the words of the late Judge John J Parker of the U. S. Fourth Circuit Court of Appeals Judge Parker, one of the great jurists of his time, said in a statement concerning the 1954 decision:

"[The Supreme Court] has not decided that the States must mix persons of different races in the schools. . . . What it has decided, and all that it has decided, is that a State may not deny to any person on account of race the right to attend any school that it maintains."

When Lincoln Criticized the Court

Those who contend that decisions of the Supreme Court are "the law of the land" should understand exactly what the Court said and did not say in this particular case The substantial number of Virginians who are not convinced that directives from the Supreme Court are "the law of the land" recall the bitter criticism of that Court a century ago—from Abraham Lincoln, Horace Greeley and the "Atlantic Monthly," among others—for its proslavery stand in the Dred Scott case. They wonder why its findings today as to mixed schools are sacrosanct. They also note that such distinguished Northern legal scholars as former U. S. Circuit Judge Learned Hand and Professor Emeritus Edward S. Corwin of Princeton have shown that they are disenchanted with the Court.

Virginians also recall that Congress went to great lengths at its recent session in attempting to curb the Supreme Bench by legislation and failed by only one vote. And there was the astounding resolution overwhelmingly adopted in late August by the Conference of Chief Justices of the 48 States in which the record and attitude of the present Supreme Court were scathingly reviewed.

Virginians are not alone, then, in their lack of enthusiasm for the nation's top tribunal. They believe that a constitutional principle—the right of a State to control its own system of public education within the "separate but equal" framework—is at stake in the present controversy and that the Court exceeded its authority in ignoring that principle.

An idea of the depth of this feeling may be gleaned from the results of a thoroughly impartial poll conducted last fall by the Richmond "Times-Dispatch" in which 80 per cent of those participating said they did not feel "morally obligated to accept the Supreme Court's decision"

It seems fair to ask those who denounce the South today for not obeying "the law of the land" whether they violated the Eighteenth Amendment and the Volstead Act during the prohibition era. A properly adopted amendment to the Federal Constitution and a law passed by both branches of Congress and signed by the President are, indeed, the law of the land—more so than the ruling of any court. Yet the Eighteenth Amendment and the Volstead Act were openly and gleefully violated by millions of citizens over a period of 14 years, nowhere more so than in New York City, with its more than 30,000 speakeasies. It is from this same city of New York that the South is lectured most frequently for its present failure to obey the "law of the land."

A tragic result of the Court's decision, seen in Virginia and the rest of the South, is the complete stoppage of the progress in race relations, which until then had been going forward steadily. The following is one example of many which might be cited: An effort was made in 1955 by members of the Richmond Academy of Medicine to admit qualified Negro doctors to that organization The motion got 87 votes, just short of the required two thirds. The effort was renewed this year: It got exactly three votes.

An important factor influencing Virginians to oppose the Court's decision for mixed schools is Senator Harry F. Byrd's advocacy of "massive resistance" As for the churches, they are split wide open on the issue Many clergymen favor integration, but the great majority of laymen are strongly against The latter say they do not find anything in Christian doctrine requiring integrated education. A powerful clerical voice opposing school integration was raised this summer by the Rev. Dr. George S. Reamey, editor of the Virginia "Methodist Advocate." In an editorial Dr. Reamey wrote:

"Until the moral standards of the whites and Negroes, as groups, are brought much nearer the same level than now exists, we unhesitatingly affirm that any attempt to bring impressionable teen-agers together, not only in the classrooms and churches, but at socials and parties and in camps and at picture shows, will be fraught with the greatest danger The trouble with all this integration is not nearly so much at the adult level as among teen-agers, and especially in their social activities And this is just where the Supreme Court decision does its most deadly damage"

The extremism of the NAACP [National Association for the Advancement of Colored People] and of Northern and Western politicians in their headlong rush to cater to the Negro vote has helped to drive Virginians into the opposite camp. Such drastic legislation as the "civil rights" bill introduced in Congress last year was finally seen by many congressional liberals to be nothing less than a statutory monstrosity. Walter Lippman said this bill "was drafted not by statesmen seriously concerned with the rights of Southern Negroes, but by Northern politicians concerned with the votes of Northern Negroes." As finally passed, it was much improved, but it still contained an infringement on the historic right to a jury trial.

The ordering of paratroopers with fixed bayonets into Little Rock last year by President Eisenhower roused Virginians and most other Southerners to still stronger opposition to mixed schools. And despite their lack of enthusiasm for some of Governor Orval Faubus's actions and attitudes, many Virginians felt confirmed in their determination to avoid integrated schools when Faubus polled his unprecedented majority in July's Arkansas primary.

Fear of "a Nation of Mulattoes"

No argument against integrated schools carries greater weight with white Virginians and other white Southerners than the prospect that education of the races together in the elementary and secondary schools will lead to ultimate interracial amalgamation and make ours a nation of mulattoes.

Events last year in Fort Wayne, Ind , served heavily to reinforce this conviction An Associated Press dispatch from that city of integrated high schools said that two 17-year-old high-school students, a Negro boy and a white girl, had been given penal terms "after admitting sex and drinking activities." The dispatch also reported, "Fort Wayne juvenile authorities said dancing of mixed groups is common in several local youth centers, and that they know of at least 40 white girls and 30 Negro boys in the city who go on interracial dates White boys are dating Negro girls, they added."

This was in a city less than 3 per cent Negro. What then, Virginians ask, is likely to happen under integration in cities from 25 per cent to 50 per cent Negro?

Although Southern whites are regularly denounced as

"racists," "bigots" and "reactionaries" for objecting to the prospect of widespread intermarriage between races, Negroes themselves sometimes oppose intermarriage with other races, even nonwhite ones. The desire of any Negro to preserve his racial identity by marrying only within his own ethnic group is to be commended rather than criticized. Would that the NAACP would take a similar stand and discourage interracial unions. There is no question here of racial superiority or inferiority but rather of wanting to preserve the ethnic and cultural heritage of one's own race, and not to have it diluted or destroyed through commingling with a race that has a sharply contrasting background

Many Virginians feel that, while there is undoubted merit in the idea that the welfare of Negro children should be our genuine concern, the welfare of white children also is not to be completely ignored. Yet the federal courts, by and large, and such organizations as the NAACP appear to proceed on the assumption that throwing masses of white children into classes with Negro children who are a couple of years behind them scholastically and whose behavior is often antisocial, to put it mildly, should not trouble us.

Trouble in New York Schools

The consequences of this policy may be seen clearly in New York City, for example, where last winter conditions arose without a parallel in American history. After a wave of rapes, knifings and beatings in the schools and the suicide of one principal, seven schools had to be patrolled inside and out by police, and 34 others had to have policemen on the premises. Max Lerner, the ultraliberal columnist for the New York "Post," spoke of "the terror that infests the city's streets and has spread to schoolyard and school corridor," and "the problems of racial hate and conflict out of which the school episodes come."

New York City's new law, intended to promote integration in housing, forbids owners of property to refuse to rent or sell to anyone because of "race, color, religion, national origin or ancestry." In this law Virginians see the mania for forcing together people of different races carried a step further: Not content with moving children out of the neighborhoods where they have always lived and teachers away from schools where they have always taught, and transporting both to other neighborhoods in order to scramble everybody together as thoroughly as possible, New York has passed this housing statute.

It was amusing to find the New York

(Continued on page 60)

THE ONE QUEEN ALL THE WORLD ACKNOWLEDGES

The Queen of Scots on the bottle assures you of the noble reputation and taste so long associated with Highland Queen Scotch Whisky. Reward yourself with its flavor and that of "Grand 15"—its 15-year-old companion.

HIGHLAND QUEEN

BLENDED SCOTCH WHISKIES, 86.8 PROOF. IMPORTED BY McKESSON & ROBBINS, INC., NEW YORK, N. Y.

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For name of your local distributor write: Vu-Ad Company, a Division of Scripto, Inc. Box 4996, Atlanta, Georgia

. . . "White Virginians are well-nigh united in their desire to prevent mixed schools as long as possible"

"Times," a great advocate of integration for Southern schools, strongly opposing the housing statute because "We do not think the people of New York have been adequately prepared for the passage of this bill. Progress must be a matter of education and spiritual growth rather than a consequence of legislation." The white South could not have put more perfectly the case against the 1954 Supreme Court decision.

Virginians have a strong belief in States' rights as a basic governmental principle. While "States' rights" has been used as a smokescreen in the Old Dominion and elsewhere, the fact remains that there is genuine merit in the argument that the rights of the States are gradually being whittled down and that our National Government is growing too powerful. This is an alarming trend that goes counter to the intentions of the Founding Fathers. Virginians incline to the theory enunciated by Jefferson: "That government is best which governs least."

° ° °

South's "Greatest Crisis"

So now the South is confronted with its greatest crisis since the Civil War, and Virginia is once more the crucial battleground. Its Governor, J. Lindsay Almond, its legislature and the overwhelming majority of its people are united in their opposition to mixing the white and colored races in the public schools. The poll conducted last fall by the Richmond "Times-Dispatch" reflected the extent of this unanimity and determination. More than two thirds of the remarkably large number of Virginians responding expressed a willingness to close *all* public schools in their communities rather than have any integration. Few returns came from Negroes or from whites in a large area of the State where the Negro population is scant.

Admittedly the actual closing of a white school, as is required under Virginia law when a Negro is enrolled, could cause a shift in sentiment and a reduction in the number of persons willing to see their children taught in hastily organized classes which would have to meet in church parish houses, vacant stores or private homes.

° ° °

While white Virginians are well-nigh united in their desire to prevent mixed schools for as long as possible, they are less united in believing that the "massive resistance" policy adopted by the State legislature is necessarily the best means of combatting integration. Everything points at this time, however, to the fact that a substantial majority of white Virginians favor "massive resistance."

Massive resistance does not mean violence. No Virginian in a position of authority has anything but criticism and contempt for white mobs, and the average Virginian feels the same way. Citizens of this State are determined to avoid by all legal, peaceful and honorable means the creation of conditions in the Old Dominion which would lead to such an unspeakable state of things as exists, for example, in Chicago. In that city special details of police are still patrolling the Trumbull Park housing project night and day more than five years after the first Negroes moved in. At one time 1,200 policemen were assigned to protect a single colored family from the fury of white mobs. Nothing like this has happened in Virginia or any other Southern State. We are determined that it shall not happen.

Certainly most Virginians are anxious to keep their public-school system. They hope that only a few school closings will be needed to show the country at large the depth of their determination to stand for a principle: the right of a State to operate its own public schools on a "separate but equal" basis, a right repeatedly upheld by the Supreme Court until the reversal of 1954. They feel that opinion in the North and West is veering in their direction and that, if they stand firm, they may yet succeed.

° ° °

Modified Segregation

Legal separation of the races on buses and trains has been eliminated, as it should have been, and there has been no trouble in Virginia. A few mature Negro students have been admitted without difficulty to onetime white graduate and professional schools. These and certain other modifications of the segregation system can be made in the State without arousing the populace unduly and without altering the State's basic social structure. But education of the mass of whites and Negroes together in the public schools is the place where the vast majority of white Virginians draw a hard, fast and firm line. Both for practical reasons and in order to uphold the constitutional principle involved, they are ready, peaceably and honorably, to take their stand.

Reprinted from "Life," issue of Sept. 22, 1958

G.F. 124-A-1

RECEIVED
NOV 28 1958
CENTRAL FILES

November 25, 1958

Dear Mr. Rodes:

The President has asked me to acknowledge your memorandum of November eleventh with enclosed resolution.

The three points of the Bossier Parish School Board are carefully noted.

Sincerely,

E. Frederic Morrow

Mr. T. L. Rodes
Superintendent
Bossier Parish School Board
Benton, Louisiana

lrs/McN

B W SWINT
PRESIDENT

T L RODES
SUPERINTENDENT

Bossier Parish School Board

Benton, La.

November 11, 1958

TO: The President of the United States

FROM: T.L. Rodes, Superintendent - Bossier Parish Schools

The Bossier Parish School Board adopted the enclosed resolution at a special meeting held on Thursday, November 6, 1958, and directed me to mail a copy to you for your consideration.

R E S O L U T I O N

By Mr. Waggonner Seconded by Mr. Carter

WHEREAS, the Bossier Parish School Board under date of November 6, 1958, adopted a resolution which concluded that the Board accept the mandate from the Legislature of Louisiana and as an agency of the State pledge its full support to continue the operation of Bossier Parish Schools in accord with its established policy of segregating white and negro children, and maintaining separate schools, taught by teachers of the respective races, and with equal, modern and proper educational facilities in fact for the children of all races.

WHEREAS, we recognize that serious conditions exist in various states in the South arising out of interference by the Federal Government in the operation of public schools, a right traditionally and constitutionally vested in the states.

WHEREAS, we believe that the Senators and Representatives from the State of Louisiana and from the other states have not been as alert and forceful as they could have been in the Congress of the United States in preserving public education as a function of the state, and further that party affiliation and seniority on Congressional Committees have outweighed their consideration, action and presentation of issues that are fundamental to the continuation of States Rights and Public Education in the schools of the nation.

THEREFORE BE IT RESOLVED, That we call upon the Senators and Representatives of Louisiana to encourage, to initiate, and to stand with senators and representatives from other states, irrespective of party platform and party affiliation, in adopting Legislation on a national level as follows:

1. That will curb the power of the Supreme Court of the United States
2. Reinstate States Rights
3. Preserve to the individual states the right inherent since the founding of this country to operate a system of public education free from intervention and interference by the Federal Government.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to the President of the United States, the Vice President of the United States, the Senators and Representatives from Louisiana, the Governor of Louisiana, Members of the State Board of Education, the State School Boards Association, Presidents and Superintendents of all School Boards in Louisiana, and the Press.

The vote on the resolution was unanimous.

G.F.
1-4-A1
School Desegregation
CCN
F

SAM R. FISHER
ATTORNEY AT LAW
814 N. ESPERSON BLDG.
HOUSTON 2, TEXAS

RECEIVED
DEC 10 1958
CENTRAL FILES

December 3, 1958

Pers-164

Hon. E. Frederic Morrow
c/o White House
Washington, D. C.

Dear Mr. Morrow:

This will acknowledge and thank you very much for your letter of November 21.

Your phrase--the sensitive issue of human rights--is very descriptive and very stimulating. THE FAMILY OF MAN (the photo-journalistic composition about people) has a page which shows a riot and disturbance (in some South American Country, as I recall) which was started because of the variant interpretation of the phrase--"ALL MEN ARE CREATED EQUAL."

I believe that a research into the writings will show that this phrase was intended as an idealistic stimulant in the field of individual spiritual-intellectual operation. I would translate it as the right to aspire to equality with the best, but, as stated, I believe that research will show that this phrase was not intended to contradict the infinite variety and difference of physical and material nature. I do not believe that it was the intent of the law professors at Yale University, with their suggestions for "proof of unequal facilities" by means of suggestion, from some of the psychology books, that separate schools produced an unequal "intangible" environment or "feelings of inferiority", to bring about a nationwide, arbitrary rule of mixed, racial attendance at all public schools; but rather to suggest "case evidence" which could be used to persuade a given school board (or local court) that a particular Negro student (or several) should be permitted to attend with a study group of White students when the applicants' intellectual-spiritual development so inclined him to think and believe that his aptitudes would not be given a full development with a study group of his own racial composition. Yet the Court, under pressure of propaganda and infected thereby, and conceiving that the phrase "equal protection of laws" meant the physical use of the same physical facilities, regardless of a variety of natural contradictions, blundered into the decision made in the said school-mixture case, also forgetting settled law.

Both Jefferson and Lincoln, most devoted lovers of mankind, who manifest goodwill towards all men, regardless of race, and whose spiritual

resolve to grant to all men the rights of Life, Liberty, and the pursuit of Happiness, may be considered among the chief supports of our democratic life, yet each recognized the immense variety and difference of physical nature, including color of skin and other physical characteristics, which make for different races, individuals, and customs. This is what Jefferson said:

> "For I agree with you that there is a natural aristocracy among men. The grounds of this are virtue and talents. Formerly, bodily powers gave place among the aristoi. But since the invention of gunpowder has armed the weak as well as the strong with missile death, bodily strength, like beauty, good humor, politeness and other accomplishments, has become but an auxiliary ground of distinction. There is also an artificial aristocracy, founded on wealth and birth, without either virtue or talents; for with these it would belong to the first class. The natural aristocracy I consider as the most precious gift of nature, for the instruction, the trusts, and government of society. And indeed, it would have been inconsistent in creation to have formed man for the social state, and not to have provided virtue and wisdom enough to manage the concerns of the society. May we not even say, that that form of government is the best, which provides the most effectually for a pure selection of these natural aristoi into the offices of government? The artificial aristocracy is a mischievous ingredient in government, and provision should be made to prevent its ascendency. On the question, what is the best provision, you and I differ; but we differ as rational friends, using the free exercise of our own reason, and mutually indulging its errors. You think it best to put the pseudo-aristoi into a separate chamber of legislation, where they may be hindered from doing mischief by their co-ordinate branches, and where, also, they may be a protection to wealth against the Agrarian and plundering enterprises of the majority of the people. I think that to give them power in order to prevent them from doing mischief, is arming them for it, and increasing instead of remedying the evil. For if the co-ordinate branches can arrest their action, so may they that of the co-ordinates. Mischief may be done negatively as well as positively."

The following is quoted from Lincoln:

> ".....But I suppose you will celebrate, and will even go as far as to read the Declaration. Suppose, after you read it once in the old-fashioned way, you read it once more with Judge Douglas's version. It will then run thus: 'We hold these truths to be self-evident, that all British subjects who were on this continent eighty-one years ago, were created equal to all British subjects born and then residing in Great Britian.'

"And now I appeal to all--to Democrats as well as others--are you really willing that the Declaration shall thus be frittered away?--thus left no more, at most, than an interesting memorial of the dead past?--thus shorn of its vitality and practical value, and left without the germ of even the suggestion of the individual rights of man in it?

* * * * * *

"One more thing. Last night Judge Douglas tormented himself with horrors about my disposition to make Negros perfectly equal with white men in social and political relations. He did not stop to show that I have said any such thing, or that it legitimately follows from anything I have said, but he rushes on with his assertions. I adhere to the Declaration of Independence..................

"My declarations upon this subject of Negro slavery may be misrepresented, but cannot be misunderstood. I have said that I do not understand the Declaration to mean that all men were created equal in all respects. They are not our equal in color; but I suppose that it does mean to declare that all men are equal in some respects; they are equal in their right to 'life, liberty, and the pursuit of happiness.' Certainly the Negro is not our equal in color--perhaps not in many other respects; still, in the right to put into his mouth the bread that his own hands have earned, he is the equal of every other man, white or black.

* * * * * *

"......but I hold that, notwithstanding all this, there is no reason in the world why the Negro is not entitled to all the natural rights enumerated in the Declaration of Independence--the right to life, liberty, and the pursuit of happiness. I hold that he is as much entitled to these as the white man, I agree with Judge Douglas he is not my equal in many respects--certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without the leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every livingman."

A Mr. Wonneman speaks of the--"infection of fanaticism which has swept the country." Any reader of history is bound to become curious on the causes of popular movements and concepts, and as I now attempt to rationalize, the following suggestions come up.

In the past several hundred years civilization, more definitely science and mechanics, has made such progress that many of the general public have been, recurringly, rather badly frightened over what the future

will bring. Karl Marx evidently became rather frightened over the changes brought about by the industrial revolution and the break up of feudalism; so he undertook to advocate a social order which would control all sources of food and materials by a regulatory government, or dictatorship, yet entirely overlooked the capacities of free enterprise which produced the industrial revolution and is still producing--the greatest abundance of material benefit which today's science and mechanics have produced, bring the tremendous plenitude of material wealth. Yet the power of science and mechanics may have frightened Marx, and a mass of people, into a rather frantic effort to control their destiny by a system of government ownership and political control, which has lead to recurring revolution and still disturbs things. (This seems to strangle and distort the natural aristocracy spoken of by Jefferson.)

The automobile, and its immense increase in the orbital activities of individuals, (good and bad), may have lead to the Eighteenth Amendment, or may have rendered liquor control impossible. The airplane, automation, atomic discoveries and rocket propulsion (all of which are probably necessary evolutions required for the future sustenance of our expanding civilization on this and other planets) have again frightened a large mass of the people so that there is again a form of fanaticism--all nations must belong to a one-world government--all must belong to a big union--all must be regulated by law--all must be considered equal.

While law and peace are the aim of the vast majority and are a worthy ideal, the laws which are adopted must be practical and the natural differences in men must be observed. However much progress science and mechanics have made, I believe it is said that anthropological man has shown but very slight evolutionary change in physical and mental capacity in the past 50,000 years.

Consequently, let changes in our social order be made slowly and wisely and in response to the promptings of careful observation, which will necessarily include the existing nature of things and people, including only such aspirational reachings towards goals of intellectual-spiritual desire, as appear within practical reach. Let the changes be made by the people themselves and not by arbitrary decree. The right and necessity of local control and local self-determination are most important. The right of private judgment in a democracy is what has made it work. The sensitive issue of human rights is not all rights, but are equally balanced with responsibility. As to each individual component of society, his freedom, his security, and his right to pursue happiness are most important--his voice and his choice in the establishment of law and in the consequent observance of law are needed. (So says the psychology professor re the Minnesota teen-age code.)

All these sensitive issues of human rights, plus modern science and mechanics, seem to add up to more and more self-control and local control--local rights, local regulation plus such assistance as is needed from broader social organization--the local police, the state police, the FBI, etc. depending upon the orbit of activity which is involved. It means more

education, not only in the physical sciences but also in the efforts to reach the best of the spiritual-intellectual attitudes and attainments of knowledge which it is possible for each individual, each family, each group, etc. to reach. These things cannot be decreed down, from a central authority, these things are something that are needed, in due measure and degree, at the grass roots; by each individual, by each community--big or little. The right and responsibility of each citizen and each small township and each state must be continually respected by others and by the central authority. As education spreads, all will be improved and will learn self-respect and gain social respect and be less bothered by fears of an unknown future; nor be victimized, so readily, by popular printings.

The wise procedure, of constitutional amendment, requiring participation of all the people, is the thing which I feel should be maintained. Our constitutional procedure, which the Court disregarded in the school case, is, in my opinion, the wisest procedure which has ever been discovered by mankind in the effort of mankind, over the centuries, to bring about, in a practical and orderly way, these aspirations of equality with the best which, as stated, is not a standard of a material and physical nature, but is a standard of a spiritual-intellectual nature which acts as an individual stimulant and a source of energy, but is not, of itself, any material thing.

I suggest that you urge on some of the newspapers in this country, and the popular magazines, that they review history in a manner calculated to bring the most knowledge to the most people and that thereby the likelihood of peace amongst all people will become nearer a reality than in any other way.

As to the existing problem, it might be well to dig into the current use of the terms segregation and integration, and the alliteration with degradation, and you will probably find some of the causes of the popular infection of the public mind. In one of the old cases it was held and determined that separate schools are no implication of inferiority of one group as against another and I believe that this is the true statement, and the right approach, rather than the approach that has been achieved by the sponsors of the degradation idea.

Sincerely,

Sam R. Fisher

Sam R. Fisher

SRF/ew

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November 21, 1958

Dear Mr. Fisher:

The President has asked me to acknowledge and thank you for your letter of October first and its enclosures. He appreciates your interest in writing and submitting your views and comments regarding the sensitive issue of human rights.

Under the Constitution each state has the power to provide a system of public education and to control the manner in which the system shall be operated. The fourteenth Amendment to the Constitution, however, provides that a state, in the exercise of its powers - whether they be with respect to education or otherwise -- shall not deny any person the equal protection of the laws. As you know, the Supreme Court of the United States held, when the issue was raised before it, that it is a denial of the equal protection of the laws for a state to refuse to admit a student to any public school solely because of the student's race or color.

You may be aware that the President stated in a press conference: "... I still hold, as I always held, that the true cure for our racial difficulties lies with each citizen examining himself, seeing whether he is doing his duty as is expected by our basic Constitution and legal procedures, and whether he is trying at least to obey law and logic and correct procedures rather than his own prejudices and emotions."

Sincerely,

E. Frederic Morrow

Sam R. Risher, Esq.
814 North Esperson Building
Houston 2
Texas

pk/jam

SAM R. FISHER
ATTORNEY AT LAW
814 N. ESPERSON BLDG.
HOUSTON 2, TEXAS

October 1, 1958

Hon. Dwight D. Eisenhower
President of the United States
White House
Washington, D. C.

Dear Sir:

The oath to preserve, protect and defend the Constitution of the United States has a solemn and inescapable duty upon the President. It is clear that the President should exercise an independent will and judgment. The safeguard against a calamity due to ignorance or perversion, which the separation of powers was to insure, becomes a mockery if the three departments of government blindly follow the judgment of one, or agree upon a usurpation of powers not given by the Constitution.

Lincoln said in his Lyceum Address, that the Union could be maintained by reason. He also said in his First Inaugural Address--

> "All profess to be content in the Union if all constitutional rights can be maintained. Is it true, then, that any right, plainly written in the Constitution, has been denied? I think not. Happily the human mind is so constituted that no party can reach to the audacity of doing this. Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied."

Little Rock is the horrible result of the most hideous failure (perversion) of legal doctrine and scholarship in the story of American Constitutional Law.

The Constitution has no express words on schooling and neither has the Fourteenth Amendment. But the Constitutional Law declared by the Supreme Court of the United States has these express words, written in the Lum Case by Chief Justice Taft, and with a Court consisting of Oliver Wendell Holmes, Harlan Fiske Stone, Louis D. Brandeis, Edward T. Sanford, et al, to-wit:

> "(2) The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow, or black.
>
> *86
>
> "Were this a new question, *it would call for very full argument and consideration; but we think that it is the same question which has been many times decided to be within the

> constitutional power of the state Legislature to settle, without intervention of the federal courts under the federal Constitution........
>
> "Most of the cases cited arose, it is true, over the establishment of separate schools as between white pupils and black pupils; but we cannot think that the question is any different, or that any different result can be reached, assuming the cases above cited to be rightly decided, where the issue is as between white pupils and the pupils of the yellow races. The decision is within the discretion of the state in regulating its public schools, and does not conflict with the Fourteenth Amendment.
>
> "The judgment of the Supreme Court of Mississippi is affirmed." (48 S. Ct. 91 -- 1927)

No one thought that any American court could "reach to the audacity" of denying the law so "plainly written", as did 1954 Court in Brown Case.

Confusion can arise and mislead the public mind, said John Stuart Mill about 100 years ago. Several recent sources have suggested that the public-mind control and/or confusion, which has been attempted by certain deceitful, selfish and artful methods, may have or may be succeeding to some extent (Note 1). The 1954 Supreme Court has confused its rights and duties under the Constitution. Duty always comes first. It is the Court's duty to declare the law as written. Changing the law, making new policy is a legislative function left to the people or the legislatures. Further comments and explanations are shown in the enclosures hereto.

It is suggested that courtesy, respect and gratitude, plus reason, can solve the Little Rock situation. Courtesy is needed in reviewing the situation from all points of view. Respect for the Law, meaning the Constitutional Law and the Law de jure, is also needed.

Also, self-respect should be indulged by those members of the colored race, who are apparently offended at the segregation rules in certain states; otherwise, they will be constantly frustrated by the confusing ideas which have been given them in recent years. Every citizen, no matter what size, shape, color or character, must respect himself, for that is what nature has given him, and he is better off with an attitude of gratitude than one of resentment. Neither courtesy or self-respect demand that we force entrance to another association, to which we do not belong, either by racial or social practice. But also respect for individual needs and individual rights is required. Lincoln went on to say this in his First Inaugural--

".....Happily the human mind is so constituted that no party can reach to the audacity of doing this. Think, if you can, of a single instance in which a plainly written provision of the Constitution has ever been denied. If by the mere force of numbers a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution--certainly would if such a right were a vital one."

Consequently, self-respect demands that every state and every individual stand up for his clearly-defined and fully-established legal rights.

It is hoped that the authorities in Washington can be made to realize what a dilemma the confusion of the past 50 years has caused, and that the authorities re-examine the situation and adhere to the Law as laid down by men whose minds had not been confused.

Very truly yours,

Sam R. Fisher

SRF/ew

Encls.
1. "Confusion In Our Times"
2. Copy of a letter to a Washington official
3. Remarks of Senator Glass and Mr. Willkie against the political Court.

Note 1
THE MATERS OF DECEIT, by J. Edgar Hoover; THE HIDDEN PERSUADERS, by Vance Packard; and possibly one or two other writers.

Glass Assails Roosevelt Court Reform Program

(Continued from Page 3.)

for the supreme court. I am simply accepting his own word and that of his spokesmen to the effect that he wants men "biased" in behalf of his legislative and administrative projects, who may be counted on to reverse the supreme court decisions already rendered and give such other decisions of policy as may be desired. This is not my view alone; it is the conclusion of millions of alarmed citizens throughout the nation.

No Justification in Fact.

The assumption of the proponents of this scheme to tamper with the court and the Constitution that only they are the president's real friends, has no justification in fact. He is not a friend of the president who would subject him to the biting indictment which Rudyard Kipling applied to a famous autocrat who answered a petition from his people with the imperious assertion that—"This is my country. These are my laws. Those who do not like to obey my laws can leave my country." Wrote Kipling:

"He shall break his judges if they cross his word;
"He shall rule above the law, calling on the Lord.
"Strangers of his counsel, hirelings of his pay,
"These shall deal out justice: sell—deny—delay.
"We shall take our station, dirt beneath his feet,
"While his hired captains jeer us in the street."

Rather is he the real friend of the president who will command to his serious attention the ringing words of Thomas Jefferson when he proclaimed himself "against writing letters to judiciary officers," because he "thought them independent of the executive, not subject to its coercion and therefore not obliged to attend to its admonitions."

In conclusion, my friends, let me press upon you the solemn warning of a world-renowned student of representative government, John Stuart Mill, when he said:

"A people may prefer a free government; but if from indolence, or carelessness, or cowardice, or want of public spirit, they are unequal to the exertions necessary for preserving it; if they will not fight for it when directly attacked; if they can be deluded by the artifices used to cheat them out of it; if by momentary discouragement, or temporary panic or a fit of enthusiasm for an individual, they can be induced to lay their liberties at the feet of even a great man, or trust him with powers which enable him to subvert their institutions—in all these cases they are more or less unfit for liberty."

Abraham Lincoln at Gettysburg thought the Civil war was a test of whether a "government of the people, by the people, for the people" should perish from the face of the earth. Just as profoundly are some of us convinced that no threat to representative democracy since the foundation of the republic has exceeded in its evil portents this attempt to pack the supreme court of the United States and thus destroy the purity and independence of this tribunal of last resort.

WE SAY WE WANT LAW AND ORDER
WE HAVE FOUND THAT WE CANNOT OBTAIN
AN EDUCATION BY GIFT OR PURCHASE, ONLY
BOOKS AND TEACHINGS CAN BE BOUGHT
WE HAVE FOUND THAT WE CANNOT BUY OR
COMMAND KNOWLEDGE OR EDUCATION OR
WISH IT, ALL THIS TAKES STUDY, MOSTLY

LAW IS FOUNDED ON KNOWLEDGE
IS MAINTAINED BY EDUCATION AND STUDY
IS GUARDED AGAINST PERVERSION AND DISTORTION
BY INTEGRITY AND INTELLIGENT UNDERSTANDING
OF ITS FUNDAMENTALS ON BEHALF OF ALL ITS
PEOPLE, HOW ELSE CAN THEY SECURE UNTO THEMSELVES THEIR RIGHT TO ORDAIN LAWS AND GOV'T?

DO THE PEOPLE WISH TO PAY THE PRICE OF LAW
AND ORDER??
DO THEY WISH TO STUDY THE FUNDAMENTALS?
OR ARE THEY UNFIT FOR LIBERTY????????

USURPATION OF POWER

WHEN this country was founded our forefathers were extremely jealous of the people's power; they didn't want anybody to get too much of it. First, there were certain powers they didn't want to give to anybody at all, and these they incorporated in the Bill of Rights, guaranteeing free speech, a free press, free religious worship, protection of private property, etc. Then they said that the federal government should have only such powers as were specifically given to it; all others were left to the states. They went even further than that. Having given specific powers to the federal government, they divided these up into three parts: a legislature, an executive, and a judiciary. Thus the power of the federal government, besides being limited, was checked by a system of balances designed to prevent anyone from accumulating too much power in his own hands. No other country in the world has made so great an effort to protect its citizens from the exercise of arbitrary political power. Even in the great constitutional monarchy of England, a majority in the House of Commons can at any time eliminate freedom of the press or freedom of religious worship. Congress could not do that here—not constitutionally.

But under the guise of reform our government has broken through these limitations in several important respects. Here again we must be careful how we fix blame. Thus, in recent years, the federal government has supplanted the states, especially in its handling of the relief problem. The mayors of our great cities, indeed, do not turn for help to their state capitals so frequently as they turn to Washington. But this trend is not entirely the New Deal's fault. It has been encouraged by the states themselves, and by us, the people.

But the time has now come to reassert the principles of a limited federal government, because if this trend is not stopped the people will lose the powers that the Constitution gave them. They will lose them to an all-powerful central government. Too much power has already been lost, for instance, in the decisions of the *new* Supreme Court. Everyone supposed that Mr. Roosevelt lost the Supreme Court fight, but in the end he accomplished his objective, because, by the death or retirement of five judges, he has been able to appoint new men. This new Court has already rendered a number of decisions vastly increasing the power of the central government at the expense of the citizen. In former days the people could protect their enterprises by resort to the courts. Today the highest court in the land cannot be relied on for that purpose.*

* *Mr. Willkie has documented this statement. See* Saturday Evening Post, *March 9, 1940.*—ED.

By WENDELL L. WILLKIE

Reprinted from

FORTUNE MAGAZINE

APRIL · 1940

A LETTER TO A WASHINGTON OFFICIAL

September 18, 1958

Name of addressee omitted in
order that issues rather than
personalities will be considered

Dear Sir:

I wish to thank you very much indeed for your letter of September 15 with a copy of Mr. X's address of August 27, 1958. This gives me an opportunity to point out certain assumptions and certain omissions which need re-examination if the American system of Constitutional Law is to endure.

Page 1 of Mr. X's address is an appeal to reason and the need of the rule of law. All will nod "yes" to such statements, which are usual.

At the top of page 2, Mr. X says this--"On May 17, 1954, the Court announced its unamimous decision--."

This reference to the "unanimous decision" holds a traditional pull on the mind, but it was observed on the street, from the reading of the newspaper reports of the Court's action very recently--"This appears more as the decision reached by a convention caucus rather than the deliberations of a court of jurists." Consequently, the reference to the "unanimous decision" is of no authority of itself. Reference to unanimity may be merely an art in the problem of persuasion. Just here it might be well to recall that Andrew Johnson said that other republics had fallen because they had failed to maintain the integrity of the different departments, while maintaining a harmony. Justice Story said that every department must exercise an independent will. To the public mind, on the average, the 5-4 decision seems a form of injustice because the average citizen does not understand the true nature of the judicial function. The judicial function is not to command the parties to do what the Court personalities think is just, but the Court's function is to descern the law and apply it to the case. Consequently, the Court opinions which reflect differences of opinion between the jurists on the Court show that the jurists have all been thinking and searching, with resolute integrity and purpose, in an independent search of a laborious nature in the effort to correctly discern the law.

The next statement by Mr. X is this:

> "--and I quote from the opinion--'that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.'"

This statement is the only predicate or hypothesis, of an active sort, that is to be found in either the Court's opinion or Mr. X's argument, that affords any plausible explanation for the Court's decree. Yet, this assumption is not one which the Court is authorized to make; and a legion (meaning very, very many) of cases and authoritative declarations could be cited here, but I will not interrupt for that purpose. Not only is the appellate court unauthorized to make findings of fact which involve many abstract, philosophic speculations and experiential comparisons by itself, but I venture to say that a preponderance of educators, psychologists, theologians, monks and other writers in the general field of social science, over a span of 200 years, will say that this statement--"SEPARATE EDUCATIONAL FACILITIES ARE INHERENTLY UNEQUAL"--is a practical and monstrous absurdity. Dr. Alexis Carrel, in MAN THE UNKNOWN says this:

> ".....Schoolteachers and university professors, as well as libraries, laboratories, books, and reviews, are adequate means for developing the mind. Even in the absence of professors, books could suffice for this task ....The education of the intelligence is relatively easy.
>
> ".....The supremacy of matter and the dogmas of industrial religion have destroyed culture, beauty, and morals, as they were understood by the Christian civilization, mother of modern science. The small social groups, possessing their own individuality and tradiitions, have also been broken

up by the changes in their habits. The intellectual classes have been debased by the immense spread of newspapers, cheap literature, radios, and cinemas. Unintelligence is becoming more and more general, in spite of the excellence of the courses given in schools, colleges and universities. Strange to say, it often exists with advanced scientific knowledge. School children and students form their minds on the silly programs of public entertainments. Social environment, instead of favoring the growth of intelligence, opposed it with all its might."

I have read enough to know that the miscellaneous, antagonistic and/or confused and contradictory opinions and ideas, at least by the same set of verbal standards, about the subject of education, psychology, movies, TV, subversive literature and all other related subjects are so enormously complicated and so on as to fill libraries. It is on account of the enormity of the differences of such opinion that mankind, over the ages, has discovered that the only practical method, in a free country, of reconciling these differences is to have the legislatures determine on same or the people themselves, in constitutional matters, by voting on the issues; and in that manner adopt either the yea plan or the nay plan, and in a free country the right of personal participation by the people themselves is the only means of getting the yea voters to accept the nay rule, when there is the elective numerical superiority in the nay voters. The idea that individual self-restraint in the use of alcoholic beverages could be imposed by law was sufficient to lead to the adoption of the Eighteenth Amendment. This idea of a few well-intenioned reformers or political-social theorists, mistakenly adopted by the nation, produced an era of lawlessness with which all are familiar; and it was later repealed, quickly, once the amendment was introduced.

Now the Supereme Court of the United States has no authority to adopt, as law, or as a factual assumption of a dynamic nature, as a prerequisite to a de jure decision, the mere idea of a few well-intentioned social-political writers, whether such idea is valid or invalid, as a matter of constitutional right and policy. The validity or invalidity of the idea is not a matter for the Court to determine by itself initially. This function of making policy is reserved to the states and to the people of the nation; to be exercised either by legislators, duly elected, or by the people themselves where there is a constitutional policy to be decided upon.

The next statement of Mr. X is--"The decision was foreshadowed by earlier holdings." Mr. X is merely begging his point here. The Missouri and Texas cases which are cited to sustain this argument are cases which involved entirely different facts or factual predicates and constitute no authority for the decision made in the Brown Case.

At bottom of page 2 Mr. X says this--"....the decision in Brown V. Board of Education, as you well know, had serious impact on certain sections of our country and was met with apprehension, resentment, and even threats of defiance." Just here it might be well to point out that the apprehension, resentment, and defiance to which Mr. X refers, is, in my opinion, very well founded in the Constitutional Law, in the nature of law itself, and in the American tradition. In his entire article of 13 pages, Mr. X does not cite or comment upon or discuss the Lum Case which involved this same States' Rights educational mix-up and which held as follows:

> "Most of the cases cited arose, it is true, over the establishment of separate schools as between white pupils and black pupils; but we cannot think that the question is any different, or that any different result can be reached, assuming the cases above cited to be rightly decided, where the issue is as between white pupils and the pupils of the yellow races. The decision is within the descretion of the state in regulating its public schools, and does not conflict with the Fourteenth Amendment.
>
> "The judgment of the Supreme Court of Mississippi is affirmed."
> (Lum v. Rice, 48 S. Ct. 91)

Mr. Xs' statements at the top of page 3 are not addressed to a justitification of the Brown Case, but are merely a plea for its docile acceptance.

At the bottom of page 3 and the top of page 4 Mr. X says this:

> "In our system of government, of course, the Constitution is the supreme law of the land and it is the function of the judiciary to expound it. This is the very cornerstone of our federal system. As Hamilton stressed in The Federalist, 'the way of a judiciary power' was 'the circumstance which crown(ed) the defects of the (Articles of) Confederation.'* These difficulties were obviated, in the words of

Chief Justice Stone, 'by making the Constitution the supreme law of the land and leaving its interpretation to the courts.'*"

These statements are not denied, but Mr. X, as did the Court opinion in the Brown Case, omitted a very large segment of Constitutional Law; namely, that an interpretation once made binds or settles the law as to the point or precise problem involved, and that such settled interpretation is a binding part of the Constitutional Law and cannot be set aside and disregarded by the Court at a later date merely because the later Court personnel might have reached a different interpretation on an initial presentation of the problem. It is interesting, I think, to here consider that Chief Justice Stone, whom Mr. X cites with only a selected sentence quoted as an inferential support to his argument, was sitting on the Court in the Lum Case, as an associate justice at that time, but Chief Justice Stone was not upon the Court at all when the Brown Case was decided. But Justice Stone did not dissent in the Lum Case, neither did Holmes, the great dissenter, and others, including Brandeis called the great liberal, who were frequent dissenters. And the opinion in the Lum Case has an inference that the writer thereof, Taft, might have reached an opinion or an interpretation different from that which was applied in the Lum Case, if the law had not previously been settled. Thus, in the Lum opinion, Chief Justice Taft says:

> "(1)" *The case then reduces itself to the question whether a state can be said to afford to a child of Chinese ancestry, born in this country and a citizen of the United States, the equal protection of the laws, by giving her the opportunity for a common school education in a school which receives only colored children of the brown, yellow or black races.
>
> "The right and power of the state to regulate the method of providing for the education of its youth at public expense is clear................
>
> "(2) The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow, or black.
>
> "Were this a new question, *it would call for very full argument and consideration; but we think that it is the same question which has been many times decided to be within the constitutional power of the state Legislature to settle, without intervention of the federal courts under the federal Constitution."

Consequently, the Supreme Court of the United States in the Lum Case followed the law as previously settled and declared in the cases hereinafter cited because the court knew that a most critical, inherent, and fundamental principle of Constitutional Law is the adherence to the settled law until it is changed by constitutional process. Making policy, changing the settled law is not a judicial function, but is a legislative function reserved either to the states or to the people as a whole nation, if they desire to amend the Constitution of the whole nation.

You may be interested to read one of the messages to the nation by President Andrew Jackson where he said that providence had cast upon this nation, more so than any other,--"the great principle of adherence to written Constitutions" which he considered necessary for the preservation of the freedom of all people.

You may be interested in the following additional remarks of Chief Justice Taft in the Lum Case:

> ".....In Cumming v. Richmond County Board of Education, 175 U.S. 528,545, 20 S. Ct. 197, 201,44L Ed. 262, persons of color sued the board of education to enjoin it from maintaining a high school for white children without providing a similar school for colored children, which had existed and had been discontinued. Mr. Justice Harlan, in delivering the opinion of the court, said:
>
> "'Under the circumstances disclosed, we cannot say that this action of the state court was, within the meaning of the Fourteenth Amendment, a denial by the state to the plaintiffs and to those associated with them of the equal protection of the laws, or of any privileges belonging to them as citizens of the United States. We may add that, while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of federal authority with the management of such schools cannot be justified,

except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land.'....................

"In Plessy v. Ferguson, 163 U. S. 537, 544, 545, 16 S. Ct. 1138, 1140, 41 L. Ed. 256, in upholding the validity under the Fourteenth Amendment of a statute of Louisiana requiring the separation of the white and colored races in railway coaches, a more difficult question than this, this court, speaking of permitted race separation, said:

"'The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.'

"The case of Roberts v. City of Boston, supra, in which Chief Justice Shaw, of the Supreme Judicial Court of Massachusetts, announced the opinion of that court upholding the separation of colored and white schools under *a state constitutional injunction of equal protection, the same as the Fourteenth Amendment, was then referred to, and this court continued:

"'Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia (Rev. Stat. D. C. Sec. 281, 282, 283, 310, 319), as well as by the Legislatures of many of the states, and have been generally, if not uniformly, sustained by the courts'--citing many of the cases above named."

Reasons for adherence to settled law are stated in a letter by James Madison in 1831. (See statement 1 of Exhibit "A", attached.)

Adherence to settled law is also shown by quotations from President Andrew Johnson shown in statement 2 of Exhibit "A".

The distinctions between true Constitutional Law, the common law of the 48 states, the law of federal procedure, and the law of federal acts need be kept in mind. I am not sure that the distinctions in all these different fields have been kept in mind, and I also am inclined to think that a good many cases have been decided where the Court feels compelled to find a different result that apparently dictated by an earlier case, that the Courts have been careless in the language used and have been unable to find, or sometimes unwilling to search for legal theory and precedent, which would constitute a justifiable differentiation for the result reached, and have, in some such instances, "over-ruled" certain prior decisions when it was actually not necessary to over-rule the existing decision. Be this as it may, in these other cases, usually concerned with only a single set of litigants, and not with the political and social function of the States, it cannot be denied that in the field of Constitutional Law, which defines and marks boundaries and channels and zones and chambers and partitions and areas and spots between the Federal and State authority, the need for strict adherences to settled law is absolute, for the rights and liberties of the people and their posterity are at stake. This distinction between the common law and Constitutional Law is illustrated by the statement from Cooley in Exhibit "A".

Whether by Divine Providence, by accident, as some discoveries seem to be made, coincidence, evolution, or other process name as you may elect to use, the system of self-government as selected and adopted by the Convention of 1787, seems to be the only truly natural system or only true system of self-government that civilization has been able to evolve. Lincoln observed the resemblance to nature which is reflected by the dual system of sovereignty--State Sovereignty as to certain areas and functions, Federal authority as to other functions, calling attention to the relationship between man and wife. The propagation of the races and the animal kingdom is confined to a dual system of sovereignty, there can be no continuity and no evolution without recognition of this dual system. The sovereign States are a homeland and a growth-bed which cannot be destroyed without loss of individuality and pride which are essential to the growth of new citizens with new ideas, which benefit the all in due time. Equally important is the right of recall which can be exercised by the several States over elected representatives, whenever the representative endeavors to betray his trust. If he considers his treatment unjust, in one State, he is at liberty to migrate to another State where he is protected against the political animosity of the other State. Lincoln's first inaugural address establishes that the Union cannot be dissolved by withdrawal, and I take it that the Union of the States cannot be destroyed by usurpation of powers which are essential to the life of the States. Yet, if all of the powers of government tend to migrate towards the Federal government, the ultimate destruction of the republic will be accomplished by a process of mental and moral strangulation, with the population in the

States throwing away, as it were, a percentage of their judgment and independence and private enterprise, progressively, so that ultimately there is a mass of people who, instead of being led by the many millions of self-respecting, thoughtful, and moral citizens, which this nation now possesses, as a free people, it is governed and directed by a handful and administered by a few thousand. The new ideas which, it is said we need, cannot be generated by a handful of active cells when we need millions. This chaotic degeneration must never take place.

Lincoln said that the citizens of Illinois must not try to tell the citizens of Indiana how to run their farms and so on.

At an early date, Chief Justice John Marshall defined the judicial function in this language:

> "Judicial power, as contradistinguished from the power of the laws, has no existance. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise 'discretion,' it is a mere legal discretion; a discretion to be exercised in discerning the course prescribed by law, and when that is discerned it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the Legislature, or, in other words, to the will of the law. Osborn v. United State Bank, 22 U. S. 738,866,9 Wheat. 738, 866. 6 L.Ed. 204;...."

This definition of the Court's authority has never been questioned and constitutes the full measure of its rights. The Supreme Court of the United States is a Court of tremendous responsibility, but it does not have "stupendous powers" as Professor Frankfurter once said in a Law Review article before he became an associate justice. The Supreme Court of the United States has no authority to make law. The law-making power is reserved to the people or the states.

Most of the balance of Mr. X' article or address is concerned with the problems created by the Brown edict and the request for supine and docile obedience, notwithstanding it is obvious that the law de jure, as announced previously and re-declared in the Lum Case, has never been changed by constitutional amendment as required by Article V of the Constitution.

How did the Court get the idea that it had the right to make new policy by an alleged present interpretation of the Constitution and wreck the social structure of 20 millions of people, developed over a period of 80 year s, by edict of the nine members? When the news was first announced, no one believed it, no one thought that it would ever be enforced by the Executive Department, but would be left to die on the docket of the Court. I do not believe that it is a de jure decree, but to answer the question of--How did it happen?--there seems to be five factors which have caused this legal monstrosity:

a. The attrition of words on doctrine and loose scholarship, developed by many sources.

b. The placement of politicians and a verbose law professor on the Court in the years after 1937 and prior to about 1955 or 1956 when President Eisenhower announced that henceforth appointments would not be made to the Court without the approval of the judiciary committee of the American Bar Association.

c. The apparent public acceptance of various other de facto or illegal edicts which have been generally popular, or not sufficiently extensive in injury, to have been adequately known or protested, which circumstances have misled the Court into the idea that it can "command" the law as it pleases. Give an inch and a mile is taken. Madison said--"Power is of an encroaching nature."

d. There may be a well-intentioned design, in the minds of some people, consciously unknown to the courts and government lawyers, which have been slanting and pushing litigations with the idea that only through a compliant court, that the idea of a peaceful world can be installed through the United Nations. These agencies have pushed the court into usurpations. Andrew Johnson said that usurpation is the worst of political crimes, and that while he might trust a benevolent despot, he does not trust the deputies. Since the benevolent despot cannot meet but a few people, and judge their situations, millions will be ruled by tyrants unless the Constitution is maintained.

e. The word selection game indulged in by the Law Review comment writers and so on for about the past 40 years over whether--judges <u>make the law</u> or--judges <u>declare the law,</u>

which episode should now be labeled--"Judges mistake the law."

Factors b, c and d are ones which no one could resolve with any definiteness and so I will not attempt to discuss them. Factors a and e are closely related and are what might be called the deluge of words with not too many concepts, and are illustrated by the following quotations:

> "Many of the solid words of our language have been twisted into false meanings by skilled propagandists. Because of this fact, we are finding it increasingly difficult to understand one another. All words used in these papers have honest meanings as defined in any good dictionary." (By a prominent Houston attorney.)
>
> ".....If some lawyers find it difficult to discover the fundamental juristic concepts on which many decisions rest it is because most of them have been entombed in an avalanche of verbalism." (By an eminent Massachusetts jurist.)
>
> ".....Magazines, law reviews, periodicals of all sorts, constantly pour out their wearisome quota of suggestions and criticism and dogma. There is no last word, and there are few clear words." (By a Houston bank president)

Judge Adlow is the Massachusetts jurist above quoted, and his articles, in the Boston University Law Review, are very helpful and penetrating upon the general subject of the common law, and among other things, Judge Adlow says that the concepts and precedents of the law are given compulsive affect by the profession. This is necessarily true, for without it, the covenants and promises and restraints will, in time, become inoperative.

The oath of the President of the United States is different from the oath of all other officers and is to--"Faithfully execute the office .... and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

This nation has a written Constitution and the laws thereunder, which are transcendent and paramount, are above our wish to control or change except in the manner specified. I hold no personal allegiance to the person of Dwight D. Eisenhower, a man, nor to Earl Warren, Frankfurter, et al; my sworn allegiance is to the Constitution of the United States, and I endeavor to uphold it as against an edict which is in violation of its provisions and the valid laws theretofore made thereunder and pursuant thereto by the Supreme Court of the United States. There has been no constitutional amendment or other authoritative action to change the law since the Lum Case was decided, and it, I do here and now assert, is the valid law de jure which should be upheld by the Executive Department. If the decree of the Court is not de jure, the President should oppose, rather than assist, the encroachment thereof, for assistance to a de facto decree may tend to destroy rather than preserve the Constitution. Since the Court has no authority to make law, since the law was clear and established, as reflected by the Lum Case, since the Court was under a duty to apply the established law, which it did not do, it follows that the edict is de facto--merely grows out of the act or the fact of its signing by the justices; it did not flow from the settled law and was not de jure.

Washington's Farewell Address constitutes a revelation of many great truths. Among those maxims of constitutional government and of law which are stated by Washington, and which are violated by the Brown Case, are the following:

> 1. ".....watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abondoned,....
>
> ".....The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

2. "In all the changes to which you may be invited remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change, from the endless variety of hypothesis and opinion;....."

I hope that you will reflect upon the whole interdependency and antagonism of certain forces and energies which are necessarily involved in the American States and in the people thereof, and how marvelous it has been that these divergent energies had nonetheless been properly balanced and restrained except for one bad episode. I wish you would read all of Washington's Farewell Address and all of Lincoln's First Inauguaral Address. The tremendous love and wisdom which these writings demonstrate makes me feel that the Constitution which the one fashioned and the other upheld must be continually observed in all of its essential functions and principles. I do firmly believe, along with many others, that Providence had a hand in the making of this system. The Constitution, and not a de facto edict, should be preserved.

Sincerely,

Sam R. Fisher

P. S. This copy of said letter is not intended for general publication as some persons might construe it as an authority for defiance of the Court's decree and this is not intended or recommended. It is intended for the information of loyal Americans who should take active but lawful steps to correct the Court which has failed to observe settled law in this situation.

EXHIBIT "A"

I.

Statement of James Madison

"'And why are judicial precedents, when formed on due discussion and consideration, and deliberately sanctioned by reviews and repetitions, regarded as of binding influence, or rather of authoritative force, in settling the meaning of a law? It must be answered, 1st, because it is a reasonable and established axiom, and the good of society requires, that the rules of conduct of its members, should be certain and known, which would not be the case if any judge, disregarding the decisions of his predecessors, should vary the rule of law, according to his individual interpretation of it. Misera est servitus ubi jus aut vagum aut incognitum. 2nd, because an exposition of the law publicly made, and repeatedly confirmed by the constituted authority, carries with it, by fair inference, the sanction of those, who, having made the law through their legislative organ, appear under such circumstances, to have determined its meaning through their judiciary organ.'"
(Story Commentaries, Vo. II, page 424.)

II.

Statement of Andrew Johnson

".....It can not be doubted that the triumphant success of the Constitution is due to the wonderful wisdom with which the functions of government were distributed between the three principal departments--the legislative, the executive, and the judicial--and to the fidelity with which each has confined itself or been confined by the general voice of the nation within its peculiar and proper sphere. While a just, proper, and watchful jealousy of executive power constantly prevails, as it ought ever to prevail, yet it is equally true that an efficient Executive, capable, in the language of the oath prescribed to the President, of executing the laws and, within the sphere of executive action, of preserving, protecting, and defending the Constitution of the United States, is an indispensable security for tranquillity at home and peace, honor and safety abroad. Governments have been erected in many countries upon our model. If one or many of them have thus far failed in fully securing to their people the benefits which we have derived from our system, it may be confidently asserted that their misfortune has resulted from their unfortunate failure to maintain the integrity of each of the three great departments while preserving harmony among them all.....

"Experience, I think, has shown that it is the easiest, as it is also the most attractive, of studies to frame constitutions for the self-government of free states and nations. But I think experience has equally shown that it is the most difficulty of all political labors to preserve and maintain such free constituions of self-government when once happily established. I know no other way in which they can be preserved and maintained except by a constant adherence to them through the various vicissitudes of national existence, with such adaptations as may become necessary, always to be effected, however, through the agencies and in the forms prescribed in the original constitutions themselves.

"Whenever administration fails or seems to fail in securing any of the great ends for which republican government is established, the proper course seems to be to renew the original spirit and forms of the Constitution itself." (Messages and Papers of the Presidents, Vol. 6, pages 497-498.)

III.

Statement of Judge Cooley

"'A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion. It is with special reference to the varying moods of public opinion, and with a view to putting the fundamentals of government beyond their control, that these instruments are framed; and there can be no such steady and imperceptible change in their rules as inheres in the principles of the common law.................but a court or legislature which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. * * * What a court is to do, therefore, is to <u>declare the law as written</u>, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the constitution is fixed when it is adopted, *and it is not different at any subsequent time when a court has occasion to pass upon it.'" (54 S. Ct. 245)

CONFUSION IN OUR TIMES

By WILL E. ORGAIN
of the
Beaumont, Texas Bar

Confusion In Our Times

By Will E Orgain

When reading a headline article "Racial Discrimination Said Contrary to the Gospel of Jesus Christ * * *," in March 16th issue of Church Week, published by our local First Methodist Church, my reaction was: Is it really true, as stated, that those who oppose integration of races in schools are unchristian and acting contrary to the "Gospel of Jesus Christ,,? I do not believe so. God created the races differently. Basically, "the law of nature" is that "like seek like". Any other desire is not consistent with natural law. The article, in support of its position says. "The Supreme Court decision declared racial discrimination in public education is unconstitutional." The court did so declare in the Brown Case in May 1954. In so-doing, the court, in my view, usurped its judicial powers and invaded the legislative field, a right not given to it by the Constitution. The court, under the guise of construction had the **power** to decree a change in the Constitution, but it did not have the **right** to do so.

Soon after the 14th Amendment became a part of the Constitution in 1868, courts in the States of Ohio, Massachusetts, New York, and some other **Northern** States, as well as some Southern States, and later the Supreme Court itself, declared that the equality contemplated by the 14th Amendment was not "social equality." They declared that laws providing for separate schools for white and the colored races did not violate the Constitution An added significance of these early holdings lies in the fact that they were rendered by eminent courts, whose personnel lived during the times the 14th Amendment was being considered, debated and adopted, all of controlling importance in matters of judicial construction The aims and purposes of the 14th Amendment were then well known and fresh in the minds of the people, North and South, including the Judges themselves

A constitutional provision is effective when adoped. When for a substantial period of time its meaning has been declared by the courts and followed, its meaning becomes fixed Cooley's Constitutional Limitations, 6th Ed, p. 68.

In Stuart v. Laird, 1 Cranch, p. 299 (1803) the Supreme Court, in denying a construction contrary to that made by prior courts said· "It is sufficient to observe that practice and acquiescence of several years commencing with the organization of the judicial system affords an irresistable answer and has indeed fixed the construction, * * * of course, the question is at rest."

In Prigg v Commonwealth of Penn. 16 Pet. 21 (1842) in an opinion by Justice Storey, a great among the great constitutional lawyers who have sat on the court, in denying a change in an existing construction of law, in a case having to do with the status of negro slaves, after citing the holding of some of the State courts, among others, in Ohio, Massachusetts, New York and Pennsylvania, it is said: "So far as the judges of the courts of the United States have been called upon to enforce it, * * * it has been uniformly recognized as the binding and valid law and as imposing a constitutional duty. Under such circumstances, if the question were of doubtful construction, such long acquiescence in it, such contemporaneou expositions of it, and such extensive and uniform recognition of its validity, would in our judgment, entitle the question to be considered at rest; unless, indeed the interpretation of the Constitution is to be delivered over to interminable doubt throughout the whole progress of legislation and of national operation."

In a more recent case, 236 U S., 459, the Supreme Court referring to, and reaffirming the rule, said. "This principal recognized in **every jurisdiction** was first applied by this court in Stuart v. Laird, 1 Cranch 299 * * * *. There, answering the objection that the Act of 1789 * * * was unconstitutional * * it was said (1803) that 'practice and acquiescence under it for a period of several years commencing with the organization of the judicial system, affords an irresistable answer, and has, indeed, fixed the construction.'" And said the court "'**contemporaneous and continuous subsequent construction would be treated as decisive.'"

George Washington, President of the Constitutional Convention that promulgated and submitted to the then States for adoption the original Constitution, and also the first President of the United States, on retiring from that high office, in his Farewell Address, now annually read before the Congress, speaking of the Constitution, warned both the Congress and the people against any change in it by usurpation, saying·

> "The Constitution which at any time exists till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all. * * * But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Years later, another President, Abraham Lincoln, the Great Emancipator, named in emphatic terms the true guardians of the Constitution, when he said·

> "The people are the rightful masters of both Congress and courts—not to overthrow the Constitution, but to overthrow the men who pervert it"

Incidentally, at another place and time Mr Lincoln said·

> "I am not now, nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races * * * and I will say, in addition to this, that there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality"

It must not be forgotten that, as said by President Eisenhower, "The Federal Government did not create the States of this Nation, the States created the Federal Government. The creation should not supersede the creator." Also, it must be kept in mind, that unlike State governments, the government of the United States, is one of enumerated and limited powers, beyond which it and its courts cannot lawfully go. Any power sought to be exercised by the Federal Government must be found in the Constitution. There is no presumption of power in its favor, and the right and power must be found within the specific powers granted it. To make certain and to emphasize the fact that all rights not granted to the United States were reserved to the States and the people, the 10th Amendment was in 1791 added to the Constitution as a part of the Bill of Rights. It provided:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or the people."

For 86 years the Executive Branches of the Federal and State Governments, Congress, State Legislatures and Federal and State Courts have repeatedly, by their words and deeds, declared that the Constitution of the United States reserves to the States the power to control its public schools, that a State could establish and separately operate schools for white and negro children and that such action did not conflict in any way with the 14th Amendment In the Brown Case (347 U.S. 483) the Supreme Court, upon the basis of psychology and sociology, and without any legal evidence as to their validity, repudiated all prior interpretations placed upon the 14th Amendment, during these 86 years.

In the great case of Plessy v. Ferguson, 163 U. S 551, the Supreme Court of the United States, referring to prior holdings of the courts and in again upholding such rights of the States as not being in violation of the 14th Amendment, the court in part said:

> "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.
>
> "One of the earliest of these cases is that of **Roberts v. City of Boston**, Cush. 198, in which the Supreme Judicial Court of Massachusetts held that the general school committee of Boston had power to make provisions for the instruction of colored children in separate schools established exclusively for them, and to prohibit their attendance upon the other schools. * * * * It was held that the powers of the committed extended to the establishment of separate schools for children of different ages, sexes and colors, and that they might also establish special schools for poor and neglected children, who have become too old to attend the primary school, and yet have not acquired the rudiments of learning, to enable them to enter the ordinary schools. Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia, Rev. Stat. D. C. Secs. 281, 282, 283, 310, 319, as well as by the legislatures of many of the States, and have been generally, if not uniformly, sustained by the courts. **State v. McCann**, 21 Ohio St. 198; **Lehew v. Brummell**, 15 S W Rep. 765; **Ward v. Flood**, 48 California, 36; **Bertonneau v. School Directors**, 3 Woods, 177, **People v. Gallagher**, 93 N. Y. 438; **Cory v. Carter**, 48 Indiana, 327; **Dawson v. Lee**, 83 Kentucky, 49.
>
> "Law forbidding the intermarriage of the two races may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the State. **State v. Gibson**, 36 Indiana, 389.
>
> "The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in schools, theatres and railway carriages has been frequently drawn by this court" (At pages 544-545)

And the Court also said

> "Legislation is powerless to eradicate racial instincts or to abolish distinction based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. * * * "

The same Congress that provided the 14th Amendment, in 1868, under its general powers of legislation for the District of Columbia, enacted laws establishing in the District separate schools for the white and black races. Had it been the purpose of the Amendment to prohibit segregation of races in the schools it does not seem reasonable that the same Congress would have enacted laws in direct contravention of such meaning and intention.

At the time of the adoption of the 14th Amendment there were thirty-seven states in the Union. Either at that time or shortly thereafter, twenty-six of the States had laws authorizing separate schools for the white and colored races and various courts held the provisions of such laws not to violate the 14th Amendment or the Constitution of the United States.

"In matters of education the States have been sovereign—until suddenly nine men have held otherwise." By design, the Court, in the Brown Case, by its own fiat and manifesto and without any legislation by Congress implementing the 14th Amendment in its application to education, changed the Constitution. It was done, not on the authority of any prior court determination, but on what the court termed "modern authority" not one of which was a decision of any court, but all works on anthropology or sociology, none of which had support by any legal evidence in the record.

A court may not properly consider treaties in a field other than the law, unless the treaties are the immediate subject of the inquiry and are supported by legal and adequate evidence. Works on anthropology or sociology are not an exception to the rule, at least were not so before the decision in the Brown Case.

In 243 U. S. p. 363, decided two years before, by the Supreme Court and when eight of the nine members who participated in the Brown Case were on the court, it was held:

> "It is not within our (the court's) competence to confirm or deny claims of social scientists as to the dependence of the individual on the position of his social or religious group in the community."

It is apparent to use the words of Mr. Cook a Beaumont editor, that the Court is doing "too much 'steering' of the law instead of being 'steered by the the law."

Senator Eastland, on the floor of the United States Senate, catalogued the authorships of the "modern authority" relied upon by the court in the Brown case. According to the Senator's designation, Clark, the first "modern authority" named by the court is "a so-called Social Science Expert, employed in segregation cases by the NAACP," Brameld, another named, is "a member of ten Communist organizations;" of another Frazier, a member of the Council on African affairs, the Senator said "The files of the Committee on Un-American Activities of the United States House of Representatives contain 18 citations of Frazier's connectons with Communist causes in the United States;" of another, Myrdal's "An American Dilemma" is a book "written in largest part by American Communists, Front Members, "and Myrdal, a Swedish Socialist. (The Senator's address is in the record of the proceedings of the U. S. Congress, May 26, 1955). On such "modern authority" the court rested its decision in the Brown case. Everyone realizes that public schools are social as well as educational intitutions and that the decision of the Supreme Court is an effort to force the mixing of the two races in a social way.

In the recent "Declaration of Constitutional Principles" by a hundred Senators and Representatives in Congress, some of the matters herein referred to are put forward and defined. I am in complete agreement with the pronouncement.

God created the white race, the yellow race and the black race, and differently. They not only differ in color but were created with different qualities, instincts and characteristics. If there has been some assimilation of the races, and there has been some, it was and is because of the sins of man and not by the will of God.

My view is that neither court decisions nor church edicts, though they may result in some association of races and much strife, can change or eradicate individual racial instincts.

I was reared where there were many negroes. I have no ill-will against the colored race. I have had and now have many friends of that race. However, I am proud that the United States was created and made by members of the white race. My racial pride, and patriotism as well, prompt me to speak out when efforts are made which to my mind are calculated to destroy or militate against, the white race and to do much injury to the colored race, whether said efforts be made by the NAACP, the Supreme Court, or other sources.

March 24, 1956
Beaumont, Texas

Printed and distributed by the Citizens Council
of Smithville, Texas.

G.F.

134-H

December 6, 1958

Dear Mrs. Bainbridge:

This will acknowledge on behalf of the President your letter of October thirty-first, which enclosed a newspaper editorial entitled, "Clergyman Presents Case for Segregation." The President appreciates your thoughtfulness in bringing this to his attention.

Sincerely,

Gerald D. Morgan
The Deputy Assistant to the President

Mrs. F. F. Bainbridge
Route 2, Box 159
Charlottesville, Virginia

FHS

Rt. 2, Box 159, Charlottesville, Va.
October 31, 1958

Honorable Dwight D. Eisenhower
The White House
Washington, D. C.

Dear Mr. President:

I am enclosing a letter which was taken from the Richmond Times Dispatch.

This letter was written by a distinguished Virginian who has always lived in the South and has been greatly respected by both the white and the Negro. He has lived with these people and has had opportunities to know them first hand.

I sincerely feel our present leaders in the South are being ignored as never before in the history of this country.

Yours respectfully,

C. B. Bainbridge
(Mrs. F. F. Bainbridge)

Enc.

Voice of the People

Clergyman Presents Case for Segregation

Retired Episcopal Minister Opposes Forced Mixing

There are three impelling reasons why Virginia and the South should maintain separate but truly equal schools.

First: Youths associated in education share in intimate personal experiences. This social and emotional contact cannot be separated from classroom instruction. It is not fair to the Negro and white youths (of opposite sex) to say: "This far and no farther" when school companionship has ripened into friendship.

To say that association need not work out this way is to mock the facts. An investigation will show that thousands of Negro and white youths have married in the North and West because of association. The resulting family and neighborhood tragedies are the fault of the state that fails to separate and protect each race.

The state has to legislate and regulate many local conditions. Acting on impulse, individuals may not realize how they may involve a whole state in distressful consequences. An article some months ago in Life magazine gave the ancestry of a "Negro" family in the Northwest. It stated that over half of its ancestors were white, and called this a "typical Negro family." Multiply this and what have you?

Second: The intermarriage of Negro and white persons, gradual at first but with increasing momentum, destroys both the white and the Negro races. This prevents each race from making its contribution. Had the Jews, from Abraham on, not been a separate people ["come ye out from among them"] there would have been no "chosen people" and no "Old Testament," written first on "the fleshly tables of the heart."

The Negro race has much, not only to acquire of knowledge and culture, but also much to give of devotion, faith, music, and creative genius. Skilled colored lawyers who come South to defend them are usually one-half, or three-fourths or more white — men without a race. How greatly we need Negro leaders from the South who will develop pride of race and challenge to individual and racial achievements and morale

Third: What has Christianity to say to individuals and races? Its command (or "absolute") is to "love thy neighbor as thyself." Today certain persons tell us how this must be applied in integregation, or denied. They confuse one plan of application with the underlying principle.

Letters should be brief and on one side of the paper. Each letter must be signed with the writer's name and address, although a pen name occasionally is permitted, at the editor's discretion, in certain cases.

Integration in public schools of the South is not the triumph of love over hate, or humility over pride. The question is: What best will build up sympathy, good will, and brotherhood? The answer is: "Separate but equal" plus earnest effort to stimulate mentally and spiritually in parallel development.

There are many ways in which one principle and fact of love may be applied. To those who believe that integration of the races is the only way, we would not argue. Only we advise them to go north while the climate is still agreeable. But the South by vast majority believes that Christian goodwill and affection which has been slowly but surely building up between races should not be ruthlessly destroyed by federal edict. To force association is not Christian or churchly. Love cannot be shackled by legal demand. To call the spurious interpretations of the Supreme Court on integration the rightful and binding bulwark of Christian ethics is ridiculous.

We believe many church leaders have indulged in muddy thinking and abstract theories. The same person as churchman and citizen should not be divided down the middle in his reaction to integration. German Christians did this in the first World War when they said: "My body belongs to the state, my soul belongs to God" Nor should we misinterpret Christ's words [render to Caesar, etc.]. This concerned the coin of the realm and not men's bodies.

Let all good citizens take their stand for states' rights and federal balance of powers. Let parents, students and teachers make necessary sacrifices, as did soldier-citizens who left education to fight for state and country.

Let us distinguish between temporary crisis and ultimate issues of law and race. Local educational programs can be devised. Our quest is to awaken the nation to the value of separate but equal as good law and good Christian witness.

(REV.) CONRAD HARRISON GOODWIN.
Weems.

G.F.

December 9, 1958

Dear Mr. Hohmann:

This will acknowledge receipt of your letter of November fifth and the enclosed copy of the resolution passed by the Morehouse Parish School Board at its regular meeting on November 4, 1958.

Sincerely,

E. Frederic Morrow

Mr. W. C. Hohmann
Superintendent
Morehouse Parish School Board
Bastrop, Louisiana

lrs/mo'b

W. C. HOHMANN
SUPERINTENDENT

C. G. ROLFE
PRESIDENT

Board of School Directors

MOREHOUSE PARISH

BASTROP, LOUISIANA

November 5, 1958

The President
The White House
Washington 25, D. C.

Mr. dear Mr. President:

I am sending you a copy of a resolution passed by the Morehouse Parish School Board at its regular meeting on November 4, 1958.

This resolution deals with the problem most important to all of us. Your consideration of this resolution and efforts to put it into effect will be greatly appreciated.

Very respectfully yours,

W. C. Hohmann

W. C. Hohmann, Superintendent
Morehouse Parish School Board

WCH/jpd

Encl.

000770

R E S O L U T I O N

WHEREAS, the Morehouse Parish School Board under date of November 4, 1958, adopted a resolution which concluded that the Board accept the mandate from the Legislature of Louisiana and as an agency of the State pledge its full support to continue the operation of Morehouse Parish Schools in accord with its established policy of segregating white and negro children, and maintaining separate schools, taught by teachers of the respective races, and with equal, modern and proper educational facilities in fact for the children of all races.

WHEREAS, we recognize that serious conditions exist in various states in the South arising out of interference by the Federal Government in the operation of public schools, a right traditionally and constitutionally vested in the states.

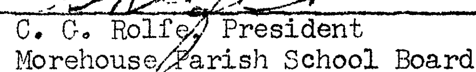
WHEREAS, we believe that the Senators and Representatives from the State of Louisiana and from the other states have not been as alert and forceful as they could have been in the Congress of the United States in preserving public education as a function of the state, and further that party affiliation and seniority on Congressional Committees have outweighed their consideration, action and presentation of issues that are fundamental to the continuation of States Rights and Public Education in the schools of the nation.

THEREFORE BE IT RESOLVED, That we call upon the Senators and Representatives of Louisiana to encourage, to initiate, and to stand with senators and representatives from other states, irrespective of party platform and party affiliation, in adopting Legislation on a national level as follows:

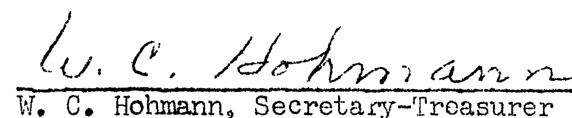
1. That will curb the power of the Supreme Court of the United States
2. Reinstate States Rights
3. Preserve to the individual states the right inherent since the founding of this country to operate a system of public education free from intervention and interference by the Federal Government.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to the President of the United States, the Vice President of the United States, the Senators and Representatives from Louisiana, the Governor of Louisiana, Members of the State Board of Education, the State School Boards Association, Presidents and Superintendents of all School Boards in Louisiana, and the Press.

Adopted unanimously this 4th day of November, 1958.



C. C. Rolfe, President
Morehouse Parish School Board



W. C. Hohmann, Secretary-Treasurer

G.F.

December 5, 1958

Dear Mr. Spence:

I need hardly to say that the President appreciated your November 18 letter and is of course much aware of the concern which prompted you to write. I can assure you he will not fail to keep your comments in view as he develops the legislative program and the State of the Union message for the forthcoming session of the 86th Congress.

It was very thoughtful of you to write the President so frankly on this difficult matter of educational opportunity for all American children.

Sincerely,

Bryce N. Harlow
Deputy Assistant
to the President

Mr. Ralph Spence
713 Bryant Petroleum Building
Tyler, Texas

BNH/sjs

THE WHITE HOUSE
WASHINGTON

December 2, 1958

NOTE FOR MR. HARLOW

Bryce,

You can't hope to answer the points he makes. I think it best to simply say that the President has asked you to reply and is aware of the concern which prompted him to write; that the responsibility of providing equality of educational opportunity to all students in the nation's public schools, regardless of race, is one which we all must recognize; no matter how slow, there must always be movement forward. As the President recently said:

"In this highly competitive and critical age, it is essential that America make full use of the bountiful resources with which she is so richly endowed. Of these, the most important are human resources: the energy, intelligence and spirit of our citizens. We need the benefit of the talents that each one of our citizens possesses, and must not let one person be wasted by prejudging his abilities or by setting artificial limits to his opportunities to grow and serve the common good."

Rocco C. Siciliano

2nd ...

THE WHITE HOUSE OFFICE

ROUTE SLIP

(To Remain With Correspondence)

TO MR. HARLOW

PROMPT HANDLING IS ESSENTIAL. WHEN DRAFT REPLY IS REQUESTED THE BASIC CORRESPONDENCE MUST BE RETURNED. IF ANY DELAY IN SUBMISSION OF DRAFT REPLY IS ENCOUNTERED, PLEASE TELEPHONE OFFICE OF THE STAFF SECRETARY.

Date November 29, 1958

FROM THE STAFF SECRETARY

ACTION:

Comment

Draft reply

For direct reply

For your information

For necessary action

For appropriate handling X

See below

Remarks:

GPO 16—71264-1

Ltr 11/18 to the P from Ralph Spence, 713 Bryant Petroleum Bldg., Tyler, Texas -- refers to P's statement re counting on Southern Congressmen to assist in enacting his program and plan to submit new civil rights legislation. Comments re racial situation in Washington, D. C.

By direction of the President:

A. J. GOODPASTER
Staff Secretary

RALPH SPENCE
713 BRYANT PETROLEUM BUILDING
PHONE 3-3202
TYLER, TEXAS

November 18, 1958

Mr. President:

Your plans to curb spending during the remainder of your term are admirable ------ and certainly the reason for my voting for you in '52 and again in '56 and contributing to your campaign to put Texas in your column. And we did.

May I take the liberty of commenting on your plans as revealed through the attached article in the Wall Street Journal?

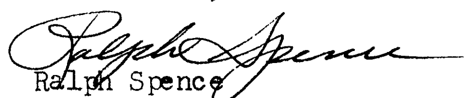
You state that you are counting on the support of the conservative southern congressmen to assist you in your program. But then you also plan to submit civil rights (so called) legislation that you know will continue to inflame the South. It was stated that this will be aimed to further split the Democratic party.

Mr. President, you are playing into somebodies arms. You will place a blackjack of so called civil rights legislation in the hands of the spenders to be used on Southern congressmen at will. A blackjack ------- for there will be more trading out of votes by Southerners who will do most anything to return control of our affairs into proper local hands who live with the problems that arise and deal with them fairly in the vast majority of the cases.

Have you read or studied the social changes which have taken place in your own Washington, D.C. since the start of the sociological experiment of the Supreme Court? We have. We have observed your worthy "Boy's Clubs" program to be abandoned because integrated they could not be managed. We have observed that your white people who wrote the constitution to govern themselves have steadily moved away from Washington as colored people move in. We have observed the decline in science classes - physics - as schools became predominantly colored --- the children just did not sign up for such courses. We have observed that schools in New York, Philadelphia, etc. embarked upon this "experiment" are now patrolled by police; and this acts only as a deterrent as temptation continues to provoke rape, knifing, and violence.

Where is the value in all of this? Where is the pay-off? What national benefit will we realize? I am searching for a proper answer --- not one in the clouds. Can you give it to me, Sir?

Best wishes,



Ralph Spence

RS/g

A Happy Pilgrim

. . . happy because he'll have a real Thanksgiving this year. He's about to enjoy special RED BIRD HAM 'n YAMS. This gift box contains a superb hickory-smoked, fully-cooked Creole ham — cured, trimmed, ready for serving. Nothing persuades fine ham to taste even juicier and more tender than RED BIRD Louisiana yams. It's a wedding of savory Creole ham and tasty yams that Mother Nature allows to grow only in South Louisiana.
You get approximately 12 pounds of ham, four cans of RED BIRD yams cooked wtih crushed pineapple, and for your convenience, a matched stainless steel carving set with Wonda Wood handles. Order now for the treat of your life!

$9.75 PREPAID

Ike vs. Congress: His '59 Plan Promises Spending Curb Clashes

Continued From First Page

Sherman Adams with Gen. Wilton B. (Jerry) Persons, who's considerably more popular on Capitol Hill than his predecessor, should improve White House relations with the lawmakers. Eisenhower lieutenants claim, too, that enough conservative Republicans and Southern Democrats survived the Democratic sweep to form a substantial barrier to really extreme legislation.

At the same time, Presidential aides argue that the shrunken band of Republicans in Congress, both "modern" and otherwise, may stick together better and work more effectively for Administration goals than in the past. They rate even the more "liberal" Republicans likely to stand closer to Ike than to the "liberal" Democrats on most issues.

Aiding the Cause

The Administration's civil rights proposals, details of which still must be worked out, are designed in part to help further the cause of other portions of the Eisenhower program, even if they do irritate the Administration's conservative Southern allies.

The President is expected to recommend, at the least, that the Justice Department be given authority to step into discrimination cases involving school integration; the civil rights bill passed in 1957 deals only with denial of voting rights. Attorney General Rogers has talked, too, about possible legislation to cope with "hate" literature and bombings of schools and churches.

A chief political aim of any Administration civil rights program is to help widen the split between the Northern and Southern wings of the Democratic Party so that the Dixie faction will be tempted to bolt the party in 1960. Administration tacticians reckon that in the fission process, angered Southern lawmakers will turn more strongly than ever against non-civil rights legislation the more liberal Northern Democrats offer, regardless of Dixie resentment against the Eisenhower civil rights scheme.

Many of the Administration's ...

G.F.

December 5, 1958

Dear Miss Harrison:

This is in reply to your letter of November 22, 1958, concerning the questions which have been the subject of our prior correspondence. I have read your letter carefully and both understand and share your deep concern for the preservation of the Constitution and the rights reserved to the states within its framework.

I can only reaffirm, in further reference to your second question, that the Supreme Court of the United States has not taken away from any state the right to control her public schools; in the discharge of its judicial function the Court has interpreted the requirements of the Fourteenth Amendment which, as I have said, are equally binding on all the states in the exercise of their unquestioned right to control their public schools in conformity with the Constitution.

I would add that under our constitutional system of government the Supreme Court is the final arbiter of the meaning of the Constitution, and the preservation of our system requires every citizen and state, whether or not they agree with a particular decision of the Court interpreting the Constitution, to accept it as the supreme law of the land until changed in accordance with constitutional processes.

Sincerely,

Gerald D. Morgan
The Deputy Assistant to the President

Miss Caroline Rivers Harrison
1030 W. Franklin Street
Apt. 72
Richmond 20, Virginia

FHS--Justice Draft

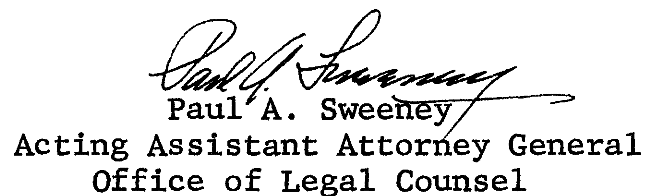
ASSISTANT ATTORNEY GENERAL

Department of Justice
Washington

DEC [illegible] 1958

MEMORANDUM FOR THE HONORABLE GERALD D. MORGAN
THE DEPUTY ASSISTANT TO THE PRESIDENT

In accordance with your request of November 28, 1958, I am enclosing herewith a suggested draft reply to Miss Caroline Rivers Harrison's letter of November 22, 1958.



Paul A. Sweeney
Acting Assistant Attorney General
Office of Legal Counsel

Enclosure

Ext 299

Miss Caroline Rivers Harrison
1030 W Franklin Street
Apt. 72
Richmond 20, Virginia

Dear Miss Harrison:

This is in reply to your letter of November 22, 1958, concerning the questions which have been the subject of our prior correspondence. I have read your letter carefully and both understand and share your deep concern for the preservation of the Constitution and the rights reserved to the states within its framework.

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Sincerely,

Gerald D. Morgan
The Deputy Assistant to the President

0 0 0 7 7 0

November 28, 1958

MEMORANDUM FOR

The Honorable William P. Rogers
The Attorney General

Attached is a further letter from Miss Caroline Rivers Harrison. Can you give me a suggested draft reply? I would appreciate it if I could have this reply by Friday, December fifth.

Gerald D. Morgan
The Deputy Assistant to the President

Attachment

Ltr. dtd. 11/22/58

FHS

OF

1030 W Franklin St, Apt 72
Richmond 20, Virginia
November 22, 1958

Mr Gerald D Morgan
The Deputy Assistant to the President
The White House
Washington, D C

Dear Mr Morgan:

I want to thank you for attempting to answer my letter of November 5, 1958 to General Persons.in a manner which you hoped would be satisfactory. I realize how difficult this must have been.

I am very sorry that this letter missed the point of the problem which prompted my questions. As your letter ended with this sentence "I hope this information will be useful to you", it is imperative that I try to form my second question in a clearer manner. Of course, the second question is the crux of the whole matter.

How can the Supreme Court alone take away from any State the right of controlling her public schools when this privilege can be taken away only by Congress and a referendum of the State's people? This was announced to the world when President Eisenhower repeated it in his speech accepting Alaska as the 49th State.

A wellknown Senator wrote me "the original Constitution of the United States conferred no jurisdiction upon the Federal Government over public education and neither did the 14th Amendment. But, to make assurance doubly sure, every State which has been admitted to the Union since the adoption of the 14th Amendment, including Alaska, has been solemnly guaranteed by the Congress in its Charter of Admission that it should always be privileged to control its public schools. Incidentally, Virginia would not have ratified the Constitution without the assurance in its Ratifying Convention by James Madison that he would offer an amendment specifically protecting the rights of the States and the people thereof against encroachment by the Federal Government. If Virginia had not ratified, the new Government would not have been formed. If the new Government had not been formed, there would have been no United States Supreme Court to override the rights of Virginia, which had done more than any one other State to win the fight for freedom, to draft a Constitution for a more perfect Union of the 13 original States and to secure its ratification by the required majority".

To all wholove our Country and want it to remain a Democracy, it is distressing and very alarming to watch the increasing criticism of the Supreme Court's rulings. This attitude of condemnation of the Court is not confined to the South, but is expressed more and more often by judges, by lawyers, by columnists and editors of newspapers and magazines, and by other Americans who live in States in the East, North and West.

Because I am a loyal American as well as a devoted Virginian I am deeply concerned and beg you to read this letter carefully and to understand the need for the preservation of the Constitution and States' Rights.

Sincerely yours,

Caroline Rivers Harrison

(Miss) Caroline Rivers Harrison

RECEIVED
NOV 19 1958
CENTRAL FILES

November 19, 1958

Dear Mrs. Harrison:

In General Persons' absence from the city, I am replying to your letter of November 5, 1958, asking:

> "1- How can Alaska be given the privilege of controlling her public schools at the same time that this long treasured right is being taken from Virginia?
>
> "2- How can the Supreme Court deny this right to Virginia, against the wishes and votes of her people, while President Eisenhower guarantees to Alaska that the constitution assures her that this privilege can be taken from her only by a vote of Congress plus a referendum of her people?"

With respect to the first question, under the Constitution Alaska's privilege of controlling her public schools, when admitted as a State, will be precisely the same as Virginia's and the other forty-seven states. All of the states must exercise that right and privilege in conformity with the Constitution. One requirement of the Constitution in the Fourteenth Amendment is that the states not deny to any person "the equal protection of the laws." The Supreme Court of the United States has held that under this provision of the Constitution no state may deny any child admission to its public schools upon the grounds of race or color. This constitutional requirement will be binding upon the State of Alaska, when it is admitted to the Union, as it is binding upon the State of Virginia and all the other states in the operation of their public school systems.

As to the second question, you will see from my answer to the first that the requirement of the Fourteenth Amendment applies equally to all the states and that no right is granted to Alaska or to any other state of the Union to maintain her public school system in disregard

of it, whether by vote of her citizens, or otherwise. Article VII, Section 1 of the Constitution of the State of Alaska provides:

> "SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

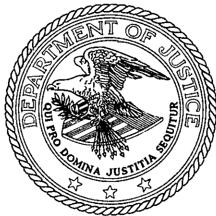
I hope this information will be helpful to you.

Sincerely,

Gerald D. Morgan
The Deputy Assistant to the President

Mrs. Caroline Rivers Harrison
1030 W. Franklin Street
Apt. 72
Richmond 20, Virginia

FHS--Department of Justice Draft



Office of the Attorney General
Washington, D.C.

November 14, 1958

MEMORANDUM FOR

Honorable Gerald D. Morgan
The Deputy Assistant to the President
The White House

In accordance with your request of November 8 to the Attorney General, I am enclosing a suggested draft of a reply to the letter of November 5 to General Persons from Caroline Rivers Harrison, together with the letter itself.

I am also enclosing another letter from Mrs. Harrison to Mr. Morrow, which was recently referred to the Department for handling. I assume this letter may simply be filed if the suggested reply is sent.

Harold H. Healy, Jr.
Harold H. Healy, Jr.
Executive Assistant to the
Attorney General

Enclosures

Mrs. Caroline Rivers Harrison
1030 W Franklin Street
Apt. 72
Richmond 20, Virginia

Dear Mrs. Harrison:

[illegible] ~~This is in reply~~ to your letter of November 5, 1958, asking:

> "1- How can Alaska be given the privilege of controlling her public schools at the same time that this long treasured right is being taken from Virginia?
>
> "2- How can the Supreme Court deny this right to Virginia, against the wishes and votes of her people, while President Eisenhower guarantees to Alaska that the constitution assures her that this privilege can be taken from her only by a vote of Congress plus a referendum of her people?"

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As to the second question, you will see from my answer to the first that the requirement of the Fourteenth Amendment applies equally to all the states and that no right is granted to Alaska or to any other state of the Union to maintain her public school system in disregard of it, whether by vote of her citizens, or otherwise. Article VII, Section 1 of the Constitution of the State of Alaska provides:

> "SECTION 1. The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution."

I trust that I have understood your questions correctly and that this letter will afford a helpful answer to them.

Sincerely,

November 8, 1958

MEMORANDUM FOR

The Honorable William P. Rogers
The Attorney General

Can you let me have a draft of a suggested reply to the attached letter addressed to General Persons from Caroline Rivers Harrison? I would appreciate it if I could have this reply by Saturday, November fifteenth.

Gerald D. Morgan
The Deputy Assistant to the President

Attachment

Ltr. dtd 11/5/58

GDM/fhs

0 0 0 7 4 7

1030 W Franklin St., Apt. 72
Richmond 20, Virginia

November 5, 1958

Maj. Gen. Wilton B Persons
The Assistant to the President
The White House
Washington, D C

Dear General Persons:

Many thanks for acknowledging my letter to President Eisenhower. However, as you merely placed it among the anti-integrations letters and overlooked the real reason for my writing, I am compelled to repeat the questions which you overlooked or evaded.

1- How can Alaska be given the privilege of controlling her public schools at the same time that this long treasured right is being taken from Virginia?

2- How can the Supreme Court deny this right to Virginia, against the wishes and votes of her people, while President Eisenhower guarantees to Alaska that the constitution assures her that this privilege can be taken from her only by a vote of Congress plus a referendum of her people?

I realize these questions are irrefutable in a democracy, but an answer to them is vital to millions of Americans.

Please try to answer both questions.

Sincerely yours,

Caroline Rivers Harrison

Caroline Rivers Harrison

P S I am sending copies of this letter to Senator Harry Byrd, Senator A Willis Robertson, Representative Vaughan Gary, and many other people. CRH

Case file - in GF124-A-1 School Decision (6)
Con

G.F.

THE WHITE HOUSE
WASHINGTON

December 3, 1958

Mr. Morgan OK GDM
Mrs. Whitman

I don't think this should have even an acknowledgment and I think it would be a surprise to Putnam if it was acknowledged.

d. w. Fenders

7

CARLETON PUTNAM

THE WHITE HOUSE
NOV 19 9 12 AM '58
RECEIVED

RECEIVED
CENTRAL FILES

The Westchester
Washington 16, D. C.

November 18, 1958

7.1.

The Hon. Dwight D. Eisenhower
President of the United States
The White House
Washington 25, D. C.

My dear Mr. President:

Permit me to enclose a copy of a letter I have just written to His Eminence Francis Cardinal Spellman, to which I attached a copy of my letter to you of October 13.

Sincerely yours,

Carleton Putnam

Carleton Putnam

The Westchester
Washington 16, D. C.

November 17, 1958

His Eminence Francis Cardinal Spellman, D.D.
Archbishop of New York
452 Madison Avenue
New York, N. Y.

Your Eminence:

By coincidence, every point in the Statement of November 13 of the Administrative Board of the National Catholic Welfare Conference would seem to be answered by the enclosed letter to the President which I wrote a month ago. As that letter has been published widely throughout the South, you may receive copies from other sources, but some of the reprints have been garbled and some greatly abbreviated. I therefore felt it advisable to send each member of your committee a copy over my own signature.

Allow me to add a few comments by way of amplification. It is perhaps too obvious to need saying that when one deals in races one has to deal in averages, and not in terms of the exceptional individual who occasionally proves the rule. A race, when it is considered as a race, must expect to be judged by the average of its individuals. If this affects the opportunity of the exceptional individual at all, it does so to a minor extent, and is not to be compared with the handicap which, for example, desegregation would visit upon Southern society as a whole.

Concerning the stigma of segregation, if there be such a thing, may I point out that in a segregated community whites, as well as blacks, are segregated and, assuming equality of facilities and curricula, if the blacks feel a stigma while the whites do not, it can only occur for one reason. The admission of a stigma is an admission of an average inferiority. White men would feel no stigma in being segregated by Negroes in the Congo. Moreover, it is curious that those who dwell most on this subject do not stop to realize that while physical association may be forced at the point of a bayonet, mental association cannot, and that the wounds of ostracism of the latter sort upon the Negro, after he enters the white school, may well prove worse than any stigma of segregation.

There is, however, one further point which to me transcends all others. I have searched in vain throughout your Statement, as I have searched in vain throughout the countless and prolix pages of our modern radical sociologists (men who spend more time asserting that their predecessors are outmoded than in producing anything significantly new themselves), for a single use of the words earn or deserve. The closest your Statement comes to it is

the solitary sentence: "They /the Negroes/ wish acceptance based upon proved ability and achievement" to which I can only answer that where there has been proved ability and achievement the South has granted both recognition and opportunity. By and large, your Statement is a long dissertation on love and equality without reference to deserts. I have analyzed the ideals of equality and Christian love, and their misuse by the aforesaid sociologists, in my letter to the President. I wish now to add with all the emphasis possible that you, and the sociologists to whom I refer, misstate and pervert the American Dream, or what Gunnar Myrdal chooses to call the American Creed, when you state it without reference to the concepts of earning and deserving. The American Dream rests on those concepts, American equality can only be understood in relation to them, and American liberty exists in their name alone. In any other sense, liberty and equality are contradictory. Where men are free they won't be equal, and where men are equal they are not free.

It does not increase one's confidence in a writer like Myrdal, on whom the Supreme Court relied in its decision in the Brown case, to find the following statement in his American Dilemma: "When opportunity became bounded in the last generation, the inherent conflict between equality and liberty flared up. Equality is slowly winning. . . . The 'four freedoms' of Franklin D. Roosevelt are liberties, but they are liberties to get equality." This precisely inverts the original American concept. Jefferson derived the phrase "all men are created equal" from the Virginia Declaration of Rights, where the wording read "All men are created equally free." Under the original American Dream, men were equal in their freedom to earn distinction, and any man who today destroys the inducement to distinction destroys the springs of human progress.

But to return to your Statement, there is nothing to my mind more harmful to the American way of life than to pander to a vaguely generalized equalitarianism in the name of Christ, and nothing does greater injustice to the character of Christ himself. Christ was a Man of infinite compassion, but He was not a Man of maudlin and undiscriminating sentimentality. Christ's life, among other things, might well be called a study in firm discrimination, and with all respect I must tell you that in my judgment you do Him a disservice when you attempt to force integration upon the South in His name.

A final word: Northerners have often remarked to me that as in the case of slavery compulsion had to be used against the South, so now the North must "nudge" the South to integrate its schools. I have always answered that, in a moral sense, the two situations are diametrically opposite. While some Northerners made fortunes out of the slave trade, Northerners as a whole did not own slaves, and hence might claim a right to criticize the South. But few Northerners today need place their children in schools with large percentages of Negroes. If the North had the South's problem, I can guarantee their attitude would be reversed, and it is the height both of hypocrisy and immorality for Northerners to demand that others do what they themselves, in similar circumstances, would not do.

Meanwhile week after week, month after month, Southern children are deprived of their education. This episode deserves to go down in history under the simple title of The Crime Against the South, and I regret to see you an accessory.

I have the honor to be, your Eminence,

Yours respectfully,

Carleton Putnam

cc - His Eminence James Francis
Cardinal McIntyre, D.D.
Archbishop of Los Angeles
Most Reverend Francis P. Keough, D.D.
Archbishop of Baltimore
Most Reverend Carl J. Alter, D.D.
Archbishop of Cincinnati
Most Reverend Joseph E. Ritter, D.D.
Archbishop of St. Louis
Most Reverend William O. Brady, D.D.
Archbishop of St. Paul
Most Reverend Albert G. Meyer, D.D.
Archbishop of Chicago
Most Reverend Patrick A. O'Boyle, D.D.
Archbishop of Washington
Most Reverend Leo Binz, D.D.
Archbishop of Dubuque
Most Reverend Emmett K. Walsh, D.D.
Bishop of Youngstown
Most Reverend Joseph M. Gilmore, D.D.
Bishop of Helena
Most Reverend Albert R. Zuroweste, D.D.
Bishop of Belleville

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G.F.

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School Decision
School Corp

THE WHITE HOUSE
WASHINGTON

RECEIVED
NOV 4 1958
CENTRAL FILES

10/31/58
1:25 pm

x GF 114-D. P

Mrs. Whitman has received a clipping of a letter addressed to the President - from Mr. Carlton Putnam - re Supreme Court decision. Has been printed in the paper. Open letter

x GF156-D

The President wants to know was the letter actually received here.

Mr. Putnam - graduate of Columbia Univ.
Chicago Airlines
The President knows him.

Mrs Whitman apparently received the 10/13 letter from Mr Putnam.

File Room Note: Oct. 13 ltr is attached hereto.
RS

November 3, 1958.

PERSONAL

Dear Mr. Putnam:

Due to the preoccupations of the political campaign, I found it impossible to reply immediately to the long letter that you sent me on October thirteenth. Its receipt at my office was acknowledged by an assistant, but I do want you to know that I found it thought-provoking, ~~even though there are certain comments of yours with which I cannot agree.~~

~~I call your particular~~ attention to a short sentence in one of the earlier paragraphs of your letter. It reads, "The law must be obeyed." I concede your right as a private citizen to express your convictions about any law or any interpretation of it; likewise I concede your obvious qualifications as a lawyer and historian to argue the merits of decisions made and published by the Supreme Court. It seems to me, however, that there are certain limitations imposed by the spirit of democratic government, particularly ours, upon the public expression of the Executive in such matters. These, I think, are likewise obvious.

With appreciation of your courtesy in submitting the letter to me,

Sincerely,

Carleton Putnam, Esq.,
The Westchester,
Washington 25, D.C.

PERSONAL

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THE WHITE HOUSE
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RECEIVED

CARLETON PUTNAM

The Westchester
Washington 16, D. C.

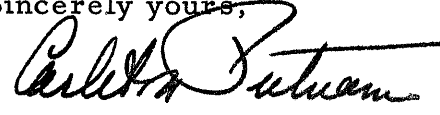
October 29, 1958

The Hon. Dwight D. Eisenhower
President of the United States
The White House
Washington 25, D. C.

My dear Mr. President:

The enclosure, while addressed to Mr. Truman, is in a sense a postscript to my letter to you of October 13. GF 6-S, Truman

Sincerely yours,



Carleton Putnam

C
O
P
Y

The Westchester
Washington 16, D. C.

October 25, 1958

The Hon. Harry S. Truman
219 North Delaware Street
Independence, Missouri

My dear Mr. Truman:

Remembering with pleasure our acquaintance in early aviation days, when you were Senator from Missouri, I write now regretfully to comment upon your criticism of the President for his stand on the segregation issue. You feel that the Supreme Court's decision was morally right and that the President has not supported it strongly enough. I feel that it was morally wrong, and that the President should be leading us in the direction of a constitutional amendment to correct it. My reasons are contained in the enclosed letter to Mr. Eisenhower and I shall not repeat them here.

Allow me, however, to make one additional remark. I am much concerned by the misconception I feel is contained in the arguments so many government officials advance, namely, that domestic desegregation is necessary to our foreign policy, and that our position in the United Nations requires us to proclaim and practice racial equality in the United States. I am advised that even the Supreme Court has been influenced by this argument in its decision.

To my mind, if ever there was a case of trying to make two wrongs into a right, this is it. I have examined what I may call the generalized doctrine of equality in my letter to the President. I would add now that in my opinion this doctrine is perhaps the most dangerous and insidious abroad in the world today. To begin with it undermines the incentive on the part of the inferior to become superior and the superior to become better. This is particularly unfortunate in the training of the young. You cannot teach the value of anything unless you devalue its opposite. You cannot create superior ideals and superior people by pretending that inferior ideals and inferior people are just as good.

Moreover, by attempting to do so, you lose the respect of those to whom you owe the duty of example and leadership. My friends coming home from backward countries have repeatedly told me that one reason Americans are so often held in secret, if not open, contempt in those countries is that Americans are willing to give with no conditions, are timid about exacting anything in return, and make no demand that the help granted be as far as possible earned and deserved. Raise a child in that way and you have a

delinquent. There is no more fundamental truth in life than that status to be worth anything has to be earned whether by races or by individuals. There is something in the most primitive man that recognizes this fundamental truth, and respects and tries to emulate the person or race that asserts it.

Sincerely yours,

Carleton Putnam

CENTRAL FILES

October 29, 1958

Dear Mr. Putnam:

The President asked me to thank you for your letter of October thirteenth, and to tell you that he appreciated having an expression of your views.

Sincerely,

Gerald D. Morgan
Special Counsel to the President

Mr. Carleton Putnam
The Westchester
4000 Cathedral Avenue, N. W.
Washington 25, D. C.

GDM/fhs

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RECEIVED
1958
FILES

CARLETON PUTNAM

The Westchester
Washington 25, D. C.

October 13, 1958

The Hon. Dwight D. Eisenhower
President of the United States
The White House
Washington 25, D. C.

My dear Mr. President:

A few days ago I was reading over Justice Frankfurter's opinion in the recent Little Rock case. Three sentences in it tempt me to write you this letter. I am a Northerner, but I have spent a large part of my life as a business executive in the South. I have a law degree, but I am now engaged in historical writing. From this observation post, I risk the presumption of a comment.

The sentences I wish to examine are these: "Local customs, however hardened by time, are not decreed in heaven. Habits and feelings they engender may be counteracted and moderated. Experience attests that such local habits and feelings will yield, gradually though this be, to law and education."

It is my personal conviction that the local customs in this case were "hardened by time" for a very good reason, and that while they may not, as Frankfurter says, have been decreed in heaven, they come closer to it than the current view of the Supreme Court. I was particularly puzzled by Frankfurter's remark that "the Constitution is not the formulation of the merely personal views of the members of this court." Five minutes before the court's desegregation decision, the Constitution meant one thing; five minutes later, it meant something else. Only one thing intervened, namely, an expression of the personal views of the members of the court.

It is not my purpose to dispute the point with which the greater part of Frankfurter's opinion is concerned. The law must be obeyed. But I think the original desegregation decision was wrong, that it ought to be reversed, and that meanwhile every legal means should be found, not to disobey it, but to avoid it. Failing this, the situation should be corrected by constitutional amendment.

I cannot agree that this is a matter involving "a few states" as Frankfurter suggests. The picture in reality is of a court, by one sudden edict, forcing upon the entire South a view, and a way of life, with which the great majority of the population are in complete disagreement. Although not from the legal, in fact from the practical, standpoint the North, which does not have the problem, is presuming to tell the South, which does have the problem, what to do.

To me there is a frightening arrogance in this performance. Neither the North, nor the court, has any holy mandate inherent in the trend of the times or the progress of liberalism to reform society in the South. In the matter of schools, rights to equal education are inseparably bound up with rights to freedom of association and, in the South at least, may require that both be considered simultaneously. (In using the word "association" here, I mean the right to associate with whom you please, and the right not to associate with whom you please.) Moreover, am I not correct in my recollection that it was the social stigma of segregation and its effect upon the Negro's "mind and heart" to which the court objected as much as to any other, and thus that the court, in forcing the black man's right to equal education, was actually determined to violate the white man's right to freedom of association?

In any case the crux of this issue would seem obvious: social status has to be earned. Or, to put it another way, equality of association has to be mutually agreed to and mutually desired. It cannot be achieved by legal fiat. Personally, I feel only affection for the Negro. But there are facts that have to be faced. Any man with two eyes in his head can observe a Negro settlement in the Congo, can study the pure-blooded African in his native habitat as he exists when left on his own resources, can compare this settlement with London or Paris, and can draw his own conclusions regarding relative levels of character and intelligence---or that combination of character and intelligence which is civilization. Finally he can inquire as to the number of pure-blooded blacks who have made contributions to great literature or engineering or medicine or philosophy or abstract science. (I do not include singing or athletics as these are not primarily matters of character and intelligence.) Nor is there any validity to the argument that the Negro "hasn't been given a chance." We were all in caves or trees originally. The progress which the pure-blooded black has made when left to himself, with a minimum of white help or hindrance, genetically or otherwise, can be measured today in the Congo.

Lord Bryce, a distinguished and impartial foreign observer, presented the situation accurately in his American Commonwealth when he wrote in 1880:

> "History is a record of the progress towards civilization of races originally barbarous. But that progress has in all cases been slow and gradual . . . Utterly dissimilar is the case of the African Negro, caught up in and whirled along with the swift movement of the American democracy. In it we have a singular juxtaposition of the most primitive and the most recent, the most rudimentary and the most highly developed, types of culture . . . A body of savages is violently carried across the ocean and set to work as slaves on the plantations of masters who are three or four thousand years in advance of them in mental capacity and moral force . . . Suddenly, even more suddenly than they were torn from Africa, they find themselves, not only free, but made full citizens and active members of the most popular government the world has seen, treated as fit to bear an equal part in ruling, not only themselves, but also their recent masters."

One does not telescope three or four thousand years into the seventy years since Bryce wrote. One may change the terms of the problem by mixed breeding, but if ever there was a matter that ought to be left to local option, it would seem to be the decision as to when the mixture has produced an acceptable amalgam in the schools. And I see no reason for penalizing a locality that does not choose to mix.

I would emphatically support improvement of education in Negro schools, if and where it is inferior. Equality of opportunity and equality before the law, when not strained to cover other situations, are acceptable ideals because they provide the chance to earn and to progress---and consequently should be enforced by legal fiat as far as is humanly possible. But equality of association, which desegregation in Southern schools involves, presupposes a status which in the South the average Negro has not earned. To force it upon the Southern White will, I think, meet with as much opposition as the prohibition amendment encountered in the wet states.

Throughout this controversy there has been frequent mention of the equality of man as a broad social objective. No proposition in recent years has been clouded by more loose thinking. Not many of us would care to enter a poetry contest with Keats, nor play chess with the national champion, nor set our character beside Albert Schweitzer's. When we see the doctrine of equality contradicted everywhere around us in fact, it remains a mystery why so many of us continue to give it lip service in theory, and why we tolerate the vicious notion that status in any field need not be earned.

Pin down the man who uses the word "equality," and at once the evasions and qualifications begin. As I recall, you, yourself, in a recent statement used some phrase to the effect that men were "equal in the sight of God." I would be interested to know where in the Bible you get your authority for this conception. There is doubtless authority in Scripture for the concept of <u>potential</u> equality in the sight of God---after earning that status, and with various further qualifications---but where is the authority for the sort of <u>ipso</u> <u>facto</u> equality suggested by your context? The whole idea contradicts the basic tenet of the Christian and Jewish religions that status is earned through righteousness and is not an automatic matter. What is true of religion and righteousness is just as true of achievement in other fields. And what is true among individuals is just as true of averages among races.

The confusion here is not unlike the confusion created by some left-wing writers between the doctrine of equality and the doctrine of Christian love. The command to love your neighbor is not a command either to consider your neighbor your equal, or yourself his equal; perhaps the purest example of great love without equality is the love between parent and child. In fact the equality doctrine as a whole, except when surrounded by a plethora of qualifications, is so untenable that it falls to pieces at the slightest thoughtful examination.

Frankfurter closes his opinion with a quotation from Abraham Lincoln, to whom the Negro owes more than to any other man. I, too, would like to quote from Lincoln. At Charleston, Illinois, in September 1858 in a debate with Douglas, Lincoln said:

0007 1 7

> "I am not, nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races; I am not nor ever have been in favor of making voters or jurors of Negroes, nor qualifying them to hold office . . . I will say in addition to this that there is a physical difference between the white and black races which I believe will ever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together, there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race."

The extent to which Lincoln would have modified these views today, or may have modified them before his death, is a moot question, but it is clear on its face that he would not have been in sympathy with the Supreme Court's position on desegregation. Many historians have felt that when Lincoln died the South lost the best friend it had. This also may be moot, but again it seems clear that for 94 years---from the horrors of Reconstruction through the Supreme Court's desegregation decision---the North has been trying to force the black man down the white Southerner's throat, and it is a miracle that relations between the races in the South have progressed as well as they have.

Perhaps the most discouraging spectacle is the spectacle of Northern newspapers dwelling with pleasure upon the predicament of the Southern parent who is forced to choose between desegregation and no school at all for his child. It does not seem to occur to these papers that this is the cruelest sort of blackmail; that the North is virtually putting a pistol at the head of the Southern parent in a gesture which every Northerner must contemplate with shame.

Indeed there now seems little doubt that the court's recent decision has set back the cause of the Negro in the South by a generation. He may force his way into white schools, but he will not force his way into white hearts nor earn the respect he seeks. What evolution was slowly and wisely achieving revolution has now arrested, and the trail of bitterness will lead far.

Sincerely yours,

Carleton Putnam

cc - Chief Justice Earl Warren
Associate Justices
Hugo Black
Felix Frankfurter
William O. Douglas
Tom Clark
John M. Harlan
William J. Brennan, Jr.
Charles E. Whittaker
Potter Stewart

A Distinguished Northerner's View Of The Supreme Court's

Carleton Putnam, who wrote the following letter to President Eisenhower, is a member of the famous New England Putnam family, a native of New York City, a graduate of Princeton and Columbia, founder and president of Chicago and Southern Airlines (1933-1948), and is on the board of Delta Airlines. He recently published a widely-praised biography of Theodore Roosevelt.

The Hon. Dwight D. Eisenhower
President of the United States
The White House
Washington, D C.

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I was particularly puzzled by Frankfurter's remark that "the Constitution is not the formulation of the merely personal views of the members of this court." Five minutes before the court's desegregation decision, the Constitution meant one thing, five minutes later, it meant something else Only one thing intervened, namely, an expression of the personal views of the members of the court

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I CANNOT AGREE that this is a matter involving "a few states" as Frankfurter suggests. The picture in reality is of a court, by one sudden edict, forcing upon the entire South a view, and a way of life, with which the great majority of the population are in complete disagreement Although not from the legal, in fact from the practical, standpoint the North, which does not have the problem, is presuming to tell the South which does have the problem, what to do

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Neither the North, nor the court, has any holy mandate inherent in the trend of the times or the progress of liberalism to reform society in the South

In the matter of schools, rights to equal education are inseparably bound up with rights to freedom of association and, in the South at least, may require that both be considered simultaneously (In using the word "association" here, I mean the right to associate with whom you please, and the right not to associate with whom you please)

Moreover, am I not correct in my recollection that it was the social stigma of segregation and its effect upon the Negro's "mind and heart" to which the court objected as much as to any other, and thus that the court, in forcing the black man's right to equal education was actually determined to violate the white man's right to freedom of association?

IN ANY CASE the crux of this issue would seem obvious: social status has to be earned Or, to put it another way, equality of association has to be mutually agreed to and mutually desired It cannot be achieved by legal fiat. Personally, I feel only affection for the Negro But there are facts that have to be faced.

Any man with two eyes in his head can observe a Negro settlement in the Congo, can study the pure-blooded African in his native habitat as he exists when left on his own resources, can compare this settlement with London or Paris, and can draw his own conclusions regarding relative levels of character and intelligence—or that combination of character and intelligence which is civilization

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Courier, Sunday, Oct. 26, 1958
—CHARLESTON, S C.

guished Northerner's View Of The Supreme Court's Decision

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Moreover, am I not correct in my recollection that it was the social stigma of segregation and its effect upon the Negro's "mind and heart" to which the court objected as much as to any other, and thus that the court, in forcing the black man's right to equal education was actually determined to violate the white man's right to freedom of association?

IN ANY CASE the crux of this issue would seem obvious: social status has to be earned Or, to put it another way, equality of association has to be mutually agreed to and mutually desired It cannot be achieved by legal fiat Personally, I feel only affection for the Negro But there are facts that have to be faced.

Any man with two eyes in his head can observe a Negro settlement in the Congo, can study the pure-blooded African in his native habitat as he exists when left on his own resources, can compare this settlement with London or Paris, and can draw his own conclusions regarding relative levels of character and intelligence—or that combination of character and intelligence which is civilization

Finally he can inquire as to the number of pure-blooded blacks who have made contributions to great literature or engineering or medicine or philosophy or abstract science (I do not include singing or athletics as these are not primarily matters of character and intelligence) Nor is there any validity to the argument that the Negro "hasn't been given a chance "

We were all in caves or trees originally The progress which the pure-blooded black has made when left to himself, with a minimum of white help or hindrance, genetically or otherwise, can be measured today in the Congo

Lord Bryce, a distinguished and impartial foreign observer, presented the situation accurately in his American Commonwealth when he wrote in 1880:

progress towards civilization of races originally barbarous. But that progress has in all cases been slow and gradual . . . Utterly dissimilar is the case of the African Negro, caught up in and whirled along with the swift movement of the American democracy In it we have a singular juxtaposition of the most primitive and the most recent the most rudimentary and the most highly developed, types of culture . . . A body of savages is violently carried across the ocean and set to work as slaves on the plantations of masters who are three or four thousand years in advance of them in mental capacity and moral force. . Suddenly, even more suddenly than they were torn from Africa, they find themselves, not only free, but made full citizens and active members of the most popular government the world has seen, treated as fit to bear an equal part in ruling, not only themselves, but also their recent masters."

ONE DOES not telescope three or four thousand years into the 70 years since Bryce wrote One may change the terms of the problem by mixed breeding, but if ever there was a matter that ought to be left to local option it would seem to be the decision as to when the mixture has produced an acceptable amalgam in the schools And I see no reason for penalizing a locality that does not choose to mix.

I WOULD emphatically support improvement of education in Negro schools, if and where it is inferior Equality of opportunity and equality before the law, when not strained to cover other situations, are acceptable ideals because they provide the chance to earn and to progress — and consequently should be enforced by legal fiat as far as is humanly possible. But equality of association, which desegregation in Southern schools involves, presupposes a status which in the South the average Negro has not earned. To force it upon the Southern white will I think, meet with as much opposition as the prohibition amendment encountered in the wet states.

Throughout this controversy there has been frequent mention of the equality of man as a broad social objective No proposition in recent years has been clouded by more loose thinking.

Not many of us would care to enter a poetry contest with Keats, nor play chess with the national champion, nor set our character beside Albert Schweitzer's. When we see the doctrine of equality contradicted everywhere around us in fact, it remains a mystery why so many of us continue to give it lip service in theory, and why we tolerate the vicious notion that status in any field need not be earned.

PIN DOWN THE MAN who uses the word "equality," and at once the evasions and qualifications begin As I recall, you, yourself, in a recent statement used some phrase to the effect that men were "equal in the sight of God "

I would be interested to know where in the Bible you get your authority for this conception.

There is doubtless authority in Scripture for the concept of potential equality in the sight of God—after earning that status, and with various further qualifications—but where is the authority for the sort of ipso facto equality suggested by your context?

The whole idea contradicts the basic tenet of the Christian and Jewish religions that status is earned through righteousness and is not an automatic matter. What is true of religion and righteousness is just as true of achievement in other fields And what is true among individuals is just as true of averages among races

The confusion here is not unlike the confusion created by some left-wing writers between the doctrine of equality and the doctrine of Christian love.

The command to love your neighbor is not a command either to consider your neighbor your equal, or yourself his equal; perhaps the purest example of great love without equality is the love between parent and child In fact the equality doctrine as a whole, except when surrounded by a plethora of qualifications, is so untenable that it falls to pieces at the slightest thoughtful examination.

FRANKFURTER closes his opinion with a quotation from Abraham Lincoln, to whom the Negro owes more than to any other man I, too, would like to quote from Lincoln At Charleston, Ill , in September 1858 in a debate with Douglas, Lincoln said:

"I AM not, nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races. I am not nor ever have been in favor of making voters or jurors of Negroes, nor qualifying them to hold office . . I will say in addition to this that there is a physical difference between the white and black races which I believe will ever forbid the two races living together on terms of social and political equality. And in as much as they cannot so live, while they do remain together, there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race."

THE EXTENT to which Lincoln would have modified these views today, or may have modified them before his death, is a moot question, but it is clear on its face that he would not have been in sympathy with the Supreme Court's position on desegregation Many historians have felt that when Lincoln died the South lost the best friend it had This also may be moot, but again it seems clear that for 94 years—from the horrors of Reconstruction through the Supreme Court's desegregation decision — the North has been trying to force the black man down the white Southerner's throat, and it is a miracle that relations between the races in the South have progressed as well as they have.

PERHAPS the most discouraging spectacle is the spectacle of Northern newspapers dwelling with pleasure upon the predicament of the Southern parent who is forced to choose between desegregation and no school at all for his child

It does not seem to occur to the papers that this is the cruelest sort of blackmail; that the North is virtually putting a pistol at the head of the Southern parent in a gesture which every Northerner must contemplate with shame.

Indeed, there now seems little doubt that the court's recent decision has set back the cause of the Negro in the South by a generation

He may force his way into white schools, but he will not force his way into white hearts nor earn the respect he seeks.

What evolution was slowly and wisely achieving revolution has now arrested, and the trail of bitterness will lead far

Sincerely yours,
CARLETON PUTNAM
Washington, D.C.

December 10, 1958

Dear Mr. Henry:

The President wants you to know that your personal observations with reference to the outcome of the recent elections were received and appreciated.

The fact that so many thousands of our citizens have taken the time to send in their reactions is in itself an inspiring commentary on our national interest in public affairs. True, every kind of opinion you could possibly imagine is advanced as being the reason or reasons for the results. Even so, from such a cross section of opinions, regardless of how contradictory many of them are, the President is provided a stimulating evaluation of the significance of what happened.

Again, your views are respectfully and gratefully acknowledged.

Sincerely,

HOWARD PYLE
Deputy Assistant
to the President

Mr. J. H. Henry
The Evening Star
Winchester
Virginia

mm

The Evening Star
WINCHESTER, VA.
J H HENRY, CORRESPONDENT

Nov. 14/58

President Eisenhower,
Gettysburg, Pa.,

Honorable Sir:-

I trust you will find time at your Gettysburg home to read a copy of the letter I sent to Governor Averell Harriman showing the cause, in my opinion, of his being about the only "big" candidate of the Democratic party that went down in defeat. Also showing by the obnoxious decisions of the Supreme Court since your appointment of Governor Warren, Surely we must assign some reasons of the Democratic trend. and in the minds of many of the older politiacn students this was the cause. Surely it could not have been your work for truly as a Democrat I think you have been a good Presedent, with the exception of supporting the integration ruling and sending troups into Little Rock. Just how you can insist on we of the South to respect the integration ruling in face of your just having signed the Alaska Statehood enactment whick provides they be given complete control of their schools and colleges. Why not rectify this blazing discrimination by likewise allowing the other States to operate their schools. As a Christian it is difficult to understand why you can do otherwise.

The Evening Star
WINCHESTER, VA.
J H HENRY, CORRESPONDENT

D.D.E.#2

Tearsheets
x GF 114-D,K

Speaking about Little Rock I herewith enclose a publication published by the Christian Educational Ass'n Union, N.J. showing one of the heads of the NAACP--Daisy Bates, who has a prounounced jail record. Also another issue showing the eminent Colored people who are opposed to integration. In this same issue you will note the Communist -Front Citations against the real NAACP. Leaders--Roy Wilkins, Thurgood Marshall, Adam Powell and even Felix Frankfurter of the Supreme Bench.

x GF 124-A-2

Trusting you will be kind enought to read and consider what I have brought to your attention and with best wishes for your good health and happiness, I beg to remain

Sincerely yours,

J. Herbert Henry

x GF 150-C-1

Nov. 10/58

Governor Harriman,
Albany, New York,

Honorable Sir:-

As a 37 year Democratic voter sharing in the great victory for the party this past election I ask your indulgence that I may shed a little light comforting you in your defeat which must not be charged to the party but solely to you by espousing the NAACP cause, who deserted you at the polls through your bringing to New York and entertaining the Negro pupils together with that notorious jail-bird NAACP Little Rock leader, Daisy Bates. The Negro voters saw you were only seeking votes thus supported your opponent who had remained silent upon the Civil Rights issue. Likewise many of the white race who sympathized with the South in the segregation trouble who were aware of the same trouble in New York, Pennsylvania, Illinois and other northern sections resented your vicious venom in the attack you make against the South, Senator Byrd, Governors Almond and Faubus in your calling them traitors in not respecting the illegal segregation ruling of May 17, 1954.

It is generally conceded the great Democratic vote was more the resentment of the Supreme Court's Communist inspired rulings than anything else. The pro-Communist decisions, the usurping of States Rights, the killing of anti- sedition laws in 42 states, the criminal Communist conspiracy, freeing of criminals, granting Paul Robeson a pass-port, freeing rapists, the illegal segregation ruling, the Philadelphia Gerrard orphanage ruling, the yielding of every demand from the NAACP. Look Magazine Sept. 30, 1958 quotes the Sheriff of Cook County saying "The racial frontiers of our time are not in the South but in the Northern metropolitan areas." Thus you have the real factors along with sending troops into Little Rock and Eisenhower's betrayal that give us the big Democratic vote.

Trusting you will accept this letter in the proper spirit, politically speaking, I am

Yours respectfully,

Copy to Democratic Chairman Butler,
Senator Byrd, Gov. Faubus, Gov. Almond
and President Eisenhower.

communism is treason! fight it with common sense!

The Nation's Anti-Communist Newspaper

Common Sense

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SUBSCRIPTION RATES:
(24 issues annually)
Plain envelope, unsealed ... $1.
Plain envelope, sealed ..... $3.
Foreign & Canada, (10 mos) $1.

"The Truth, the whole Truth, and nothing but the Truth"

Without fear or favor,
Conde McGinley
FOUNDER AND EDITOR

Issue No. 281 (12th Year) Union, New Jersey, U.S.A., August 1, 1957 Entered as Second Class Matter January 27, 1948 at the Post Office at Union, N. J., under the Act of March 3, 1879 Five Cents

NAACP Leaders With Their Communist-Front Citations!

Red Records Reprinted Herein By Popular Demand.

W. E. B. DuBois
Founder of NAACP, has 72 Communist-front citations.

Roy Wilkins
Executive Secretary NAACP 9 Communist-front citations

Thurgood Marshall
Special Council NAACP, has 5 Communist-front citations

Cong. Adam C. Powell Jr.
60 Communist-front Citations

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Communist-front Citations

Some people in Northern States are under the impression the Negro people want to abolish segregation and that it is the colored people who are pushing integration.

The Editor of COMMON SENSE recently interviewed people of the black and white race in twenty States and can truthfully say that approximately 90% of the colored people in the South want separate schools. Why shouldn't they? Most people like to be with their own. Your Editor saw Negro schools which appeared equal, and in many cities the Negro schools were better than those for whites.

The two races have been living in harmony in the South for quite some time, and they understand each other. Jewish Communist organizers from New York have been agitating and indoctrinating young Negroes in the South, using false promises just as they did with the Hungarian workmen to secure their support in Communizing Hungary. Later when Jewish Communism had full control of Hungary, the workers asked for recognition and were slaughtered.

Now in 1957, COMMON SENSE states positively that the NAACP is a Communist dominated, agitation group which has never had a Negro as head of the organization since it was organized and financed by the Communist Garland Fund. A Jew has always headed the National Association for the Agitation of Colored People. (A more appropriate name for the NAACP)

The NAACP screams over and over that they are not a Communist-front organization, just as the United Electrical & Radio Workers Union with 600,000 members still do.

During 1946, the U.E. Union called a strike of 2,000 men at Phelps Dodge Copper Co. in Elizabeth, N.J. This strike lasted eight and one half months and cost the workers three million dollars. In 1949 the same U.E. Union conducted a strike at the Singer Sewing Machine Co. in Elizabeth,

Arthur Spingarn (Jew)

A Zionist Jew and President of NAACP. Has contact with many Communist-Front organizations.

N.J. This strike of 9,000 workers idle for 168 days cost the workers, the company and merchants fifty-four million dollars.

In 1946 COMMON SENSE was the first and only publication to expose the U.E. as Communist. No organization or individual did so until years later when it became public knowledge, and later the U.E. was thrown out of the CIO as even too Red for that organization.

In 1946, COMMON SENSE published five issues exposing the U.E. as Communist and used 20 men to distribute them outside Churches on Sunday. COMMON SENSE published the names, photographs and records of the Hungarian Jews who were directing the strike:

Julius Emspak, Sec., U.E.; James Matles (Freedman) Director; James Lustig, District Organizer; Walter Barry (Isador Eisenstadt), National Advisor.

The U.E. used every means to discredit and smear COMON SENSE and many good people were deceived into attacking this paper for "falsely accusing" the U.E. But time usually discloses the facts.

Newspapers of July 24, 1957 report testimony of William Wallace, former Communist in the U.E. before the Senate Internal Sub-Committee to the effect that the U.E. was Communist, and Communists did direct the Phelps Dodge and Singer strikes. He said; "We let our people bear the brunt of these strikes but actually we Communists directed them." The U.E.'s protest that they were not Communist was ten times stronger than the NAACP's and COMMON SENSE has twice the damaging evidence aganst the NAACP than it had against the U.E.!!

The NAACP derives its real power from the Anti-Defamation League of B'nai B'rith which is the Jewish F.B.I. Twenty-four years study of the world Marxist conspiracy enables us to state that the U.S. is being brain-washed and prepared to give up its freedom. AWAKE! BEFORE IT IS TOO LATE!!

Since the Supreme Court Decision on segregation has focused attention on the NAACP, and they have been exposed time and again as a Communist-front, at each important public meeting they cleverly state they must be careful to screen out all Communist influence. Then, why not start with themselves? All the important officers in the NAACP we know of, have been tied up with Communism for years. When the Communists are put in a corner they take the "Fifth Amendment" or "don't remember,"

—o— (Continued on Page 2) —o—

The NAACP, Supposedly Negro, Controlled By Zionists!

375

Channing Tobias
Asst. Treasurer of NAACP, at least 50 Communist-front listings

Paul Robeson
Has over 150 Communist Citations to his credit

Hulan E. Jack
Pres. City Council of N.Y. 16 Communist-front Citations

Dr. Ralph Bunche
Deputy Secy.-Gen. of U.N. National director NAACP; 7 Red front Citations

Commie Citations

—o— (Continued from Page 1) —o—

or like Alger Hiss, in an effort to deceive the public, sued Whittaker Chambers for calling him a Communist. Major Jordan's Diary shows conclusive evidence that Sen. Herbert Lehman is a powerful man in the world Communist movement and certainly he is the most powerful man behind the NAACP.

The Jewish-controlled NAACP agitators hand-pick Negroes to force into schools of the South as an opening wedge to break down segregation. The Autherine Lucy case was an outstanding example of this type agitation, and anyone who has studied the NAACP and its questionable leaders should see right through their scheme. The masterminds in New York are directing this attack on segregation, fully realizing it is going to bring trouble between White and Black—that is why it is brought about. Few people realize this is only part of the plan to condition our country for Communism.

Part of the globe in which half the popu-

prominent leaders and this publication is bringing out the facts, regardless of where the chips may fall. With this information, it is hoped the subject of integration will be approached with a better knowledge of who controls the NAACP and who controls the Supreme Court.

Adam Clayton Powell

66 Communist-front-Citations-Count-Them

Allied Voters Against Coudert—Sponsor of rally—10/21/42.

American Committee for Protection of Foreign Born—Sponsor—U. N. Dinner—4/17/43.

American League for Peace and Democracy, Sponsor—"Boycott Japanese Goods Conference" (See Daily Worker, 1/11/38, p. 2); China Aid Council—Sponsor 6/11/38; NYC Division—Advisory Board 3/21/39.

American League Against War And Fascism—Member of National Peoples Committee Against Hearst 3/16/37; Member of National Executive Committee 8-22-35.

National Council of American-Soviet Friendship—Sponsor of Tenth Anniversary U.S.-Soviet Friendship...

National Scottsboro Action Committee—Member Executive Committee (See Daily Worker, 5/3/33, p. 2.)

National Wartime Conference of the Professions, The Sciences, The Arts, and the White-Collar Fields—Sponsor 5/8-9/43.

Negro Labor Victory Committee—Sponsor of Rally 4/24/43; Dance—Sponsor 10/11/43.

Non-Partison Committee for the Re-election of Congressman Vito Marcantonio—Member of Committee 10/3/36.

People's Voice—Editor-in-chief 10/3/42.

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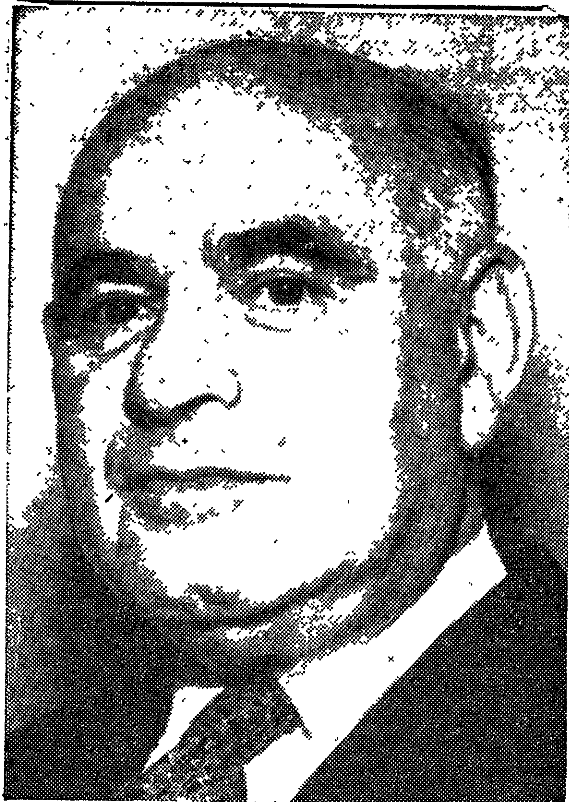
Part of the globe in which half the population of the world exists, has already been broken down and Marxist rule set up. All kinds of deception was used to bring this about, camouflaged with high-sounding purposes. Now these masterminds are bringing pressure on Washington to send troops into the South. Are they trying to bring about a revolution to coincide with the outbreak of war in the Middle-East, when our sons will be called on to shed their blood in Palestine to again protect the Jews?

Jews of the South may join the Citizen's Councils, but every Jewish organization and publication in the U.S. are backing the fight against segregation. If Jewish influence were withdrawn from the de-segregation movement, it would die a sudden death!

Careful research has been done on the NAACP and the activities of each of its prominent leaders and this publication is bringing out the facts, regardless of where the chips may fall. With this information, it is hoped the subject of integration will be approached with a better knowledge of who controls the NAACP and who controls the Supreme Court.



Herbert Lehman (Jew)
This Zionist Jew, a Director in the NAACP, has 10 Communist-Front Citations.

Adam Clayton Powell

66 Communist-front-Citations-Count-Them

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National Council of American-Soviet Friendship—Sponsor of Tenth Anniversary U.S.-Soviet Friendship Congress (See Daily Worker 9/29/43, p. 5); Congress of American-Soviet Friendship—Sponsor (See Soviet Russia Today, Dec. 1942, p. 42.)

American Youth Congress—Member National Advisory Committee; Fourth American Youth Congress—Member National Advisory Board 7/4/37; N.Y. State Model Legislature of Youth at CCNY—Signer of call 1/28-30/38; Fifth American Youth Congress—Signer of call 7-1-5-39.

American Youth for Democracy—National Sponsor (See Spotlight, Apr. 1944, p. 19); Celebration of 15 years of Biro Bidjan—Sponsor 5/14/43; Icor—Co-Sponsor of the Celebration.

Citizens Committee To Free Earl Browder 1942; Signer of petition to release Browder (as Negro signer only) See the Peoples Voice, 3-21-42.

Sponsor—Consumers National Federation.

Gerson Supporters (Simon W. Gerson)—Signer of letter for this Communist (See Daily Worker 2/10/38. p. 1.)

Greater N.Y. Emergency Conference on Inalienable Rights—Member General Committee 2/12/40.

International Labor Defense—Sent greetings to National Conference (The 7th) (7/8-9/39) See Equal Justice, July 1939 pp. 2-5.

Joint Anti-Fascist Refugee Committee—Sponsor Dinner 10/27/43.

Harlem Employment Committee—"under the excellent chairmanship of" (See Daily Worker, 5/23/38, p. 5.)

National Committee to Combat Anti-Semitism—Sponsor 5/24/44.

National Emergency Conference—Signer of call 5/13-4/39.

Natonal Emergency Conference for Democratic Rights—Member Board of Sponsors 2/15/40.

National Federation for Constitutional Liberties—Signer of Jan. 1943 message to abolish Dies Committee; Signer 12-26-41 (See Oxnam, p. 3656.)

National Scottsboro Action Committee—Member Executive Committee (See Daily Worker, 5/3/33, p. 2.)

National Wartime Conference of the Professions, The Sciences, The Arts, and the White-Collar Fields—Sponsor 5/8-9/43.

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The Protestant—Member of Editorial Advisory Board 10/7/41; Editorial Advisory Board-member (See June-July 1942 Protestant); Protestant Digest Associates—Sponsor of call for forum 2/25/41.

Reichstag Fire Trial Anniversary Committee—Signer of declaration for (See N.Y. Times, 12/22/43, p. 40.)

Schappes Defense Committee—Signer for pardon (See N.Y. Times, 10/9/44, p. 12.)

Soviet Russia Today—Sponsor dinner "25th Anniversary Red Army."

Wartime Budget Conference—Sponsor 4/11/44.

American Round Table on India—Member.

Consumer-Farmer Milk Cooperative, Inc. A director.

Felix Frankfurter (Jew)
Packed the New Deal with Reds. Before appointment to Supreme Court was attorney for Sacco-Vanzetti, anarchists, and Tom Mooney, Communist. Also attorney for the Red dominated NAACP.

Christian Negroes Opposed To NAACP And Integration Hold Convention

African Universal Church and Commercial League Corporation (General Office 3802 3rd Ave., New York, N.Y. — Louisiana Headquarters: 2382 Texas St., Baton Rouge, Louisiana.)

Will Open National Convention Of Negroes Opposed to the Red Policies Of The NAACP And Integration. The Convention will be Held In Dutch Town, La. From Aug. 6th Through Aug. 11th. Good Christian Negro Americans Are Invited. Learn The Truth How The Zionist Controlled NAACP Is Using Good Christian Negroes To Stir Up Trouble In The North As Well As The South!

Below Are Photographs Of These Christian Leaders Who Hold That The Devil Is The Author Of INTEGRATION And God The Author Of SEGREGATION. Support Them!

Dr. J.N.B. Egbutcheh

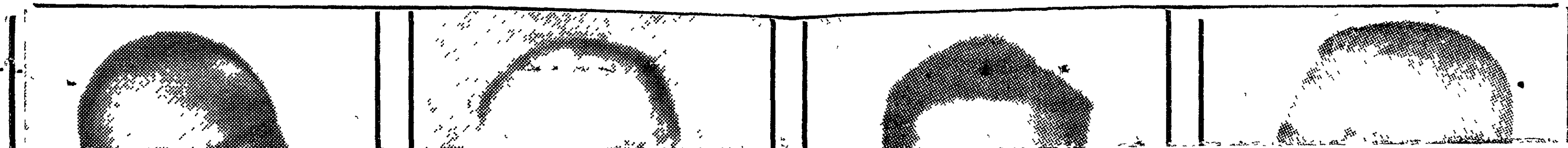
D.M., SC., B.M., D.D., Ph.D. Native of West Africa, in charge of International Headquarters, Nigeria, W. Africa

Archbishop C.C. Addison

Native of Colquitt, Ga., the man who told the truth which stirred the U.S. from coast to coast, will be back in the South telling the truth until it hurts

Mr. William Nettles

Native of Chester, Penn. Chairman of Labor and Industry. Member of the Executive Board



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Native of Chester, Penn. Chairman of Labor and Industry. Member of the Executive Board

Mr. Jackson Bradley

Native of Buffalo, N.Y., Secy. of Labor & Industry

Rev. R.C. Smith

Native of N.Y. Chairman of National Convention Delegation 1957

Mr. L. Kofi Brown

Native of North Carolina, Chairman of the Executive Board

Elder G.B. Brown

Host of National Convention, in charge of the work in Louisiana

(All foregoing citations drawn from Appendix IX.)

Federation of Children's Organizations—Sponsor (See Walter Steele Testimony, of 1938, p. 277.)

Bridges Mass Meeting—Speaker 12-16-36 (See Dies Hearings-Vol. 3, p. 2167.)

Manhattan Citizens Committee—Speaker ("A. Clayton Powell...notoriously pro-Communist" See Sunday Worker, 4/9/39, Also, Report on CIO-PAC Dies Committee 3/29/44; National Negro Congress—Supported meeting; Jewish People's Committee—Supported meeting.

Spanish Refugee Appeal—Rally Speaker (See Daily Worker, 9/17/45, p. 8 and 9/22/45, p. 5; also, Un-American Activities Committee Hse. Report 2233, 1946, p. 60);

Veterans Abraham Lincoln Brigade—Supported rally (Daily Worker, 9/20/45, p. 4; same); Communist Party—Supported Rally (Daily Worker, 9/21/45, p. 2; same, p. 59.)

National Negro Congress-Tenth Annual Convention 5-30 to 6/2/46—Speaker (See Walter Steele Testimony 7/21/47, p. 93); 1st Conv. 1941—Speaker (See Communism in the Detroit Area-Part 2, Wood Committee, 1952, p. 3076-7.)

Stage for Action (Philadelphia branch)—Sponsor (See Walter Steele testimony, 7/21/47, p. 115.)

American Friends of the Chinese People (Co-sponsor with American League Against War and Fascism)—Sponsor of Rally (See Daily Worker, 9/24/37, p. 6; also Testimony of Bishop G. Bromley Oxnam, Velde Committee 7/21/53, p. 3626.)

American Committee for Spanish Freedom—Member, Inter-faith Committee—1/21/46 (See Oxnam Testimony 7-21-53, p. 3678.)

American Relief for Greek Democracy—Sponsor (See 4th Cal. Report p. 169.)

Civil Rights Congress—Signer of call to National Congress on Civil Rights 4/27-8/46 (See 4th Cal. Report, p. 202.)

Committee for a Democratic Eastern Policy—Sponsor (See 4th Cal. Report, p. 208.)

Member of Japanese-American Committee for Democracy (See N.Y. World Telegram, 1/23/46, p. 1; also IPR Hearings, p. 2242.)

Methodist Federation for Social Action—inserted statement by, supporting Communist Party (See Congressional Record, 3/27/47.)

Provisional Committee for Democratic Rights—Co-chairman 1948 (See "Communist Tactics in controlling Youth Organizations"-McCarran Committee p. 57.)

This man often screams to high heaven how anti-Communist he and the NAACP are, yet this conclusive evidence speaks for itself. He screamed for a nation wide day of prayer to help the Negro. Thank God that most good Negro people see through him and the false NAACP. This phony prayer deal was a complete flop.

Thurgood Marshall

5 Communist-fronts-Count Them

National Lawyers Guild—Member of the Executive Board Dec. 1949, (See Report on National Lawyers Guild p. 18); Lawyers Guild Review— Associate Editor, (See Atty. Gen. Eugene Cook speech, Atlanta, Ga.)

International Juridical Association—Member of its National Committee (See Appendix IX.)

Hollywood Ten—He supported these Communists in 1947, (See Atty. Gen. Cook speech, Atlanta, Ga.)

American League Against War and Fascism—Rally-speaker, (See Baltimore Area Testimony, Part 3, p. 4145.)

Roy Wilkins

9 Communist-fronts-Count Them

Council for Pan-American Democracy—Sponsor, 11/16/38, (Appendix IX.)

International Juridical Association—National Committee member, 5/18/42, (Appen-

—o— (Continued on Page 4) —o—

345

dix IX.)

United Front for Herndon (adjunct of International Labor Defense)—Signer, (See Labor Defender, Oct. 1935.)

American League Against War and Fascism, (See Steele Testimony, p. 463.)

American Friends of the Chinese People, co-sponsors of rally, (See Daily Worker, 9/24/37, p. 6; also Oxnam Testimony, 7-21-53, p. 3626.)

International Labor Defense—Speaker, (See Atty. Gen. Cook speech, Atlanta, Ga. in 1955.)

Workers Alliance—Speaker, (See Atty. Gen. Cook Speech.)

Benjamin J. Davis—He voted for, and supported this Communist, (See Daily Worker, 7/15/49.)

Communist Party, 1936, National Convention—Wilkins attached "great significance" to this convention, stated that the Communist Party's racial program had had "a very wholesome effect in the U.S. (See Daily Worker, 6/17/36.)

The reader should take note how friendly the DAILY WORKER, the official Communist newspaper in this country, is toward all these so-called anti-Communist NAACP lawyers and backers.

Hulan E. Jack, Pres. City Council, N.Y.

The following citations are from Appendix IX unless otherwise indicated. Most have also been cited by the Atty. Gen. as subversive organizations:

International Labor Defense, Oct. 1943, member of national committee.

Morris U. Schappes Defense Committee—Signer of open letter for pardon of convicted Communist. (N.Y. Times Oct. 9, 1944, also Appendix IX.)

National Federation for Constitutional Liberties, 1942, (N.Y. Post 2/27/56); Jan. 1943, signed petition to abolish Dies Committee as Assemblyman 17th A.D.

Negro Labor Victory Committee, Oct. 11, 1943, member of Executive Board. Listed as member of Paper Box Makers Union.

It also presents authentic documentation to substantiate the following summation of Dr. Bunche's record of activities paralleling the Communist line throughout the years which is so consistent that it seems impossible to interpret it as accidental:—

1.-Travels in Africa, which coincided with the Kremlin's planting of agents in that part of the world, in order to lay the basis for racial explosions of the future. Bunche wrote from there (Journal of Negro Education) denouncing "Imperialist Capitalism" and advocated elimination of the current social order in the mother countries. The fruits of the Kremlin infiltration in Africa can be seen today in the bloody Mau-Mau massacres. (1935-1936)

2.-Wrote a pamphlet which advocated a Communistic program in respect to the Negro question and advocated class war throughout the world asking the non-white peoples to look to the Soviet Union for inspiration and leadership. (1936)

3.-Wrote a clearly Communistic line in respect to education. He voiced the Red line that "American education" is "goose step education.' And that "Capitalism owns the colleges and universities by right of purchase." Bunche denounced "Red riders," and "oath clauses." He complained that "in America...we are living in an economy of capitalism and our educational system consistantly harmonizes with the dominant capitalistic pattern." (1936)

4.-Bunche was praised in the official theoretical Red organ, THE COMMUNIST, published for top echelon Communists and supporters. One of the top Communists, A.W. Berry, praised Bunche for "approaching the Marxist viewpoint" and "that Bunche realized the significance of the class struggle." Berry then described Bunche as an "active friend and supporter" of the working class, which in the Communist aesopian manner means a friend of the Soviets, since they claim exclusive franchise as representing the "working class." (1937)

5.-Contributed [illegible] to the RACE

Red line in its various ramifications. Such impossibility is furthur compounded if the language used is strictly Marxist-Leninist.

A highly accurate report on Ralph Bunche consisting of 49 pages was prepared after careful research by Alliance, Incorporated, Archibald Roosevelt, Pres. Obviously space will not permit us to publish the entire report which covers excerpts from many writings in Communist publications by Ralph Bunche, who has been maneuvered into high positions by Marxist forces.

Ralph Bunche is national director of the NAACP and Deputy Secy.—General of the United Nations.

Those who are sufficiently interested, may obtain this 49-page report on Ralph Bunche, by sending a dollar to Alliance Inc. 200 East 66th St. New York, N.Y.

The NAACP is crawling with Communists. Following are a few more of the leaders of the National Association for the Advancement of Colored People showing their Communist-front records.

Algernon D. Black, Director, 61 Communist-front citations.

Hubert T. Delaney, Director, 18 Communist-front citations.

Earl B. Dickerson, Director, 72 Communist-front citations.

Oscar Hammerstein II, Vice President, 25 Communist-front citations.

S. Ralph Harlow, Director, 23 Communist-front citations.

Willam Lloyd Imes, Vice President, 25 Communist-front citations.

Benjamin E. Mays, Director, 32 Communist-front citations.

A. Phillip Randolph, Vice President, belongs to 35 Communist-front organizations and has 62 Communist and socialist citations.

Eleanor Roosevelt, Director, 57 Communist-front citations.

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Citizens Committee to Free Earl Browder, 4/2/42.

Civil Rights Congress—4-13-46, member of Initiating Committee, (Report on Civil Rights Congress 9-2-47.) Signer, call to National Congress on Civil Rights, (See Walter Steele testimony, 7-21-47, p. 142.)

Member of Board of Directors, Civil Rights Congress of N.Y. (Letterhead 9/1946.) Signer of call to Civil Rights Congress, 7-21-47, (N.Y Journal American, 2-28-56.)

Win the Peace Conference, 1946, (N.Y. Post 2-27-56.)

American Committee for Protection of Foreign Born, 1943, (N.Y. Post 2-27-56.)

Reichstag Fire Trial Anniversary Committee—Signer, (N.Y. Times 12-22-43, also Appendix IX.)

Tribute to Bella V. Dodd 1943, (N.Y. Post, 2-27-56.)

Tribute to Ferdinand Smith 1944—Sponsor of Dinner (Daily Worker, 9-11-44, also Appendix IX.)

Welcomed Abraham Lincoln Brigade of church burners on 6-15-43, when they returned after killing Priests and burning churches in Spain.

The N.Y. Herald Tribune, March 4, 1956, states "Virtually all of the published reports of Mr. Jack's purported affiliation with left-wing groups appeared in 'The Daily Worker,' People's Voice,' 'The Daily World' and other similar publications."

Dr. Ralph Bunche

This report intends to prove, without a shadow of a doubt that Dr. Ralph Bunche for a number of years had expressed himself in writings, speeches, and organizational activity in a manner which paralleled the Communist line in its major aspects. Further evidence is hereby presented to prove his expressions were of such a nature that they could only have been arrived at as a result of his going through thorough indoctrination in Communist methods and techniques. It will be shown his affiliations and activities were such as to fill the requirements necessary for a top level operative for the Kremlin apparatus.

It also presents authentic documentation to substantiate the following summation of Dr. Bunche's record of activities paralleling the Communist line throughout the years which is so consistent that it seems impossible to interpret it as accidental:—

1.-Travels in Africa, which coincided with the Kremlin's planting of agents in that part of the world, in order to lay the basis for racial explosions of the future. Bunche wrote from there (Journal of Negro Education) denouncing "Imperialist Capitalism" and advocated elimination of the current social order in the mother countries. The fruits of the Kremlin infiltration in Africa can be seen today in the bloody Mau-Mau massacres. (1935-1936)

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5.-Contributed an article to the RACE MAGAZINE, whereby he repeated the "class" position on the race question and considered those who called the National Negro Congress as "dominated by Reds" as "biased individuals." This magazine in its opening issue prominently announced that they are working for "a social upheaval which will plow up our institutions to their very roots and substitute a socialist order for the present capitalist imperialist order." (1936)

Actually the evidence of Communistic writings and Communistic organizational activity of Ralph Bunche is greater overall than the combined evidence that government agencies had when they first began to get interested in Red activities of Alger Hiss, Remington, Harry Dexter White and the Rosenbergs. Bunche's Communistic utterances and connections are there as a public printed record and it is a great puzzle as to why our Government officials have not taken appropriate action. Instead it seems, that there is an effort to hush up the entire matter.

It is impossible for a person accidently to coincide in his own personal independent views so as to match the Communist line in all of its major features. It is quite possible that one may accidently coincide in viewpoint with some one part of the Communist program, but, in respect to the overall line it is a mathematical impossibility for anyone to independently match the total Red line in its various ramifications. Such impossibility is furthur compounded if the language used is strictly Marxist-Leninist.

A highly accurate report on Ralph Bunche consisting of 49 pages was prepared after careful research by Alliance, Incorporated, Archibald Roosevelt, Pres. Obviously space will not permit us to publish the entire report which covers excerpts from many writings in Communist publications by Ralph Bunche, who has been maneuvered into high positions by Marxist forces.

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W.J. Walls, Vice President, 38 Communist-front citations.

HIGH COURT ON THE MARCH

Excerpts from a Speech by Senator James O. Eastland Columbia, S. Car., Jan. 26, 1956

"The Court is on the march and unless curbed. . It will create a judicial dictatorship in this country. If this judicial march is not halted there will be no states. We will lose the dual system of government. State legislatures, state and county officials will be impotent and subject to the control and direction of the Supreme Court. Even the Congress will be impotent.

"The Communist conspiracy can never succeed in America unless there is first destroyed the powers of the States. It can never succeed until the people are deprived of the power to control their local institutions.

"I do not believe the people of any state in any section of this country desire to see, or that they will permit, the politicians who sit upon the Court to take from them the control of their schools, their local institutions, and their domestic affairs. Every section of the country has its local problems and they should all be combined in this overall legislative plan.

"If we have government of men, and not of law, and we escape tyranny only through compassion; then liberty exists only as a phantom among the shadows and the dream of a free people on this Continent in the dust lies dead."

Common Sense*
Union, New Jersey, U. S. A.
Conde McGinley, Editor
$1 for 30 copies, $3 for 100, $10 for 500
One year's subscription, $1. Three years for $2.50
First Class (Sealed)—$3.00 per year
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*Common Sense**
Published twice monthly at
530 Chestnut St. Union, New Jersey, U.S.A.
*Trade Mark Registered United States Patent Office

HELP US TO SECURE A MILLION READERS

Read and pass on!

✱ communism is treason! ✱ fight it with common sense!

The Nation's Anti-Communist Newspaper

Common Sense

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Plain envelope, sealed ..... $3.
Foreign & Canada, (10 mos) $1.

✱

"The Truth, the whole Truth, and nothing but the Truth"

Without fear or favor,
Conde McGinley
FOUNDER AND EDITOR

Issue No. 308 (13th Year) | Union, New Jersey, U.S.A., Sept 15, 1958 | Entered as Second Class Matter January 27, 1948, at the Post Office at Union, N. J., under the Act of March 3, 1879 | Five Cents

Little Rock--Proving Ground For Commies & Red-Fronters

Grace Lorch is a nice girl, you will see from the following report. She lives at 2722 Cross St., Little Rock, just across the street from Daisy Bates, president of the NAACP in Little Rock. This woman, with Daisy Bates, was very active at Central High School coaching the 9 Negro children who were taken from a new, more modern school and forced into Central High,—typical communist tactics to stir up trouble.

The Senate Internal Security Sub-Committee held hearings in Memphis, Tenn. on Oct. 29, 1957 and Grace Lorch was subpoenaed as a witness.

The U.S. Senators wanted to give her an opportunity to show she was not a communist. She screamed and attacked the Committee and refused to answer questions.

Sen. Wm. Jenner addressed her: **"You wanted to create a scene, and you have accomplished your purpose. You are trying to**

THE INTER-RACIAL MOVEMENT IS NOT CATCHING ON FAST ENOUGH TO SUIT THE COMMUNISTS, HENCE THE CONSTANT, RELENTLESS AGITATION

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Common Sense

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Sen. Wm. Jenner addressed her: **"You wanted to create a scene, and you have accomplished your purpose. You are trying to hide the fact you are a communist."** She was a member of the board of trustees of the **Samuel Adams School for Social Studies** in Massachusetts. This is the Communist Party's training school, like the one in Monteagle, Tenn. She was also a very active communist organizer in the New England states for years.

As a reward for her activity in the Little Rock affair, the Communist Party brought her to New York City to be honored at a dinner.

The Emergency Civil Liberties Committee (a Jewish front) was used as a cover-up for this affair.

The Southern School News of Nashville, Tenn., in its issue of September 3rd, 1954, revealed that Mrs. Lorch and her husband tried to force their 3 children into a Negro school, and when refused, threatened to sue. Here again we have the communist race mixers in action.

The **DAILY WORKER**, official communist newspaper, of May 2, 1941, stated that Mrs. Lorch signed a petition demanding release of Earl Browder, head of the Communist Party U.S.A. During 1943, Mrs, Lorch was vice president of the Teachers Union which was run by communists.

The Communist Training School at Monteagle, Tenn., known as Highlander Folk School, was set up in 1932 by Don West and James Dombrowski. Both have long communist records.

Below are listed several who were active during the communist training period with Grace Lorch in September, 1957.

Abner Berry (Negro), member Central Committee of the Communist Party and a writer for the Daily Worker. Rev. John B. Thompson, Chaplain of the University of Chicago; 36 communist-front citations. Don West, 18 communist citations. James A. Dombrowski—45 communist citations. Rev. Martin Luther King—The Daily Worker says King's secretary, Bayard Rustin, is a communist,—they should know!

Lee Lorch, husband of Grace, is now a professor at Philander Smith College, Little Rock, Arkansas, a Negro institution. The

—o— (Continued on Page 4) —o—

THE INTER-RACIAL MOVEMENT IS NOT CATCHING ON FAST ENOUGH TO SUIT THE COMMUNISTS, HENCE THE CONSTANT, RELENTLESS AGITATION

Here we have race-mixing at the Communist Training School, Monteagle, Tenn. Dancing at school would be encouraged by certain teachers and the children would not be capable of coping with the overwhelming Red propaganda aimed at them

CHARACTERS SUCH AS THIS ARE DETERMINED TO RUN OUR GOVERNMENT

ARKANSAS STATE POLICE
Little Rock, Ark.

Name Daisy Lee Bates

Ark. St. Police # 130846

Age 1914 Wt. 105 Ht. 5-8

Eyes dk. brn. Hair Bl&K

Marks & Scars:

FPC: 10 - S 1 R - III 3 / S I U III 3

Daisy Lee Bates (alias Daisy Lee Gatson) **President of the NAACP for Little Rock**

Daisy Bates Of The NAACP

For a period of 23 years Daisy Bates has been arrested and jailed 5 times—a chronic troublemaker. Among the charges was "gaming" defined in Arkansas courts as gambling such as running a crap game or dice game.

New York papers recently pictured this NAACP representative with Governor and Mrs. Harriman in New York City, as the fountain-head of pressure on the Supreme Court and Little Rock.

The 48 states are gradually being run from New York by the Marxist pressure groups. This will continue until communism finally takes over, unless a sufficient number of strong courageous men and women with character stand up, name the enemy and defy them.

G.F.

December 27, 1958

Dear Mr. Davies:

This will acknowledge receipt of your letter of November seventh enclosing copies of two resolutions passed by the St. Bernard Parish School Board on October 29, 1958.

Sincerely,

E. Frederic Morrow

Mr. Joseph J. Davies, Jr.
Secretary
St. Bernard Parish School Board
Chalmette Post Office
Louisiana

lrs/McN

ST. BERNARD PARISH SCHOOL BOARD

November 7, 1958

The President
The White House
Washington 25, D. C.

Dear Mr. President:

Attached are copies of two resolutions passed by the St. Bernard Parish School Board on October 29, 1958.

Yours truly,

Joseph J. Davies, Jr.

JOSEPH J. DAVIES, JR.
Superintendent

JJD/df

Attachments

RESOLUTION

WHEREAS, the State Board of Education has determined that approximately $15,000,000.00 additional money is needed to provide a full nine month school term for the children of Louisiana, and

WHEREAS, the St. Bernard Parish School Board has determined that an additional $158,000.00 of revenue is necessary to operate the public schools of this Parish for a full nine month session,

NOW, THEREFORE, WE, the members of the St. Bernard Parish School Board do respectfully request the Governor of Louisiana to call a special session of the Louisiana Legislature for the purpose of providing the necessary monies needed to operate Louisiana's public schools for a full nine month session.

I hereby certify that the above is a true and correct copy of a resolution passed by the St. Bernard Parish School Board at a special meeting on October 29, 1958.

Joseph J. Davies, Jr.
JOSEPH J. DAVIES, JR., Secretary
St. Bernard Parish School Board

R E S O L U T I O N

WHEREAS, the St. Bernard Parish School Board accepts the mandate from the Legislature of Louisiana and as an agency of the State pledges its full support to continue the operation of St. Bernard Parish Schools in accord with its established policy of segregating white and Negro children, and maintaining separate schools, taught by teachers of the respective races, and with equal, modern and proper educational facilities in fact for the children of all races.

WHEREAS, we recognize that serious conditions exist in various states in the South arising out of interference by the Federal Government in the operation of public schools, a right traditionally and constitutionally vested in the states.

WHEREAS, we believe that the Senators and Representatives from the State of Louisiana and from the other states have not been as alert and forceful as they could have been in the Congress of the United States in preserving public education as a function of the state, and further that party affiliation and seniority on Congressional Committees have outweighed their consideration, action and presentation of issues that are fundamental to the continuation of States Rights and Public Education in the schools of the nation.

THEREFORE BE IT RESOLVED, That we call upon the Senators and Representatives of Louisiana to encourage, to initiate, and to stand with senators and representatives from other states, irrespective of party platform and party affiliation, in adopting Legislation on a national level as follows:

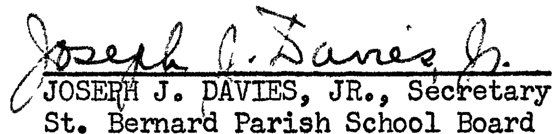
1. That will curb the power of the Supreme Court of the United States

2. Reinstate States Rights

3. Preserve to the individual states the right inherent since the founding of this country to operate a system of public education free from intervention and interference by the Federal Government.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to the President of the United States, the Vice President of the United States, the Senators and Representatives from Louisiana, the Governor of Louisiana, Members of the State Board of Education, the State School Boards Association, Presidents and Superintendents of all School Boards in Louisiana, and the Press.

I hereby certify that the above is a true and correct copy of a resolution passed by the St. Bernard Parish School Board at a special meeting on October 29, 1958.



JOSEPH J. DAVIES, JR., Secretary
St. Bernard Parish School Board

December 29, 1958

Dear Mr. Meyer:

This is in reply to your letter of December nineteenth to the President, in which you comment on the Supreme Court decision of 1954 holding unconstitutional segregation of the races in public schools.

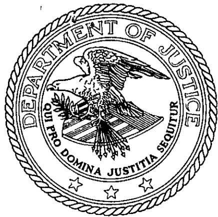
Your interest is well understood and appreciated. It occurs to me that you might like to examine the enclosed statements of the Attorney General on this subject.

Sincerely yours,

David W. Kendall
Special Counsel to the President

J.D.E. Meyer, Esq.
Meyer, Goldberg, Hollings, Lempesis
& Uricchio
115 Church Street
Charleston, South Carolina

jt



Office of the Attorney General
Washington, D.C.

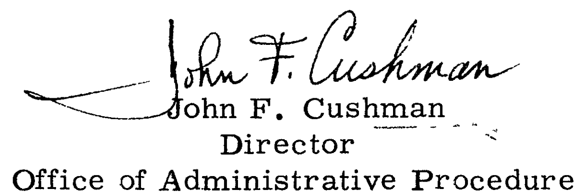
December 24, 1958

MEMORANDUM FOR

Honorable David W. Kendall
Special Counsel to the President
The White House

In accordance with your request of December 23 to the Attorney General, I am enclosing a suggested draft reply to the letter from Mr. J.D.E. Meyer.

Mr. Meyer's letter to the President is returned herewith.



John F. Cushman
Director
Office of Administrative Procedure

SUGGESTED DRAFT REPLY

Dear Mr. Meyer:

This is in reply to your letter of December 19, 1958, to the President, in which you comment on the Supreme Court decision of 1954 holding unconstitutional segregation of the races in public schools.

In view of your interest, it occurred to me that you might like to examine the enclosed statements by the Attorney General on this subject.

Sincerely yours,

Enclosures

December 23, 1958

MEMORANDUM FOR:

The Honorable William P. Rogers
The Attorney General

Respectfully referred to the Department of Justice for a draft reply, which draft we would appreciate having by Wednesday, December thirty-first.

David W. Kendall

Ltr. to Pres., dtd December 19, 1958
From: Mr. J. D. E. Meyer, (Esq.),
Meyer, Goldberg, Hollings, Lempesis & Uricchio,
115 Church Street, Charleston, South Carolina

States Supreme Court Justice fails to follow the Supreme Law of the Land - refers to segregation. je

THE WHITE HOUSE OFFICE

ROUTE SLIP

(To Remain With Correspondence)

TO Mr. Kendall

PROMPT HANDLING IS ESSENTIAL. WHEN DRAFT REPLY IS REQUESTED THE BASIC CORRESPONDENCE MUST BE RETURNED. IF ANY DELAY IN SUBMISSION OF DRAFT REPLY IS ENCOUNTERED, PLEASE TELEPHONE OFFICE OF THE STAFF SECRETARY.

Date December 22, 1958

FROM THE STAFF SECRETARY

ACTION:

Comment

Draft reply

For direct reply

For your information

For necessary action

For appropriate handling x

See below

Remarks:

GPO 16—71264 1

By direction of the President:

A. J. GOODPASTER
Staff Secretary

LAW OFFICES
MEYER, GOLDBERG, HOLLINGS, LEMPESIS & URICCHIO
ATTORNEYS AND COUNSELLORS AT LAW
115 CHURCH STREET
CHARLESTON, S. C.

J. D. E. MEYER
DAVID S. GOLDBERG
ROBERT M. HOLLINGS
J. LOUIS LEMPESIS
PAUL N. URICCHIO, JR

December 19, 1958.

IN REPLY ADDRESS
J.D.E.Meyer

Hon. Dwight D. Eisenhower
President of the United States
Washington, D. C.

PERSONAL
(Not for Publication)

My dear Mr. President:

I am from Charleston, South Carolina, and, strange to say, I became a Republican back about 1920, when as a young lawyer, I was offered a position as United States Attorney, which position I accepted. The first man to speak to me about the position was the Honorable Ben A. Hagood, of Charleston, South Carolina, a lawyer of excellent repute in our State, and I was sent to have a consultation with the Honorable Ernest F. Cochran, who later became a Federal Judge in the Eastern District of South Carolina. I was nominated for United States Attorney, was confirmed by the Senate, and served two terms. At the time that I accepted the United States Attorneyship, I stated that I did not desire to have anything whatsoever to do with the naming or recommendation of any postmasters, or any other political jobs to be given out by the Republicans in South Carolina.

Since you probably do not remember me, although I shook hands with you in Columbia, South Carolina, when you were first running for President, I think that I ought to mention something about myself before I say what I am about to say.

I served in the first World War. I was Adjutant of an Infantry Division, and later became Ammunition Officer and Assistant G1 of the Thirtieth Division, A.E.F. General Lewis commanded this Division. Colonel Pope of the Regular Army, selected me as Assistant G1 of the Thirtieth Division. I might say that I participated in all of the active engagements in which the Infantry troops of the Thirtieth Division, A.E.F. were engaged. Shortly before we returned from Europe, I represented an American soldier at the special request of Major General Reed and Major General Lewis in a court-martial case which might have resulted in international complications. I am happy to say that I was successful in the handling of this case. I am a Citadel (the Military College of South Carolina) graduate of the Class of 1912. I have practiced law at Charleston, South Carolina. I am a Past President of the Charleston County Bar Association, and I have acted as a special Circuit Judge.

I have attended,as a delegate, some of the Republican Conventions, and I have represented our Delegation before the Credentials Committee. If Senator Bob Taft were alive, I could simply refer you

to him because I knew him personally. He was a good friend of mine, and on one occasion he stated to me: "Major, if I am ever elected President, you can come and eat peanuts on the White House steps". I have never forgotten that statement.

Please pardon me for writing what I am about to write. I state this because I do not know how you may take it. I think that if Bob Taft had lived, he would have been the Chief Justice of our Supreme Court rather than our present Chief Justice. I believe that if Bob Taft had lived, you would never have been in all of this integration-segregation business. Personally, I have had some very definite thoughts in reference to the Supreme Court and their 1954 Decision. I don't think it is necessary for me to express them. Up to this present letter to you, I have never made a speech on this situation, nor have I publicly expressed my opinion except perhaps to one or two personal friends in a private conversation. But this week I am in receipt of a copy of U. S. News and World Report, dated December 19, 1958. This magazine, on page 108, expresses the thought which I have always entertained in reference to the Supreme Court Justices who sat on that case and rendered that Opinion. In other words, when a Supreme Court Justice assumes his office, he takes a solemn oath to support the Constitution of the United States, and that means the Constitution of the United States as it has been interpreted up to this time, unless changed by the Legislative Branch of the United States. That, in short, has always been my feeling, and I had intended originally to write a piece for publication, expressing that opinion, but under my own duty to defend the Constitution of the United States, I have refrained from either going into print or mentioning this matter in any public speech which I have made.

The compelling reason why the decisions of the Supreme Court should be strictly adhered to is not so much the violation of an oath of a Supreme Court Justice in failing to follow the Supreme Law of the Land, but it is for the stability of our Union. Millions of dollars are sometimes invested dependent upon the construction of a law by the Supreme Court, and if nine men can change a law for psychological reasons, the stability of our Court is liable to ruin at anytime, and the rights of our citizens endangered.

What I would like to see done, which I know will be hard to accomplish, would be to have our Supreme Court on its own behalf come out with a statement that they realize that they are human beings; that they realize that they have made a mistake and that in the interpretation of the Constitution, the word "equal" meant "equal" and nothing more. I know that if I had been a member of that Court and had joined in the Decision of 1954, I would have "guts" enough to acknowledge my mistake and attempt to correct it.

In the reading of this magazine article, I disagree with so much of the article as refers to you in the last column. I admit that

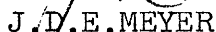
you took a solemn oath to support and defend the Constitution as it existed and was interpreted when you took oath in 1953, but I take the position that when the Supreme Court has changed the meaning of the Constitution, I believe that it is just as much your duty to uphold the Supreme Court's Opinion of 1954 as it is the duty of every other citizen to abide by the Decision of that Court until some Legislative action be taken to change that Opinion, or until the Supreme Court itself changes that Opinion.

Please pardon me for writing you. Please do not bother to answer this letter. You may want to keep it for your files or throw it in the waste paper basket. I just wanted to get it off of my mind. It is what I have been thinking for about four years and this article in the U. S. News and World Report was the fuse or spark which started me to write you this letter.

Before closing, I might add another thought. Shortly after the Maine elections were held, I read in some New York newspaper something to the effect that the Labor Unions had put workers at all of the Polls. I am perhaps just a lone voice crying in the wilderness, but it is my intuition that unless something is done to stop the Labor Unions from spreading and spreading and exercising more and more power, this Country is going to be defeated from within before another World War happens. The right to strike might be approved by the Supreme Court, but even the Bible says to be temperate in all things, and I do not think that the right to strike by Labor Unions should be permitted to tie up any business where it effects the economy of the Union or the best interests of our Government.

With kindest regards and Greetings of the Season, I beg to remain

Respectfully yours,



J.D.E.MEYER

JDEM/lm

Department of Justice

FOR RELEASE TO MORNING PAPERS
THURSDAY, SEPTEMBER 18, 1958

ADDRESS

BY

HONORABLE WILLIAM P. ROGERS

ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

Before the

THIRTEENTH ANNUAL MEETING

of the

NATIONAL CONFERENCE ON CITIZENSHIP

Statler Hilton Hotel

Washington, D. C.

September 17, 1958

The early fall of each year is a stirring and significant time in our land. Annually, millions of our children return to school after the long summer holiday. In each state, the public education systems resume the work upon which, in a very real sense, our future as a nation depends.

However, as you know, there are overhanging clouds this year in some places. In those places there is resistance, in one form or another, to specific decrees of the federal courts directing the admission or retention of Negro children in public schools together with white children. The situations which exist in these places are not merely of local significance. They carry serious implications harmful to our system of government which is based on the principle that we are a nation in which the rule of law reigns supreme.

Because the problem is a serious one, I thought it would be appropriate to discuss some phases of it tonight at this National Conference on Citizenship. Certainly it is important that all citizens have an appreciation of how sound our system is and how harmful it would be to our nation if a sustained effort were made to defy it.

Four years ago, the Supreme Court of the United States announced its unanimous decision in the School Segregation Cases. The Court determined that enforced segregation of the races in public school denies "the equal protection of the laws" guaranteed by the Fourteenth Amendment of the Constitution.

The following year the Court, in considering the relief which should be accorded the Negro school children, ruled that the transition to nondiscriminatory school systems was to take place with all deliberate speed. The Court recognized, however, that the time and manner of compliance would vary with local conditions. It accordingly left to the local school authorities, subject to the supervision of the local district courts, the formulation of appropriate plans for carrying out the decision. The Court thus provided that there should be latitude as to the timing and as to the details of compliance. It also declared that "(i)t should go without saying that constitutional principles cannot be allowed to yield simply because of disagreement with them."

Various notions have been circulated by persons opposed to the School decisions. Although the arguments take different forms and are expressed in different ways, basically they come down to this: that a decision of the Supreme Court of the United States interpreting the Constitution of the United States is something less than an authoritative expression of the law. This is an unsound notion which causes misunderstanding and confusion.

When our forefathers, representing the sovereign people, established and ordained the Constitution, they provided that it "shall be the Supreme Law of the Land." Obviously this is a fundamental concept.

The Constitution, however, is brief and in many important respects is couched in general terms. It is, in Chief Justice Marshall's words, a charter of government "intended to endure for ages to come, and consequently

to be adapted to the various crises of human affairs."* It is not a lengthy compendium of detailed rules. Indeed, it outlines the whole structure of our form of government in a mere four thousand words, and the amendments, spanning more than a century and a half, have added only another two thousand. It was intentionally drafted in broad terms so that it would cover a myriad of situations, many of them only dimly conceived--many wholly unforeseeable. Of necessity, these constitutional provisions acquire specific meaning and content only as they are interpreted and applied in concrete cases. This was fully recognized by the framers of the Constitution and is inherent in the nature of the legal process.

Let me illustrate how the Constitution takes on meaning. Congress is granted the power to regulate commerce among the several states. But what is the specific content of the word "commerce"? Does it, for example, mean that Congress can regulate the manufacture of goods as well as their transportation? If so, in what circumstances? The Constitution does not say anything about child labor or minimum wages. It does not discuss monopoly, restraint of trade, or the misbranding of goods. Is legislation upon these matters consistent with the underlying constitutional purpose? Such questions have been answered on a case by case basis over the course of many generations.

Let us take another example. The Fourteenth Amendment provides that no state shall deprive any person of liberty without due process of

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*McCulloch v. Maryland, 4 Wheat. 316, 415

law. But when is the law's process _due_ process? Suppose that a state prosecutor compels an accused in a criminal case to submit to the taking of his footprints or fingerprints. Does that violate his constitutional rights? The courts have held that the answer is "No." On the other hand, suppose that a state seeks to obtain physical evidence from an accused by making him submit to the use of a stomach pump. Does that violate his constitutional rights? The courts have held that the answer is "Yes."

To cite additional examples drawn from other constitutional provisions, when is a search and seizure _unreasonable_? When is bail _excessive_? When is punishment _cruel_ or _unusual_? Plainly such constitutional concepts take on specific meaning only as applied to concrete cases by conscientious judges.

The right of free speech occupies a primary place in our constitutional scheme. Yet that right, even though it is not subject to any express constitutional limitations, is not deemed absolute by our courts. As Justice Holmes once said, there is no right to shout "fire" in a crowded auditorium for the purpose of causing a stampede. Similarly, there is no right to engage in libel or slander or to incite riot or insurrection.

Freedom of religion covers many prerogatives--the freedom to worship as one chooses or not to worship at all. But, as was stated in an early case involving a charge of bigamy, * a man cannot excuse violations

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* _Reynolds_ v. _United States_, 98 U.S. 145

of the criminal law on the ground of his religious beliefs. To permit this, the opinion states, would allow "every citizen to become a law unto himself. Government could exist only in name under such circumstances."

These illustrations--and they could be multiplied many times over--show that constitutional provisions are not self-executing; they must be interpreted and applied in concrete cases. As Chief Justice Charles Evans Hughes observed, "The vast body of law which has been developed (under the Constitution) was unknown to the fathers, but it is believed to have preserved the essential content and the spirit of the Constitution."*

How did the framers propose that the Constitution be interpreted? They intended that the ultimate responsibility for interpreting the Constitution and for determining whether governmental action squares with constitutional requirements should be vested in the federal judiciary.

Article III provides that "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." To assure the supremacy of the Constitution, the jurisdiction of the Supreme Court was defined to extend to all controversies arising under the Constitution, including, specifically, those to which the states were party.

The establishment of this judicial power was essential to the new plan of government. The framers of our Constitution had experienced government under the Articles of Confederation which made no provision for a

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* Home Building and Loan Association v. Blaisdell, 290 U.S. 398, 443

federal judiciary. Under that system, as you will recall, each state jealously preserved the right to be the final judge of its own powers. The result was friction, conflict and confusion. A notable example was the prevalent practice of the states in imposing prohibitive and discriminatory taxes and duties upon goods emanating from sister states.

The framers were determined that this mistake should not be repeated. They concluded that if a nation were to be forged, an independent federal judiciary must be created to determine, among other things, the constitutional rights of the individual in relation to governmental authority and the roles of the states in relation to one another and in relation to the United States. As Alexander Hamilton stated in The Federalist,* "A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."

The vital role that the Court was intended to fill as the final arbiter in constitutional controversies was reaffirmed in the First Judiciary Act of 1789. That Act, passed by a Congress in which the framers of the Constitution were the most prominent members, explicitly defined the Supreme Court's jurisdiction to adjudicate cases involving the claim that a state statute, or action taken pursuant to a state law, is repugnant to the Constitution.

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*The Federalist, No. 78

The concept that the judiciary finally must determine challenges to the constitutionality of acts of the federal and state governments is central to our political structure. It provides the means by which constitutional conflicts are resolved, the means which enable us to remain a country of numerous states united in a single nation.

Who can doubt the wisdom of the framers in creating an independent federal judiciary? And who can doubt the wisdom of empowering the Justices to resolve constitutional controversies and other issues of national moment? Under the system thus conceived, we became a united nation. We have demonstrated the capacity to overcome, in the national interest, local rivalries, factionalism and internal conflict. We have weathered every constitutional crisis, and our Constitution has become stronger with the passing years. No person mindful of our history would detract from the great role which the independent judiciary has played in the development of our nation or weaken the high respect to which it is justly entitled.

The framers were, of course, aware that the decisions of the Supreme Court would not always be universally popular. They realized that attacks would be made upon the Court in its role of interpreting the Constitution. Speaking of immoderate assaults upon the institution of the Court, the authors of <u>The Federalist</u> warned "that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress."* The same holds true today.

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*<u>The Federalist,</u> No. 78

To come back to the School Segregation Cases, the clause in the Constitution which the Court was called upon to interpret is the clause in the Fourteenth Amendment guaranteeing "the equal protection of the laws." The Court, after long and careful deliberation and by unanimous decision, concluded that a segregated public school system violates that clause. There has thus been a definitive determination, by the Court ultimately charged with making the determination, as to the constitutional rights of Negro school children. As a nation, we must meet the test of assuring to all persons, whatever their color or creed, the free exercise of their lawfully determined rights and the full measure of the law's protection.

Of course, persons who disagree with decisions of the Court interpreting constitutional rights are free to seek change by the orderly process of constitutional amendment. However, individuals may not determine for themselves when they will obey the decrees of the courts and when they will ignore them. Constitutional rights must not yield to defiance or lawlessness.

The Constitution provides that the President, members of Congress, other federal officials, and the governors, legislators and judicial officers of the states shall be "bound by Oath or Affirmation to support this Constitution." The duty embraced by the oath of office requires support of the Constitution, not as each individual officer, federal or state,

believes it should or might be interpreted, but as it is interpreted by our courts. Similarly each person who owes his allegiance to the United States has this duty. Free government could not long exist otherwise.

In our history, of course, acts of Congress have met constitutional objection, and the Congress has recognized and accepted the role of the Court. In the Steel Seizure Case, President Truman recognized the Supreme Court's decision on a constitutional issue which directly involved the President's powers. And it has been settled since the adoption of the Constitution that state laws and state action must comply with constitutional requirements. As I have pointed out, this was a major concern of the framers of the Constitution. Had they provided otherwise, we would still be a collection of independent states rather than a United States.

As the Supreme Court of North Carolina stated in a recent decision related to the school controversy*--

> "***the Constitution of the United States takes precedence over the Constitution of North Carolina. ***In the interpretation of the Constitution of the United States, the Supreme Court of the United States is the final arbiter. Its decision in the Brown case is the law of the land and will remain so unless reversed or altered by constitutional means. Recognizing fully that its decision is authoritative in this jurisdiction, any provision

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*Constantian v. Anson County, 244 N.C. 221, 228-9 (1956)

of the Constitution or statutes of North Carolina in conflict there-with must be deemed invalid."

The very court which made that statement had been long and deeply committed to the view that separation of the races in public schools was legally permissible. That did not for one moment blind it to the necessity of recognizing that the ultimate responsibility for interpreting provisions of the federal Constitution is vested in the Supreme Court of the United States.

No one should overlook the fact that in certain areas of the country there are very difficult problems of adjustment and accommodation. But these difficulties, I am convinced, can be overcome -- not, of course, by an attitude of defiance, which is futile and damaging -- but by a determination on the part of men of good will to find constructive solutions within the guidelines marked out by the Supreme Court.

In summary, I think the following propositions are clear:

First. The Constitution is the supreme law of the land.

Second. Constitutional provisions take on meaning and content as they are interpreted and applied in specific cases.

Third. The Supreme Court, under our federal system of government, is charged with the ultimate responsibility of interpreting and applying the provisions of the Constitution and adjudicating specific rights which are asserted thereunder.

Fourth. If there is a disagreement with the Constitution as interpreted by the Courts, the people have a right to change it by the orderly process of constitutional amendment.

Fifth. There is no right, however, to flout the decisions of the Supreme Court of the United States. As the President said, "Every American must understand that if an individual, a community, or a state is going successfully and continuously to defy the Court then there will be anarchy."

These propositions are not novel. But since they are vital, they cannot be restated too often. Individual character depends upon basic virtues. So, too, the strength of a nation rests upon its devotion to fundamental principles. Perhaps the most important of these fundamental principles is respect for the lawfully determined rights of others and a firm dedication to the rule of law.

Department of Justice

ADDRESS

BY

HONORABLE WILLIAM P. ROGERS

ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

Before the

CALIFORNIA STATE BAR CONVENTION

Coronado, California

Wednesday, October 8, 1958

During our nation's growth, problems have arisen, from time to time, challenging to a most basic concept of our constitutional system - equal justice for all people under law. In some parts of our country we are again faced with such problems.

Unfortunately there is resistance in a few areas to decisions of the federal courts determining the legal rights of Negro school children. Continued resistance cannot fail to damage the fabric of our government and the standing of our nation in every corner of the world. The problems are thus of urgent concern to all of us.

It is vitally important that all persons, whatever their personal views, understand the law and comply with its requirements. I am not unmindful that many persons who resist the decisions in the School Cases do so out of deep personal conviction. Many of them do not intend to defy the courts or to deny to others their lawfully determined rights. In large measure, I think they have relied on representations, by state officials and others, that there was some constitutional means, other than closing down the public schools, by which they might maintain their traditional practices.

Tragic though it is, the closing of some public schools has demonstrated the fallacy of this notion. But even though the alternatives should now be perfectly clear, much misunderstanding and confusion, charged with high emotion, persist.

The late Arthur T. Vanderbilt, Chief Justice of New Jersey, once said that, "No class in our society is better able to render real service in molding public opinion than the lawyer." Today our profession has a heavy responsibility to provide leadership and guidance to the end that there shall be orderly compliance.

Last week, the Supreme Court, speaking as one, announced its opinion in the case of Cooper v. Aaron.* The opinion is a memorable one. In its opening words, the Court solemnly declared, "As this case reaches us, it raises questions of the highest importance to the maintenance of our federal system of government." The Court has answered the questions posed by the case and it has done so in clear and unmistakable terms. For lawyers, there can certainly be no substantial doubt as to the existing legal situation.

There is, first, the basic proposition that the Constitution is, in the words of Article VI, the "supreme Law of the Land," of binding effect upon the states "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." State legislators, executives and judicial officers, as well as federal officials, are solemnly

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*August Special Term, 1958, No. 1

committed by oath of office to support the Constitution. For, as the Court points out, "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."

No less fundamental is the proposition that it is the province and the duty of the federal judiciary to interpret and expound the law of the Constitution. From the earliest days of the Republic, it has been recognized that this is a permanent and indispensable feature of our constitutional system of government. Under the system thus conceived, we became a united nation. Under it, we have weathered every constitutional crisis.

The opinion recites and the Court, as it is now constituted, unanimously reaffirms the constitutional principle declared in Brown v. Board of Education*: That enforced segregation of the races in public schools is inherently discriminatory and constitutes a denial of "the equal protection of the laws" guaranteed by the Fourteenth Amendment.

The Court further emphasizes that "the constitutional rights of children not to be discriminated against in school admission on grounds of race or color *** can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously'."

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*347 U.S. 483.

The Court points out, at the same time, that the federal district courts, in the exercise of their equity powers, may take account of local factors in order to bring about the transition to non-segregated schools in an orderly and systematic manner. Time, it is recognized, will be required in some communities, though not in others. The timing and the manner of transition are left to local school boards under the supervision of local district courts. However, delay in any guise because of hostility to the principle announced will not be countenanced.

The applicable legal principles have thus been clearly established. And, as President Eisenhower said last week: "It is incumbent upon all Americans, public officials and private citizens alike, to recognize their duty of complying with the rulings of the highest court in the land." "Any other course," he cautioned "would be fraught with grave consequences to our nation."

It is not enough, in the administration of justice, to declare the legal principle. The law is not a mere intellectual pastime. It provides the framework for the establishment of orderly human relationships. Legal principles must be implemented by persons who have both a respect for the law and an understanding of the particular requirements which it imposes.

In the Department of Justice, we have received hundreds of letters from all over the country concerning the School Cases and the problems of desegregation. As you might surmise, they reflect every shade of opinion. Certainly the points of view of all persons on this important national issue need to be carefully weighed and given thoughtful consideration.

One point of view often advanced is that the problem is purely one of local concern. Why, they ask, are federal courts interfering with the operation of local public school systems?

Of course, public education--and I quote from the Supreme Court's opinion of last week--"is primarily the concern of the states." But that is not the end of the matter. As the Court goes on to point out, all state responsibilities "must be exercised consistently with federal constitutional requirements as they apply to state action."

Illustrations of this principle are abundant. The enforcement of a state's criminal laws is certainly the primary responsibility of the state. Thus, in providing for trial by jury, a state may choose any reasonable method it wishes for organizing juries and selecting jurors. But a state may not exclude persons from jury service on the basis of race, creed or

color. Thus, in Strauder v. West Virginia,* decided in 1880, the Supreme Court set aside a Negro's conviction on the ground that state law had effectively excluded all members of his race from service on the grand and petit juries. In doing so, the Court emphasized that the Fourteenth Amendment was drafted because "it required little knowledge of human nature to anticipate * * * that state laws might be enacted or enforced to perpetuate the distinctions that had before existed." The amendment "was designed," the opinion continues, "to assure to the colored race the enjoyment of all the civil rights that under law are enjoyed by white persons * * *."

Consider another example. In the exercise of its police powers, a state may regulate, by licensing or other measures, the manner in which a local business is conducted. It may also restrict entry into that business to qualified persons. But, as was held at an early date in the leading case of Yick Wo. v. Hopkins,** this certainly does not mean that a state may administer a licensing statute so as systematically to exclude from an occupation persons of a particular race -- in that case, persons of Oriental ancestry.

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* 100 U.S. 303

** 119 U.S. 356

A state has full control over its election machinery. But it does not follow that it may adopt a scheme of registration which is subtly calculated to disfranchise voters of a particular race. The Constitution, as was said in one such case, "nullifies sophisticated as well as simple-minded modes of discrimination."*

So, also, in the field of public education, a state is free to work out, as it chooses, the details of its public school system. Buildings, school buses, teacher selection, curricula, all the elements which go into a school system and its management, are, as they have always been, the affair of the state and local authorities. What the Supreme Court has said is this: The state may not hang a sign upon the door of the public school, "For White Children Only." For the state to do this is to deprive Negro children of rights guaranteed to them by the federal Constitution.

Others say to me, "A majority of the people in our community are opposed to desegregation of the public schools. What has happened to the democratic principle that the views of the majority should prevail?"

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* Lane v. Wilson, 307 U.S. 268

This question shows a basic misunderstanding of our constitutional system of government. The Constitution does not mean one thing in Maine, another in Florida, and something else in California. People living in different sections of our country may have different viewpoints on particular issues, but constitutional rights are fundamental guarantees which may not be denied in any area.

To be sure, there is always the right to seek change in the law through orderly constitutional processes. But disagreement with a constitutional principle declared by the Supreme Court of the United States does not give those who disagree the right to override the Court's mandate. The constitutional rights of individuals and of minority groups would be worth little if a majority could push them aside at will. As the President has said: "We must never forget that the rights of all of us depend upon respect for the lawfully determined rights of each of us. As one nation, we must assure to all our people, whatever their color or creed, the enjoyment of their constitutional rights and the full measure of the law's protection."

A closely related question takes this form -- Is it the business of government to tell people with whom they shall associate?

Of course, it is not. Private preferences or prejudices, noble or ignoble, present no constitutional question. But state action stands on a different footing. The injunction of the Fourteenth Amendment applies to state action and provides that no "State shall deny to any person within its jurisdiction the equal protection of the laws." Individuals may not look to the state to aid or support their particular private prejudices.

This point is well illustrated by the Restrictive Covenant Cases.* In those cases, various individuals had entered into agreements restricting the use and occupancy of certain property to members of the Caucasian race. A piece of property covered by such an agreement was conveyed to a Negro family, whereupon other property owners in the area brought suit in a state court to restrain them from taking possession. On review, the Supreme Court concluded that, standing alone, these private arrangements did not violate the Constitution. Nonetheless, the Court held, the state may not make available to individuals the "coercive power of government" to deny to persons, on grounds of race or color, the enjoyment of private property rights.

As I stated earlier, many who write are confused because they have been led by state laws and by some of their state officials

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* Shelley v. Kraemer, 334 U.S. 1; Hurd v. Hodge, 334 U.S. 24.

to believe that there are means and devices by which the principle of segregation might be maintained in their public school systems. But, as the Court stated last week, "State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the (Fourteenth) Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws." If it ever were doubtful, it is plain now that subterfuge and evasion will not work. They are self-defeating. They lead but tortuously to a dead end.

One of the cases cited with approval in the Supreme Court's opinion is the decision of the Court of Appeals for the Fifth Circuit in the case of Derrington v. Plummer.* The facts of that case are worth noting. A county in Texas had leased a cafeteria in a newly constructed courthouse to a private tenant. The tenant then undertook to exclude Negro patrons. The Court of Appeals, pointing out that the courthouse had been constructed with public funds for the use of citizens generally, held that the acts of discrimination were as much state action as if the county had operated the cafeteria directly.

In still another case which involved operation of public facilities through the agency of a private corporation, a federal

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* 240 F. 2d 922

district court in West Virginia stated, "Justice would be blind indeed if she failed to detect the real purpose of this effort * * * to clothe a public function with the mantle of private responsibility."*

As Justice Holmes once declared, "States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification * * *."**

The lesson is written in large letters, plain to everyone's view. An Alabama lawyer recently summed it up in these words: "To a lawyer who has followed the segregation cases it is apparent that the state cannot exercise any part in the operation of a private school system. In other words, if we are to have a segregated school system then public education as we have known it is finished."

It is encouraging that responsible voices are beginning to be heard with more frequency. Ministers, school boards, parent-teacher associations, students, some of our state officials are speaking out courageously and realistically. For example, the Attorney General of North Carolina said last week:

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* Lawrence v. Hancock, 76 F. Supp. 1004

**Nixon v. Herndon, 273 U.S. 536

"Those states which seek to evade have been and will continue to be unsuccessful, and, to those states, there are but two avenues which remain open -- an obedience to the law or avoidance of the law. To avoid the law, the state merely goes out of the business of public education. That day should never come to North Carolina."

In speaking of compliance, let me re-emphasize that the courts have not imposed drastic or inflexible requirements. An examination of the decrees now outstanding discloses that the district courts, in the exercise of their equity powers, have approved a variety of plans submitted by local school authorities. These plans embrace different approaches. Thus, in some, the transition is to be initiated in the first grade; in others, at a different level. In Little Rock, for example, the first step under the school board's plan was to be taken in the senior high school in the year 1957 -- a date more than two years removed from May, 1955, when the plan was initially approved by the local district court -- and it was to be gradually extended to the remainder of the school system over a period of six years. The test applicable in each instance is whether the specific plan submitted, viewed in the light of prevailing local conditions, provides a prompt and reasonable

start towards desegregation. Time is allowed in appropriate cases, if it is utilized in good faith.

But there must be an end to delusion and an awareness of the path which, in view of our constitutional system and the unanimous decision of the highest court in our nation, must inevitably be followed. The crux of the matter is one of intention. In those states where there has been a willingness to seek methods of good-faith compliance reasonable solutions are being found. Where people have sought to comply, they have, in every instance, made progress. On the other hand, those who seek to thwart compliance are sowing a bitter harvest. There is not only the damage, already evident in some places, to public schooling. There is this, also, to weigh and consider. Disrespect for law in one area breeds disrespect in others. And in an atmosphere of disrespect, rebelliousness leads soon to violence.

A few moments ago, I quoted the Attorney General of North Carolina. He also said this: "However distasteful may be the job which is assigned to me by law, I intend to take my stand on the side of the law--and neither through public utterance nor in any other manner will I seek to advise people to take any other stand than that which I know under the law is the only stand we may take. If this is politically inexpedient, dangerous or fatal, I'll just have to be content with what the future holds for me."

All responsible citizens must face the realities. They, too, must take their stand on the side of the law. I repeat - given the will to comply in good faith, all problems of accommodation and adjustment can be satisfactorily met. The federal government stands ready to cooperate and assist by every means within its power in the search for such solutions. But without a basic willingness to comply, any search, by whatever means, is apt to be merely time-consuming and frustrating.

We have known in the past problems which cut deep and caused division within the nation. The comforting conclusion which one can draw from our history is that, regardless of the travail or the shame of the day, the nation has invariably emerged strong and united. If we are to be faithful to the principles upon which our nation was founded, we must go forward today with the task of translating into reality the constitutional guarantee of equality under the law.

Department of Justice

FOR RELEASE ON DELIVERY
SUNDAY, DECEMBER 7, 1958 1:00 P.M.

"PUBLIC OPINION AND CIVIL RIGHTS"

ADDRESS

BY

HONORABLE WILLIAM P. ROGERS

ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

Before the

ANNUAL AWARDS LUNCHEON

of the

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

Savoy Plaza Hotel

New York, N.Y.

December 7, 1958

It is a real privilege to participate in these ceremonies honoring the recipients of the America's Democratic Legacy Award of the Anti-Defamation League. You have selected three outstanding organizations in the field of mass communications - the Columbia Broadcasting System, Look Magazine, and the New York Times, for these awards. Each has used its prestige and influence wisely and fully for human betterment. The individuals who make up these great organizations are entitled to the sincere thanks of all thoughtful Americans for the part they have played in the cause of human rights.

Over the past several years it has been my good fortune to know and to work closely with the Anti-Defamation League. You have been vigorous in the fight to overcome the evils of prejudice; you have been wise in the methods you have used to advance the concept of equality for all;and you have never failed to give full credit to others for their efforts. You, too, deserve the sincere thanks of thoughtful Americans for your devotion to democratic ideals.

A matter which is today uppermost in the minds of all persons who are concerned with human rights is the serious resistance in some areas of our Nation to the decisions of the federal courts. We are witnessing in a few states a challenge to the principle that we are a Nation in which the rule of law reigns supreme and in which every individual, regardless of his race, religion or national origin, is entitled to the equal protection of the laws.

Yet in our concern over the deep-seated and difficult problems involved, we should not lose sight of the fact that the tensions have become

increasingly acute because we are in a period of great progress in the field of human rights. There are, to be sure, starts, stops--occasionally some backward steps--but I believe that we are moving forward irresistibly and with purpose toward fulfillment of a noble concept--equality under law for all people everywhere in the United States.

Equality under law is a national concept rooted in this Nation's Constitution. Its fulfillment could never be a violation of the rights of any state. Nonetheless, one of the most deceptive notions which has been advanced by those who oppose the decision of the Supreme Court in the *School Cases* is that the federal government is improperly interfering with the operation of the local public school systems.

Of course, public education, as the Supreme Court explicitly recognized, is a primary concern of the states. But, as the Court went on to point out, all state action "must be exercised consistently with federal constitutional requirements as they apply to state action." The applicable constitutional requirement is the provision of the Fourteenth Amendment which declares that "No State shall **** deny to any person within its jurisdiction the equal protection of the laws."

In a long line of cases prior to the *School* decisions, the Supreme Court, in a variety of situations, gave concrete meaning to this command of the Constitution. For example, it set aside convictions of Negroes by state juries from which Negroes had been systematically excluded. The states involved did not seriously contend

that the Supreme Court was thereby trying to run their jury systems. The Court also struck down licensing laws which were administered so as to exclude persons of Oriental ancestry from certain occupations. The states involved did not argue that the federal government was attempting to take over their legitimate licensing functions. On the contrary, they recognized the unconstitutionality of the discriminatory practices.

There is no more reason to argue that the federal government is interfering with rights of the states in the field of public education. A state is completely free to work out, as it chooses, a public school system--teacher selection, curriculum, all of the elements which go into a school system and its management are, as they have always been, the affair of the state and local authorities. The Supreme Court has never suggested otherwise. It held merely that a state violates the Constitution of the United States when it denies to a Negro child who is otherwise qualified for admission to a particular public school, and who seeks admission, the right to enter that school.

The legal issue has been settled. No serious-minded person can doubt the permanence of the *School* decision. The issue now is the manner and method of accommodation to it. If the community's attitude is governed by a respect for the constitutional rights of others the problems can be solved with due consideration for all of the interests involved. The guidelines laid down by the Supreme Court provide latitude;

they leave room for the use of varied techniques in making the necessary adjustments. In every community where good faith efforts have been made there has been progress. On the other hand, if the accommodation takes place only after a period of obdurate and bitter resistance, the community and the state involved will be scarred by the experience. The damage to the Nation itself cannot be calculated.

We have seen the doors of thirteen public schools closed in four communities. This unprecedented action was taken in order to avoid compliance with court decrees requiring the admission of qualified Negroes who sought only to exercise their lawfully declared rights. In consequence, about 16,400 young people, white and colored, have had their public schooling disrupted.

A grave consequence of attitudes of defiance is that they create an atmosphere in which extremists and fanatics are encouraged to take the law into their own hands. Many schools and places of worship have been the target of actual bombings or threatened violence. For the most part, these shameful acts have taken place in communities where necessary adjustments have been made without incident. They appear to be retaliation against people of good will who are demonstrating by their acts that the adjustments required do not lead to the dire consequences predicted by the fanatics. The responsibility for this wanton destruction of property rests, in my opinion, on the doorsteps of those who stir up race prejudice and advocate defiance

of law. The Department of Justice, through the FBI, is lending every possible assistance in an all-out effort to apprehend the guilty parties.

Another consequence is an upsurge in hate literature, which had been on the decline for many years. On the basis of complaints from persons who have received unsolicited trash of this sort, it appears that there has been a recent increase of approximately 400 percent in this type of mail, much of it printed in the basements of professional bigots.

Community tensions resulting from racial prejudices are not without their economic implications. Private enterprise, in making new investments, will necessarily take into account the climate of local opinion and the public facilities that will be available to personnel. By the same token, the Government, in determining the location of new or expanded federal facilities will have to give consideration to the availability of public schools and other public conveniences as a matter of fairness and justice to its personnel who will be on duty there.

The international consequences of incidents which reflect prejudice are far reaching. In September 1957 an editorial in an Asian newspaper said:

> "***When an Indian Ambassador is pointedly asked to sit in the 'coloured' section of an American airport, when a Burmese invitee (of the United States) is turned out of a

restaurant, the whole of Asia is stirred to its emotional depth."

A newspaper in Africa recently stated:

"The problem of the status of American Negroes is one that America must settle at once, if she sincerely wants to win the good will of Africans."

The Soviet press, of course, exploits racial incidents occurring in the United States for its own purposes. Thus a recent article commenting on incidents involving schools declared that all the talk in the United States "about individual freedom and dignity, all the slogans voiced about the equality of rights and democracy lose all their meaning while such facts exist."

We know, of course, that the hostile attitudes which prevail in a few areas do not accurately reflect the views of the overwhelming majority of Americans. We have all been encouraged by the fact that even in areas where there is the sharpest conflict with tradition, responsible voices are pointing to the disastrous consequences which are bound to flow from purely negative attitudes. For example, over three hundred clergymen of Atlanta, Georgia, representing seventeen denominations, recently warned that "all hatred between races and groups within society carries with it the constant threat of violence and bloodshed." They also declared, "It is clearer now than ever before that we must obey the law***and that the public school system must be preserved."

Many other voices throughout the land are speaking out in support of orderly processes. Statements by religious denominations have emphasized the underlying moral issue. Communications media -- radio, television, motion pictures, newspapers and magazines -- are playing a most important role. And almost daily the voices of responsible state officials and respected private citizens are being heard, pointing out the futility of defiance and urging the need for common sense and constructive measures.

This educational process has already had its impact. For a time, as you know, the notion was being circulated that a decision of the Supreme Court interpreting the Constitution of the United States was something less than an authoritative expression of the law. I think that this misconception has now been effectively dispelled. There is also, I think, a fuller understanding of the meaning of the *School* decision. Thus, it is now widely realized that the decision does not impose inflexible requirements and that there is considerable discretion so long as state and local authorities proceed in good faith on a basis which does not make race a criterion. At the same time, there is an increased awareness that neither outright defiance nor schemes which are merely evasive will be countenanced by the courts.

We in the Department of Justice have made every effort faithfully and conscientiously to carry out our duties under the

Constitution and laws of the United States. We shall continue to take all necessary and appropriate measures to support and enforce the decrees of the federal courts. And we are giving careful thought and study to a number of legislative proposals.

What I wish to emphasize today, however, is not the role of law enforcement but, rather, the vital importance of creating an enlightened public opinion, a climate in which obstructionism will be seen for what it is -- an exercise in futility. Those of us in law enforcement, and you who fight discrimination in all its insidious forms, know that neither the law alone, nor education alone, can bring lasting solutions to these difficult problems. Each is indispensable to the effectiveness of the other.

Thus the agencies of communication, in addition to presenting news and information can provide, as many are successfully doing, a forum for enlightened opinion. They can lay bare false and deceptive claims, help to allay groundless fears and prejudices and strengthen the devotion of all citizens to our national ideals.

How vital is this task? Chief Justice Hughes once stated it this strongly:

> "We have in this country but one security. You may think that the Constitution is your security - it is nothing but a piece of paper. You may think that the statutes are your security - they are nothing but words

in a book. You may think that elaborate mechanism of government is your security - it is nothing at all, unless you have sound and uncorrupted public opinion to give life to your Constitution, to give vitality to your statutes, to make efficient your government machinery."

To give continuing vitality to our liberties is a task for all of us; it is an enduring task; it is the highest calling of the Nation. There is no greater bounty that mankind can enjoy than the liberties which result from freedom under law. There is no greater heritage that we can bequeath to our children than a full appreciation of the concept of equality under law and what it means to our lives, our freedom, and our self respect.

Department of Justice

FOR RELEASE AT
10 AM PDT (1 PM EDT)

ADDRESS

BY

HONORABLE WILLIAM P. ROGERS

ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

Before the

GENERAL ASSEMBLY

EIGHTY-FIRST ANNUAL MEETING

AMERICAN BAR ASSOCIATION

Los Angeles, California

Wednesday, August 27, 1958

The subject of my talk here today concerns a matter which is of great moment to our nation. I refer to the decision of the United States Supreme Court in the School Segregation Cases* and to some of the problems which have arisen in connection with the implementation of that decision.

They are numerous, and they go deep; often they engender strong feelings. The subject is one which calls for our most serious and thoughtful consideration. I choose this occasion to discuss it because this is a gathering of lawyers, lawyers from every corner of our land. Every lawyer, as the late Arthur T. Vanderbilt, Chief Justice of New Jersey, reminded us, has "the responsibility of acting as an intelligent and unselfish leader of his community."** No class in our society," he has said, "is better able to render real service in the molding of public opinion."***

Let me make it clear at the outset that my discussion of these problems today does not relate to the implementation or timing of any specific court order or to any proceedings now in court. My purpose is to discuss some of the broad problems in this field.

In the Department of Justice we have given much thought to the various aspects of these problems. Without attempting or purporting to deal with all these various aspects let me say that as I see it, the ultimate issue which emerges does not turn upon the evaluation of particular rules of law. The ultimate issue becomes the role of law itself in our society; whether the law of the land is supreme or whether it may be evaded and defied.

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* Brown v. Board of Education, 347 U.S. 483; 349 U.S. 294

** 40 A.B.A.J. 31, 32

*** Ibid.

On May 17, 1954, the Court announced its unanimous decision--and I quote from the opinion--"that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The decision was foreshadowed by earlier holdings. Thus, as early as 1938, the Court, speaking through Chief Justice Hughes, had concluded that a Negro living in Missouri was entitled to study law at the University of Missouri, a state school, there being no other law school maintained by the state which he might attend. The constitutional requirement of "equal protection of the laws" was not deemed satisfied by the state's offer to pay tuition at a school of comparable standing in a nearby state.* Then, in 1950, the Court, in a unanimous opinion written by Chief Justice Vinson, examined intangible as well as tangible factors in determining that a separate law school maintained by Texas for Negro residents of that state did not provide the same opportunities as were offered by a legal education at the University of Texas.**

Notwithstanding this litigation involving public education at the university level, the decision in _Brown_ v. _Board of Education_, as you well know, had serious impact on certain sections of our country and was met with apprehension, resentment, and even threats of defiance.

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* _Missouri ex rel. Gaines_ v. _Canada_, 305 U.S. 337

** _Sweatt_ v. _Painter_, 339 U. S. 621

Since the date of that case holdings of the Supreme Court and of the lower federal courts emphasize that a state may not engage in other forms of segregation, for example, in providing recreational facilities and in public transportation. The courts have concluded that for a state to enforce separation on the basis of racial criteria, even though the separate facilities provided may be physically similar, is to deny equal protection of the laws.

So the doctrine "separate but equal" must be considered a thing of the past. In other words, a state law which requires a Negro to act or not to act or to do a certain thing merely and solely because he is a Negro violates constitutional requirements. For a nation which stands for full equality under the law -- which solemnly believes that all men are equal before the law, regardless of race, religion, or place of national origin -- the result undoubtedly is permanent. It must be our hope that persons who oppose the decision will see the wisdom and the compelling need, in the national interest, of working out reasonable ways to comply.

In our system of government, of course, the Constitution is the supreme law of the land and it is the function of the judiciary to expound it. This is the very cornerstone of our federal system. As Hamilton stressed in The Federalist, "the want of a judiciary power" was "the circumstance which crown(ed) the defects of the (Articles of) Confederation."* These difficulties were obviated, in the words of

*The Federalist, No. 22 at 138 (Mod. Lib. ed. 1937)

Chief Justice Stone, "by making the Constitution the supreme law of the land and leaving its interpretation to the courts."*

The unanimous decision of the Court in the recent school cases thus represents the law of the land for today, tomorrow and, I am convinced for the future -- for all regions and for all people. There are, to be sure, those who strongly oppose the result -- a circumstance more or less true of most court decrees. However, the opposition and resentment caused by this decision in the school cases is much more serious, widespread, and deep-seated than that caused by any court decision in recent times.

No one should try to minimize the problems of local adjustment posed in certain areas by these decisions. All of us must be mindful that for some communities the principle of law declared is one which runs against long ingrained habits, customs, and practices, which were thought to be consistent with the Constitution. We must remember and comprehend the significance of the fact that for more than five decades these communities had reason to rely upon Plessy v. Ferguson,** which enunciated the concept of "separate but equal." To be unmindful of this is to be unreasonable and unrealistic.

The Supreme Court's 1955 opinion in Brown v. Board of

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* Law and Its Administration (1924), p. 138

**163 U. S. 537

Education, * dealing with the question of relief, itself recognized that a period of transition would be required and that it would be an unwise procedure to prescribe a uniform period for compliance without regard to varying local conditions. At the same time, however, it must be remembered that the rights declared by the Court are personal and present rights. "It should go without saying," the Court declared, that "constitutional principles cannot be allowed to yield simply because of disagreement with them."

It should be remembered and constantly kept in mind that the court laid down no hard and fast rules about the transition from segregated to nonsegregated schools. The court did not set forth any inflexible rules about when or how this was to be done. It left the method of change and the length of time required to meet the test of "all deliberate speed" with due regard for varying local conditions, to the local school boards under the supervision of the local federal courts.

The crux of the matter then is one of intention. The problems are difficult at best but they become hazardous if the underlying intent of those who are opposed to the decision of the court -- particularly those in official positions who are opposed to the decision -- is one of defiance. For the reasons I have mentioned, time and understanding are necessary ingredients to any long term solution. But time to work out constructive measures in an honest effort to comply is one thing; time used as a cloak to achieve complete defiance of the law of the land is quite another.

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* 349 U. S. 294

Let me turn then to the question of compliance and to the respective roles of State and Nation.

The responsibility for carrying out the principle declared in Brown v. Board of Education is primarily that of local officials and of the local community, subject, of course, to the supervision of the courts when the matter is in litigation. In remanding the school cases to the lower courts for further proceedings, the Supreme Court instructed those courts to require that the local school authorities involved "make a prompt and reasonable start toward full compliance." It also directed that the trial courts consider the adequacy of any plans that the school boards might propose as a means of "effectuat(ing) a transition to a racially nondiscriminatory school system."

The United States was not a party to the school cases. The immediate parties were plaintiff school children on the one hand and local school authorities on the other. The United States appeared only in the Supreme Court, at the invitation of the Court. The Court made it clear in its opinion that the means of implementing the decision -- the accommodations of the various local communities throughout the nation to the constitutional principle declared -- were to be worked out at the local level. Latitude and flexibility are there, provided only that the means adopted are "consistent with good faith compliance at the earliest practicable date."

The Executive Branch of your government does not appear in district court proceedings conducted for purposes of determining whether a proposed school plan is adequate or whether an existing plan should be modified. The details of implementation are for the parties directly involved and for the local court. If such plan as may be approved by the courts is thereupon carried out, there can, of course, be no occasion for participation by the Department of Justice. There is hope that this will be the prevailing pattern and that implementation will go forward consistently with the requirements of law and order and the dictates of good citizenship and good sense. As the President stated last Wednesday, "The common sense of the individual and his civic responsibility must eventually come into play if we are to solve this problem."

There have been a few instances in which we have participated in court actions, not in connection with a proposed school plan, but in order to assure proper respect for law and order and for the decrees of the United States district courts.

One instance of participation by the Executive Branch of the federal government in the enforcement of orders of a federal court is a case which arose in Clinton, Tennessee. In compliance with a court order, a number of Negroes had been admitted, without incident, to the Clinton High School. Several days later, John Kasper, an agitator for the Seaboard White Citizens Council, arrived to organize concerted obstruction. His purpose was to frustrate the district court's order and to exert pressure upon the school board to dismiss the Negro students.

At the petition of members of the school board, the court enjoined Kasper from further hindering or obstructing the approved plan. Kasper refused to comply and continued to incite mob action aimed at subverting the court's decree. He was thereupon charged with criminal contempt, again at the instance of the school board members. At this point the United States Attorney, who had not been in the case since it had involved only the predominantly "local" question of formulating an appropriate plan of integration, was requested by the court to participate in the investigation and prosecution of the criminal contempt charge. This was done and Kasper was convicted and the conviction sustained on appeal.*

An example of still another way in which the federal government has participated in helping to overcome violent interference with a plan of integration is the Hoxie, Arkansas, case. Promptly after the Supreme Court's decisions, the Hoxie school board, finding no administrative obstacle to immediate desegregation, announced that the schools in that district would be open to white and colored children alike. This was met, however, by threats and acts of violence designed to coerce the school board to rescind its action. The board and its members responded by an action in the federal district court to enjoin the agitators from interfering with the desegregation of the Hoxie schools and from threatening or intimidating the school board members in the performance of their duties. The injunction was granted, but the defendants appealed on the

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*245 F. 2d 92 (C. A. 6), certiorari denied, 355 U. S. 834

grounds that no federal rights were involved and that the federal courts had no jurisdiction. The appeal thus raised the broad question whether state officials can be protected in the federal courts from interference with their performance of a duty imposed upon them by the Federal Constitution. Because of the effect the decision would have upon the procedures available for dealing with obstructions to duly-adopted plans of desegregation, the United States, at the request of the school board and with the consent of all the parties, appeared and filed a brief in the court of appeals in support of the power of the federal courts. The injunction was affirmed.*

The general policy of the Federal Government under the present law is that it does not institute proceedings to alter the practices followed in the nation's countless school systems. Moreover, if a complaint on behalf of local school children is filed on the ground that the school system in a particular community operates in discriminatory fashion, and this contention is sustained, we regard the matter of formulating an appropriate remedial plan as the responsibility of the local litigants and the local court.

On the other hand, if there is concerted and substantial interference, as in the Kasper case, with the decree of the court, we stand prepared to take such steps as may be necessary to vindicate the court's authority, for example, to aid the court in the prosecution of a contempt

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*238 F. 2d 91 (C. A. 8).

charge. We are prepared to assist the courts in other ways -- as in the Hoxie case, where, at the request of the local school board, we submitted our views on an important question involving the formulation of effective federal procedures for dealing with threatened obstruction of law and order.

This brings me finally to the most serious situation, and one which all Americans solemnly hope will never occur again. I refer to the case where a state impedes the execution of a court's final decree in one of two ways: (1) under the guise of preventing disorder it uses state military forces in a manner calculated to obstruct a final order of the court, or (2) where a state fails to provide adequate police protection to those whose rights have been determined by final decree of the court and as a result "domestic violence, unlawful combination or conspiracy"* hinders the exercise of those rights.

When a group of private persons engages in a concerted effort to obstruct the execution of a court decree, application for an injunction and, if necessary, the institution of contempt proceedings, will ordinarily prove effective. That is illustrated by the Kasper case. In Clinton, Tennessee, however, there had been no breakdown of local law enforcement machinery. Local authorities stood ready, able and willing to prevent violence and to protect the individual citizen. If local law enforcement breaks down and mob rule supplants state authority, the situation is immeasurably more serious. In that situation, it may not be enough to go back to the courts for further relief in the form of an injunction, a process which is necessarily time-consuming. A mob does not always wait.

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*Sec. 333, Title 10, United States Code

Let me make it emphatically clear that the maintenance of order in the local community is the primary responsibility of the states. That responsibility cannot be shifted. When a court has entered a decree, the state has a solemn duty not to impede its execution. More than that, it has the affirmative responsibility of maintaining order so that the rights of individuals, as determined by the courts, are protected against violence and lawlessness. But what if a state fails to meet this responsibility? It means that persons who oppose the decision of the court, if they can muster enough force, can set the court's decree at naught.

If this occurs, there can be no equivocation. President Eisenhower has clearly stated on two occasions.

> " The very basis of our individual rights and freedoms rests upon the certainty that the President and the Executive Branch of Government will support and insure the carrying out of the decisions of the Federal Courts."

Each state, I believe, is fully capable of maintaining law and order within the state. There is no state, granting the will, which cannot maintain law and order and at the same time permit a final decree of a court to be carried out. This being so, no further occasion need arise--none should ever be permitted to arise--which would require the federal government to act to support and insure the carrying out of a final decision of a federal court.

Responsible state officials must exercise wisdom and foresight to prevent violence and the defiance of court decrees. Our nation pays a

heavy price for such disorder both at home and abroad -- particularly when it is the product of an attempt to deny to fellow American citizens rights duly determined by our courts.

In any civilization based upon ordered liberty, it is fundamental, in the words of John Locke, a favored philosopher of the founding fathers, that "no man in civil society can be exempted from the laws of it."* By the same token, no man can be excepted from the requirement of respecting the lawfully determined rights of others. Every thoughtful and responsible person knows this to be true. I earnestly call upon you as officers of our courts, as leaders of the bar, and as the respected counselors of your communities to insure that this fundamental truth shall not be lost upon your fellow citizens -- more than that, that it shall not even be temporarily obscured.

In summary then let me restate these conclusions:

(1) The decision of the Supreme Court in the school cases and in related fields is the law of the land.

(2) Compliance with the law of the land is inevitable. As the President said last Wednesday, "Every American must understand that if an individual, a community, or a state is going successfully and continuously to defy the court then there will be anarchy."

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*John Locke, Concerning Civil Government, Chapter VIII, Sec. 94

(3) In the final analysis, therefore, it is vital in the national interest that there be thoughtful compliance in conformity with the general guideline laid down by the Supreme Court and in a manner specifically worked out by local authority under supervision of the local federal courts.

(4) Whenever good faith efforts to comply have been made by local and state officials, substantial progress has been made without serious incident.

(5) Each state has the clear, affirmative duty to use its police power so that the lawfully determined rights of all persons are protected against violence and lawlessness.

(6) Most states have made it clear that they are able to and intend to perform this duty. If each state performs its duty the occasion should never arise, and I am sure that all of us fervently hope that it will not arise, when the ultimate duty would fall upon the Executive Branch of government "to support and insure the carrying out of the final decision of the federal court."

(7) We in the Executive Branch stand ready at all times in a spirit of cooperation to consult with state officials in a search for solutions consistent with the decisions of the court.

The problems I have discussed here today present a serious challenge to all Americans in the days ahead. With an awareness of the gravity of these problems which face our nation there is but one course to pursue. We are one nation, with total dedication to the rule of law. We must always remain so.