SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1954

No. 3

DOROTHY E. DAVIS, ET AL.,
Appellants,

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

SUPPLEMENTAL MEMORANDUM FOR APPELLEES ON FURTHER REARGUMENT

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Dated April 8, 1955.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I.

INTRODUCTION

On November 15, 1954, fourteen briefs were filed with the Court in these cases. Because briefs were filed simultaneously, no party has had a substantial opportunity to comment on the positions taken by others in those briefs. The brief filed for the United States in particular requires comment. In addition, almost five months have now elapsed since those briefs were filed and in the field of segregation the picture is never completely static.

For these reasons, it seems to us appropriate to present to the Court this short Memorandum as a supplement to our Brief that was filed last fall.

II.

THE REPORT OF THE COMMISSION

On August 30, 1954, the Governor of Virginia appointed a Commission to consider the effect on Virginia of the decision of this Court in this case on May 17, 1954. This Commission was authorized by the Governor to recommend a course of future action. Because, action to reconstitute the school system of Virginia can be taken only by the General Assembly of Virginia, this Commission consisted entirely of members of the General Assembly. Its membership numbers 32, almost one-quarter of the General Assembly.

On January 19, 1955, the Commission presented an interim report to the Governor. That report, a short paper, is reprinted in full in the Appendix. It represents the considered judgment of a substantial percentage of the men and women responsible for the government of Virginia;

it is not an appeal for self-exaltation through publicity, nor an incitement to violence, nor an expression of helpless dismay; it is rather a statement of fact as to the present and intention as to the future. It deserves the study of this Court.

The last three paragraphs of the report present the conclusions of the Commission so cogently that they are reprinted here:

> "The public hearing held in Richmond, the content of many communications to Your Excellency and to the Commission, conversations with the people of this Commonwealth, and the actions taken by a majority of the boards of supervisors of the counties, and by school boards and other organizations, have convinced the Commission that the overwhelming majority of the people of Virginia are not only opposed to integration of the white and negro children of this State, but are firmly convinced that integration of the public school system without due regard to the convictions of the majority of the people and without regard to local conditions, would virtually destroy or seriously impair the public school system in many sections in Virginia.
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> "The welfare of the public school system is based on the support of the people who provide the revenues which maintain it, and unless that system is operated in accordance with the convictions of the people who pay the costs, it cannot survive; and this is particularly true in Virginia where a large percentage of the cost of public education is dependent upon local revenues.
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> "In view of the foregoing, I have been directed to report that the Commission, working with its counsel, will explore avenues toward formulation of a program, within the framework of law, designed to prevent enforced integration of the races in the public schools of Virginia."

When the feeling of the people at large is so clear and strong, it cannot be disregarded.[1] This Court assumes a heavy burden if it attempts to disestablish overnight a system that has existed for 90 years with its approval and demands a new pattern completely repugnant to most of the people. Any requirement of immediate integration as a result of this shift of principle will bring lasting harm to today's children of both races, ironically those least able to protect themselves.

III.

IMPEDIMENTS TO INTEGRATION

The Appellants would have the Court believe that there are no reasons why integration may not be directed overnight. They speak of "documented experience with desegregation" that indicates that "gradualism . . . may make it more difficult" (Brief, p. 17). They quote from experience in States even north of those generally known as the Border States or from reactions in graduate schools in the universities of the South.[2]

But none of the "experience" that they cite has any relevance to the present issue. The primary and secondary schools to which they refer are in localities remote from the

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[1] We quote again the words of the Ford Foundation study:

> "It is axiomatic that separate schools can be merged only with great difficulty, if at all, when a great majority of the citizens who support them are actively opposed to the move." Ashmore, *The Negro and the Schools* (Chapel Hill 1954) 81-2.

[2] Even such experience makes clear the need for substantial time. Moves toward desegregation began in Cincinnati about 1940 but a decade and a half later:

> "The integration of public schools is not complete even today." Williams and Ryan, *Schools in Transition* (Chapel Hill 1954) 36-7.

Southern States; in the Southern States the practice of segregation has existed with legal sanction ever since the beginning, and there the greatest concentration of the Negro population still exists. Experts may assert that in New Jersey "basic policies and prevailing practices have been essentially similar to those of the Southern States;"[3] Virginia is fully conscious, as the Court must be, that the problems that we face are gargantuan in comparison with those of New Jersey.

Virginia is confronted with many problems. They are problems arising primarily from the determined unwillingness of its people to support, financially and otherwise, a system of integrated public schools. This position is not taken out of racial dislike. There are many practical reasons.

1. *Level of Educational Attainment:* More than 31,000 Virginia school children in the eighth grade annually are given a standard silent reading test. These are the results most recently tabulated for Virginia's cities:

Class Standing		*"Reading Age"*
	WHITE	
Highest 25%		18 1/6 years
Middle 50%		13 1/2 years
Lowest 25%		12 years
	NEGRO	
Highest 25%		11 5/6 years
Middle 50%		10 7/12 years
Lowest 25%		9 1/3 years

Thus it was made clear that the lowest quarter of the white students was further advanced than the highest quarter of the Negroes.

This result was not unexpected. Similar answers were obtained from the standard psychological examination of

[3] *Id.* at p. 121.

the American Council on Education, generally designated as IQ tests, given to all high school seniors. These were the scores obtained in the Virginia cities:

Class Standing	*Score*
WHITE	
Highest 25%	103.2
Middle 50%	89.9
Lowest 25%	71.2
NEGRO	
Highest 25%	63.9
Middle 50%	50.3
Lowest 25%	34.0

It is true, though not particularly helpful, that the results for rural areas were slightly closer; the gap remained wide. How can the gap be bridged? Is it practicable to mix everyone together and have one teacher instructing children whose levels of attainment are as diverse as reading ages of 18 and 9? Will it benefit the children in the schools for this to be required?

This is a very practical measure of difficulties to be encountered in ending segregation.

2. *Standards of Health:* Statistics for Virginia as a whole indicate that tuberculosis is almost twice as prevalent among the Negroes as among the whites. Similarly, in Virginia, where Negroes constitute 22% of the population, 78% of the cases of syphilis and 83% of the cases of gonorrhea occur among Negroes. No white parent will welcome Negro students into the white schools when to do so would increase his child's exposure to such contagious diseases.

3. *Standards of Morality:* In Virginia, one white child out of every 50 is illegitimate; one Negro child out of every 5 is illegitimate. The background of parental morality indicated by these figures dismays Virginia's white parents.

4. *Source of Teachers:* Virginia employs as many Negro teachers as do all the unsegregated States (R. 440, 450, 494). But Virginia is not prepared to place Negro teachers in charge of white pupils. The need for additional teachers is urgent; the source is not immediately apparent.

It does no good to discuss the cause of the conditions that we have mentioned; cause is irrelevant when the facts exist and must therefore be taken into account. These facts present very practical justification for the position taken by Virginia that integration under present conditions is impossible at this time.

IV.

THE POSITION OF THE UNITED STATES

The decision of this Court of May 17, 1954, was based neither on abstract reasoning nor on prior decisions; to the contrary, it overruled prior decisions on the basis of psychological evidence. The turning phrase is the asserted "feeling of inferiority . . . that may affect [Negro] hearts and minds in a way unlikely ever to be undone."[4]

The Attorney General of the United States welcomed a decision on this ground and he now proposes that it be put into effect on a relatively moderate basis. But he overlooks, as the Court should not, the fact that other psychology is involved here in addition to that of the Negro. That is the psychology of the whites; it must be taken fully into account in the final decree.

This principal criterion for decision was made clear by this Court:

> "Today, education is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship. . . . In these days, it is doubtful that any child may reasonably be expected

[4] 347 U. S. at 494.

to succeed in life if he is denied the opportunity of an education."[5]

Accordingly, the aim of the final decree in this case must be to preserve and protect the public schools.

The public schools cannot be preserved and protected if the psychology of the whites is disregarded.[6] Yet the Attorney General proposes, apparently, that it be disregarded completely. He would demand a program of desegregation even if the program resulted in the elimination of the public schools.

Were the Attorney General to modify his proposals so as to accept the aim of protection of the school system, we should not present strong objections to the general terms of his program. What will it benefit the Negro to win the decision and close the schools? The Attorney General must recognize that law rests on the consent of those subject to the law. The Court must not forget that practical education is more important than the imponderable of integration.

Accordingly, we propose that a decree be entered here directing that the Court below take further evidence to determine a program for effective enforcement of the decision of May 17, 1954, in such a manner and to such an extent as will not jeopardize the effectiveness of Virginia's system of public schools.

V.

CONCLUSION

Neither Prince Edward County nor Virginia come before this Court convicted of a crime; we recognize neither a

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[5] 347 U. S. at 493.

[6] The public school system has proven that it is well worth protection and preservation. Since 1920 illiteracy among the school population has declined from 4.2% to 0.27%; by races, the decline for whites has been from 2.7% to 0.18%, for Negroes from 7.2% to 0.52%.

sense of guilt nor a feeling of inferiority. We feel a sense of bewilderment that traditions and systems that have operated with judicial approval since 1870, and, in fact, since 1619, can be so readily swept away.

In looking at the days ahead, Virginia thinks first of her children. Education is important and it must be preserved. When this Court swept away the traditions and systems of many generations, it did not change the way that Virginians think and believe. How Virginians think and believe is an important factor in determining the future course of Virginia schools. To require integration in Virginia's public schools now will result only in their collapse. As the years go by, conditions may change; if education is to prosper in Virginia, this Court must permit a now indeterminable period to elapse before requiring integration of the races in Virginia's public schools.

Dated April 8, 1955.

Respectfully submitted,

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APPENDIX

Report of the Commission on Public Education

COMMONWEALTH OF VIRGINIA

COMMISSION ON PUBLIC EDUCATION

January 19, 1955.

Honorable Thomas B. Stanley, Governor of Virginia:
Richmond, Virginia

On August 30, 1954, Your Excellency appointed the undersigned to a commission charged with the duty of examining the effect on this Commonwealth of the decision of the Supreme Court of the United States in the school segregation cases handed down on May 17, 1954, and of making such recommendations, based upon its examination, as they deemed proper.

Your Commission met on September 13, 1954, and elected the undersigned chairman and Harry B. Davis vice-chairman. An executive committee was provided for, consisting of the two named officers and nine other members of the Commission.

Immediately following the appointment of the Commission, its members began to receive a large volume of mail from the citizens of Virginia. In addition, a great many citizens talked with members of the Commission and stated their views on the question of integration, requesting that they be transmitted to the proper authorities.

The Commission held a public hearing on November 15, 1954, in the City of Richmond. The widest possible publicity was given to this hearing and all citizens and groups were invited to attend or send representatives to express their views on the question of what course Virginia should follow in the light of the decision of the Supreme Court of the United States in the school segregation cases. The hearing was held in the Mosque in order to accommodate the more than two thousand persons who attended. It began at 10:00 A. M. and extended late into the night. Opportunity

was given everyone who had indicated a desire to do so, to express his opinion.

As the record of the public hearing shows, the great majority of those appearing there expressed opposition to integration and requested those in authority to afford them relief from the effects which they anticipated would result therefrom. Spokesmen for the Negro race and various Negro organizations, and a lesser number of white persons, urged immediate integration; in some instances conflicting viewpoints developed among members of the same organization.

The hearing was well attended, orderly, and apparently representative of the views of the people of the entire State, and it is presently the view of the Commission that further public hearings would result only in cumulative testimony, rather than fresh viewpoints.

The testimony at the hearing brought into sharp focus the nature and intensity of the feeling as to the effect that integration would have on the public school system. Not only did the majority of persons speaking at the hearing feel that integration would lead to the abolition or destruction of the public school system, but some groups indicated, through their spokesmen, that they *preferred* to see the public school system abandoned if the only alternative was integration.

It is noteworthy that fifty-five counties, located in various parts of the State, through resolutions adopted by their representative governing bodies, have expressed opposition to integration in the public schools and that of the fifty-five counties only twenty-one have over fifty percent Negro population. A number of school boards have expressed opposition to integration of the races in the schools, as have many non-governmental organizations and associations of our citizens. Included in the latter group are large and

representative Statewide organizations. In addition, the sentiment of a large number of individuals has been expressed through the medium of petitions opposing integration.

The public hearing held in Richmond, the content of many communications to Your Excellency and to the Commission, conversations with the people of this Commonwealth, and the actions taken by a majority of the boards of supervisors of the counties, and by school boards and other organizations, have convinced the Commission that the overwhelming majority of the people of Virginia are not only opposed to integration of the white and negro children of this State, but are firmly convinced that integration of the public school system without due regard to the convictions of the majority of the people and without regard to local conditions, would virtually destroy or seriously impair the public school system in many sections in Virginia.

The welfare of the public school system is based on the support of the people who provide the revenues which maintain it, and unless that system is operated in accordance with the convictions of the people who pay the costs, it cannot survive; and this is particularly true in Virginia where a large percentage of the cost of public education is dependent upon local revenues.

In view of the foregoing, I have been directed to report that the Commission, working with its counsel, will explore avenues toward formulation of a program, within the framework of law, designed to prevent enforced integration of the races in the public schools of Virginia.

Respectfully submitted,

GARLAND GRAY
Chairman