In The
SUPREME COURT OF THE UNITED STATES

October Term 1954

OLIVER BROWN, MRS. RICHARD LAWTON, et al.,
Petitioners,

vs.

BOARD OF EDUCATION, TOPEKA, KANSAS, et al.,
Respondents.

- - -

FRANCIS B. GEBHART, et al.,
Petitioners,

vs.

ETHEL LOUISE BELTON, et al.,
Respondents.

- - -

SPOTTSWOOD THOMAS BOLLING, et al.,
Petitioners,

vs.

C. MELVIN SHARPE, et al.,
Respondents.

- - -

HARRY BRIGGS, JR., et al.,
Petitioners,

vs.

R. W. ELLIOTT, et al.,
Respondents.

- - -

DOROTHY E. DAVIS, et al.,
Petitioners,

vs.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, et al.,
Respondents.

- - -

Washington, D. C.

April 12, 1955

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WASHINGTON, D. C.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

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OLIVER BROWN, MRS. RICHARD LAWTON, ET AL :

vs. : Case No. 1

BOARD OF EDUCATION, TOPEKA, KANSAS, ET AL :

FRANCIS B. GEBHART, ET AL :

vs. : Case No. 5

ETHEL LOUISE BELTON, ET AL :

SPOTTSWOOD THOMAS BOLLING, ET AL :

vs. : Case No. 4.

C. MELVIN SHARPE, ET AL :

HARRY BRIGGS, JR., ET AL :

vs. : Case No. 2

R. W. ELLIOTT, ET AL :

DOROTHY E. DAVIS, ET AL :

vs. : Case No. 3

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

- -

Washington, D.C.

April 12, 1955

The above-entitled matter came on for further oral argument at 12 noon.

PRESENT:

The Chief Justice, Earl Warren and Associate Justices Black, Reed, Frankfurter, Douglas, Burton, Clark, Minton and Harlan.

APPEARANCES:

On behalf of the Board of Education of Topeka, Kansas:

Harold R. Fatzer, Attorney General of Kansas.

On behalf of Oliver Brown, et al.:

Robert L. Carter.

On behalf of Francis B. Gebhard, et al.:

Joseph Donald Craven, Attorney General of Delaware.

On behalf of Ethel Louise Belton, et al.:

Louis L. Reading.

On behalf of Spottswood Thomas Bolling, et al.:

George E. C. Hayes and James M. Nabrit, Jr.

On behalf of C. Melvin Sharpe, et al.:

Milton D. Korman.

On behalf of Harry Briggs, et al.:

Thurgood Marshall and Spottswood W. Robinson, III.

On behalf of R. W. Elliott, et al.:

Robert McC. Figg, Jr., and S. E. Rogers.

APPEARANCES (Continued):

On behalf of Dorothy E. Davis, et al.:

Thurgood Marshall and Spottswood W. Robinson, III.

On behalf of County School Board of Prince Edward County, Virginia, et al.:

Archibald G. Robertson, and Lindsay Almond, Jr., Attorney General of Virginia.

Amicus Curiae:

I. Beverly Lake, North Carolina.

Mac Q. Williamson, Oklahoma.

Tom Gentry, Arkansas.

Richard W. Ervin, Florida.

Edward D. E. Rollins, Maryland.

John Benn Sheppard, Texas.

Ralph E. Odun, Alabama.

PROCEEDINGS

The Chief Justice: Harry Briggs, Jr., Et Al, vs. W. Elliott, and Dorothy E. Davis, Et Al, vs. County School Board of Prince Edward County, Virginia, Et Al, numbers 2 and 3 on the Calendar.

The Clerk: Counsel are present.

The Chief Justice: Mr. Marshall.

ARGUMENT ON BEHALF OF HARRY BRIGGS, ET AL AND DOROTHY E. DAVIS, ET AL

By Mr. Thurgood Marshall.

Mr. Marshall: May it please the Court, as was pointed out in argument yesterday by Mr. Robinson, it is our opinion that in answering specifically the questions propounded by this Court that the Court should issue a forthwith decree, and I say on that when we use "forthwith decree" in our briefs and argument as explained in the brief for this case, we actually are urging, not tomorrow or as of whatever day the opinion comes down in this case, but we are urging as of the September school term being this year of the next school term, and as I use "forthwith" that was what we were urging.

I am just using it as a shorthand way of saying September, 1955.

Justice Frankfurter: You do not want that word in the decree, then?

Mr. Marshall: It came about this way, Mr. Justice

Frankfurter: We took the position that in any decree issued that says "forthwith," that normal administrative details always come into consideration, so as far as we are concerned, if the decree says "September of 1955," that will be exactly what we want.

Justice Frankfurter: I am sure you will agree in this kind of litigation, it is of the utmost importance to use language of fastidious accuracy?

Mr. Marshall: Absolutely, we agree with you fully. That is why we would rather have it say September of 1955.

The other specific point is that we believe that the Appellants in these cases, those of high school age from Prince Edward County and those of elementary and high school age of District 1 which includes Clarendon County, should be admitted as of September, 1955, and the entire class that they represent.

Justice Harlan: Mr. Marshall, on page 29 of your joint brief--

Mr. Marshall: Yes, sir.

Justice Harlan: --as I read it, you suggest as an alternative date, September 1, 1956.

Mr. Marshall: Yes, sir.

Justice Harlan: You indicate that that would be acceptable?

Mr. Marshall: Yes, sir.

Justice Harlan: Have you receded from that view?

Mr. Marshall: No, sir, I was going to limit the argument to two sections, and as I understand it, the two questions can be divided. We say that we are entitled to forthwith action as of September. We felt obliged by the wording of Question 5 to,at that stage of our argument, assume that this Court had then agreed that forthwith was not proper, and in answering that in good faith to the Court, we took the position that, if we cannot have forthwith, the least this Court should do would be to put a date certain and put certain other safeguards. And we most certainly do not recede from that position.

If I may just bring this particular issue down to the present point, I think we should also, at the outset of this argument, recognize that these present and personal rights we are talking about that were in the beginning of this case, they are still there and we are still talking about the same personal and present rights of the type that this Court enforced in the Sipuel Case, the Sweatt vs. Painter case, the McLaurin vs. Oklahoma State Regents case, and other cases set out in our brief, and that even in the consideration of Questions 4 and 5, which you are now considering, we still are considering those questions in the light of this personal and present right. We want to continue to emphasize that point.

The question then resolves itself as to, it seems to us, whether or not this immediate relief is granted or the delayed action, and we believe that there is much to support our position that ut should be -- not only should be, but could be -- forthwith. We believe that the three cases other than South Carolina and Virginia cases, the three cases that were argued yesterday, argued very well to the proposition that forthwith should be the term included--I mean, September, 1955, should be the term included in the decree. And I say that for each one of the cases. In the Kansas case, it is significant that the resolution they produced yesterday said specifically that segregation in so far as they were concerned, was going to be over as of September, 1955. So, certainly, a decree in these two cases would be unnecessary, as a precedent or anything else for Kansas. They do not need it. According to their story, they will be through with it by September of 1955.

In the Delaware case, despite the fact that the new Attorney General says that they need time, I believe that his statement which has no documentation, no support except his personal opinion, should be weighed with the long detailed argument which his predecessor made in the brief which is before this Court which says they do not need time. And what will happen in Delaware is that already 50 per cent of the children living in the State of Delaware have already been

integrated so they do not need any time. And, as for the others, this Steiner case, this last case that was adverted to in argument of both sides in the Delaware case, stands on the books in Delaware. And they say that these rights which they recognize as being personal and present could not be enforced as of the time of the decision in that case but had to be delayed until this Court decides the broad question. Bear in mind that the original decision of the Delaware case said --on of course a basis to which I do not agree--the separate but equal basis, but they said that the relief had to be immediate. And if at some later date the schools were made equal, of course the Attorney General would come in for nonenforcement. But that judgment said "immediately."

The Steiner decision says depending on what this Court says, that it might be a delayed action. So, if, in the decisions in the Virginia and South Carolina cases, this Court should say that time can be recognized as a factor as to this relief, in fact the decision of the original Delaware case would be destroyed. It would destroy the present and personal, and I do not have the slightest idea what the status of the law in the State of Delaware would be.

In the District of Columbia case, it is wholly significant when we apply it to these cases we are now on, for, in the District of Columbia, they did it between May and September and I say,in all frankness, they must have been working

integrated so they do not need any time. And, as for the others, this Steiner case, this last case that was adverted to in argument of both sides in the Delaware case, stands on the books in Delaware. And they say that these rights which they recognize as being personal and present could not be enforced as of the time of the decision in that case but had to be delayed until this Court decides the broad question. Bear in mind that the original decision of the Delaware case said --on of course a basis to which I do not agree--the separate but equal basis, but they said that the relief had to be immediate. And if at some later date the schools were made equal, of course the Attorney General would come in for nonenforcement. But that judgment said "immediately."

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In the District of Columbia case, it is wholly significant when we apply it to these cases we are now on, for, in the District of Columbia, they did it between May and September and I say,in all frankness, they must have been working

on it before because it is a very complicated, involved school system in a city the size of Washington. But it is significant that they not only began on it in September, but they found that it was necessary to speed it up. And the other thing that we must bear in mind, it seems to me, in answer to all of the arguments to the contrary, running through them is this great number of Negroes involved, this terrific number makes the Fourteenth Amendment different. And, fortunately, in so far as this argument is concerned, the District of Columbia has the largest number of Negroes in its school system of any city in the country, not only the southern cities, but any other city. It is approximately 60-40.

And so that argument, it seems to me, is lost because on one hand, we have theory that numbers are bad, and that numbers are this, and we have unsupported opinions of Attorneys General, and so forth, that numbers are this, and we have right here in our face in the District of Columbia that if you take everything else aside, numbers could not possibly be important.

Justice Frankfurter: The argument is lost only if all other factors are the same.

Mr. Marshall: That portion of my argument would be, Mr. Justice Frankfurter, and I would like to get to the other factors.

The question was raised yesterday that a partial

reason for this fine development in the District of Columbia was the good policy of the Administration, of the school system, good will, firm hand, and so forth. And I say that that does not, in any way, negate my argument, for this reason: It is admitted within all of the studies of desegregation--and considerable scientific studies have been made--that, yes, the situation needs a firm hand of Government to say, "We are going to desegregate." And that is it.

But I take the position that it matters not whether that firm hand is executive, legislative or judicial, And in these cases we are urging that the District Court, once properly instructed by this Court, will be the type of firm hand, and I support that by the citation some time back in this very case, not the Virginia case, the South Carolina case, where, during the trial of the case, the question was raised as to whether or not, assuming the District Court would issue an injunction, somebody might not obey it, and the question was raised by the attorney for the Defendants as to the question, and I think Judge Parker's statement was wholly significant, and it was a very short statement: "Any injunction issued by this Court will be obeyed."

And I think that applies to any decree that this Court issues, plus the fact that, as late as March 14, this year, in a case involving recreation in Baltimore, Maryland, recreation facilities, not school facilities, State recreation

facilities, the Fourth Circuit, with Judge Parker presiding, issued a per curium decision, in which they said, not only that the decision of this Court on May 17, declared unconstitutional the laws as to public schools, but declared all the other laws involved in segregation unconstitutional. So, so far as I am concerned with the proper instructions and a decree in this Court, I have no hesitance in worrying about the firm hand of the judiciary in the Fourth Circuit carrying out the instructions of this Court. And, second, I have no doubt whatsoever that the people in South Carolina and North Carolina, once the law is made clear, will comply with whatever that Court does.

Justice Reed: Mr. Marshall, your comments about the District of Columbia--

Mr. Marshall: Yes, sir.

Justice Reed: In the District of Columbia, as I understand it, there is one Board that has authority over the District of Columbia schools?

Mr. Marshall: That is my understanding.

Justice Reed: Now do you know whether or not that is true in any of the other states?

Mr. Marshall: I do not. It varies, Mr. Justice Reed, and they have been changing. But I can positively say this: I know of no state where the State Board has complete control. As a matter of fact, every system that I know of, varies only

from complete autonomy of the Local Board, to the State Board having supervisory authority as to policy, which, incidentally, Mr. Justice Reed, they cannot enforce.

Justice Reed: Yes. That has given me concern. One can see the advantage that the District of Columbia has. It is part of what you are saying in regard to a strong hand of the Judiciary, because obviously, the Judiciary has no hand until other cases have been brought before it.

While, if the policies of the State are in the hands of the State authorities, the power to enforce by direction of the State would result in a situation as they had in New Jersey. As I understand it, they did desegregate there.

Mr. Marshall: Yes, sir, they did.

Justice Reed. The policies of the central power.

Mr. Marshall: Plus a commission that worked.

Justice Reed: Which had power.

Mr. Marshall: Which had power. I might say, Mr. Justice Reed, I think I would feel they would have to do two things. They both can be done by the Court. In the first case, to equalize teachers' salaries in Maryland, an effort was made to bring in the State Board and, frankly, the purpose was to get one suit instead of 23 or 24. Judge Chestnut of the District Court, said the evil would be, if there be an evil, it would be of the one who was actually administering the school system, paying out the money that it was complained

was paid out unequally.

Then the case was filed against the County and the District Court ruled they could not pay Negroes less salaries than they paid others.

Two other cases were filed in the State Court on the same basis whereupon the State legislature passed the necessary legislation to compel the equalization. There, if I may use the term, the firm hand of the Judiciary moved the legislature.

Justice Reed: If there was more time than between now and the first of September, 1955, say the first of September, 1956, the first of September, 1957, there would be opportunity for the enactment of state law that would put into a central body authority to carry forward desegregation?

Mr. Marshall: On the contrary, Mr. Justice Reed, at least one state--I think it is North Carolina--but at least one state has further decentralized for the express purpose of requiring anybody that wants to enforce this decree, whatever it might be from this Court, to go from district to district.

So, I do not know whether that would help or not. And I might say, in addition to the Maryland situation about teachers, and we may say Maryland is at least a border state, but Louisiana did the exact same thing. The area is unimportant.

The question was asked yesterday--at least we have

been unable to find a lawyer-like argument to support a case that would cover any of the states involved, the whole state. It might be, some day somebody might think of one. So we now are on the assumption that we are required, if necessary, we would be required to litigate. But I just do not believe that people, even assuming that they are in this frame of mind, would necessarily continue--I do not believe these school boards, many of them I know are the finest people in the community and there is nobody more law-abiding, and once the law is made clear, I do not believe--the primary case, Mr. Justice Reed, you wrote the opinion--it only involved one little election precinct in Harris County, Texas, which is part of Houston, one precinct. And, as a result of the decision which actually only applied to the two men, the two registrars, the primaries were open to Negroes in every single southern state within a year or less, except one or two counties of Georgia. As a result, we had to file a case which the Court knows about, Chaplain against King, and in South Carolina, where we had to eventually file two cases, the Elmore case and the Baskins case. So the precedent established by this Court--and that would be the primary issue as to whether Negroes could vote in the Deep South, was, at on worst, one that raised terrific racial feeling and it worked out. In the Sweatt and McLaurin cases, involving the Law School of Texas, the Graduate School of Oklahoma, University of

Oklahoma, as a result of this Court's decision, the universities, the graduate and professional schools, were open in twelve southern states, and the reports show, as a matter of fact, Professor Guy Johnson, we cite in our brief, made a study and the important thing is that there was only one untoward incident in the whole twelve states of integrating into professional schools. And I also would like to remind the Court that you will remember at that time the Attorneys General of the southern states, with the exception of Alabama, filed a brief amicus in this case in which they said everything that they are saying in this brief and despite all of their predictions, not a single prediction came true except that Mississippi, Georgia, South Carolina, Florida and Alabama have not admitted them yet, and we are convinced that within the next six months, for reasons that are not important to this Court, that Alabama will be open. So it will leave only four.

Finally, in the Henderson Case, where not only the other side made all of these dire predictions of what would happen in these areas if Negroes rode with white people on the trains, and I remember only too well the brief filed by Congressman Hobbs and his argument to this Court. There is no argument that can be made that was stronger and with more dire predictions, and we have had less trouble than we had before. So, it seems to me that in considering this, I, for one, and the lawyers representing the Appellants in these

cases, and the people they represent, there is nobody more conscious that this is a real difficult problem. We recognize it as such. But we believe that in considering the difficulty of the problem, you have to take, not only the fact that some attorney general would be unhappy about supporting the decision in this case or that he would have problems.

I say, in all deference to the Attorneys General, they get paid for the handling of problems. It is not just the consideration of one side of this, but the large number of Negroes in the South who have, for years--since 1870--been suffering the denial of rights which this Court said on May 17, that they have been injured in a way that there is only one way to correct. And I think that it is our job to constantly urge to this Court that in taking all of this into consideration it take that, too, into consideration. And on these difficult problems, whenever our Government faces them, the history of our Government shows that it is the inherent faith in our democratic process that gets us through, the faith that the people in the South are no different from anybody else as to being law-abiding. And in that connection, you will find that in our brief, we set out in a footnote the several studies that have shown by people who take polls, not the takers, but the brains behind the taking--that it is almost impossible to predict from one person's opinion, what he will actually do. You just cannot do that. You get his

opinion. He would not like to go to school with the Negro, he would not like to have his children to go to school with the Negro, but that is not saying he won't, and that is not saying that he would prefer for his child to grow up and be an imbecile as to going with the Negroes. It does not say that. It says that in the context of an area where segregation has not only been considered lawful but it has been considered on a very high level, to ask somebody as to whether or not you want to destroy my present system, his answer would be no.

Automatically people do that. And I cannot see the basis for any statement that gradual, indeterminate delay of relief in this case will do anything. It is significant. I think it would be a better position if somebody came before this Court from Carolina and Virginia and said, if you give us five years or four years, we can work it out. They don't say that. And they are taking no step to say it. As a matter of fact, in the brief filed by the State of Virginia, their reply brief, the whole brief relies upon the initial statement that it is this Commission that has been appointed, that is working on the May 17th decision. And it is very interesting what they are working on, which appears at page 3 of the Appendix, the final paragraph of this official State Commission:

"That in view of the foregoing, I have been directed to report that the Commission, working with its counsel, will explore avenues towards formulation of a

program within the framework of law designed to prevent enforced integration of the races in the public schools of Virginia."

That is what they are working on. And they are coming to this Court, asking to be given time to work on that, and I submit that when you consider the decision of May 17 and questions 4 and 5, it was obvious that the average state official involved would be obliged to first make it clear to the general public in his state that the state segregation statutes requiring segregation in public education by order of this Court, is unconstitutional. Kansas did that almost immediately. Delaware, at least did it before, as a matter of fact, before the decision in the case, I mean, the decision in the Steiner case.

The District of Columbia, Mr. Korman and the responsible officials said it right off. Neither of these states has made any statement that their laws on segregation are unconstitutional. To the contrary, they take the position that, despite this decision, they are still constitutional, and all they are asking for is one of two things: It is either a moratorium on the enforcement of the 14th amendment, or local option. And in this case, throughout the briefs of both sides, throughout the arguments on yesterday and possibly throughout the arguments today, will be the effect of these decrees not only in the individual areas involved, but

for other areas. And, whereas, this Court has said--I would say as far back as at least the Gaines case, and I think farther back--that there is no local option on the 14th Amendment in the question of rights. That just because there is a southern area involved or border area involved, that is no reason to delay it.

And now, once having done that, I find it very difficult to draw an exception as to enforcement so that--if this is referred to the district courts and I use that advisedly, I mean I know technically, but the effect would be to say to all the district courts of the states, the several states could decide in their own minds as to how much time was necessary--then the Negro in this country would be in a horrible shape. He, as a matter of fact, would be as bad, if not worse off than under the separate but equal doctrine for this reason. When they produce reasons for delay, they are up in the air, they are pretty hard to pin down.

And, as a lawyer, it is difficult to meet that type of presentation. In separate but equal, we could count the number of books, the number of bricks, the number of teachers and find out whether the school was physically equal or not. But now, enforcement of this will be left to the judgment of the District Court with practically no safeguards, and that, most certainly, we submit, would not be in keeping with the principle of our Constitution at first, and as it is

today. It is a national Constitution. There is no place for local option in our Constitution. And we would have, as far north as southern Illinois--whereas of today there are some segregated schools--that in Illinois, the District Judge there, if he wanted to, could say, because unlimited time was given by the Supreme Court in South Carolina, and Virginia, "I can give undetermined time in Illinois."

And it would apply all over the country.

Justice Reed: You certainly would not say, I am sure you would not, that the problems of Delaware and Kansas are the same as they are in South Carolina, would you?

Mr. Marshall: I would say--

Justice Reed: I grant you that they might be the same.

Mr. Marshall: Yes, sir, they are different but it can be argued both ways.

Kansas is north of Missouri. The Attorney General of Kansas yesterday, on two occasions in commenting on--I have forgotten the name of the cities--excused them on the ground they were down near the Missouri line, a southern state. But the record will show that Missouri is further advanced on desegregation than any of the other states. So here we have Kansas saying they cannot do it, and Missouri saying, let us do it faster. So, it will not be a geographical difference there. And in Kansas, it has always been non-understandable to

me that the state could have been running so long on the theory that you have integrated high schools but segregated elementary schools.

I mean, the fact that the mixed high schools have been existing all these years without trouble, that they could do the same in the elementary schools without any trouble. Take Delaware. Delaware is no better off than Maryland, and Baltimore desegregated. The rest of the state has not. The rest of the state has taken a "wait-and-see" attitude to see what this Court does. But Baltimore is South of Delaware. And so I say that in this it is, of course--I recognize that there are difficult situations, and even as they mention in the briefs for the states, they vary within a state. But area alone could not be important because, in two counties in Arkansas, Charleston and Fayetteville, Arkansas, there were a very small number of Negroes involved, something like ten or eleven in these places but they integrated in September without any problem. But the number point could not be significant because of the numbers that were integrated here. So I think that all of these arguments, when you add them up, they all end with this: That there has to be in this type of presentation to this Court, there has to be, it seems to me, something that will help. We have taken in our brief, and I think we have taken in argument, the position that we say that there is no

question but that we are entitled to relief under 4-A. However, in good faith, we are going to assume that we are not entitled to it as the question is asked in 5, at which stage we go out and get all of the available scientific materials that we think will help the Court. We take the different plans that have been put into segregation for that and we, in good faith, answer the question because it is considered by this Court to be material and once it is considered by this Court, to be material, it is material to us.

On the other hand, Virginia and South Carolina are rearguing question 3, which was decided on May 17. It is the exact same argument.

Justice Frankfurter: Mr. Marshall, you referred to Arkansas a little bit ago.

Mr. Marshall: Yes, sir.

Justice Frankfurter: And earlier, you said something about which I have deep sympathy, that on the whole, people are the same, there are no great biological differences between white people in South Carolina and white folk in Arkansas.

Mr. Marshall: Yes, sir.

Justice Frankfurter: That is your position?

Mr. Marshall: Yes.

Justice Frankfurter: Why is it that Fayetteville desegregated and other parts of the State of Arkansas did not; because there is some individual reason?

Mr. Marshall: The best I can get from reading the writeup of it, which is in the Southern School News, is the statement from the superintendent who emphasized the fact they made no preparation about it, they just put them in there, but then he said that the smallness of number was what encouraged them to do it.

Justice Frankfurter: Well, isn't that very important, and is it not something--is it not the same thing that is involved in carrying them by bus?

Mr. Marshall: Yes.

Justice Frankfurter: That is a direct statement, is it not?

Mr. Marshall: Yes.

Justice Frankfurter: That is a great saving?

Mr. Marshall: It is also a great saving--there would be a saving because to equalize the facilities in the southern states would take around four and a half billion dollars.

That would save money all over the south for them if they did that.

Justice Frankfurter: Maybe they couldn't. If I am to take any stock in what the Chief Justice of Delaware said, he pointed out the complexities of the various school districts in that state?

Mr. Marshall: Yes.

Justice Frankfurter: I do not know whether it is so or not but I assume it would be so, if he said so.

Mr. Marshall: But Mr. Justice Frankfurter, granting the complexity and assuming throughout each of these states there are terrific complexities, the only thing that this Court is dealing with, this Court is not dealing with the complexities, this Court is dealing with whether or not race can be used. That is the only thing that is before this Court.

Justice Frankfurter: But the physical situation in the different districts may make the result not because of race, but because of those physical differences.

Mr. Marshall: No, sir, physically, Mr. Justice Frankfurter, I submit it will have to be further attended to by the people who are working on it.

Justice Frankfurter: Yes, sir.

Mr. Marshall: But this Court cannot do it.

Justice Frankfurter: I do not imagine this court is going to work out the details of all the states of the Union.

Mr. Marshall: I certainly would not want to be a party to thinking about it. But that is why, it seems to me, that the real basic issue as I said in the beginning, is that what we want from this court is the striking down of race.

Now, whatever other plan they want to work out, the

question is made about the educational level of children. That has been an administrative detail since we have had public schools.

They give tests to grade children so what do we think is the solution? Simple. Put the dumb colored children in with the dumb white children, and put the smart colored children with the smart white children--that is no problem.

Justice Frankfurter: I hope you will not swallow whole that science can tell us that that is a great certainty any more than the polls can tell us these things.

Mr. Marshall: The proof is that in my own profession some of the greatest lawyers--they had difficulty in getting out of law school--but they turned out to be the greatest lawyers in the country. I think there is no question about it. But the point is that all of these problems that they urge are problems which are peculiar in administrative detail and have no merit in either the constitutional issue involved, or the question of decree in this case, if for no other reason than you cannot sell it.

Justice Frankfurter: In the northern states where there is not a problem of race at all, at least in some of them, there are problems of districting schools which are of the same nature as those that involve southern states, is that right?

Mr. Marshall: Yes, sir.

Justice Frankfurter: Not because of race, but because of the inherent problems?

Mr. Marshall: And they should be solved in the north, without regard to race.

Justice Frankfurter: But that may take an amount of time that is not definitively determined by the authority of this Court.

Mr. Marshall: Then we get to our suggestion of the September of 1956 point. We say that we believe that, if we do not get immediate relief, then the least--

Justice Frankfurter: Well, we should not use "immediately enforce." I thought that we agred that we would not use words like "immediately" or "forthwith" except the declaration that this Court has made on May 17, 1954 that you can not make distinction because of race.

Mr. Marshall: Yes, sir. If we cannot get that, then we say that the least that would do us any good at all would be a decree which included four items: (1) That this Court make the clearest declaration that not only those statutes but others are in violation of the 14th Amendment. We think it is necessary for that to be put in the decree. (2) That they start immediately to desegregate. (3) File reports; (4) That it must end at a day certain, and that we take the position is the minimum

that we should expect if we cannot get the decree which will say that as of the next school term--

Justice Frankfurter: What you are saying is that the decision of this Court on May 17, 1954 was not empty words, that was a declaration of unconstitutionality of everything that made a differential on the ground of race.

What you want is a manifestation clear and unequivocal on that, that states, the counties, the cities and the schools , all are affected because we have specific cases and not the world at large?

Mr. Marshall: Yes, sir.

Justice Frankfurter: That, in good faith, this declaration should be carried into action?

Mr. Marshall: That is what we would like to have, because we take the position that this Court could have ordered this done immediately after the May 17th decision, could it not?

Justice Frankfurter: It could have. It might as well say some physical thing that can be done should be done in the next five minutes.

Mr. Marshall: No, sir.

Justice Frankfurter: There are certain unalterable facts of life that can not be changed even by this Court. I am not talking about the feelings of people, I am talking about districting the accommodations, the arrangement of personnel.

and all the complexities that go with the administering of schools.

Mr. Marshall: What I would say, Mr. Justice Frankfurter, is that it should be done as of the school term which is September, 1955. I am getting to using words again.

And now we take the position that the Court should do it. That is the fundamental place we are now. It is whether or not the Court should do it. And we take the position that having done this, having gone into answering the broad equity powers, there is no question about the gradual and effective--we say it can never be effective and that having answered those, we then say that we come back to the point that this court at this time should enter that type of decree, that is the substance of our position.

Justice Harlan: I want to ask you this question: It may appear to be a little on the technical side, but I think it is bound up with the basic problem. Do you consider that the decree, whether it is entered by the District Court or this Court, do you consider that its enforcement provisions can run in favor of any other than those who are named as Plaintiffs in these particular suits?

Mr. Marshall: It is my understanding, Mr. Justice Harlan, that in the Federal class suit, that if the entire class is not actually receiving relief, the only way other members of the class can enforce it is to intervene.

Justice Frankfurter: In other words, you recognize these so-called class suits as pure experience class suits and only those who become parties prior to the decree can actually take advantage of the enforcement provisions?

Mr. Marshall: We had a situation like that in one of our teacher salary cases and rather than to try to do anything more, we merely had them file a regular intervention that was after judgment and appeal and it was back in the District Court and it was granted and once the intervention was granted, the relief was extended to the whole class. But I would assume, sir, that any school board, including the two school boards before this Court, would grant relief to the local class. There is one case--the Williams vs. the Kansas City Park Commission. It is a Court of Appeals case. The District Court said that declared suit was no class suit, that it was no good in regard to these personal rights but the Court of Appeals said that we overrule the decision but we do not have to pass on the class action because we are sure the district court will protect the class. I say I am sure whatever decree is entered in this case, I have every faith that the local school board would give it to the whole class. I do not think they will restrict it to the individuals.

Justice Frankfurter: We have to define the class. I understood your associate, Mr. Robinson, to say in the

Virginia case we have before us, Prince Edward County and that is the only county.

Mr. Marshall: Yes, sir, and only the high school students.

Justice Frankfurter: So that is the only class before us?

Mr. Marshall: Yes.

Justice Frankfurter: In Delaware it was indicated that the class is the pupils seeking admittance to two named schools.

The word "class" cannot be used to cover a state or the nation?

Mr. Marshall: I do not see how it can.

Justice Black: May I ask you this about the South Carolina case. That is a school district. How many are involved or will be involved in that? How many schools?

Mr. Marshall: The number of students--I got through Mr. McCFigg, the lawyer on the other side. The total number is 2,358. That is in school district 1.

Justice Black: That is the only school, that is the only district involved?

Mr. Marshall: That is the only district involved.

Justice Black: How many schools?

Mr. Marshall: Four schools, one combination on the

same grounds of an elementary and high school for white students and three schools for Negroes.

Justice Black: As I understand it, as far as South Carolina is concerned, this order would affect the pupils in that district and no others?

Mr Marshall: Absolutely. I do not see how the decree could--

Justice Black: It would require new litigation to affect other students in South Carolina.

Mr. Marshall: Unless in the two cases I mention in Maryland and Louisiana, there could be a possibility that the others would agree. For example, getting back to our University and graduate schools, Arkansas operated its graduate school while the Sipuel case was in this court before it was decided and there was a willingness to go along.

Justice Black: They might do it voluntarily.

Justice Frankfurter: As far as the Court order was concerned, it would have to be as definite and specific as the statute on which a charge was being made against a person for an offense?

Mr. Marshall: I think so. In addition to that, Mr. Justice Black, as I said before, maybe I could say it but I do not believe that anybody under the jurisdiction of the Fourth Circuit would disobey a judgment issued by that Court of Appeals and I think there would be considerable

compliance. Maybe some would argue it back to the point where well, if you do not, we will sue. But we would have stare dicisis in a circuit where stare dicisis is quite important.

Justice Black: But the courts would be left with an order which involves only 2,000 pupils, as to the enforcement, rather than one which would involve all the pupils in the state.

Mr. Marshall: I would say that--Mr. Justice Black, I just do not believe it is that important. I think that the whole state is involved, for example, in Virginia, according to the Attorney General--it is practically unanimous about that.

Justice Black: Do I understand that it is your position that we must consider this order with reference to South Carolina involving one district as though it affects the whole state?

Mr. Marshall: No. I say that I gathered, maybe mistakenly, from the preliminary sentence at the end of the May 17th decision where the statement was made this was going to be set for further reargument that because these are class actions and the wide applicability--and I for one, and others, construed that, that although nobody but these two counties were involved, that consideration would be given our ideas as to the rest of it with the understanding that it did not apply. That is the only reason I

bring this in. I would be perfectly willing. I do not think there is anything in my argument except the first part about how this would affect Topeka, Kansas as that would be changed either way.

Justice Frankfurther: May I say this apropos of your last statement. Of course you could not have local operation with reference to the applicability of the 14th Amendment.

Mr. Marshall: Yes, sir.

Justice Frankfurter: And say that race is not allowed to be, is an inadmissible differential as to Clarendon County, South Carolina, but admissible in some other county. Therefore, any general language in the opinion dealing with the substantive constitutional question is one thing?

Mr. Marshall: I think so. I think there is no question about that. But I think we ought to also make it clear while we are talking about the effect of this decree or rather, this takes in the judgment of this Court, that we point out at the end of our reply brief a point that we have not wanted to point out but we felt obliged to, is that a decree in this case, a judgment in this case, which says that the enforcement of the 14th Amendment as it applies to Negroes can be postponed at the judgment of any district court, in my mind presents a very difficult prospect for postponement of enforcement of other provisions of

the Constitution that this Court has never even thought about and I would assure that I am convinced this Court would not do it but I am most sure that they will be urged over and over again on the basis of the Briggs case that this newspaper, which the local state judge did not like, and said go out of business--that because of their terrific love for the Judge and hatred for the newspaper, we had better let you stay out of business for six months.

To my mind that is just horrible to think of.

Justice Frankfurter: I am going to suggest, Mr. Marshall, speaking for myself, the question is not what we should not like in a decree but what we should like.

Mr. Marshall: That is the very question we have here and which the Court has copies of. These are two decrees. The first one is the decree that we think we are entitled to which would require admission by September of 1955 and the other is the alternative decree, assume that the Court would not enter that, requiring admission as of September of 1956.

On those decrees, I would like also to say to Chief Justice Warren and the Court, that with your permission--this is the joint suggestion of the lawyers in Topeka, Delaware, Virginia, and South Carolina and we could have made different ones for each one with the state and the Defendants, but we would like, if the Court would indulge us, to leave this one

because it is the joint agreement of all of the lawyers that this is the type we would recommend to the Court. We had it drafted before the argument and we expected to ask permission to submit it after argument because we were not too sure, so as of last night we--is it all right--we agreed, is it all right for that to apply to Topeka?

The Chief Justice: It is all right.

Justice Reed: Do these decrees take into consideration the making of the school districts?

Mr. Marshall: Yes, sir. I might get to that. We take the position that--you will notice here that it says--the one that gives the time.

Justice Reed: Three.

Mr. Marshall: Yes, sir.

3(a), the third page shows the district court -- "that the transition to a school system not based on race and color distinctions involve such administrative factors,"--and we used that because the districting, the assigning of pupils, the assignment of buildings, the assigning of teachers, are all administrative details.

At least we think they are administrative details. Once that is shown to the district court satisfactorily, the district court would give them another year.

Justice Clark: How much time did the Fourth Circuit of South Carolina have when they were thinking of

separate but equal?

Mr. Marshall: Six months.

Justice Clark: That was to build facilities, or what was the purpose of that?

Mr. Marshall: The purpose was to provide for facilities and if I remember correctly, when they appeared in the court, they had made all of the preparations including the fact that they had let, not only appropriated the money, and so forth, they let the contract to build the new Negro schools and we took the position that merely for the purpose of the separate and equal point which we were willing to, for all intents and purposes--that would be all of that.

Justice Clark: Was there any question of facilities in this particular district?

Mr. Marshall: There is no question about the facilities in Prince Edward. We agreed as of the first argument in this case, there was no question in Clarendon County and there is no question in Prince Edward County. So, the physical facilities are entirely out of the case so far as we can see.

Justice Frankfurter: Mr. Marshall, in all the prior cases, the Gaines cases, and Sweatt cases, and all that class of cases--

Mr. Marshall: Yes, sir.

Justice Frankfurter: --in any of them was there any requirement of reorganization of the school system other than the mere admission of a few colored students?

Mr. Marshall: It was nothing but the registration detail, they had nothing to do otherwise.

Justice Frankfurter: There was no problem of what you call administration?

Mr. Marshall: None that I conceive of. There would have been problems if they wanted to assign them to a different place, but they did not do it.

Justice Frankfurter: It was only the question of admitting them?

Mr. Marshall: The question of admitting them. We think in our brief, we have recognized this in these cases, that there will be problems but we take the position that, if they can work out the details in the District of Columbia, in that highly involved system, they can work them out in Clarendon County with 2800 children.

In conclusion, in so far as this particular, as our side is concerned, I am trying to leave some time for rebuttal--in summing up, while we still believe that we are entitled to this type of decree that would come under the answer to 4-A, and we are convinced that any other form of gradual adjustment would not meet the words of the question of this Court which is effective gradual adjustment. We say

only at that stage that assuming that that is done, then we believe that the least we should expect is that protection be given to these cases. For example, the children in these cases and the class that they represent.

They are graduating every day. That is the one narrow issue involved in this case. When we go from the narrow issue of the individual named plaintiffs involved and get to the class, the class is limited to children of school age. Your school age is something you cannot control and any delay in that is costly. The court has said that that segregation system could very well be harming these children personally. On the other hand, we have this effort to--these plans to protect people's rights against these theories, these predictions of what can not be done. And even if this Court should take that position, we believe that a deadline date is the only thing that will prevent our arriving at the position in the Attorney General of Virginia's reply brief where on the last page he says, "The only thing that would do him any good is an interminable period of desegregation and, as between that and what we think we are clearly entitled to, we say that the only thing that will protect us is a deadline because we hope that the court will recognize that there is practically no way under the sun that a lawyer seeking relief under any other decree, could show that the delay was not one way or the other, and that in this effort to

solve this very difficult problem, it seems to us that the answer should be that this is not a matter for local option. This is not a matter that shall be geared down to the local mores and customs of each community in the country. to the extent that,not the Constitution, but the mores and customs of some people in some community will determine what are and how they shall be enforced in so far as constitutional rights are concerned.

Justice Reed: Mr. Marshall, I gather from your argument that"gradual" has no place in your thinking as far as the decree is concerned?

Mr. Marshall: I would say pretty well, yes. I would say gradual is involved in this case as of now because Virginia and South Carolina and the other states have had from May 17 until now, which is almost a year.

Justice Reed: I was thinking of a decree which would say that segregation, or desegregation would start through the first grade and run through the years.

Mr. Marshall: Yes, the 12 years.

Justice Reed: Two grades at a time or whatever it might be that in places like South Carolina where I understand the percentage of the races is quite disproportionate--90 per cent Negroes against white?

Mr. Marshall: That is about the ratio, yes.

Justice Reed: There have been suggestions made--

perhaps it was used, I think in New York.

Mr. Marshall: It was Indiana that had a five-year plan. I forget how it was broken down. The interesting thing there is that most of them cleaned up right quick and some of them waited until the five years --the last day. You had that variation within the state. But I would say, sir, that on this--if I may extend your plan of two years a year, the studies that I have had on it show that the original was a 12-year plan, the first year coming in, next year and going up that way. It is our idea--

Justice Reed: I think that has been used in some of the schools here in the District?

Mr. Marshall: Not that I know of.

Justice Reed: In the public schools?

Mr. Marshall: Not that I know of.

But my answer to that is that there you not only destroy completely the rights of the individual pupils, you destroy the rights of the whole class.

Nobody in that class will ever get mixed education. That is our answer to that.

The Chief Justice: Mr. Rogers?

ARGUMENT OF MR. R. W. ELLIOTT ET AL

By Mr S. E. Rogers.

Mr. Rogers: Mr. McCrigg will make the principal argument, Mr. Chief Justice.

I would like to just have the indulgence of the Court for about five or ten minutes, since I come from the district involved.

I live in the district involved. I am associated daily with the problems that we have. I would like to have just an opportunity to point to some of those problems.

It seems to be recognized by our opponents that these are terrific problems. They are the greatest problems that have been presented to our people in this district, probably this century.

We are not in the position of Kansas where we have only a few Negroes who would be involved in the integration or the desegregation. We are not in the position of the District of Columbia, where our school authorities are not responsible to the people in the District. We are not in the position of the District where our school funds come from others than the people in the District. We are an agricultural community. We have no industries as you will note from the record. As our children are educated from generation to generation, some remain at home to farm and supervise the farming, some to work and labor on the farms, but most of them have to leave the district and find employment elsewhere. We are tied to the land. Therefore, we are not in the position as I noticed here in Washington yesterday, Mr. Korman stated that some of the districts where there was a complaint

that there were no white children sent to this particular Negro school, that the problem could not be solved by just moving away from the district, because we can not--we are tied to the land and we cannot take the land with us.

So our school district, being an agricultural district, and being tied as we are to the land, we have to face our problems there, without moving away.

Justice Reed: What is your district, is it a county district?

Mr. Rogers: No, sir, it is only one-third. Our district is composed of the old plantation section of the country, fronting along a deep curve in the Santos River. It is for that reason that our Negro population is so large in that district and our white population so small. There has not been very much change in the texture of the population over the years. We differ from the school district adjoining us, another school district in the county. Yet, if you go to the next school district, No. 3, we start as 1, 2, 3, in No. 3 there probably you will find their problem is not as bad as ours. We do not have the concentration of population.

So, if we did--if this Court should order the immediate desegregation, the immediate integration of the schools of this district, we would be--it would not produce an integration that most people have in their minds of mixing the white and the colored in school. It would actually be

the sending of the few white children that we have there to the Negro schools, because our ratio of population is approximately 9 to 1 in students in the school population.

Justice Frankfurter: Could I trouble you to state the schools that are involved in your district and the population of those schools, both in numbers and in division between white and Negroes? And, also the distances that they are apart.

Mr. Rogers: I think I can give you those, sir. The total enrollment in the district is 2858, down about 200 students by the way, from the time of the commencement of this case. Of that, colored students are 2559. The white students are 299. That drop has been entirely in the colored children.

The first school is the Somerton High and Elementary School which occupies one lot and two adjoining buildings. The elementary school has a total of 176 students, this is the white school. The high school has 123. The Scotch Branch School, which is in the town of Somerton, approximately a quarter of a mile away, has 700 --that is the colored school has 738 i[n] the elementary school and 408 in the Springhill--which is located about four miles to the south of the Somerton school--southeast--it is an elementary schoo, and has 650 Negroes, that is the Negro school. The St. Paul school, which is located about 4 miles to the South of the Somerton School, has 763 Negroes.

They are all Negro students. The Negro High School is run on the basis of four years, the 9-4 plan. 9 years in the elementary and 4 years in high school. The white school is run on the basis of 6 years in the elementary and 6 years in the high school.

Having that population to deal with, we, of course, have the administrative functions that our opponents have referred to.

Justice Frankfurter: I take it that the colored schools would be taught by all colored teachers, and the white schools--

Mr. Rogers: They are now.

Justice Frankfurter: That kind of condition?

Mr. Rogers: Yes, sir, there is no integration of the teaching.

Justice Frankfurter: The size of the classes, are they the same in the respective schools?

Mr. Rogers: Generally they are, sir. You have--you get that largely from your classrooms. In the districts there are 54 colored classrooms and 13 white classrooms.

They are divided out among the various schools. I can give you those proportions, if you want them.

Justice Frankfurter: The proportions are a little bit in favor of the white classes?

Mr. Rogers: Yes. It is like the overhead of a

business, you have a minimum to run a school that you have to have.

But in addition to those things we must remember that in the very statement that was filed by the Appellants, called a social science statement in the original causes, attention was called to the fact that the question of desegregation involved problems that were as they use them, in the frontiers of scientific knowledge. We realize that very much in this district because we have had a bi-racial society for more than two centuries. As this Court called attention to the fact that we could not turn the clock of progress back to 1895 or even 1868, using the basis that we are now doing--are now exploring the frontiers of scientific knowledge, I do not believe that in a bi-racial society, that we can push the clock forward abruptly to 2015 or 2045. we can help and that has been helped.

Great progress has been made. We have equalized in this district. We have spent a great deal of money in that equalization. We are doing good work. The Negroes from that district are going out as lawyers, doctors, and teachers. The white children are doing the same. Whether we like it or not, there is a feeling in the District that the desegregation of the elementary and the high school does affect the social life of the community, and for that reason, we have to remark that to say that the decision is popular in the

area, is the understatement of the year, but we would wish to work within the framework of the decision, but we do know that we are faced with problems that can not be solved except with a change of attitude and those attitudes will have to be changed slowly, not quickly.

As a result, we are asking that the cases be sent back without instructions, but to be sent back to the lower court for action in conformity with the provisions of the decision.

Justice Frankfurter: Would it not be fair to say that attitudes in this world are not changed abstractly, as it were, by reading something, that attitudes are partly the result of working, attitudes are partly the result of action?

Mr. Rogers: I think so.

Justice Frankfurter: Would that be a fair statement?

Mr. Rogers: Yes, sir. I think so. Our sociologists have had a very difficult time in saying what attitude comes from or how it can be changed. But it does have to be in the society as it works.

Justice Frankfurter: But you do not fold your hands and wait for an attitude to change by itself?

Mr. Rogers: No, sir. You can not. That has not been done here. That is not being done in this district. We have made progress and greater progress will still be made.

I am sure. But to simply say you have to change your attitude is not going to change it.

Justice Harlan: Mr. Rogers, what is the total adult population in the district between the races-- whites and Negroes?

Mr. Rogers: I do not have the division of the adults. I can tell you it is about 8 to 1. It is not quite as much as in the school age. Our colored population is about 8 to 1. It is not quite the same.

The Chief Justice: Is your request for an open decree predicated upon the assumption that your school district will immediately undertake to conform to the opinion of this court of last year and to the decree, or is it on the basis--

Mr. Rogers: Mr. Chief Justice, to say we will conform depends on the decree handed down. I am frank to tell you, right now in our district I do not think that we will send -- the white people of the district will send their children to the Negro schools. It would be unfair to tell the Court that we are going to do that. I do not think it is. But I do think that something can be worked out. We hope so.

The Chief Justice: It is not a question of attitude, it is a question of conforming to the decree. Is there any basis upon which we can assume that there will be an immediate attempt to comply with the decree of this Court.

whatever it may be?

Mr Rogers: Mr. Chief Justice, I would say that we would present our problem, as I understand it, if the decree is sent out, that we would present our problem to the District Court and we are in the Fourth Circuit. Our opposition has just told this Court how the Fourth Circuit has been-- he has no fear of the Fourth Circuit. I feel we can expect the Courts in the Fourth Circuit and the people of the district to work out something in accordance with your decree.

The Chief Justice: Don't you believe that the question as to whether the district will attempt to comply should be considered in any such decree?

Mr. Rogers: Not necessarily, sir. I think that should be left to the lower court.

The Chief Justice: And why?

Mr Rogers: Your Honors, we have laid down here in this Court the principle that segregation is unconstitutional. The lower court we feel is the place that the machinery should be set in motion to conform to that.

The Chief Justice: But you are not willing to say here that there would be an honest attempt to conform to this decree, if we did leave it to the district court?

Mr. Rogers: No, I am not. Let us get the word "honest" out of there.

The Chief Justice: No, leave it in.

Mr. Rogers: No, because I would have to tell you that

right now we would not conform --we would not send our white children to the Negro schools.

The Chief Justice: Thank you.

Justice Burton: Mr. Rogers, that might not mean that you would violate the decree--

Mr. Rogers: No, sir.

Justice Burton: --it would mean that you would send your children to some other school, some other than public school?

Mr. Rogers: Yes. We do not want to say that we would violate it. We are trying to work within it. We hope the Court will give us a decree that we can work within.

Justice Frankfurter: May I ask one more question? Am I right--I am not asking a leading question-- in thinking that you have said or implied, are you asking this Court to reconsider the declaration of unconstitutionality of last May?

Mr. Rogers: No. We are asking the opportunity to work the matter out at the local level.

Justice Frankfurter: You are not inferentially or remotely coming before this Court and saying that decision was a mistake and what went on before should be continued?

Mr. Rogers: I am certainly not saying that in my argument, no, sir.

Justice Frankfurter: All right.

The Chief Justice: Mr. McC. Figg, you may proceed.

ARGUMENT ON BEHALF OF R. W. ELLIOTT, ET AL

By Mr. Robert McC. Figg.

Mr. McC. Figg: All right, sir.

Justice Frankfurter: I take it you and your associate will adddress yourselves to our minds in your argument. We are dealing with the secret recesses of the mind.

Mr. McC. Figg: No, I do not believe we have any mental reservations in what we are trying to say. I think Mr. Rogers and I both understand that we were not invited up here to reconsider the decision of May 17, 1954.

It seems to me that that decision might be said to be the declaration of the rights of the parties that were asked for when this declaratory action was brought. In many cases of declaratory judgment, the courts go no further. The Court may, however, proceed to grant such orders as may be warranted by the showing made in actions involving declaratory judgments as I understand the procedure, and it would seem that maybe the question which we are discussing here, is how much further the Court should go than the declaration of the rights of the parties. We are here answering in particular two specific questions with subdivisions. The fourth question we answered in our original brief, that we did not think that

a decree should necessarily follow, providing that Negro children should forthwith be admitted to schools of their own choice within the limit of normal geographical school districting.

We did say that we think that this Court in the exercise of its equity powers, does have the power to permit an effective gradual adjustment to be brought about from existing systems to a system not based on color distinctions. In the argument yesterday it seemed to me to be suggested that the characterization of the rights of the appellants as personal and present, cast some doubt in the minds of our adversaries as to whether these equity powers were as broad in this case as they are traditionally held to be in the equitable jurisdiction of the United States courts. In the briefs which have been filed by the Attorney General of the United States in this matter, all three of them, it has been emphasized that the power of the court in their opinion is not limited by the characterization of the rights as personal and present.

And reference is made in one of those briefs to Chief Justice Marshall's statement in Coynes against Virginia, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used, and that if they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the

very point is presented for decision.

And Attorney General McGrannery, and Attorney General Brownell in both briefs which have been filed by them in this case, have urged the view that the court does not have its full equitable discretion to deal with this litigation. They say that a court of equity is not bound to direct any particular form of relief, that it has full power to fashion a remedy which will best serve the ends of justice in the particular circumstances. They say that Congress expressly empowered the Court to enter such appropriate judgment, decree or order or require such further proceedings to be had as may be just under the circumstances. And that the needs of the public and the effect of proposed decrees on the general welfare are always a relevant if not paramount concern to a court of justice, and that where public interests are involved, equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.

That is a quotation from the decision of this Court in Porter vs. Warner in 320 U.S.

We think that the suggestion in the argument yesterday that there may be some limitation on the equity power of this Court to consider the circumstances or to authorize the consideration fully of the circumstances involved in the particular cases by the district court is not sustained

by the decisions of this Court and that nowhere does the history of the phrase "present and personal" sustain the thought that its use by the court in the case where it has been used was intended to limit the equity powers of this Court where those rights were involved in litigation instituted as this was by plaintiffs in the equity jurisdiction court.

Now then, we have been handed a copy of the forms of decree suggested by the appellants, the one which they say is the least that they should have, and the other, if the Court does not follow Question 4-A. And the difference seems to be that in the one they say that the officials of this school district should be ordered to carry out this decision beginning September 1, 1955. The other is apparently quite similar, but it says that if the district officials will come before the Federal Court and make a showing of administrative difficulty, that the district may go as far as September 1, 1956. That seems to be the difference between the two decrees. Now it is our view of the case that, as Mr. Rogers has told you, we conceive that this case should be remanded in the usual course for proceeding in conformity with the declaration which the Court made on May 17, 1954, and that the school authorities may then, or the appellants may then, present the circumstances facing the authorities of this district in trying to carry out the duty imposed upon them by the laws of

the state and provide an efficient public system of education in this district. What we think is that, certainly if the September, 1955 limitation as an outside time limit is put upon this district, it would mean the end of the public school system in the district.

That would not be the voluntary action of the trustees and I do not think Mr. Rogers meant to show that. He was trying to tell the Court, I think, that there are forces at play in this situation over which the trustees have no control. There is the question of whether you are going to have funds to run a school, there is the question of whether you are going to have the legislation to run the schools.

The Attorney General's brief in this case points out that in South Carolina heretofore the state aid to the district, which is in the form of a guaranteed minimum teachers' salary, has been computed and is distributed by the state statute on the basis of white teachers and the Negro teachers in the school district, and that statute is one of the changes which the Attorney General suggested would have to be made by legislation in our state in order to expect trustees to be able to run the schools and pay the teachers.

Justice Frankfurter: Is it the amount of the appropriation, or the allocation?

Mr. McC. Figg: That is all an allocation. The amount is a lump sum amount for the whole state which of course is

arrived at by an over-all budget, and then the allocation is on--there are school funds from the state allocated on average daily attendance, and enrollment. That is a factor in that. Now the figures that Mr. Rogers gave you about the district I understood were enrollment figures, and it should be said in reference to the teacher load about which inquiry was made, that the schools are largely built, the classrooms provided and the teachers provided on average daily attendance. Our records will show you that the white attendance has always been almost 100 per cent and that the attendance of the Negro pupils has been down as low as 80 per cent and the planning has been for the experience in attendance and not on enrollment.

If they built classrooms for the enrollment, there would be vacant classrooms. They build them for the attendance and employ teachers to teach the pupils who come. An explanation of that very low attendance as I understand it--I do not live in the district and I am associated with Mr. Rogers in personally presenting the case of this litigation, but as I understand it, the Negro parents are, in great measure, tenant farmers and they want their children on the farms and there is a constant struggle with them, especially at planting and harvest time, to have school attendance rather than the children helping their parents plant the seeds and gather the crops.

Justice Clark: What is your compulsory age?

Mr.McC.Figg: The compulsory age was 7 through 16. Of course, our compulsory education laws, we, at that time, were principally an agricultural state, so we did not have as many teeth in this as it may have in some more industrial states because wherever a parent certifies that he needs his child for any reason, the law does not require the attendance.

The first two months of school, the first two months of the school year, it was developed in the district court, that about 50 per cent attendance among the Negro pupils as against almost 90 per cent for the white students, so that what concerns us about this and why we would rather have an opportunity for the officials of this district to lay their problems before the lower court where it could be done in full and by concrete showing which we, as counsel in the case, are not able to make before this Court--our friends on the other side call it unsupported when we make statements and I think that they are largely predictions rather than--we have no instructions from the trustees to tell this Court that they will or will not be able to continue to operate the schools.

But one of the great reasons is that the state action that is necessary in our state has got to be taken before any trustee knows exactly how he is going to be able

to operate schools in the future.

And then the attitude of the people in voting on tax levies or even in electing school board members: This district is to a considerable extent autonomous and represents local government and it is not like the District of Columbia where the school board is appointed by members of the Judiciary and the voters do not have any ability other than persuasion or letters to the newspapers to influence in any effective manner the members of the school board.

But in district 1 of Clarendon County, the democratic process of the ballot box has a great effect on the taxation to run the schools, and as was suggested here, when it is said that white children will not enter the schools which can be realistically called Negro schools, if there were a forcible requirement of entrance, if they were made to enter, they will have other ways of educating their children.

The white people are in a vast minority but they do happen to pay most of the taxes, and they have a considerable influence in the affairs of the district as would be known and is natural.

The school trustees just cannot tell what is going to be the showdown when the time comes.

Justice Reed: Is the tax provided by the state or by

the district?

Mr.McC.Figg: The trustees?

Justice Reed: No, the tax.

Mr. McC.Figg: There is a state contribution toward teachers' salaries. There has been a state loan for capital construction as a result of which the school program was carried to fruition, but a considerable percentage of the funds that run this district are district imposed, and that would be by the people in the district and by the trustees in the district. They are real estate taxes, the local taxes are all real estate.

The taxes in the state are direct taxes.

Justice Reed: Does the State Board of Education have any directional power over the local Board of Education?

Mr. McC.Figg: The County Board of Education has supervisory power from the local board of trustees and then the state board has appellate jurisdiction. That is not controlling. I think it would have to come up as the case does in court. There would have to be some direction by the State Board of Education.

Justice Reed: Do you think the State Board has the power to direct?

Mr. McC.Figg: Yes.

Justice Reed: And may that certain persons should not be employed?

Mr. McC. Figg: I think they could reverse the local action in proper cases. I think they would have to find their power to do --to segregate--in the state law. I do not think they have any power--I do not say they could not--I have definitely never considered the question from that angle but their powers are granted by state statute and their power is to enforce the state school law. I do not think they would find anything in our state school laws--

Justice Reed: Take a state school law, for instance, which said you should have not more than 50 pupils to a teacher in the elementary grades, would the State Board have the power to enforce that?

Mr. McC. Figg: On a complaint. The complaint normally would be made to the trustees and they would pass on it. Then a complaining party, an aggrieved party--I think the statute uses the word, aggrieved, may go to the county board and then go to the State Board.

Justice Reed: As an administrative matter, is that it?

Mr. McC. Figg: Yes. Of course, I do not think they would deal with a 50 pupil enrollment question. It would be how many people use the room as a practical matter.

The Chief Justice: Mr. McC. Figg, you made the distinction between the District of Columbia and your school district. Is there any inherent distinction between

your school district and, let us say, Baltimore or St. Louis?

Mr. McC. Figg: I am not familiar with those. I think that probably--

The Chief Justice: I mean so far as the Board of Education is dependent upon the community?

Mr. McC. Figg: Well, I would assume not. They probably are run somewhat the same, those particular cities I have never had any information about.

One thing that has been mentioned in the briefs, the Attorney General's brief was mentioned and others, has been the matter of disparity of numbers as bearing upon this problem. Another thing, and it seems to me a very important thing that has been mentioned as proper to be taken into account by the Court, is the matter of community acceptance of the very idea that it be, or can be carried out. It is easy enough to say that that is of no moment, of no relevance, but if the failure to achieve community acceptance in a short time results in the destruction of public support for the idea of public education, that is a very serious matter and it is serious to both classes of pupils. It is serious to the Negroes in this district, nine times as serious as it is to the white pupils and maybe more because they may not be as well able to take care of themselves if an impasse occurs in the public education affairs of the district, and the people of the district, after all, have lived there for at least

90 years in what my associate called a bi-racial society.

That has been a long time to develop habits and relationships toward each other, and there has to be some opportunity as we see it, for community acceptance of this idea. We think that that is an important consideration in the employment of the discretion of the court of equity which, after 90 years, has established the unconstitutionality of their school system. It seems that it would be reasonable not to try to establish a six-month time limit or a 12-month time limit or an 18-month time limit but to rely on the district courts in the states and particularly the court that this district is in, to receive representations from the citizens both white and Negro as to what the best interests of both classes of children in the district might require in the way of handling its school affairs.

The Chief Justice: I was thinking of what Mr. Rogers said his suggestion was, that perhaps these attitudes that he relies on could not be changed until 2015 or 2045. I wonder if the decision of May 17 last year would be of much value to these people if they waited until 2045 for that change in the attitude of these people.

Mr. McC. Figg: I do not hardly think that time element is going to be--I never have thought it was involved in the disappearance of the institution of segregation in the southern states. But the southern states have not been

so far behind the time table of those who, in other sections of the country have had the same problem and ended it in their own time.

For instance, I think it was the Act of 1938 that abolished segregation in New York State, and counsel today referred to the fact that in southern Illinois there are still segregated schools, and we know the trouble that they were having in 1952 trying to put the white and Negro children in the same schools in southern Illinois for the first time in the history of the state. The Attorney General of Kansas, yesterday, in talking about plans, said a willing school board had started working in September, 1953 and it had not yet achieved the carrying out of its attack on a very simple problem in a state that has never had the usages and customs that this school district had, a state which has only been permissive in its segregation legislation and confined it to the first six grades and required mixed schools above that, and then, as counsel conceded here today, the District of Columbia obviously has been working on its plan for a good while before your decision of May 17, 1954, and as a result of that and with their comparatively streamlined educational setup, they say they can meet a September 1, 1955 deadline. Then I was interested in reading about the constitutional change in the New Jersey people, that prohibited separate schools in 1947, and by September, 1951

they were still worrying with the problem of getting rid of mixed schools in a district in New Jersey. There have been 43 such districts in 1947 and all but three I think have been integrated, as they called it, by September, 1951.

Now, I do not know of any school district which has been mentioned here or that I have heard about, that has as much of every kind of factor in this serious problem that the other side admits is a problem of primary magnitude. This district has all of the adverse factors to contend with. The trustees have not one favorable circumstance. In New Jersey every board was in favor of accomplishing what the Constitution -- the constitutional change of 1947 demanded. The majority of every board and the majority of the people apparently in the community, and yet there were three stragglers four years later.

Now how, in the face of that, it can be suggested by counsel that for some other purpose or for effect in southern Illinois or for effect in some other part of the United States that the children and the parents and the school authorities of this district should have imposed upon them a 6-months' or an 18-months outside deadline by this Court on no evidence, not a scintilla of evidence--because our record is utterly barren as far as any evidence properly bearing upon the exercise by this Court of equitable discretion usually to be exercised by the district court after this Court has declared

it law.

We just do not think these people should be treated as an example or as a theoretical case, or as you may say, we just passed it as an act to be applied in all the states or in all school districts. Their problem is oersinal and present to the trustees.

It is not theoretical. It is very serious. It is as serious as any board or any school district in the whole United States will face. There is no doubt about that.

Therefore, we ask this Court to give us an opportunity to let our school officials, who are charged with providing efficient public education to the children, white and Negro in this district, an opportunity to go before the district court in the district in which they live, in a reasonable time, where they will have ample opportunity to offer their evidence, to have other people come in, to have the citizens, and then trust the district judge to carry out the constitutional provisions. Counsel, it seems to me, thought the school boards were going to disobey the Constitution, the school authorities, everybody connected with the state, everybody involved in this thing except they seem to have a distrust of allowing a district judge in the district where this school is or the one in Virginia from performing the function which the statutes of this country envisaged that he would perform, to hear evidence on a serious question

and then make a decision not on a record bearing of the testimony, not on considerations pulled out of the air, but on real concrete evidence and facts and considerations. And I do not believe that in a problem of this kind that anybody is going to suffer any real lack of educational advantage by giving a proper opportunity to the people involved, the officials involved, to study and present and canvass their problems before the district court.

There are not enough, as we suggest in our brief--this is a case, we are talking to a court of equity, and when you weigh these things quantitatively, there will be no great denial in this district of the educational advantage of mixed schools because the white content of those schools, even if they were completely gone tomorrow, would be inconsiderable, in an educational aspect.

So that we respectfully suggest, if your Honor please, that what concerns us is that counsel in this case is not avoiding or getting around or rearguing your decision, but it is whether that decision, unless the things that we are aware of and are concerned about are given a chance to be presented to the Court in an orderly fashion without limitation upon the traditional equitable jurisdiction which we think the district judge is as capable of properly using as any court in the Federal setup. We say this is a school district in which it may well prove impossible to have

unsegregated schools in the reasonably foreseeable future.

The Chief Justice: And on what do you base that conclusion?

Mr. McG. Figg: Failure to allow opportunity and time for community acceptance of the idea, on the large numbers involved, on the long bi-racial society that has developed there, and there is other evidence in the community of course. We can look to see how much acceptance is going to have to be achieved. The churches are not bi-racial, the PTA is separate, everything else in the community is separate and the Attorney General's brief refers among other things, and I think it is an important reference in many school districts, to the fact that even in New Jersey and other places it was found necessary to institute programs in the community apart from the school to at least gain community acceptance of an idea of mixing the children in the schools, that there had to be some start in districts far removed from the south in making the adults willing to entertain the idea before it was possible to gain their consent, both by funds and by authority to their elected representatives to have unsegregated schools. And I base it on that. I just do not see the signs in the community at this writing of a situation you can confidentially say, "This will be no problem."

Justice Frankfurter: In view of the emphasis you

have placed upon the unique factors in Clarendon County. I naturally inferred you do not think this a typical school district of South Carolina.

Mr. McC. Figg: I think it is typical of others in South Carolina.

Justice Frankfurter: It may be, but something that is unique cannot be typical.

Mr. McC. Figg: Well, I did not say, I do not believe I used the word "unique."

Justice Frankfurter: No, no, but you emphasized these special factors and I wondered whether I had the right to think that this may not be duplicated in every other district.

Mr. McC. Figg: No, I think that you may well find it in almost the same degree or perhaps in the same degree in 25 to 30 per cent of our school districts because of the way the population is situated. About a third of the state is agricultural, intensively agricultural and this district, this county, has not the greatest percentage of Negro population over white. Calhoun County is heavier and Buford County, I believe, is heavier and Berkeley County. There are others where there is going to be a difficult--

Justice Frankfurter: The situation you describe is not uniform in the state?

Mr. McC. Figg: No, not in every district. There are

districts that will have problems, some of the districts in states other than the South that have been solved in three or four years as in the State of New Jersey or in other places.

I think that about a third of our state is regarded as intensively agricultural and I believe this is typical of that kind of--

Justice Frankfurter: We have this case?

Mr. McC. Figg: That is right, you have this case and it is different from any other cases you have here. I believe, certainly different from the Virginia case in the amount of people involved.

Justice Burton: Is that saying that there are 25 or 30 school districts that might be approximately like the first?

Mr. McC. Figg: No, we have 46. On school districts--there may be more than that. We have several hundred school districts.

Justice Burton: 25 or 30 would be like this and about 75 would be unlike?

Mr. McC. Figg: Yes, that is, in degree, would be less of an expensive problem. I do not say that is going to be easy anywhere in South Carolina. The history of the way of life there, the bi-racial society that my associates spoke about, of course, has been maintained for nearly a century, since the

war, and it is going to be difficult to be able to obtain community acceptance of that everywhere.

As counsel in this case what worries us is the fact it may be impossible to obtain that without some time to do it.

The Chief Justice: On the other hand, do you argue that we should wait until attitudes have changed, until compliance with the opinion of the Court is had?

Mr. McC.Figg: No. I do not say that you should wait at all on that. You see, all we suggest is that the proper court to be considering this matter is not this Court, because it does not have the opportunity to consider the evidence and to consider the circumstances. If you lay down such a time as the other side has asked you to do, you are not considering this district, you are considering a general problem that is not involved in our particular litigation, and we approach this as a lawsuit.

The Chief Justice: It makes a considerable difference whether the school district is making a valid effort to comply with decisions of the Court or whether it is exercising every effort that it can put forth to prevent it from becoming a reality. I understood from Mr. Rogers that your school district there and your people, because of your attitude, would not permit white and colored children to go to school together, notwithstanding the opinion of this

court. Now when it comes to remanding this to the court below, do you not believe that it is essential for us to take into consideration, since it is a court of equity, whether there is an attempt to comply or an attempt at frustration?

Mr. McC. Figg: To speak frankly, I think, if the case were remanded in the usual course, for action in the local court upon such considerations as advanced, it would advance public acceptance, the action which this Court would take. I believe, if it was set down almost like a legislative act, that it would retard public acceptance. You asked me that?

The Chief Justice: Yes, and that is a very fair answer. Let me ask you, do you not think that it might be of some value to the court below to have some guidance as to the manner in which progress can be expected?

Mr. McC. Figg: My conception was the other way, if your Honor please. My conception was that the district judge would sit as he does in many cases, in full possession of his equity powers and if it was thought that he misused them, one side or the other would complain. I think he would be better off if he may fully consider the situation. It would mean the public would feel better about it. I think definitely one of our major problems is public acceptance. I am talking about every part of the country when I say that that has been the problem.

We do not regard ourselves as too far behind the time-

table because we have had the problem for many years. 90 years ago a way of life had to be worked out. It was thought that would accommodate these two races in a certain area.

We think great progress has been made. Even in my time, I have seen the areas of the real relevance of race, the life, and many of our people think that the last frontier is the schools and that the school situation may be ahead of the time table in orderly progress. But there has been so much improvement.

We have great belief in the fact that the evolutionary process has done a very, very good job. It is still a matter that anything that forwards public acceptance of this undertaking and doing this job is going to speed the day.

I think if you ordered the trustees tomorrow to comply or else, that that would destroy the public school system of South Carolina.

The Chief Justice: We will recess at this time.

(At 2 p.m. a recess was taken until 2:30 p.m.)

AFTER RECESS

2:30 p.m.

The Chief Justice: Mr. Robertson.

ARGUMENT ON BEHALF OF COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY OF VIRGINIA, ET AL

By Mr.A. C. Robertson.

Mr. Robertson: If the Court please, Virginia has no plan, no panacea for the complete solution of the segregation problem. We can not foresee any definite future date when it can be completely solved.

What we are up against, of course, is that the Government is determined upon the consent of the governed and many people in all parts of Virginia have expressed their unwillingness at this time to consent to the compulsory integration of the races in the public schools. In August, 1954, the Governor appointed a legislative commission and that has finally filed an interim report in January of this year which was to the same effect, the opposition to compulsory integration in the public schools at this time. And to the same effect the resolution of the Board of Supervisors of Prince Edward County which I represent, and of 54 other counties in the state comprising altogether 55 of the 90 counties in the state, indicating the opposition to compulsory integration.

What we are up against is that neither a court decree, for that matter, nor an executive order, can produce

the result which is opposed by a united majority in the place where it must be enforced.

A solution is being sought, however, in good faith by the Governor's Legislative Commission. That Commission is composed of 32 members, comprising almost one-fourth of the General Assembly of Virginia. The Commission has sought and obtained advice of organizations and of people in all walks of life in general and is seeking, as I say, in good faith to find a legislative program within the decision of May 17, 1954.

The first question to be decided here, of course, is the power of this Court to permit gradual adjustment. We maintain the Court has the power and that the power should be exercised by the Court in this case. That has been intimated here before, if the Court lacked the power, it would seem that it would long since have reversed this case and remanded it with a direction for immediate desegregation. But if it had done that, it would have nullified the public school laws of Virginia, without any provisions for other laws in their place and would have practically destroyed the public school system of Virginia.

As a result, the existing laws having been wiped out, there would have been a vacuum without any other laws to justify the operation of the schools and it just could not have been operated without the sanction of laws.

This action, of course, is an equity proceeding where the appellants seek an injunction against segregation and in an equity proceeding this Court may, of course, withhold, delay or condition its remedy as the situation may require.

As the court said in the Virginia-West Virginia Debt case, the State can not be expected to move with the zealotry of a private individual. It is enough if it proceeds with all speed and to adjust Virginia to the decision of May 17, 1954, the General Assembly of Virginia must consider and must enact new legislation and, of course, this Court must grant time, adequate for that.

The next session of the General Assembly of Virginia convenes in January, 1956. Though the rights are personal and present, the allowance of an immediate remedy in a court of equity is within the discretion of the Court in view of the circumstances of the particular case before the Court.

This Court has the power to permit adjustment to new conditions, which present many problems in Virginia and Prince Edward County.

That power is conceded by all the parties to this action and the Attorney General of the United States, we understand now. Virginia does not appear before this Court as a convicted culprit to be punished for wrongdoing. Segregation was declared legal in Roberts against the City of

Boston in 1849 and in some cases the separate and equal doctrine was promulgated in Plessey against Ferguson in 1896. That doctrine was not repudiated until May 17, 1954.

At least--I say it with deference--it took this court more than 60 years to change its mind and decide that segregation was illegal per se, and it would seem now that Justice would require that Prince Edward County and the State of Virginia be afforded fair opportunity to adjust itself to this revolutionary decision.

Since Plessey vs. Ferguson, Virginia has maintained a segregated public school system in good faith, and the separate but equal requirements of Plessey against Ferguson have been met in this case so we say we are not here as a convicted culprit subject to punishment.

Repudiation by this Court on May 17, 1954 of the separate but equal doctrine created the problem which confronts Virginia now and just points up the necessity that Virginia be afforded time and opportunity for the solution of that problem. We come now to the evidence in this case. The evidence of record in this case applies to the effects of segregation, there is not a scintilla of evidence in this case now regarding the effects of desegregation. Much has been said of the emotional and psychological effects of segregation upon Negro children. What we are confronted with now and concerned with now, are what the emotional and

psychological effects will be upon the white children. In Charles City, within 25 miles of Richmond, the Negro school children outnumber the whites 3 to 1. And whites constitute the minority group in Prince Edward County. 55 per cent of the school children are Negroes.

In 17 of the 98 counties of Virginia, the Negro population exceeds the white.

What, also, the emotional and psychological effect of desegregation is upon the white citizens in Virginia, generally--they, in large part, pay the taxes and bear the cost of operating and maintaining the public school system.

Surely, evidence regarding the effects of transition to non-segregation is required for the formulation of an appropriate decree here.

Without a favorable community attitude, no satisfactory adjustment is possible.

I certainly have not heard anybody else mention it in this case but I lived through the prohibition era and that noble experiment keeps coming back to my mind in what the experiment ended in.

The greater the percentage of Negroes in the community, the more difficult the problem of desegregation.

The ratio of Negro groups, Negro pupils in the State of Virginia varies from zero, not one, in three counties, Highland, Craig and Buchanan Counties to more than 77 per cent

in Charles City County.

Education now follows one single pattern in Virginia. But the plan for local variation must obviously be devised and time is needed for the preparation of such a plan. A single pattern to be applied under one general rule will no longer apply. A plan acceptable and which might be enforced in Highland County or Craig County or Buchanan County where there is not a single Negro student will not be accepted in Prince Edward County where 55 per cent are Negro or in Charles City County where almost 78 per cent are Negroes or in a majority of the other counties in the State of Virginia.

Some workable plan must be devised and that is one of the purposes of the legislative state commission. Without a plan that the public will accept and support, Virginia schools may have to be closed for the time necessary to devise such a plan. The reason I have said that the existing laws would be nullified is there will not be any new laws to take their place and there would be no authority for the operation of the schools.

Just as in South Carolina, the greater part of the money for the public schools must be provided by the localities and the remainder will come from the state.

About this matter of public acceptance, what if they refuse to supply the necessary funds?

Justice Reed: How is that money raised in Virginia?

Mr. Robertson: The Board of Supervisors raises it.

Justice Reed: That is not the school board?

Mr. Robertson: No, the Board of Supervisors levies the tax which includes the fund for the operation of the schools and then the Board of Supervisors allocates the funds to school districts.

Justice Reed: So the Board of Supervisors is distinct from the School Board?

Mr. Robertson: Yes.

Justice Reed: They raise the money and appropriate it to the various schools?

Mr. Robertson: Yes.

Justice Reed: The school board has no control over what it gets?

Mr. Robertson: Not until it gets it, not in raising it.

Justice Reed: They cannot pass a resolution if they want so much money for the schools?

Mr. Robertson: That is within the discretion of the Board of Supervisors whether they provide it or not.

Justice Reed: Is there any central state control over the school boards?

Mr. Robertson: The state Board of Education has general supervisory control but the real government is in the district school board.

Justice Reed: You probably heard me ask this question of South Carolina. As I understand, there was administrative appeal from the local board?

Mr. Robertson: The State Board of Education issues general rules and regulations, but if there is a question of whether or not the school board is violating the law, that will take the normal course in the courts.

Justice Reed: Promulgates whether it should be the law. Suppose the State Board issues a regulation that there should be three schools in the district and the local board did not have three, they thought two would be better?

Mr. Robertson: I speak, subject to correction by the Lieutenant General. My idea is that that would be appealed to the State Board of Education and then would be subject to redress in the courts by a court decree.

Application in good faith of the separate but equal doctrine and statewide enforcement since 1940 for compulsory school attendance with hard-won victories which produced magnificent results. I wish I had time to say what some of those results were. A few of them appear in a footnote on page 7 of our brief which shows how much illiterateness in the state has been reduced and is being reduced and as appears from the other briefs here we do not stand here as a convicted culprit. We are proud of our public schools and think we have gotten great results and we are trying to maintain

it and preserve it and defend it for the benefit of all the children in the state the best way we know in good faith and with good will.

The next thing is the necessary support of public schools. That may create a situation whereby we will have nonenforcement of the compulsory attendance law. That would increase teen age idleness and delinquents and I think the Court will be interested in this.

In Danville, Virginia, since this case in Baltimore was decided, a bond issue for public swimming pools which everybody thought would be passed was defeated. In Prince Edward County last week the Board of Supervisors delined to levy the tax necessary to raise the funds for the school budget for 1955-1956 until they could find out and know what they were up against.

In Albemarle County which encircles Charlottesville, the University of Virginia's seven-year capital improvement fund, the present fund of which would have provided two fine Negro elementary schools and two equally good white schools, has been brought to a halt.

I am not speaking in defiance or in any ill will but I am trying to tell the Court as vividly as I can what we are up against in public acceptance and in searching for a solution here to meet this problem.

Justice Minton. If a deadline was fixed in the

decree entered by this Court of 1956, what would be the attitude of your people?

Mr. Robertson: I think they would be greatly hampered. I have no authority to speak in that way for anyone but myself. My feeling is that, as I will come to that in a moment in my argument, that if this case was remanded to the District Court without instructions, other than to proceed in conformity with the opinion delivered here on May 17, 1954, as rapidly as can be done, without serious jeopardy or impairment of the public school system of Virginia, then the district court in its normal process with this case serving as a precedent for all the state, would bring about desegregation in the different localities in the state as rapidly as could reasonably be done and as the law could be enforced.

Does that answer your question?

Virginia employs some 6,000 Negro teachers, more than employed in all the states where they do not have segregation and those Negro teachers must be treated fairly and justly in the solution of this problem.

The general level of educational capacity and attainment must be determined. Standard reading tests of 31,000 Virginia school children in eight grades for the school session 1950-1951 showed that the lowest 25 per cent of white students were further advanced than the highest 25 per cent

of the Negro students.

The standard IQ test given to all high school students in Virginia for the session 1951-1952 showed the same thing.

I know that it may be said, well, that is your fault, you denied them opportunity, you denied them equality. It is the result of environment. We think that is irrelevant in this case. We are not aware of any unfairness or inequality and we are not responsible for that.

We say that the standards of health and morals must also be taken into account. Tuberculosis is almost twice as prevalent among the Negroes as it is among the whites. Negroes constitute 22 per cent of the population of Virginia but 78 per cent of all cases of syphilis and 83 per cent of all cases of gonorrhea occur among the Negroes.

One white child out of every 50 born in Virginia is illegitimate. One Negro child out of 5 is illegitimate.

Of course, the incidence of disease and illegitimacy is just a drop in the bucket compared to the promiscuity. We say that not as a moral issue, not as to where the fault lies, but that the fact is there and the white parents at this time will not appropriate the money to put their children among other children with that sort of a background.

That is just one of the factors of life with which we are confronted. There are some 130 different school districts

in Virginia and each one of them presents a different problem in a different locality.

An integrated system of public schools would require more than a court decree. It would require an evolutionary change in the attitude of people in Virginia, both Negro and white.

An intelligent, orderly and effective transition must be accomplished under new legislation to be accomplished with good will and in good faith and all within the requirements of the decision of May 17, 1954.

We come now to the consideration of the decree. We say that this Court should not formulate a decree, a detailed decree and this Court should not appoint a special Master.

We think that this Court should remand the case to the court below and direct that court to take further evidence to determine a program for effective enforcement of the decision of May 17.

The Chief Justice: Mr. Robertson, would you prepare the form of decree that you suggest for the Court, please?

Mr. Robertson: Yes, sir.

Justice Harlan: Mr. Robertson, we wonder when this commission you refer to is due to report.

Mr. Robertson: I do not know the date--September, 1955. The record in this case contains no evidence as to the

facts on which a detailed decree must be based and without such evidence a detailed decree would be based upon surmise and conjecture. Moreover, it is not the function of an appellate court to prepare detailed decrees and as has been said here, this Court has never previously formulated such decrees in the school cases.

I have to say this in fairness to the Court--this case may require months or years of trial courts' attention and this Court can not give the case that kind of attention effectively.

This Court at this time does not know the issues that must be met and decided. This Court will not undertake to decide unknown issues.

If this Court enters a detailed decree now, the decree will be based upon issues developed in the briefs of counsel and through the assertion of facts made by the counsel.

It will be based upon general notions of propriety, not upon the testimony of witnesses. It will be entered upon undetermined issues, without a hearing upon the issues, without evidence and without cross examination.

Reference to a Master is a practice of this Court only when the original jurisdiction of the Court is invoked. Where the original jurisdiction of this Court is invoked, the Court receives evidence and makes findings of fact.

In this case the original jurisdiction of the Court has not been invoked and the Court can not properly receive evidence or enter a decree not based on evidence.

That is beyond the function of the Court. In this case no overall rule can properly be applied. Countless different facts and circumstances are involved; the flexibility is absolutely necessary.

This Court is remote from the scene. On the other hand, the court below clearly has much greater familiarity with local conditions than this Court can ever acquire.

The court below in pretrial conference could confer with counsel, with school authorities and with others. It could consider administrative programs here and formulate an appropriate decree.

The court below should be free to supervise future action in Prince Edward County and enforce the decisions of this Court as speedily as may be done, consistent with the maintenance of the public school system in Prince Edward County.

The court below is fully equpped to follow the general directions of this Court. It is under the same oath as this Court to obey the law and thereby, it will proceed in good faith and with all reasonable speed.

We agree with the Attorney General of the United States that no decree should be entered now in this Court

providing that Negro children shall forthwith be admitted to schools of their choice. We agree with him that this Court in exercise of its equity powers should permit an effective, gradual adjustment.

We agree with him that this Court should not formulate a detailed decree and that this Court should not appoint a special master to hear evidence and to recommend specific terms for a detailed decree.

We agree with him that this Court should remand the case to the court below for further proceedings in conformity with the opinion of May 17, 1954.

We differ with the Attorney General in that we believe that no specific direction should be given to the court below for all the reasons I have stated and that no definite time limit should be set. Any specific directions to the court below will crimp its efficiency.

There is no short or easy path to the solution of the segregation problem in Virginia. New phases of the same problem will continue to be present and the generations of litigation that Mr. Justice Jackson apprehended when these cases were decided here before can not be forestalled by any action of this Court now.

It can be forestalled and the progress can be pushed along in the District Court.

This Court--and I say "this"--this Court can tell

Virginia what not to do, but what I apprehend and what I think presents a much more difficult problem, this Court can not tell Virginia what kind of public schools to operate. And if public opinion refuses to go along, not in disobedience of the decree of the Court--we would not for one minute say that they would disobey the Court, defy the Court and continue segregated schools against the mandate of this court, but there are more difficult and subtle ways of doing it which we as counsel in this case do not know how to meet. hey could refuse to vote the money, refuse to support necessary laws, and repeal usual public attendance laws.

You mar and impair the public school system of Virginia in a way that has taken a whole era to produce. You encourage a recurrence of the bitterness that was engendered by the old reconstruction era.

What is worst of all, in our opinion, you impair the public school system of Virginia and the victims will be the children of both races. We think the Negro race worse than the white race, because the Negro race needs it more by virtue of these disadvantages under which they have labored. We are up against the proposition: What does the Negro profit if he procures an immediate detailed decree from this Court now and then impairs or mars or destroys the public school system in Prince Edward County?

The Chief Justice: Mr. Almond.

ARGUMENT ON BEHALF OF THE ATTORNEY GENERAL OF VIRGINIA

By Mr. Lindsay Almond.

Mr. Almond: Mr. Chief Justice, may it please the Court: Several questions have been propounded from the bench to various of counsel relative to the statutory setup of the various cases with regard to the operation of the public school system. We have in Virginia a constitutional provision, Section 133 of our State Constitution which vests the control and direction of the school boards in the various counties and cities of Virginia.

By statute purusant to that constitutional provision, the supervision and control is gone into more detail. The State Board of Education has supervisory direction. The appropriations for the operation of the public schools in Virginia, 56 per cent comes from the localities.

The rest from the state. The state may condition its appropriation. The State Board of Education is vested with power to make rules and regulations requiring equalization relative to curricula, teachers' salaries and whatnot.

But the whole system in Virginia, if it please the Court, is one of local autonomy. The school boards of Virginia are appointed by a school trustee electoral board which board in turn is named by the circuit judges of the various circuits comprising the counties of Virginia.

The appropriations for public schools in Virginia

at the local level work in this fashion:

The statute requires the local school board to present its budget to the Board of Supervisors as to its requirement for the coming session. That has to be done some time in advance. Then it is lodged within the legislative discretion of the Board of Supervisors which is the governing body of the County and the City Council which is the governing board of our city, to appropriate such funds as it deems sufficient for the efficient operation and maintenance of the public school system.

I wanted to clear that up with reference to my own state. And then another question has been asked that I think it will be appropriate for me to answer here now. The question has been asked from the bench relative to the authority of the Attorney General respecting the enforcement of law in Virginia. No state officer has any right to undertake to enforce federal law. But as to the enforcement of state law in Virginia, the statute prohibits the Attorney General from entering into the institution or trial of criminal cases in the circuit and other courts of the county, and state.

His jurisdiction attaches only upon a writ of error being granted by the Supreme Court of Appeals and then he must take over and represent the commonwealth.

I trust that was not a digression but the Court had manifested its interest in those questions.

Now if the Court please, knowing that I shall say,

because I harbor no spirit of defiance--I do not agree as a lawyer and I must say it in all deference with the momentous decision of May 17. It is the law of the land.

I trust that we may be given an opportunity to work out a solution at the state and local level, acceptable to our people and consistent with the Constitution of our country.

That is all we ask in this case. As far as my constitutional obligations as an officer of my state and my status before the bar of this Court which I cherish. I shall advise and have advised the officers of my state to proceed with expedition in view of all the circumstances and problems facing Virginia to work out a solution to this grave problem.

Just a word, if you please, on the power of this Court to permit gradual adjustment. There seems not the shadow of a doubt that this Court may--it does not have to--in the exercise of its equity powers permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinction.

As I shall try to develop in my argument, that does not mean enforced integration to us in Virginia.

Now on the power of the Court, there is almost unanimity of agreement on this point among counsel of both sides. This Court, itself, entered upon the threshold of the exercise of that power on May 17. Otherwise it would have entered an order reversing the decree of the

court below with the mandate that the relief sought be granted. This Court has frequently in the application of its judgment, resorted to the flexibility of equitable rules and remedies and adopted them toward the circumstances of particular cases.

If there were argument or dispute on this point, the Congress has settled it by removing every vestige of room for debate by expressly empowering the Court in molding effective relief to enter such appropriate judgment, decree or orders or require such further proceedings to be had as may be just under the circumstances.

I close that point of my argument with a statement. My honest judgment is that clearly the Court possesses the power. Should it exercise that power in these cases? This, I think, has been removed from the realm of debate.

On May 17, this Court handed down a decision in principle. The Court refrained from formulating decrees necessary to implement its decision.

It recognized that these are not individual but class actions. It recognized the wide and sweeping applicability of its decision. And so the Court recognized that the decision involved the rights, the mode of life, the customs, the mores of 50 million people and 11 million school children.

It recognized and so stated the various local

conditions with their varying problems, problems interstate, intrastate, community-wise, county-wise and village-wise. And it recognized that the formulation of decrees represented problems of considerable complexity and I venture to add, problems of overwhelming magnitude.

The Court then by its own conclusions without more action, would seem to have answered the question. And I maintain, if Your Honors please, that the consequences of the alternative answers the question.

The alternative to the exercise of the power to permit gradual adjustment would be to adopt the view asserted by the Plaintiff that their rights are personal and present and require immediate enforcement within the limitation stated by Mr. Marshall, forthwith enforcement, subjugative of the rights of millions, superior to the preservation of any semblance of public education in many parts of this country, provocative of unending chaos, engendering of racial bitterness, strife and possible circumstances more dire.

Forthwith enforcement, in terms of the definition of our adversaries would be preemptive of the right of a sovereign people to call upon their own elective representatives in their state legislatures to promulgate state policy and enact laws consistent with the Constitution for the maintenance and administration of their own public school system.

Our adversaries ask this Court--and I say without any spirit of bitterness, they ask this Court to arm them with the power to destroy, which this Court has said to be perhaps the most important function of state and local governments. Prince Edward County with a Negro population of 55 per cent of the total, one of the poorer counties of Virginia, has, at really tremendous cost, borne largely and in disproportionate measure by the white people, constructed and now operate a high school facility for Negroes not equal to, but far superior to its facilities for white children.

The white people there are not complaining. They seek an education for their children and for the Negro children. Now, after these things was the final mandate requiring admittance forthwith or without provision for a reasonable time for state and local government to proceed to an orderly solution within the framework of constitutional legislative and administrative process.

You will have placed in their hands, unbridled power to destroy the most important function of state and local government.

The high schools of Prince Edward County, not in defiance of the mandate of this Court, but under the imperative necessity of relentless circumstance over which they have no control, would cease to operate.

They would remain dormant until an orderly and

lawful solution could be brought about.

I say, in all candor and frankness to this Court, that solution whatever it may be, will not in my judgment in the lifetime of those of us hale and hearty here, be enforced integration of the races in the public schools of that county.

Mr. Robertson has pointed out, it is nothing to boast about. I certainly do not assert it as a threat but as a fact. The governing body of the State, in response to the demand of the people who pay the taxes, have deferred action on the school levy.

Forthwith admittance would serve to perpetuate that action for some time to come.

Now, in view of the broad scope of the decision of May 17, its crushing impact upon a system of public education established and progressively maintained, with the sanction of the Congress since 1868, with the sanction and approval of this Court since 1896, the sudden shock entailed by the uprooting and demolishing of a way of life enshrined and institutionalized in the hearts and minds of the overwhelming majority of millions of law-abiding citizens, their fierce and deepseated devotion to their customs and traditions composing as they do, the warp and woof of their mores of life and their devout and firm conviction as to the legal and moral soundness of their public school system which they have maintained for

generations and into which they have poured their souls, their substance and their sacrifices, we, in Virginia and in the South, if it please the Court, steeped in the concept of the right of people to govern, to support or not support a system of public education as they may choose, we are facing the bleak prospect of serious impairment or possible destruction of our public school system--and I measure my words.

This Court, in all deference, should, therefore, afford a reasonable opportunity to work with as much expedition as possible, in good faith as state governmental machinery will permit, to evolve a solution acceptable to a majority of our people and consistent with the Constitution of our country.

We therefore respectfully submit that this case be remanded and that the Court of first instance be allowed discretion in the light of relevant circumstances and tradition.

Now, only one phase of this great problem has ever been considered by this or any other court. When this Court repudiated the separate but equal doctrine, it then proceeded to deal only with the effect of segregation upon the colored children; that type of segregation which they denoted as segregation with the sanction of law. They held that the plaintiffs, by reason of segregation complained of, were

deprived of the equal protection of the law.

No consideration has ever been given, nor did the record in its present state so require, to the effect of integration on white children, to what it would do to their hearts and minds or to the effect of integration on the ability of a state to maintain a public school system or to how a state might shape its legislative policies to evolve a solution to the dilemma which confronts it.

These, in my judgment, are considerations of policy and legislation belonging to the states. As to such matters I say in all deference, this Court has no power to legislate or to delegate non-existing authority to the court of first instance. I further say, with due deference, it has no power to give to a state or a local school board affirmative directions as to the operation of its school system.

There is no authority in law nor can we submit to any situation whereby any court takes charge of and supervises our public schools.

On the surface the problems confronting us do not stem from racial antipathies. Those who spout that propaganda are either abysmally ignorant of the facts of life or are as reckless with truth as Sherman was with fire in some parts of our country.

If permitted to delve into and cope with these problems on state and local legislative and administrative

levels, we are hopeful--we are determined to salvage a rational and constructive system from the wreckage which the future otherwise tends to hold for us.

May I for a moment, touch upon this problem of uniformity of approach with the decree? Our problem can not be solved, if it please the Court, through uniformity of approach statewide at the state level.

Broad non-discriminatory discretion to be exercised without discrimination must be vested in local school boards to cope with varying conditions extant throughout the state.

No blanket forthwith decree entered by any court could possibly do aught but preclude an approach to a solution and not only turn the clock back educationwise, far beyond Plessey vs. Ferguson, but wreak damage upon the hearts and minds of children, to quote the opinion of May 17, in a way unlikely to be ever undone and to the extent that such final adjudication would constitute precedence in law, the remaining southern states here, Amicus Curiae and others not before this Court in any role, could and would tell their people in fact, that they had not had their day in court to test the constitutionality of any solution which they might evolve in an honest effort to save their public school system from destruction.

This Court has said that public education is the most important function of state and local government. Virginia and her sister states of the south are in full accord with the

soundness of that statement, for nearly a century we have proceeded under the sanction of law.

Suddenly we are told we are performing the most important function of state and local government in violation of law.

If education--and we agree--is the most important function of state and local government, then the state and local government have the right to cope with the problems thus created in the discharge of their functions and to be given a reasonable time to set in motion governmental processes designed to respond to the educational requirements of their own people.

It is difficult and dangerous. The percentage of Negro children, as Mr. Robertson has pointed out, range from zero in 3 counties to 77 per cent in one. One-fourth of Virginia's counties have 50 per cent or more of Negro population, one-half have 25 per cent or more. Over one-half of Virginia's 29 cities have 25 per cent or more of Negro school population.

Six of our cities have less than 10 per cent. The ratio of population is of pressing significance in any approach to a solution of this problem. While it is not the final determinant, it is the most powerful single influence on racial attitudes which we must recognize.

A county with ten per cent or less of Negro population will be found in many instances to have a district or

area where the ratio will approximate 50 per cent.

Now it is pointed out in the brief of opposing counsel that in May of 1954 Negroes were admitted to previously all white parochial schools in Virginia and this was accomplished without a bit of discontent. The fact remains that out of a total of 21,048 pupils, only 7 per cent of them were Negro and that the schools were not tax-supported. While the public schools of Virginia with a population approximately 800,000 of which 25 per cent are Negroes must depend upon local taxation for 56 per cent of their support.

Mr. Robertson went into the achievement standards. I am going to say this: In a typical class of 36, according to these tests, accepted appropriate standard tests, in a typical class of 36, half white and half Negro, the range of comprehension would extend all the way from 6 Negro pupils with a reading age of 9 years and 4 months to a top group of 6 white pupils with a reading age of 16 years and 2 months.

In dealing with the how of integration, which they tell us we must deal with, how would it be possible to proceed with an effective teaching program on any such basis if the teaching level is pitched for the level of the median Negro child?

Then the education of the white group must suffer. Regardless of why and as to any other reason, it is a fact that these great differences do exist. And these are not intangibles.

they are measurable.

They are substantially the same variations as turn up year after year by race in the county and city schools.

These realities cannot be ignored. I am not going further into the matter of health, Mr. Robertson brought it out, but with the same drinking fountain, the same toilets, the same physical daily habits, and all, our problem is increased. The conclusion as a result of these conditions with reference to health is inescapable, that white parents will keep their children out of school. They will withdraw their support. I do not say that as a threat.

Now, with the attitude that has flourished, our friends sing their siren song entitled "The People of the South are Law-abiding People." In the next stanza they urge this Court with unwarranted and undue force, not to press this crown of thorns upon our brow and hold the hemlock up to our lips. Yes, we are an orderly law-abiding people. We lead in giving law and order to the nation. We washed the 18th Amendment out of the Constitution and flooded the Volstead Act to oblivion on the stream of our honest spirits because it affected the way of life of the American people.

We have that problem multiplied now. The people of Virginia devoutly committed to the cause of education, look to this Court as their trustee of the power and the bearer of the responsibility.

The Chief Justice. Mr. Marshall.

REBUTTAL ARGUMENT ON BEHALF OF HARRY BRIGGS, ET AL

By Mr. Marshall.

Mr. Marshall: May it please the Court, I had hoped as I saw the issues in this case, that by now I would be discussing the one point I think is still before the Court. That is, assuming that the Court decides to consider effective gradual adjustment, that by now somebody representing one of the two states would have been able to give the Court some idea as to when that could be done under any circumstance.

And to hear from the Lawyer Almond, not in his lifetime, some other place, it was so for hundreds of years, I say on that point, which as I understand is limited to the decision being effective, there is nothing before this Court that can show any justification for giving this interminable gradual adjustment. I am particularly shocked at arguments of the impotency of our Government to enforce its Constitution. I am shocked that anybody would put the right of the Negro child to participate in education, which this Court has said is the most important function, on a non-segregated basis. I am shocked that anybody classes that right to take a drink of whiskey involved in prohibition with the right of a Negro child to participate in education.

We are not talking about the same thing. There is nothing in anything that shows that there is any connection.

The point was made that in South Carolina they have had segregated schools for such a long time, and it would not be wise to get rid of them expeditiously. I remind this court that in two cases where certiorari was applied for here and denied, the two primary cases from South Carolina, Elmore and Baskins, Negroes have been denied the right to vote in South Carolina since, if I remember correctly, before the turn of the century, but yet when the district court issues a temporary injunction or preliminary--I have forgotten which, but before ultimate decision, Judge Warring, now retired, ruled that Negroes could not be excluded from the primary election in South Carolina in the very state he is talking about, they had to re-open their books which they did and register some 50 or 80 thousand Negroes within ten days of the decision.

They say, well, education has been here for a long time. And once again these general phrases of time and its significance at this step, I know I was correct in the beginning of trying to make clear the issues in this case.

Everybody on the other side takes the position that we are obliged to show that effective gradual adjustment will not work.

As I read these questions they are obliged to show that it will work. It is said constantly that we have not shown anything. We have shown our right to immediate relief. And this is a court of equity. And although I, of course,

recognize that the burden of proof never shifts in a case but the burden of going forward shifts back and forward. in this, a court of equity, it is unbelievable that at this late day and age the argument would be made that calls for consideration and that the person arguing it should be given advantage brought out by their own wrongdoing.

Both attorneys in the Virginia case say that all of these things they talk about, they admit frankly, are because of the denial of the rights to these people involved. They mention these educational tests. There again, we have use of figures that can be used any way. They use figures on a percentage basis. They leave out the fact that in each one of those percentages, there are Negro children that run the gamut in each one of those 25 figures, but they try to give the impression that all the Negro children are below all the white children when that is not true.

There are geniuses in both groups and there are lower ones in both groups, and it has no bearing. No right of an individual can be conditioned as to any average of other people in his racial group or any other group.

Now these health theories, and again we have figures that you can go any way you want. I did not check them because I think they are so completely immaterial unless the State of Virginia either has no public health service in its schools or they do not know how to use it.

It has always been interesting to me, if the Court please, from the Morgan case involving transportation, that, well, whenever Negroes are separated from other people because of race, they always make an exception as to the Negro servants.

In Virginia, it is interesting to me that the very people that argue for this side, that would object to sending their white children to school with Negroes, are eating food that has been prepared, served and almost put in their mouths by the mothers of those children, and they do it day in and day out, but they cannot have the child go to school. That is not the point involved in this case. The point is as to whether or not, at this late date, with emphasis, this government can any longer tolerate this extreme difference based upon race or color.

Not one man has stood before this Court yet representing the other side, and shown concretely what they have done in support of the May 17th decision. They have not even started to begin to think about desegregating.

Rather, their emphasis is based on the hope--without any foundation that I can imagine--that this Court will buy the idea of turning this over for a period of an indeterminate number of years. They say I do not have faith in the district courts.

That is untrue. My argument was that I was sure the district courts in these cases would do absolutely right

and follow the ruling of the Court, but in this governmental protection of these rights and the governmental leadership in this so-called educational process, this changing-of-attitudes process can be brought about more effectively, and I submit anything else would be of no effect, than for this Court to issue the strongest type of a decree which will arm the district judge and the court of appeals judge with these necessary high level decrees so that they can operate from then on.

That is why we think that the instruction from this Court, we all agree--I do not know why there was so much argument about it--there should be this evidence given in the lower court.

That is in our proceedings. We say you can present it to the lower court, you can show all of these difficulties. We agree on that. The only thing we do not agree on is they want no time limit, and I do not believe that anybody in good faith could listen to these four arguments and not be certain that when they go to any court they are going to argue the same thing they are arguing here, which is never.

So I say, with a strong, forthright decree from this court, all of the district courts in the country can solve this problem. To my mind -- again I come back to it -- despite the criticism that has been made of what I say, that we can not continue to exist with this division in our country, whether it is on sectional lines or areawise.

This local option business, this question that there is always a two-fold score, that we cannot integrate Negroes because we have got so many in this country.

However, the reason we cannot integrate them is because we have to listen to what the people in that county want. Well, obviously, that is what they mean. They mean the 10 per cent of the white people. They mean specifically that the enforcement of our constitutional rights, recognized in this Court's decision on May 17, must be geared down to the point, as one of the lawyers said, you not only bring in people in the community, you bring in experts.

The district court would be a legislative body, and after listening to all the people in the community, there would be the decision as to when this could come about.

The opposite of orderly procedure. And we would have, for example, as was raised by Mr. Justice Reed, the number in Clarendon County. I do not think it is probable but you could have three different time limits in Clarendon County, one for each district. Obviously that is not what is intended. Obviously, I do not believe that our Constitution, that this Court,-- and I most certainly do not believe that questions 4 and 5 were either -- intended to put the right of the children in these cases to be subjected to what the will of the majority of the people in that community want.

Finally, one thing that to my mind is completely

without any semblance of legal authority is that, if you do not give me what I want, I will close up the public schools. It is quoted in the Southern News and in this very State of South Carolina in one of these hearings on these bills to abolish the public school system in South Carolina, they are already working on it, to be ready. And one leader who happened to be a white leader who is not in favor of integration, made the statement that "I do not know what the solution to this problem is, but as to foreclosing these schools, one thing I do know, we will not solve the problem by increasing ignorance." Now that is something I just do not believe, and proof is right in South Carolina, and immediately after this May 17 decision Governor Byrnes stopped the building of all schools under the equalization program.

A month or so later, he started the program again. So, sure, there will be noise here and there, but we have got to continue, if the Court please. I cannot over-emphasize that the problem is tough and we have faith in our government and not the belief that our government is not enforcing its Constitution in South Carolina and Virginia, just as it is any place else.

So far as I am concerned, the arguments that are made to the contrary, in addition to the arguments made in their briefs, they have shown only one point in so far as the

legal argument is concerned.

That is, that they should have an opportunity to have time to make certain adjustments. We agree on that, and they should present them to the district court but we want a time limitation, a time limit. We believe we are entitled to our rights as of the next school term, and if we cannot get that type of decree in the judgment of this Court, then what is going to happen? They are making all the threats as to what will happen if they do not get the decree, putting that aside if this Court in its wisdom decides that you will not, in this case, issue a decree which will require admission of these students by September.

The only thing that will give us anything at the end of this lawsuit would be a decree which would do the four things I say. It is important to start that immediately, to report to the district court step by step, and to end it at a date certain. Otherwise, we will have in the State of Virginia and in the county involved, the State of South Carolina and throughout the country the continuation of what has been branded as an unlawful procedure, what has been branded by this Court as unconstitutional.

It is not the question of having my constitutional rights to day-by-day variations in county by county determined one way or the other according to the local option.

In my county they say my child will go to school, schools will be desegregated in five years. I move over into the next county, hoping that he will go in one year and they make it six years. I will be traveling all around the country trying to get my constitutional rights.

It makes no difference under this Constitution of the United States that your child is born in one state or one county or the other. You have the exact same rights in South Carolina and Virginia insofar as the Constitution is concerned as you have in New York or any place else.

Therefore, in so far as these cases are concerned, we believe that the first decree is the one we are entitled to, and if we are not entitled to that, in your judgment, at least, we get the second decree so that our plaintiffs in these cases and other Negroes will at least have some protection.

Without a decree, providing for a time limit, there will be no protection whatsoever for the decision of this Court rendered on May 17.

Thank you very much.

The Chief Justice. Referring to the South Carolina case, Mr. McC.Figg and Mr. Rogers, will you be good enough to furnish to the court a decree as you would propose it for your state as the others have done? It would be helpful to the Court if you would.

We will now hear from the State of Florida, Friend

of the Court.

ARGUMENT ON BEHALF OF THE STATE OF FLORIDA,
AS THE FRIEND OF THE COURT

By Mr. Richard Ervin.

Mr. Ervin. First I would like to express appreciation for the opportunity to be present and present the facts of our Amicus brief.

The decision of May 17 was momentous and it had a very serious impact potentially upon our Florida school system.

We believe the answer to this is that stated in Question 4-B, effective gradual adjustment.

We feel that the legal justification rests in equity jurisprudence considering the progressive state of society, the public interest, and that this Court should permit a situation where sociological and psychological factors can be considered as well as physical adjustments in each situation that comes before the courts for adjudication.

We feel that no constitutional rights are absolute but that all are exercised within the realm of the police power, the public welfare and regulations for the best interest of the people.

In overturning the present decision on the basis of advance and psychological knowledge, we feel that the Court in any implementation pattern that it sets in these

cases, particularly in the South Carolina and Virginia cases, that it should give consideration to psychological and sociological factors in implementation.

The brief of the United States Attorney General says "The impact of segregation upon children the Court found can so affect their entire life as to preclude their full enjoyment of their constitutional rights. In similar fashion, psychological and emotional factors are involved and must be met with understanding and good faith in alterations that must now take place in order to bring about compliance with the Court's decision."

We feel that he means that in the implementation of the Court's May 17th decision that consideration must be given to sociological and psychological factors. W that in order to do that, that there must be essential preparation in the South, in the various school districts of the South to bring about some degree of public acceptance and diminution of sociological and psychological factors which militate against a nonsegregated school system.

The Attorney General's brief then says "General hostility is a relevant factor to be considered in determining the most effective method for ending segregation in a particular locality. School administrators have an obvious concern in obtaining public support and acceptance of the transition. Thoughtful preparation in advance will resolve

the problem with as few disruptions as possible."

Harry Ashmore wrote the book, "The Negro and the Schools." He based it on the Ford Foundation for advancement studies and he wrote, "It is axiomatic that separate schools can be merged only with great difficulty if at all, where a great majority of the citizens who support them are actively opposed to the move. No public school is isolated from the community that supports it, and if the very composition of its classes is subject to deep-seated and sustained public disapproval, it is hardly likely to foster the spirit of united effort essential to learning."

As we understand it, the school system in the South, is close to the people and it is an important center of social life in many of our Southern communities. In arguments here, it has been suggested that the Federal Court could by decree, handle the situation without the cooperation of state and local officials; that public opinion of the community may be disregarded, provided positive leadership and action of responsible public officials is extended on behalf of the program of desegregation.

Such appears to be implicit in the sociological theory advanced by Milder K. D. Clark and other scientists but whether this theory is correct or not, statewise and folkwise, in Florida, as between its public officials and People

they are practically homogenous.

In other words, they view the problem of desegregation almost the same and they feel that Florida is not ready for a program of immediate segregation.

I want to read to you very briefly the findings of the survey made of leadership opinion in Dade County, Florida. Dade County is where Miami is located. This survey was made by the University of Miami Social Scientists of that University.

Dade County people are heterogeneous. They come from all parts of the nation and they have all types of racial people in that area. Here are some of the findings:

"Despite the fact that a majority of the white population of Dade County is opposed to the Court's decision as a matter of principle, they, nevertheless indicate that they will abide by the decision if integration is handled gradually with an adequate period of preparation. The present reluctance to assume positive leadership on a par with public officials out of any substantial number of leadership groups outside official circles, indicates great difficulty if an attempt is made to move too quickly. A general belief exists that serious violence will occur if the decision is pushed by any minority group, white or colored."

With a majority of white population disagreeing with the Supreme Court decision principle, a state legislator was without question, correct when he said what is needed is a

change in the community. Such change obviously requires sufficient time.

We believe that it is wise in these cases where only the question is involved of race, that a decree remanding the case to the courts of first instance and in the general directions stating that the court will consider not only physical adjustments but sociological and psychological factors, would be the right decree.

We feel on the other hand, that an abrupt decision, one that sets a time limit which could become the maximum limit, that it would seriously retard the efforts of all moderate, all liberal-minded people in the State of Florida, and would drive them probably in the opposition camp.

There will even be trouble in the legislature with regard to getting appropriations, state aid to the schools. There would be complete arousement of the people that it had to be done by a certain period of time with no advance preparation. You would not have the opportunity for university workshops where the problem is studied, where inter-racial committees,which are now in operation in Florida, are trying to solve the problem, continue their efforts. You would not have the churches, the civic groups, fraternal, the other people who are consciously trying to make this go forward there.

We feel that for the court, that is,the Federal Courts to assume the whole burden of enforcing the

decision without taking into their confidence the school administrators and the people of the state, would be a great mistake and would have untoward results.

The idea that from the top, that is by Federal contempt or by prosecution, under the Federal Civil Rights Statute, that this May 17th decision can be enforced, we think is an unsound one, we hope that the Court will not permit it.

We are making efforts in our state to work this out on a local basis. It is true some of the counties, some of the areas of the state are not making that effort. Others are. In Dade County alone there is a council, a Council of Human Relations. They are meeting next Sunday to talk about plans, well in advance of the Court's implementation decision. They are trying to devise means to prepare the people for acceptance. Any decree that would result in a specific,abrupt change would be completely devoid of cooperation of state officials, of state citizens, it seems to me.

I do not believe in the rule "Do it," that has been expressed here. The extremists are trying to take charge of this proposition. We want the Court acting as a an executive council here at the very top to write in these cases where race is the sole question, that the lower courts can take into consideration the sociological and psychological factors involved in the integration, only for the transition

period as well as the physical adjustment that is necessary, and then there will be the arguments all along the way, that is the Federal district judge or perhaps the state court judge, where there is a dispute about administrative policy, to see whether or not the quotas of the school administrators in Florida and other areas of the South --whether they are trying to circumvent or whether they are really trying to adopt these programs of human engineering to bring about public acceptance.

I think that these ideas expressed here of what we want really is a delay, a moratorium or local option and that that is beside the point. We want an opportunity to show this Court that we can by local action, not by taking a vote but by people working with the school administrators, the PTA, inter-racial committees, talking this problem out, arrange some time of desegregation in the school districts. We want to show the Court that it can be done.

If it appears that this idea of gradual adjustment under the great power of the court of equity is not properly received by the people of the South, then the court can abandon it. But at least they should give us the chance, just as you felt that you had to strike down racial segregation altogether in the schools because of the modern advance, the psychological knowledge, then you should take into consideration the psychological and sociological and allow us

a period of grace to work on them.

We feel you have faith in your decision that ultimately it will be not only the rule but the accepted practice everywhere. But to ruin the good effect of this decision by abrupt decree is what we respectfully request that you guard against. The Prophet Isaiah said, "He that believeth will not make haste."

In this instance, this great problem before us, we would like to ask the Court that you write a broad decree remanding these cases under your equity power and your power to say that within the framework of reality these rights of the Negro children shall be exercised in such a way that they will not arouse our communities and they will not result in all kinds of trouble in the schools.

If you will allow us the opportunity to work under this decision, not against some deadline, we feel eventually we will bring about full integration.

As one county goes away from segregation, it will be an example to other counties. For that reason, we hope you will not feel that the rule "Do it and do it now," and federal compulsion is the only way. Give the people a chance through the democratic process to change the attitudes of the people in the community. If it does not work, you can change it in a later case and come back to a deadline time table.

Thank you.

The Chief Justice: We thank you for your cooperation and presentation.

Mr. Odum, will you want to say something by way of supplementation?

Justice Reed: Mr. Attorney General, could you be a bit more specific as to how time will have an opportunity to bring about acceptance of this?

Do you have in mind gradual integration by the first grade, second, and third grade, or starting at the top and have it the other way?

Mr. Ervin: Yes, all of that would be contemplated, but we do want the school administrator to try to work out the direction of the plan for his school system, sir.

Probably they can start in the first grade, that is a mixed group. Probably it should start at the high school level. But each school attendance area or district should make a showing of good faith to forward some type of plan. If that is done and there were no objection to it, if it were accepted by the Negro people involved, it could go on under that plan.

If it were not accepted and a case were brought then the question would be whether or not in good faith they were making any attempt at all.

I think the Chief Justice had that in mind this morning when he questioned some of the advocates of the gradual program.

We do contemplate any type of plan that would move toward the goal.

Justice Reed: As for instance, a choice between two schools in the same district?

Mr. Ervin: I do not know whether that could be done or not. That might be one solution if the inter-racial committees and the groups working with the School Board decided that that was the way to start it, that might be all right. I have not examined that type, your Honor, but that might be one of the ways.

The Chief Justice: Thank you, General.

The Chief Justice: Mr. Odum.

ARGUMENT ON BEHALF OF THE STATE OF FLORIDA AS A FRIEND OF THE COURT

By Mr. Odum.

Mr Odum: Mr. Chief Justice, by way of supplementation of what I am going to say to you, I am aware that after argument of two days most of the subject matters have already been talked about. I do not want to take up the Court's time by way of repetition but I think it may be of interest to the Court to know some of our problems, specific problems in Florida that will have to be faced and overcome before we can comply with the Court's decision. Last May when this Court announced its decision in the Brown case, that news had a considerable impact in Florida. Everyone in Florida, of course, felt that he or she was directly, or would be directly, involved. There were a great many wild statements made and there was considerable discussion of the matter in the newspapers. We were confronted and found that we had two groups of people there.

We had extremists on both sides who were unable or unwilling to see any good in the other fellow's point of view, who were unwilling to reason or to be reasoned with. In between these two extreme groups we have a great many people, both white and Negro, who can give and take, and who are willing to work together and who are willing to try as good citizens to live within the law, at the same time recognizing

the position that the other people have and their feelings and trying to work together. I think that position is best expressed as regards this decision by one of our outstanding Negro citizens in Florida. I would like to quote you what Dr. Mary McLeod Bethune had to say.

In a press statement this was announced. As you know, I am sure Mrs. Bethune has spent her life working for the welfare of Negro people. She is the founder and has developed the Bethune-Cookman College in Daytona Beach, Florida.

I do not believe that anyone can question her interest and her sincere devotion to the cause of the Negro people. She had this to say when she heard the news of the Court's decision: "The High Tribunal has put a legal foundation under a belief many of us have long held and which is clearly and concisely stated in the most basic American ideal, 'All men are created equal.'

"In quietness and patience, people of culture receive this news, realizing the inevitable has at last come about. They also realize, however, that the absorption into our daily life of this new decision--the putting of it into practice--must represent an organic cultural assimilation which, like all social processes, will take time. But eventually, the wrongs and mistakes of history are righted and remedied and inhumanities are rectified . . . Let us enter into this integration calmly, with good judgment. Let us give and take.

working out together the best possible means we can put into action so that there may be peace and understanding, and may I say, the spirit of brotherhood.

"There is much for the Negro to do as well as the white. We must use tact and wisdom. It will take conferences, thinking and planning and working side by side. More largely than is realized, we are good, loyal, American citizens. And whether we be north, east, south or west, we shall put forth every effort to meet the requirements of our new status."

Justice Reed: Where is that in the brief?

Mr. Odum: Page 43, your Honor, this statement is included in our brief, our own brief, under the subheading "Reasons for Hope" because we do have reasons for hope in Florida.

All of these reasons for hope based on statements such as these whether they be from Negro leaders or white leaders, are always based on the assumption that there will be time, reasonable time to work out difficulties, because we do have difficulties, and it is foolish to try to ignore or brush aside these difficulties with the assumption that a little pressure from the top can overcome them, that they will crumble away. In the first place, that assumption, because of this, is false. We have to have leadership before any pressure can be exerted. And by that I mean leadership at the

local level and the school board officials and the state officials who will be directly or indirectly concerned with trying to carry out the Court's decree and preserve our school system in good order, and the safety and health and welfare of our children and our people.

Our cabinet, our Florida cabinet, which is the governing body there, the Governor and the Attorney General and the Superintendent of Schools, the Commissioner of Agriculture and the State Treasurer and the Comptroller on the day after this decision was announced, tried to decide what was the best thing to do, so they took this decision, and I think this is in answer to the accusation that none of us in the South are doing anything about it, because they lost no time in doing something constructive about it. They said, "Let us find out what problems we have to face, what we have to overcome and what should be done."

The cabinet requested Attorney General Ervin to make a survey of leadership opinion, and that point is important. This was not a straw vote, a straw poll of people on the street as to what they thought. Everybody knew what they thought, practically all the white people were against the plan; practically all the colored people were for it. It would have been a waste of time to make such a survey as that. This survey was a survey of leadership opinion, because we assumed from a very hasty study of what the experience in other

states was that without leadership willing and able to carry it out, it could not be carried out. So this survey was a leadership opinion in Florida.

With the help of an advisory committee, an inter-racial advisory committee consisting of some of the best people that we could find in the state, Negro and white leadership, educators, people who had some specialized knowledge that would help us in making this survey, and with the help of sociologists from the State Universities--we had, to mention a few of this committee, we had three of the outstanding Negro leaders, I feel, in Florida, Dr. Richard Moore who is President of the Bethune-Cookman College, Dr. Gore, president of the State Negro College at Tallahassee, Florida and Dr. Gilbert Porter, head of the State Negro Teachers Association. They served and worked with this committee. Eight-thousand some odd, I believe it was, questionnaires were carefully formulated under expert advice and sent out to such people as County School Board members, trustees, supervisors, a sampling of teachers both Negro and white, of course, Presidents of PTA Associations both Negro and white, county judges, peace officers, and many other elected and appointed officials, and practically all officials that we thought would have some direct or indirect bearing or responsibility for carrying out an implementation of this decree. In addition to that, we sent trained interviewers into 10 sample counties.

The counties were chosen at a number of spots in the state representing some urban, rural counties, some counties that had a high Negro population, and other counties a low Negro population, trying to get a cross section. In these interviews and in these questionnaires we tried to get at the root of what these leaders and their local community thought.

The results are in the brief. Time does not permit my going into these results but they have been obtained for the information of ourselves and the people of Florida who must try to work this problem out. Now this information presents the problems which they had time to overcome and solve. We do not know when. We maintain that many of these problems can not be solved. We do feel this and we feel sure of this, that to set a definite date in Florida for compliance, an immediate over-all compliance, whether it is next year or the following year, would be to the best we can find out, totally impracticable.

There would be no sense to it, because Florida is a peculiar state. It extends for almost a thousand miles from Pensacola down to Miami and Key West, and in between this thousand miles you will find in the 67 counties some really different situations. You will find counties which are populated largely by people who have migrated there from other states, white people who have different customs and traditions.

Then those in the Deep South counties further north. Even that generalization does not always hold true because some of the central and south central counties present some of our greatest problems.

We know of counties in Florida, in one end of the county, problems of integration would be very small because there is a low population of Negroes and most of the people there are people from the north who have no particular objection. At the other end of the county it is just the opposite situation, a heavy concentration of Negro rural workers whose cultural situation reveals a wide gap. Whether we like it or not, it is there and these gaps must be closed.

A decree telling that particular county "You must integrate all of your schools at one time" would make it almost impossible for that county school board to carry that out. We do not believe the Court, in a decision of this kind, has ever intended that our people, white and Negro, shall be made to suffer. We really believe that the Court in its equity power is willing to permit a course down the line.

The Federal Courts, the District Courts, who are close to the situation and who can call before them the parties and examine into the real problems and decide these problems, that that discretion should be given.

We think in line with your questioning--that good faith always should be the answer. It should be the test. And

If the district judges are adequate or capable of making a determination like that, they can decide whether or not a plan which is formulated by a local school board is a trumped up thing or whether it is offered in good faith.

Where the Board can come in and show--worrying about the burden of proof--I think it is on the Board of Instruction, but when the Board can come in and say, we have tried and here is what we have done, we have tried to work with the PTA, through parent groups, through teacher groups, we have done our best, but even so, we know that if we admit these children there will be disruption and our school is in confusion and our scholastic standards in that school will fall away; the school will be in danger.

In that case, we think the Federal District Court should be permitted to take those things into consideration after he is satisfied that there is good faith there, and say, we will listen to your proposal,what to do about it.

And then the school board gives a considered plan and says here is what we will do. If it is reasonable, we think that would justify the time.

How much time,the court would have to decide at that time under those circumstances.

If it says 6 months or a year, that would be the time.Then at the end of that time the Board would have the responsibility of showing that it had complied or why it had

not complied.

The pressure would always be there. And yet, it would not be too much pressure, the kind of pressure that an over-all immediate decree would bring which would take away the hope that we have of time for a reasonable adjustment, for reasonable compliance.

We think that the Court has the right to give us those things.

Justice Harlan: What you are really saying is that there should be a time limit but the time limit should be fixed by the District Court?

Mr. Odum: Yes. We do not think that the time limit set for all states or all counties would be practical.

Justice Harlan: But you agree that a time limit at some level imposed by somebody is an essential part of this machinery?

Mr. Odum: Yes, that each case as it came up before the district court would have to have its own time limit set.

Thank you.

Justice Frankfurter: Before you sit down, may I ask you apropos of the results of your survey, your appendix A which I read with the greatest interest and even found enlightening, did the attorney general give that survey any kind of dissemination among the people in the state, the views set forth and the

data?

Mr. Odum: Yes, sir, as I said, the purpose in making that survey was not only to give that information to you but to make it available to us, school leaders in Florida. We really printed 2500 copies of this book.

Justice Frankfurter: Was there any summary of it in the press?

Mr. Odum: Most of the daily newspapers in Florida carried it, one paper quoted it in full.

2500 copies were made available to various school officials in the state with the hope they would be used as a guide.

Justice Frankfurter: You mean most of the papers printed your conclusion?

Mr. Odum: Yes, sir, not the whole story, but most of it.

The Chief Justice: Thank you, sir.

We will now hear from the State of North Carolina, Mr. Beverly Lake, Assistant Attorney General.

ARGUMENT ON BEHALF OF THE STATE OF NORTH CAROLINA AS THE FRIEND OF THE COURT

By Mr. I. Beverly Lake.

Mr. Lake: May it please the Court, speaking on behalf of myself and the Attorney General of North Carolina, I would like to express my appreciation for the opportunity

to participate in the argument of these cases, to which neither our state nor any of our citizens was a party.

In response to the invitation of the court, we are here as a friend of the Court. We have no reason to make North Carolina a party to these cases nor by anything that we may say or do here to commit her or her people to any course of conduct. No decree that is issued under your authority in these cases can reach directly any officer, agency or citizen of North Carolina. But whether or not the children of this state will or will not attend public school after this year and whether or not the people of North Carolina will or will not continue to live side by side in peace and friendliness will depend in a large measure on the decrees about to be issued.

To ignore those facts is simply to shut one's eyes to reality, and if ever there was need to come to grips with raality, that need is present in drafting of these cases.

So for that reason we have come in response to the invitation to direct the Court's attention to the public schools of our state and to the grave concern which the people of North Carolina have felt. They yield to no other Americans in their loyalty to the Constitution or in their respect for this cause. We are not here to re-argue the issue disposed of last May, but the proper discussion of the questions which we have been invited here to discuss requires

that we start with the frank recognition of the indisputable fact that in North Carolina -- contrary to the condition in Kansas -- in North Carolina, there, the overwhelming majority of people regard that decision as a serious blow which they did not expect in view of the circumstances under which their schools are being operated. And the suggestion in the opinion that at this term that decision might be implemented by a decree requiring that Negro children be admitted forthwith to the schools of their choice has hung like a veritable sword of Damocles over the public schools of our state. It comes as a terrific blow and comments of the county, and city school superintendents which are quoted in the Appendix to our brief show that those people who know the North Carolina schools best believe that, if such a decree should fall from this Court upon the schools of our state, it would in all probability be a death blow, and if not, that it would put those schools in turmoil and confusion from which only the enemies of our country could derive satisfaction.

The people of North Caroline recognize that this issue is too great for hasty action. I speak on behalf of a state which is conscious of no wrongdoing in this matter. North Carolina is proud of her record in the field of Negro education. Today North Carolina is, in fact, educating more Negro children than any other state in the Union and she is educating them well. That is not the result of

an eleventh hour attempt to avert the decision of last May. It is the result of a century of devotion to the cause of public education. It is the result of sacrifices of four generations made in reliance upon the interpretation placed on the 14th Amendment by the Congress, by the courts of northern as well as southern states and by this Court. It is the result of a public school system in which both white and Negro North Carolina children have a distinct pride because both white and Negro children have a share in its development. They participate in its benefits.

As I say, in equity, Maitland says we study the day before yesterday in order that yesterday may not paralyze today, and today may not paralyze tomorrow.

The Chief Justice: Very well. We will recess until tomorrow morning.

(At 4:30 p.m. the oral arguments were recessed to be resumed at 12 o'clock noon, Wednesday, April 13, 1955.)

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