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Desegregation in the Schools The Citizen's Responsibility

William P. Rogers

DESEGREGATION IN THE SCHOOLS: THE CITIZEN'S RESPONSIBILITY

William P. Rogers†

In the following article, the CORNELL LAW QUARTERLY *prints five addresses by Attorney General William P. Rogers in which he discusses the meaning and impact of the landmark decisions of the Supreme Court in the* School Desegregation *cases.*

The initial address was delivered just prior to the opening of the public schools in the Fall of 1958, the year following the tragic incident at Little Rock, Arkansas. The last speech in the series was delivered in February, 1959, just after Negro school children were first admitted to the previously segregated public schools of the State of Virginia. The six-month period under review traces a change from wholly negative attitudes in many areas to good faith efforts towards compliance with the law within the framework of the Court's decisions.

In forwarding these speeches for publication, the Attorney General said:

> *I am most pleased that the* CORNELL LAW QUARTERLY *will publish the series of speeches I made during a most trying period in our national existence. It was my hope then, as it is now, that with understanding on the part of responsible parents and civic leaders in the communities affected, progress could continue to be made without disrupting the educational opportunities for all children of all races. If these speeches helped to point the way, then my purpose was fully accomplished.*

I*

The decision of the United States Supreme Court in the *School Desegregation* cases[1] and some of the problems which have arisen in connection with the implementation of those decisions call for our most serious and thoughtful consideration. The ultimate issue which emerges, as I see it, does not turn upon the evaluation of particular rules of law, but rather upon the role of law itself in our society; whether the law of the land is supreme or whether it may be evaded and defied.

On May 17, 1954, the Court announced its unanimous decision which declared in part "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[2]

The decision was foreshadowed by earlier holdings. As early as 1938, the Court, speaking through Chief Justice Hughes, had concluded that a Negro living in Missouri was entitled to study law at the University of Missouri, a state school, there being no other law school maintained by

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† See Contributors' Section, Masthead, p. 558, for biographical data.

* Address before the General Assembly, American Bar Ass'n, Los Angeles, California, August 27, 1958. This speech appears in 45 ABAJ 23 (1959).

1 Brown v. Board of Education, 347 U.S. 483 (1954); 349 U.S. 294 (1955).

2 347 U.S. 483, 495 (1954).

the state which he might attend. The constitutional requirement of "equal protection of the laws" was not deemed satisfied by the state's offer to pay the student's tuition at a school of comparable standing in a nearby state.[3] Then, in 1950, the Court, in a unanimous opinion written by Chief Justice Vinson, examined intangible as well as tangible factors in determining that a separate law school maintained by Texas for Negro residents of that state did not provide the same opportunities as were offered by a legal education at the University of Texas.[4]

Notwithstanding this litigation involving public education at the university level, the decision in *Brown v. Board of Education* had a serious impact upon certain sections of our country and was met with apprehension, resentment, and threats of defiance.

More recent holdings of the Supreme Court and of the lower federal courts emphasize that a state may not engage in other forms of segregation, for example, in providing recreational facilities and in public transportation. The courts have concluded that for a state to enforce separation on the basis of racial criteria, even though the separate facilities provided may be physically similar, is to deny its citizens the equal protection of the laws.

Thus, the "separate but equal" doctrine must be considered a thing of the past. A state law which requires a Negro to act or not to act solely because he is a Negro violates constitutional requirements. For a nation which stands for full equality under the law—which solemnly believes that all men are equal before the law, regardless of race, religion, or place of national origin—the result undoubtedly is permanent. It must be our hope that persons who oppose the decision will see the wisdom and the compelling need, in the national interest, of devising reasonable ways to comply.

In our system of government, of course, the Constitution is the supreme law of the land and it is the function of the judiciary to expound it. This is the very cornerstone of our federal system. As Hamilton stressed in *The Federalist,* "the want of a judiciary power" was "a circumstance which crown[ed] the defects of the Confederation."[5] These difficulties were obviated, in the words of Chief Justice Stone, "by making the Constitution the supreme law of the land and leaving its interpretation to the courts."[6]

The unanimous decision of the Court in the recent school cases thus represents the law of the land for today, tomorrow and, I am convinced,

[3] Missouri ex rel. Gaines v. Canada, 305 U.S. 337 (1938).
[4] Sweatt v. Painter, 339 U.S. 629 (1950).
[5] The Federalist No. 22, at 132 (Lodge ed. 1888) (Hamilton).
[6] Stone, Law and Its Administration 138 (1924).

for the future—for all regions and for all people. There are, to be sure, those who strongly oppose the result—a circumstance more or less true of most court decrees. However, the opposition and resentment caused by these decisions is much more serious, widespread, and deep-seated than that caused by any court decision in recent times.

No one should try to minimize the problems of local adjustment posed in certain areas by these decisions. All of us must be mindful that for some communities the principle of law declared is one which runs contrary to long-ingrained habits, customs, and practices, which were thought to be consistent with the Constitution. We must remember and comprehend the significance of the fact that for more than five decades these communities had reason to rely upon *Plessy v. Ferguson,*[7] which enunciated the concept of "separate but equal." To be unmindful of this is to be unreasonable and unrealistic.

The Supreme Court's 1955 opinion in *Brown v. Board of Education,*[8] dealing with the question of relief, recognized that a period of transition would be required and that it would be an unwise procedure to prescribe a uniform period for compliance without regard to varying local conditions. At the same time, however, it must be remembered that the rights declared by the Court are personal and present rights. "[I]t should go without saying," the Court declared, that ". . . constitutional principles cannot be allowed to yield simply because of disagreement with them."[9]

It should be remembered and constantly kept in mind that the court laid down no hard and fast rules about the transition from segregated to nonsegregated schools. The court did not set forth any inflexible rules about when or how this was to be done. It left to the local school boards, under the supervision of the local federal courts, the method and timing of change, and required only that the authorities meet the test of "all deliberate speed" with due regard for varying local conditions.

The crux of the matter then is one of intention. The problems are difficult at best; but they become hazardous if the underlying intent of those who are opposed to the decision of the court—particularly those in official positions who are opposed to the decision—is one of defiance. For the reasons mentioned, time and understanding are necessary ingredients to any long-term solution. But time to work out constructive measures in an honest effort to comply is one thing; time used as a cloak to achieve complete defiance of the law of the land is quite another.

The responsibility for carrying out the principle declared in *Brown v.*

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7 163 U.S. 537 (1896).
8 349 U.S. 294 (1955).
9 Id. at 300.

Board of Education is primarily that of local officials and of the local community, subject, of course, to the supervision of the courts when the matter is in litigation. In remanding the school cases to the lower courts for further proceedings, the Supreme Court instructed those courts to require that the local school authorities involved "make a prompt and reasonable start toward full compliance." It also directed that the trial courts consider the adequacy of any plans that the school boards might propose as a means of "effectuat[ing] a transition to a racially nondiscriminatory school system."[10]

The United States was not a party to the school cases. The immediate parties were plaintiff school children and defendant local school authorities. The United States appeared only in the Supreme Court, at the invitation of the Court. The Court made it clear in its opinion that the means of implementing the decision—the accommodations of the various local communities throughout the nation to the constitutional principle declared—were to be worked out at the local level. Latitude and flexibility are there, provided only that the means adopted are "consistent with good faith compliance at the earliest practicable date."[11]

The executive branch of the government does not appear in district court proceedings conducted for purposes of determining whether a proposed school plan is adequate or whether an existing plan should be modified. The details of implementation are for the parties directly involved and for the local court. If such plan as may be approved by the courts is thereupon carried out, there can, of course, be no occasion for participation by the Department of Justice. There is hope that this will be the prevailing pattern and that implementation will go forward consistently with the requirements of law and order and the dictates of good citizenship and good sense.

There have been a few instances in which we have participated in court actions, not in connection with a proposed school plan, but in order to assure proper respect for law and order and for the decrees of the United States district courts. One instance of participation by the executive branch in the enforcement of orders of a federal court is a case which arose in Clinton, Tennessee. In compliance with a court order, a number of Negroes had been admitted, without incident, to the Clinton High School. Several days later, John Kasper, an agitator for the Seaboard White Citizens Council, arrived to organize concerted obstruction. His purpose was to frustrate the district court's order and to exert pressure upon the school board to dismiss the Negro students. At the petition of

[10] 349 U.S. at 301 (1955).
[11] Id. at 300.

members of the school board, the court enjoined Kasper from further hindering or obstructing the approved plan. Kasper refused to comply and continued to incite mob action aimed at subverting the court's decree. He was thereupon charged with criminal contempt, again at the instance of the school board members. At this point the United States Attorney, who had not been in the case since it had involved only the predominantly "local" question of formulating an appropriate plan of integration, was requested by the court to participate in the investigation and prosecution of the criminal contempt charge. Kasper was convicted and the conviction sustained on appeal.[12]

The Hoxie, Arkansas case illustrates still another way in which the federal government has participated in helping to overcome violent interference with a plan of integration. Promptly after the Supreme Court's decisions, the Hoxie school board, finding no administrative obstacle to immediate desegregation, announced that the schools in that district would be open to white and colored children alike. This was met, however, by threats and acts of violence designed to coerce the school board to rescind its action. The board and its members responded by an action in the federal district court to enjoin the agitators from interfering with the desegregation of the Hoxie schools and from threatening or intimidating the school board members in the performance of their duties. The injunction was granted, but the defendants appealed on the grounds that no federal rights were involved and that the federal courts had no jurisdiction. The appeal thus raised the broad question whether state officials can be protected in the federal courts from interference with their performance of a duty imposed upon them by the federal Constitution. Because of the effect the decision would have upon the procedures available for dealing with obstructions to duly adopted plans of desegregation, the United States, at the request of the school board and with the consent of all the parties, appeared and filed a brief in the court of appeals in support of the power of the federal courts. The injunction was affirmed.[13]

The general policy of the federal government under the present law is not to institute proceedings to alter the practices followed in the nation's countless school systems. Moreover, if a complaint on behalf of local school children is filed on the ground that the school system in a particular community operates in discriminatory fashion, and this contention is sustained, we regard the matter of formulating an appropriate remedial plan as the responsibility of the local litigants and the local court.

On the other hand, if there is concerted and substantial interference,

[12] Kasper v. Brittain, 245 F.2d 92 (6th Cir.), cert. denied, 355 U.S. 834 (1957).
[13] Brewer v. Hoxie School District No. 46, 238 F.2d 91 (8th Cir. 1956).

as in the *Kasper* and *Hoxie* cases, with the decree of the court, we stand prepared to take such steps as may be necessary to vindicate and sustain the court's authority.

The most serious situation, and one which all Americans solemnly hope will never occur again, involves the case of a state impeding the execution of a court's final decree in one of two ways: (1) under the guise of preventing disorder it uses state military forces in a manner calculated to obstruct a final order of the court, or (2) where a state fails to provide adequate police protection to those whose rights have been determined by final decree of the court and as a result "domestic violence, unlawful combination or conspiracy"[14] hinders the exercise of those rights.

When a group of private persons engages in a concerted effort to obstruct the execution of a court decree, application for an injunction and, if necessary, the institution of contempt proceedings, will ordinarily prove effective. That is illustrated by the Kasper case. In Clinton, Tennessee, however, there had been no breakdown of local law enforcement machinery. Local authorities stood ready, able and willing to prevent violence and to protect the individual citizen. If local law enforcement breaks down and mob rule supplants state authority, the situation is immeasurably more serious. In that situation, it may not be enough to go back to courts for further relief in the form of an injunction, a process which is necessarily time-consuming. A mob does not always wait.

It should be made emphatically clear that the maintenance of order in the local community is the primary responsibility of the states. That responsibility cannot be shifted. When a court has entered a decree, the state has a solemn duty not to impede its execution. More than that, it has the affirmative responsibility of maintaining order so that the rights of individuals, as determined by the courts, are protected against violence and lawlessness. But what if a state fails to meet this responsibility? It means that persons who oppose the decision of the court, if they can muster enough force, can set the court's decree at naught.

If this occurs, there can be no equivocation. President Eisenhower has said:[15]

> The very basis of our individual rights and freedoms rests upon the certainty that the President and the Executive Branch of Government will support and insure the carrying out of the decisions of the Federal Courts.

Each state, I believe, is fully capable of maintaining law and order within its boundaries. There is no state, granting the will, which cannot

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[14] 70A Stat. 15 (1956), 10 U.S.C. § 333 (1958).
[15] N.Y. Times, Aug. 21, 1958, p. 12.

maintain law and order and the same time permit a final decree of a court to be carried out. This being so, no further occasion need arise—none should ever be permitted to arise—which would require the federal government to act to support and insure the carrying out of a final decision of a federal court.

Responsible state officials must exercise wisdom and foresight to prevent violence and the defiance of court decrees. Our nation pays a heavy price for such disorder both at home and abroad—particularly when it is the product of an attempt to deny to fellow American citizens rights duly determined by our courts.

In any civilization based upon ordered liberty, it is fundamental, in the words of John Locke, a favored philosopher of the founding fathers, that "No Man in Civil Society can be exempted from the Laws of it."[16] By the same token, no man can be excepted from the requirement of respecting the lawfully determined rights of others. Every thoughtful and responsible person knows this to be true. I earnestly call upon all attorneys, as officers of our courts, as leaders of the bar, and as the respected counselors of your communities to insure that this fundamental truth shall not be lost upon your fellow citizens—more than that, that it shall not even be temporarily obscured.

As the President has noted, "Every American must understand that if an individual, a community, or a state is going successfully and continuously to defy the courts, then there is anarchy."[17] An awareness of the gravity of these problems leaves but one course to pursue. We are one nation, with total dedication to the rule of law. We must always remain so.

II*

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

However, there are overhanging clouds this year in some places. In those places there is resistance, in one form or another, to specific decrees of the federal courts directing the admission or retention of Negro children in public schools together with white children. The situations which exist in these places are not merely of local significance. They carry serious implications harmful to our system of government—a sys-

[16] Locke, An Essay Concerning the True Original Extent, and End of Civil-Government, Ch. XII, § 94 (1713).

[17] N.Y. Times, supra note 15.

* Address before the National Conference on Citizenship, Washington, D.C., September 17, 1958. This speech appears in 25 Vital Speeches 14 (1958).

tem based on the principle that we are a nation in which the rule of law reigns supreme.

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

When our forefathers, representing the sovereign people, established and ordained the Constitution, they provided that it "shall be the Supreme Law of the Land." The Constitution, however, is brief and in many important respects is couched in general terms. It is, in Chief Justice Marshall's words, a charter of government "intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs."[18] [Emphasis added.] It is not a lengthy compendium of detailed rules. Indeed, it outlines the whole structure of our form of government in a mere four thousand words, and the amendments, spanning more than a century and a half, have added only another two thousand. It was intentionally drafted in broad terms so that it would cover a myriad of situations, many of them only dimly conceived—many wholly unforeseeable. Of necessity, these constitutional provisions acquire specific meaning and content only as they are interpreted and applied in concrete cases. This was fully recognized by the framers of the Constitution and is inherent in the nature of the legal process.

Let me illustrate how the Constitution takes on meaning. Congress is granted the power to regulate commerce among the several states. But what is the specific content of the word "commerce"? Does it, for example, mean that Congress can regulate the manufacture of goods as well as their transportation? If so, in what circumstances? The Constitution does not say anything about child labor or minimum wages. It does not discuss monopoly, restraint of trade, or the misbranding of goods. Is legislation upon these matters consistent with the underlying constitutional purpose? Such questions have been answered casuistically over the course of many generations.

Consider another example. The Fourteenth Amendment provides that no state shall deprive any person of liberty without due process of law. But when is the law's process *due* process? Suppose that a state prosecutor compels an accused in a criminal case to submit to the taking of his footprints or fingerprints. Does that violate his constitutional rights? The courts have held that the answer is "No." On the other hand, sup-

[18] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 415 (1819).

pose that a state seeks to obtain physical evidence from an accused by making him submit to the use of a stomach pump. Does that violate his constitutional rights? The courts have held that the answer is "Yes."

To cite additional examples drawn from other constitutional provisions, when is a search and seizure *unreasonable?* When is bail *excessive?* When is punishment *cruel* or *unusual?* Plainly such constitutional concepts take on specific meaning only as applied to concrete cases by conscientious judges.

The right of free speech occupies a primary place in our constitutional scheme. Yet that right, even though it is not subject to any express constitutional limitations, is not deemed absolute by our courts. As Justice Holmes once said, there is no right to shout "fire" in a crowded auditorium for the purpose of causing a stampede. Similarly, there is no right to engage in libel or slander or to incite riot or insurrection.

Freedom of religion covers many prerogatives—the freedom to worship as one chooses or not to worship at all. But, as was stated in an early case involving a charge of bigamy,[19] a man cannot excuse violations of the criminal law on the ground of his religious beliefs. To permit this, the opinion states, would allow "every citizen to become a law unto himself. Government could exist only in name under such circumstances."

These illustrations—and they could be multiplied many times over—show that constitutional provisions are not self-executing; they must be interpreted and applied in concrete cases. As Chief Justice Charles Evans Hughes observed, "The vast body of law which has been developed [under the Constitution] was unknown to the fathers, but it is believed to have preserved the essential content and the spirit of the Constitution."[20]

How did the framers propose that the Constitution be interpreted? They intended that the ultimate responsibility for interpreting the Constitution and for determining whether governmental action squares with constitutional requirements should be vested in the federal judiciary. Article III sec. 1 provides that "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." To assure the supremacy of the Constitution, the jurisdiction of the Supreme Court was defined to extend to all controversies arising under the Constitution, including, specifically, those to which the states were party.

The establishment of this judicial power was essential to the new plan of government. The framers of our Constitution had experienced govern-

[19] Reynolds v. United States, 98 U.S. 145 (1878).
[20] Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 443 (1934).

ment under the Articles of Confederation which made no provision for a federal judiciary. Under that system each state jealously preserved the right to be the final judge of its own powers. The result was friction, conflict and confusion. A notable example was the prevalent practice of the states in imposing prohibitive and discriminatory taxes and duties upon goods emanating from sister states.

The framers were determined that this mistake should not be repeated. They concluded that if a nation were to be forged, an independent federal judiciary must be created to determine, among other things, the constitutional rights of the individual in relation to governmental authority and the roles of the states in relation to one another and in relation to the United States. Alexander Hamilton, in *The Federalist*,[21] noted that "[a] constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."

The vital role that the Court was intended to fill as the final arbiter in constitutional controversies was reaffirmed in the First Judiciary Act of 1789. That Act, passed by a Congress in which the Constitution's framers were its most prominent members, explicitly defined the Supreme Court's jurisdiction to adjudicate cases involving the claim that a state statute, or action taken pursuant to a state law, is repugnant to the Constitution.

The concept that the judiciary finally must determine challenges to the constitutionality of acts of the federal and state governments is central to our political structure. It provides the means by which constitutional conflicts are resolved, the means which enable us to remain a country of numerous states united in a single nation.

Who can doubt the wisdom of creating an independent federal judiciary? And who can doubt the wisdom of empowering the Justices to resolve constitutional controversies and other issues of national moment? Under the system thus conceived, we became a united nation. We have demonstrated the capacity to overcome, in the national interest, local rivalries, factionalism and internal conflict. We have weathered every constitutional crisis, and our Constitution has become stronger with the passing years. No person mindful of our history would detract from the great role which the independent judiciary has played in the development of our nation or weaken the high respect to which it is justly entitled.

The framers were, of course, aware that the decisions of the Supreme Court would not always be universally popular. They realized that attacks would be made upon the Court in its role of interpreting the Con-

[21] The Federalist No. 78, at 485 (Lodge ed. 1888) (Hamilton).

stitution. Speaking of immoderate assaults upon the institution of the Court, the authors of *The Federalist* warned "that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress."[22] The same holds true today.

The clause in the Constitution which the Court, in the *School* cases, was called upon to interpret is the clause in the Fourteenth Amendment guaranteeing "the equal protection of the laws." The Court, after long and careful deliberation and by unanimous decision, concluded that a segregated public school system violates that guarantee. There has thus been a definitive determination, by the Court ultimately charged with making the determination, as to the constitutional rights of Negro school children. As a nation, we must meet the test of assuring to all persons, whatever their color or creed, the free exercise of their lawfully determined rights and the full measure of the law's protection.

Of course, persons who disagree with decisions of the Court interpreting constitutional rights are free to seek change by the orderly process of constitutional amendment. However, individuals may not determine for themselves when they will obey, and when they will ignore, the decrees of the courts. Constitutional rights must not yield to defiance or lawlessness.

The Constitution provides that the President, members of Congress, other federal officials, and the governors, legislators and judicial officers of the states shall be "bound by Oath or Affirmation to support this Constitution."[23] The duty embraced by the oath of office requires support of the Constitution, not as each individual officer, federal or state, believes it should or might be interpreted, but as it *is* interpreted by our courts. Similarly, each person who owes his allegiance to the United States has this duty. Free government could not long exist otherwise.

In our history, of course, acts of Congress have met constitutional objection, and the Congress has recognized and accepted the role of the Court. In the *Steel Seizure* case,[24] President Truman recognized the Supreme Court's decision on a constitutional issue which directly involved the President's powers. And it has long been settled that state laws and state action must comply with constitutional requirements.

As the Supreme Court of North Carolina stated in a recent decision[25] related to the school controversy,

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22 Id. at 489.
23 U.S. Const. art. VI, § 3.
24 Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).
25 Constantian v. Anson County, 244 N.C. 221, 228-9, 93 S.E.2d 163, 168 (1956).

> . . . the Constitution of the United States takes precedence over the Constitution of North Carolina. . . . In the interpretation of the Constitution of the United States, the Supreme Court of the United States is the final arbiter. Its decision in the *Brown* case is the law of the land and will remain so unless reversed or altered by constitutional means. Recognizing fully that its decision is authoritative in this jurisdiction, any provision of the Constitution or statutes of North Carolina in conflict therewith must be deemed invalid.

The very court which made that statement had been long and deeply committed to the view that separation of the races in public schools was legally permissible. That did not for one moment blind it to the necessity of recognizing that the ultimate responsibility for interpreting provisions of the federal Constitution is vested in the Supreme Court of the United States.

No one should overlook the fact that in certain areas of the country there are very difficult problems of adjustment and accommodation. But these difficulties, I am convinced, can be overcome—not, of course, by an attitude of defiance, which is futile and damaging—but by a determination on the part of men of good will to find constructive solutions within the gnidelines marked out by the Supreme Court.

These propositions are not novel. But since they are vital, they cannot be restated too often. Individual character depends upon basic virtues. So, too, the strength of a nation rests upon its devotion to fundamental principles. Perhaps the most important of these fundamental principles is respect for the lawfully determined rights of others and a firm dedication to the rule of law.

III*

During our nation's growth, problems have arisen, from time to time, challenging a most basic concept of our constitutional system—equal justice under law for all people. In some parts of our country we are again faced with such problems.

Unfortunately there is resistance in a few areas to decisions of the federal courts determining the legal rights of Negro school children. Continued resistance cannot fail to damage the fabric of our government and the standing of our nation in every corner of the world. The problems are thus of urgent concern to all of us.

It is vitally important that all persons, whatever their personal views, understand the law and comply with its requirements. I am not unmindful that many persons who resist the decisions in the *School* cases do so out of deep personal conviction. Many of them do not intend to defy

* Address before the California State Bar Convention, Coronado, California, October 8, 1958.

the courts or to deny to others their lawfully determined rights. In large measure, I think they have relied on representations, by state officials and others, that there was some constitutional means, other than closing down the public schools, by which they might maintain their traditional practices.

Tragic though it is, the closing of some public schools has demonstrated the fallacy of this notion. But even though the alternatives should now be perfectly clear, much misunderstanding and confusion, charged with high emotion, persist.

Last week, the Supreme Court, speaking as one, announced its opinion in the critical case of *Cooper v. Aaron*.[26] In its opening words, the Court solemnly declared, "As this case reaches us it raises questions of the highest importance to the maintenance of our federal system of government." The Court has answered the questions posed by the case and it has done so in clear and unmistakable terms. For lawyers, there certainly can be no substantial doubt as to the existing legal situation.

There is, first, the basic proposition that the Constitution is, in the words of Article VI, the "supreme Law of the Land," of binding effect upon the states "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." State legislators, executives and judicial officers, as well as federal officials, are solemnly committed by oath of office to support the Constitution. For, as the Court points out, "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."

No less fundamental is the proposition that it is the province and the duty of the federal judiciary to interpret and expound the law of the Constitution. From the earliest days of the Republic, it has been recognized that this is a permanent and indispensable feature of our constitutional system of government. Under the system thus conceived, we became a united nation. Under it, we have weathered every constitutional crisis.

The opinion recites, and the Court, as it is now constituted, unanimously reaffirms the constitutional principle declared in *Brown v. Board of Education*,[27] that enforced segregation of the races in public schools is inherently discriminatory and constitutes a denial of "the equal protection of the laws" guaranteed by the Fourteenth Amendment.

The Court further emphasizes that "the constitutional rights of children not to be discriminated against in school admission on grounds of race or color . . . can neither be nullified openly and directly by state

[26] 358 U.S. 1 (1958).
[27] 347 U.S. 483 (1954).

legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously'."[28]

The Court points out, at the same time, that the federal district courts, in the exercise of their equity powers, may take account of local factors in order to bring about the transition to nonsegregated schools in an orderly and systematic manner. Time, it is recognized, will be required in some communities, though not in others. The timing and the manner of transition are left to local school boards under the supervision of local district courts. However, delay in any guise because of hostility to the principle announced will not be countenanced.

The applicable legal principles have thus been clearly established. It is not enough, however, in the administration of justice to declare the legal principle. The law is not a mere intellectual pastime. It provides the framework for the establishment of orderly human relationships. Legal principles must be implemented by persons who have both a respect for the law and an understanding of the particular requirements which it imposes.

In the Department of Justice, we have received hundreds of letters from all over the country concerning the *School* cases and the problems of desegregation. As might be surmised, they reflect every shade of opinion. Certainly the points of view of all persons on this important national issue need to be carefully weighed and given thoughtful consideration.

One view often advanced is that the problem is purely one of local concern. Why, it is asked, are federal courts interfering with the operation of local public school systems?

Of course, public education, in the words of the Supreme Court, "is primarily the concern of the States." But that is not the end of the matter. As the Court points out, all state responsibilities "must be exercised consistently with federal constitutional requirements as they apply to state action."[29]

Illustrations of this principle are abundant. The enforcement of a state's criminal laws is certainly the primary responsibility of the state. Thus, in providing for trial by jury, a state may choose any reasonable method it wishes for organizing juries and selecting jurors. But a state may not exclude persons from jury service on the basis of race, creed or color. Thus, in *Strauder v. West Virginia*,[30] decided in 1879, the Supreme

[28] 358 U.S. 1, 17 (1958).
[29] 358 U.S. 1, 19 (1958).
[30] 100 U.S. 303, 306 (1879).

Court set aside a Negro's conviction on the ground that state law effectively excluded all members of his race from service on the grand and petit juries. In doing so, the Court emphasized that the Fourteenth Amendment was drafted because "it required little knowledge of human nature to anticipate . . . that State laws might be enacted or enforced to perpetuate the distinctions that had before existed." The amendment "was designed," the opinion continues, "to assure to the colored race the enjoyment of all the civil rights that under law are enjoyed by white persons . . . ."

Similarly, a state, in the exercise of its police powers, may regulate by licensing or other measures, the manner in which a local business is conducted. It may also restrict entry into that business to qualified persons. But, as was held at an early date in the leading case of *Yick Wo v. Hopkins*,[31] this certainly does not mean that a state may administer a licensing statute so as systematically to exclude from an occupation persons of a particular race—in that case, persons of Oriental ancestry.

A state has full control over its election machinery. But it does not follow that it may adopt a scheme of registration which is subtly calculated to disfranchise voters of a particular race. The Constitution, as was said in one case, "nullifies sophisticated as well as simple-minded modes of discrimination."[32]

So, also, in the field of public education, a state is free to work out, as it chooses, the details of its public school system. Buildings, school buses, teacher selection, curricula, all the elements which go into a school system and its management, are, as they have always been, the affair of the state and local authorities. But the state may not hang a sign upon the door of the public school, "For White Children Only." For the state to do this is to deprive Negro children of rights guaranteed to them by the federal Constitution.

Others say, "A majority of the people in our community are opposed to desegregation of the public schools. What has happened to the democratic principle that the views of the majority should prevail?"

This question shows a basic misunderstanding of our constitutional system of government. The Constitution does not mean one thing in Maine, another in Florida, and something else in California. People living in different sections of our country may have different viewpoints on particular issues, but constitutional rights are fundamental guarantees which may not be denied in any area.

To be sure, there is always the right to seek change in the law through

[31] 118 U.S. 356 (1886).
[32] Lane v. Wilson, 307 U.S. 268, 275 (1939).

orderly constitutional processes. But disagreement with a constitutional principle declared by the Supreme Court of the United States does not give those who disagree the right to override the Court's mandate. The constitutional rights of individuals and of minority groups would be worth little if a majority could push them aside at will. As the President has said: "We must never forget that the rights of all of us depend upon respect for the lawfully determined rights of each of us. As one nation, we must assure to all our people, whatever their color or creed, the enjoyment of their constitutional rights and the full measure of the law's protection."[33]

A closely related question takes this form—Is it the business of government to tell people with whom they shall associate? Of course it is not. Private preferences or prejudices, noble or ignoble, present no constitutional question. But state action stands on a different footing. The injunction of the Fourteenth Amendment applies to state action and provides that no "State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Individuals may not look to the state to aid or support their particular private prejudices.

This point is well illustrated by the *Restrictive Covenant* cases.[34] In those cases, various individuals had entered into agreements restricting the use and occupancy of certain property to members of the Caucasian race. Property covered by such an agreement was conveyed to a Negro family, whereupon other property owners in the area brought suit in a state court to restrain them from taking possession. On review, the Supreme Court concluded that, standing alone, these private arrangements did not violate the Constitution. Nonetheless, the Court held, the state may not make available to individuals the "coercive power of government" to deny to persons, on grounds of race or color, the enjoyment of private property rights.

Many who write are confused because they have been led by state laws and by some of their state officials to believe that there are means and devices by which the principle of segregation might be maintained in their public school systems. But, as the Court stated, "State support of segregated schools through any arrangement, management, funds, or property cannot be squared with the [Fourteenth] Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws."[35] If it ever were doubtful, it is plain now that subterfuge and evasion will not work. They are self-defeating. They lead but tortuously to a dead end.

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[33] N.Y. Times, Oct. 2, 1958, p. 18.
[34] Shelley v. Kraemer, 334 U.S. 1, 19 (1948); Hurd v. Hodge, 334 U.S. 24 (1948).
[35] 358 U.S. 1, 19 (1958).

One of the cases cited with approval in the Supreme Court's opinion is the decision of the Court of Appeals for the Fifth Circuit in the case of *Derrington v. Plummer*.[36] There, a county in Texas had leased a cafeteria in a newly constructed courthouse to a private tenant. The tenant then undertook to exclude Negro patrons. The Court of Appeals, pointing out that the courthouse had been constructed with public funds for the use of citizens generally, held that the acts of discrimination were as much state action as if the county had operated the cafeteria directly.

In still another case which involved the operation of public facilities through the agency of a private corporation, a federal district court in West Virginia stated, "Justice would be blind indeed if she failed to detect the real purpose in this effort . . . to clothe a public function with the mantle of private responsibility."[37]

As Justice Holmes once declared,

> States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification . . . .[38]

The lesson is written in large letters, plain to everyone's view. An Alabama lawyer recently summed it up in these words: "To a lawyer who has followed the segregation cases it is apparent that the state cannot exercise any part in the operation of a private school system. In other words, if we are to have a segregated school system then public education as we have known it is finished."

It is encouraging that responsible voices are beginning to be heard with more frequency. Clergymen, school boards, parent-teacher associations, students, some of our state officials are speaking out courageously and realistically. For example, the Attorney General of North Carolina has said:

> Those states which seek to evade have been and will continue to be unsuccessful, and, to those states, there are but two avenues which remain open—an obedience to the law or avoidance of the law. To avoid the law, the state merely goes out of the business of public education. That day should never come to North Carolina.

In speaking of compliance, let me reemphasize that the courts have not imposed on the states drastic or inflexible requirements. An examination of the decrees now outstanding discloses that the district courts, in the exercise of their equity powers, have approved a variety of plans submitted by local school authorities. Thus, in some, the transition is to be initiated in the first grade; in others, at a different level. In Little

[36] 240 F.2d 922 (5th Cir. 1956), cert. denied, 353 U.S. 924 (1957).
[37] Lawrence v. Hancock, 76 F. Supp. 1004, 1008 (S.D. W.Va. 1948).
[38] Nixon v. Herndon, 273 U.S. 536, 541 (1927).

Rock, for example, the first step under the school board's plan was to be taken in the senior high school in the year 1957—a date more than two years removed from May, 1955, when the plan was initially approved by the local district court—and it was to be gradually extended to the remainder of the school system over a period of six years. The test applicable in each instance is whether the specific plan submitted, viewed in the light of prevailing local conditions, provides a prompt and reasonable start toward desegregation. Time is allowed in appropriate cases, if it is utilized in good faith. In those states where there has been a willingness to seek methods of good-faith compliance reasonable solutions are being found. Where people have sought to comply, they have, in every instance, made progress. On the other hand, those who seek to thwart compliance are sowing a bitter harvest. There is not only the damage, already evident in some places, to public schooling, there is this, also, to weigh and consider—disrespect for law in one area breeds disrespect in others. And in an atmosphere of disrespect, rebelliousness soon leads to violence.

The Attorney General of North Carolina has unequivocally stated his position:

> However distasteful may be the job which is assigned to me by law, I intend to take my stand on the side of the law—and neither through public utterance nor in any other manner will I seek to advise people to take any other stand than that which I know under the law is the only stand we may take. If this is politically inexpedient, dangerous or fatal, I'll just have to be content with what the future holds for me.

All responsible citizens must face the realities. They, too, must take their stand on the side of the law. Given the will to comply in good faith, all problems of accommodation and adjustment can be satisfactorily met. The federal government stands ready to cooperate and assist by every means within its power in the search for such solutions. But without a basic willingness to comply, any search, by whatever means, is apt to be merely time-consuming and frustrating.

We have, in the past, known problems which cut deep and caused division within the nation. The comforting conclusion which one can draw from our history is that, regardless of the travail or the shame of the day, the nation has invariably emerged strong and united. If we are to be faithful to the principles upon which our nation was founded, we must go forward today with the task of translating into reality the constitutional guarantee of equality under the law.

IV*

A matter which is today uppermost in the minds of all persons who are concerned with human rights is the serious resistance in some areas of our nation to the decisions of the federal courts. We are witnessing in a few states a challenge to the principle that we are a nation in which the rule of law reigns supreme and in which every individual, regardless of his race, religion or national origin, is entitled to the equal protection of the laws.

Yet in our concern over the deep-seated and difficult problems involved, we should not lose sight of the fact that the tensions have become increasingly acute because we are in a period of great progress in the field of human rights. There are, to be sure, starts, stops—occasionally some backward steps—but I believe that we are moving forward irresistibly and with purpose toward fulfillment of a noble concept—equality under law for all people everywhere in the United States.

Equality under law is a national concept rooted in this nation's Constitution. Its fulfillment could never be a violation of the rights of any state. Nonetheless, one of the most deceptive notions which has been advanced by those who oppose the decision of the Supreme Court in the *School* cases is that the federal government is improperly interfering with the operation of the local public school systems.

Of course, public education, as the Supreme Court explicitly recognized, is a primary concern of the states. But, as the Court went on to point out, all state action "must be exercised consistently with federal constitutional requirements as they apply to state action."[39]

The legal issue has been settled. No serious-minded person can doubt the permanence of the *School* decision. The issue now is the manner and method of accommodation to it. If the community's attitude is governed by a respect for the constitutional rights of others the problems can be solved with due consideration for all of the interests involved. The guidelines laid down by the Supreme Court provide latitude; they leave room for the use of varied techniques in making the necessary adjustments. In every community where good faith efforts have been made there has been progress. On the other hand, if the accommodation takes place only after a period of obdurate and bitter resistance, the community and the state involved will be scarred by the experience. The damage to the nation itself cannot be calculated.

We have seen the doors of thirteen public schools closed in four com-

* Address before the Annual Awards Luncheon of the Anti-Defamation League of B'nai B'rith, New York, N.Y., December 7, 1958.

39 Cooper v. Aaron, 358 U.S. 1, 19 (1958).

munities. This unprecedented action was taken in order to avoid compliance with court decrees requiring the admission of qualified Negroes who sought only to exercise their lawfully declared rights. In consequence, about 16,400 young people, white and colored, have had their public schooling disrupted.

A grave consequence of attitudes of defiance is that they create an atmosphere in which extremists and fanatics are encouraged to take the law into their own hands. Many schools and places of worship have been the target of actual bombings or threatened violence. For the most part, these shameful acts have taken place in communities where necessary adjustments have been made without incident. They appear as retaliation against people of good will who are demonstrating by their acts that the adjustments required do not lead to the dire consequences predicted by the fanatics. The responsibility for this wanton destruction of property rests, in my opinion, on the doorsteps of those who stir up race prejudice and advocate defiance of law. The Department of Justice, through the FBI, is lending every possible assistance in an all-out effort to apprehend the guilty parties.

Another consequence is an upsurge in hate literature, which had been on the decline for many years. On the basis of complaints from persons who have received unsolicited trash of this sort, it appears that there has been a recent increase of approximately 400 percent in this type of mail, much of it printed in the basements of professional bigots.

Community tensions resulting from racial prejudices are not without their economic implications. Private enterprise, in making new investments, will necessarily take into account the climate of local opinion and the public facilities that will be available to its personnel. By the same token, the Government, in determining the location of new or expanded federal facilities will have to give consideration to the availability of public schools and other public conveniences as a matter of fairness and justice to its personnel who will be on duty there.

The international consequences of incidents which reflect prejudice are far reaching. In September, 1957, an editorial in an Asian newspaper said:

> . . . When an Indian Ambassador is pointedly asked to sit in the "coloured" section of an American airport, when a Burmese invitee (of the United States) is turned out of a restaurant, the whole of Asia is stirred to its emotional depth.

A newspaper in Africa recently stated:

> The problem of the status of American Negroes is one that America must settle at once, if she sincerely wants to win the good will of Africans.

The Soviet press, of course, exploits racial incidents occurring in the United States for its own purposes. Thus, a recent article declared that all the talk in the United States "about individual freedom and dignity, all the slogans voiced about the equality of rights and democracy lose all their meaning while such facts exist."

We know, of course, that the hostile attitudes which prevail in a few areas do not accurately reflect the views of the overwhelming majority of Americans. We have all been encouraged by the fact that even in areas where there is the sharpest conflict with tradition, responsible voices are pointing to the disastrous consequences which are bound to flow from purely negative attitudes. For example, over three hundred clergymen of Atlanta, Georgia, representing seventeen denominations, recently warned that "all hatred between races and groups within society carries with it the constant threat of violence and bloodshed." They also declared, "It is clearer now than ever before that we must obey the law . . . and that the public school system must be preserved."[40]

Many other voices throughout the land are speaking out in support of orderly processes. Statements by religious denominations have emphasized the underlying moral issue. Communications media—radio, television, motion pictures, newspapers and magazines—are playing a most important role. And almost daily the voices of responsible state officials and respected private citizens are being heard, pointing out the futility of defiance and urging the need for common sense and constructive measures.

This educational process has already had its impact. For a time the notion was being circulated that a decision of the Supreme Court interpreting the Constitution of the United States was something less than an authoritative expression of the law. I think that this misconception has now been effectively dispelled. There is also, I think, a fuller understanding of the meaning of the *School* decision. Thus, it is now widely realized that the decision does not impose inflexible requirements and that there is considerable discretion so long as state and local authorities proceed in good faith on a basis which does not make race a criterion. At the same time, there is an increased awareness that neither outright defiance nor schemes which are merely evasive will be countenanced by the courts.

The Department of Justice has made every effort faithfully and conscientiously to carry out its duties under the Constitution and laws of the United States. We shall continue to take all necessary and appropri-

[40] N.Y. Times, Nov. 23, 1958, p. 81.

ate measures to support and enforce the decrees of the federal courts. And we are giving careful thought and study to a number of legislative proposals.

What I wish to emphasize, however, is not the role of law enforcement but, rather, the vital importance of creating an enlightened public opinion, a climate in which obstructionism will be seen for what it is—an exercise in futility. Those of us in law enforcement, and those who fight discrimination in all its insidious forms, know that neither the law alone, nor education alone, can bring lasting solutions to these difficult problems. Each is indispensable to the effectiveness of the other. Thus, the agencies of communication, in addition to presenting news and information can provide, as many are successfully doing, a forum for enlightened opinion. They can lay bare false and deceptive claims, help to allay groundless fears and prejudices and strengthen the devotion of all citizens to our national ideals.

How vital is this task? Chief Justice Hughes once stated it this strongly:

> Put no confidence in mere forms or in institutional arrangements however astutely contrived in the interest of liberty. All these arrangements depend upon the popular will. The security of our democratic institutions is not in existing constitutional provisions or framework of government but in the dominant sentiment which maintains them.[41]

To give continuing vitality to our liberties is a task for all of us; it is an enduring task; it is the highest calling of the Nation. There is no greater bounty that mankind can enjoy than the liberties which result from freedom under law. There is no greater heritage that we can bequeath to our children than a full appreciation of the concept of equality under law and what it means to our lives, our freedom, and our self respect.

V*

A short time ago, for the first time in the history of the Commonwealth of Virginia, Negro children—some 21 in number—walked through the open doors of public schools to sit down in the classroom with white children. This was not the first time that such an event has occurred in southern communities where segregation had long been traditional. Nonetheless, it was a milestone, for the State of Virginia had adopted legislation which had the avowed purpose of avoiding and preventing the very occurrence which was taking place. That legislation proceeded from an untenable premise—that somehow it was possible, consistently with the

41 Address before the Annual Alumni Meeting of Brown University, June 21, 1937.

* Address before the Fordham University Law Alumni, New York, N.Y., February 7, 1959.

law as declared by the Supreme Court of the United States, to continue a policy of racial separation in the public schools. The entry of the 21 pupils—an event marked by dignity and courage on the part of the Negro children and by understanding and restraint on the part of the white pupils—signalled the end of a chapter. This is not to suggest that there are not continuing and very difficult problems to be met, both in Virginia and elsewhere—problems which will call for profound wisdom and understanding on the part of all Americans, whether they live in the north or south.

This was the end of a chapter in one state—the end of efforts at resistance by all legal means. It was particularly significant because, as we well know, Virginia has had a long and proud history. It was in the finest tradition of a democracy cradled in Virginia that its people accepted peaceably a drastic change in their way of life. It was difficult for them, for many were not at all convinced that our Constitution and our democratic ideals call for this change. Yet it is to their great credit that their faith in a government of laws prevailed over all such doubts and hesitations.

Prior to this desegregation in the public schools of Virginia, two decisions of importance were rendered by the federal and state courts in that state. One, by the three-judge United States District Court in what has been called the *Norfolk* case, was a suit instituted on behalf of *white* Norfolk children who had been shut out of the public schools in consequence of Virginia's school-closing laws. The court ruled that it was unconstitutional for a state to close schools on a selective basis, that is, to close down only those schools in which it has been ordered that Negro children be admitted while continuing to operate other schools not subject to a similar order.[42]

On the very same day that the *Norfolk* case was decided in a federal court, the State Supreme Court of Appeals reached a decision of far-reaching importance.[43] That court decided that Virginia's school-closing and related laws could not be squared with the requirement of the Virginia Constitution that the General Assembly shall establish and "maintain an efficient system of public free schools throughout the State."[44] This decision underscores the importance which our people have attached, and which, indeed, a democratic people can scarcely fail to attach, to the general availability of public schooling. If the *Norfolk* case makes clear that if a state is to operate a public school system at all it must do so

42 James v. Almond, 170 F. Supp. 331 (E.D. Va. 1959).
43 Harrison v. Day, 200 Va. 439, 106 S.E.2d 636 (1959).
44 200 Va. 439, 450, 106 S.E.2d 636, 646.

in compliance with the requirements of the United States Constitution, the *Virginia* case highlights what an indispensable place the institution of the public school has come to occupy. It seems difficult to believe that responsible men and women, deliberately weighing the consequences for children, for parents and for the community at large, would voluntarily choose a course leading to abandonment of their public schools.

It should be pointed out that the start which has now been made in Virginia took place without the necessity of any intervention by the executive branch of the federal government. In making this observation, I do not mean to imply that we view our functions passively or that we will fail to exercise those responsibilities which are properly ours. Recently, a group of foreign students who spoke to me about integration in the schools observed how strange it seemed to them that there were involved so many legal problems. One of them noted that in his country the government, through the Minister of Education, would, in such a situation, simply issue a blanket decree. Ours, of course, is a federal system, and the separate roles of the federal government and of the states must be respected. This does not mean inaction on the part of either. It does mean that each must proceed within its proper sphere, and with understanding and self-restraint.

A troublesome problem arises when a campaign of interference is initiated by extremists in the community who are not directly under a court's order and, accordingly, are not subject to government invocation of the court's contempt power. This might take the form of organized threats of violence or the gathering of a mob. To strengthen the federal government's ability to deter such occurrences, the President has proposed to Congress the enactment of legislation which would make it a federal crime for persons to seek to obstruct the carrying out of a federal court's decree duly entered in a school desegregation case. This would correct a deficiency in the present law, though I have every hope that we will rarely, if ever, find it necessary to invoke such authority. I cannot overemphasize the point that if, as in Virginia, state and local authorities stand ready to maintain law and order within the community there need be no occasion for the federal government to act in order to support and insure the carrying out of court decrees.

There are forms of assistance other than legal which can be rendered. The President has proposed that Congress enact a statute under which the federal government might make grants-in-aid in order to assist the states and localities in shouldering certain additional costs attendant upon the transition to desegregated school systems. The measure would

also authorize the United States Commissioner of Education to provide technical assistance and to initiate or participate in conferences designed to solve the educational problems involved.

As President Eisenhower has stressed, progress depends not on laws alone, but on building a better understanding. The leaders of all of our great religious faiths have been prominent in that most important endeavor. As was stated by the Catholic bishops of America:[45]

> The heart of the race question is moral and religious. It concerns the rights of man and our attitude toward our fellow-man. If our attitude is governed by the great Christian law of love of neighbor and respect for his rights, then we can work out harmoniously the techniques for making legal, educational, economic, and social adjustments.

As recently as last fall, there was still a substantial body of opinion in certain areas of the country which held tenaciously to the view that the Supreme Court's decision might be permanently nullified. The negative attitudes which then prevailed gave every reason for grave concern. Today, there is a much wider acceptance of the realities—a growing recognition that intransigent resistance can lead but ultimately to the destruction of public schooling in the area concerned. By the same token, there is increased awareness that the problems of adjustment, though they are real, and in some areas extremely difficult, are not insuperable. Our nation in its short history has solved many grave problems, and if all persons concerned act with reason and understanding the problems in this field will seem less serious.

True, there is some talk of communities falling back upon the expedient of private schooling. No one should forget that it has taken a century to bring our public school systems to their present state of development. Even so, we are still faced today with the dual necessity of expanding existing school facilities and raising academic standards. Is it not self-delusion to suppose that if a state or community abandons its public school system there will be any available or adequate substitute?

Where, then, do we stand today? There is cause for encouragement, for believing that reason and wisdom are coming to the fore. Voices of moderation are being heard in many quarters, and with greater frequency and clarity. Many people who have been adamant up to this point are beginning to listen. These are signs that more thoughtful and reasoned progress is in prospect.

Obviously, imposed solutions are much less satisfactory than voluntary ones. That which is imposed tends to accentuate tensions; it may leave a

[45] N.Y. Times, Nov. 14, 1958, p. 16.

residue of resentment—resentment both on the part of those who feel that too much is being required too soon and on the part of those who feel that too little is being done too slowly.

We have seen, on the other hand, that where the individual citizens and the responsible officials have frankly faced the facts and have proceeded in good faith to formulate their own plans and to go forward with them, confusion and disorder have been largely avoided and substantial progress has been made.

While our attention has recently been focused on efforts which have been made in relation to our public school systems, we should not lose sight of the fact that the same lesson is persuasively demonstrated by the experience of the parochial schools. Few people realize, for example, that the parochial schools in Virginia were integrated before the Supreme Court handed down its first *School* decision in 1954. That was accomplished by careful planning and through the exercise of moral leadership. It was done quietly and effectively, without turmoil and without fanfare.

What is the conclusion to be reached? The time has come, I believe, for the states and communities concerned to think soberly and wisely about the future. The alternatives—assuming as we must that the abandonment of public schools is not feasible—are these: (1) voluntary compliance, on the basis of considered plans prepared by local people and worked out to meet local needs and conditions; or (2) a period of dogged resistance initiated for purposes of delay and resulting in increased tensions, with compliance finally coming pursuant to court orders and on a more or less haphazard basis depending upon when and where lawsuits are started.

Plainly, it is in the best interests of all concerned that communities not wait until there are lawsuits and court decrees. Every community should begin to plan and develop for itself a program best suited to its own needs. The leaders of community life should encourage this forehanded and affirmative approach. In this, clergymen, teachers, professional people, Parent Teachers Associations, school boards, civic associations, can all make their influence felt.

Obviously all of the problems cannot be solved today or tomorrow. What is important is that the communities go about the business of meeting them—that they become engaged in the process of translating the constitutional principle into a working principle. We must proceed with wisdom and with understanding, with patience and with determination. We must not fail, for the ultimate goal is a cherished one—to achieve full respect for the lawful rights of all Americans.