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ADDRESS

BY

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The subject of my talk here today concerns a matter which is of great moment to our nation. I refer to the decision of the United States Supreme Court in the School Segregation Cases* and to some of the problems which have arisen in connection with the implementation of that decision.

They are numerous, and they go deep; often they engender strong feelings. The subject is one which calls for our most serious and thoughtful consideration. I choose this occasion to discuss it because this is a gathering of lawyers, lawyers from every corner of our land. Every lawyer, as the late Arthur T. Vanderbilt, Chief Justice of New Jersey, reminded us, has "the responsibility of acting as an intelligent and unselfish leader of his community."** No class in our society," he has said, "is better able to render real service in the molding of public opinion."***

Let me make it clear at the outset that my discussion of these problems today does not relate to the implementation or timing of any specific court order or to any proceedings now in court. My purpose is to discuss some of the broad problems in this field.

In the Department of Justice we have given much thought to the various aspects of these problems. Without attempting or purporting to deal with all these various aspects let me say that as I see it, the ultimate issue which emerges does not turn upon the evaluation of particular rules of law. The ultimate issue becomes the role of law itself in our society; whether the law of the land is supreme or whether it may be evaded and defied.

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* Brown v. Board of Education, 347 U.S. 483; 349 U.S. 294

** 40 A.B.A.J. 31, 32

*** Ibid.

On May 17, 1954, the Court announced its unanimous decision--and I quote from the opinion--"that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The decision was foreshadowed by earlier holdings. Thus, as early as 1938, the Court, speaking through Chief Justice Hughes, had concluded that a Negro living in Missouri was entitled to study law at the University of Missouri, a state school, there being no other law school maintained by the state which he might attend. The constitutional requirement of "equal protection of the laws" was not deemed satisfied by the state's offer to pay tuition at a school of comparable standing in a nearby state.* Then, in 1950, the Court, in a unanimous opinion written by Chief Justice Vinson, examined intangible as well as tangible factors in determining that a separate law school maintained by Texas for Negro residents of that state did not provide the same opportunities as were offered by a legal education at the University of Texas.**

Notwithstanding this litigation involving public education at the university level, the decision in Brown v. Board of Education, as you well know, had serious impact on certain sections of our country and was met with apprehension, resentment, and even threats of defiance.

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* Missouri ex rel. Gaines v. Canada, 305 U.S. 337

** Sweatt v. Painter, 339 U. S. 621

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

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

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

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*The Federalist, No. 22 at 138 (Mod. Lib. ed. 1937)

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

The unanimous decision of the Court in the recent school cases thus represents the law of the land for today, tomorrow and, I am convinced for the future -- for all regions and for all people. There are, to be sure, those who strongly oppose the result -- a circumstance more or less true of most court decrees. However, the opposition and resentment caused by this decision in the school cases is much more serious, widespread, and deep-seated than that caused by any court decision in recent times.

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

The Supreme Court's 1955 opinion in Brown v. Board of

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* Law and Its Administration (1924), p. 138

**163 U. S. 537

Education,* dealing with the question of relief, itself recognized that a period of transition would be required and that it would be an unwise procedure to prescribe a uniform period for compliance without regard to varying local conditions. At the same time, however, it must be remembered that the rights declared by the Court are personal and present rights. "It should go without saying," the Court declared, that "constitutional principles cannot be allowed to yield simply because of disagreement with them."

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

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

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* 349 U. S. 294

Let me turn then to the question of compliance and to the respective roles of State and Nation.

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

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

The Executive Branch of your government does not appear in district court proceedings conducted for purposes of determining whether a proposed school plan is adequate or whether an existing plan should be modified. The details of implementation are for the parties directly involved and for the local court. If such plan as may be approved by the courts is thereupon carried out, there can, of course, be no occasion for participation by the Department of Justice. There is hope that this will be the prevailing pattern and that implementation will go forward consistently with the requirements of law and order and the dictates of good citizenship and good sense. As the President stated last Wednesday, "The common sense of the individual and his civic responsibility must eventually come into play if we are to solve this problem."

There have been a few instances in which we have participated in court actions, not in connection with a proposed school plan, but in order to assure proper respect for law and order and for the decrees of the United States district courts.

One instance of participation by the Executive Branch of the federal government in the enforcement of orders of a federal court is a case which arose in Clinton, Tennessee. In compliance with a court order, a number of Negroes had been admitted, without incident, to the Clinton High School. Several days later, John Kasper, an agitator for the Seaboard White Citizens Council, arrived to organize concerted obstruction. His purpose was to frustrate the district court's order and to exert pressure upon the school board to dismiss the Negro students.

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

An example of still another way in which the federal government has participated in helping to overcome violent interference with a plan of integration is the Hoxie, Arkansas, case. Promptly after the Supreme Court's decisions, the Hoxie school board, finding no administrative obstacle to immediate desegregation, announced that the schools in that district would be open to white and colored children alike. This was met, however, by threats and acts of violence designed to coerce the school board to rescind its action. The board and its members responded by an action in the federal district court to enjoin the agitators from interfering with the desegregation of the Hoxie schools and from threatening or intimidating the school board members in the performance of their duties. The injunction was granted, but the defendants appealed on the

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*245 F. 2d 92 (C. A. 6), certiorari denied, 355 U. S. 834

grounds that no federal rights were involved and that the federal courts had no jurisdiction. The appeal thus raised the broad question whether state officials can be protected in the federal courts from interference with their performance of a duty imposed upon them by the Federal Constitution. Because of the effect the decision would have upon the procedures available for dealing with obstructions to duly-adopted plans of desegregation, the United States, at the request of the school board and with the consent of all the parties, appeared and filed a brief in the court of appeals in support of the power of the federal courts. The injunction was affirmed.*

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

On the other hand, if there is concerted and substantial interference, as in the Kasper case, with the decree of the court, we stand prepared to take such steps as may be necessary to vindicate the court's authority, for example, to aid the court in the prosecution of a contempt

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*238 F. 2d 91 (C. A. 8).

charge. We are prepared to assist the courts in other ways -- as in the Hoxie case, where, at the request of the local school board, we submitted our views on an important question involving the formulation of effective federal procedures for dealing with threatened obstruction of law and order.

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

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

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*Sec. 333, Title 10, United States Code

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

If this occurs, there can be no equivocation. President Eisenhower has clearly stated on two occasions.

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

Each state, I believe, is fully capable of maintaining law and order within the state. There is no state, granting the will, which cannot maintain law and order and at the same time permit a final decree of a court to be carried out. This being so, no further occasion need arise--none should ever be permitted to arise--which would require the federal government to act to support and insure the carrying out of a final decision of a federal court.

Responsible state officials must exercise wisdom and foresight to prevent violence and the defiance of court decrees. Our nation pays a

heavy price for such disorder both at home and abroad -- particularly when it is the product of an attempt to deny to fellow American citizens rights duly determined by our courts.

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

In summary then let me restate these conclusions:

(1) The decision of the Supreme Court in the school cases and in related fields is the law of the land.

(2) Compliance with the law of the land is inevitable. As the President said last Wednesday, "Every American must understand that if an individual, a community, or a state is going successfully and continuously to defy the court then there will be anarchy."

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*John Locke, Concerning Civil Government, Chapter VIII, Sec. 94

(3) In the final analysis, therefore, it is vital in the national interest that there be thoughtful compliance in conformity with the general guideline laid down by the Supreme Court and in a manner specifically worked out by local authority under supervision of the local federal courts.

(4) Whenever good faith efforts to comply have been made by local and state officials, substantial progress has been made without serious incident.

(5) Each state has the clear, affirmative duty to use its police power so that the lawfully determined rights of all persons are protected against violence and lawlessness.

(6) Most states have made it clear that they are able to and intend to perform this duty. If each state performs its duty the occasion should never arise, and I am sure that all of us fervently hope that it will not arise, when the ultimate duty would fall upon the Executive Branch of government "to support and insure the carrying out of the final decision of the federal court."

(7) We in the Executive Branch stand ready at all times in a spirit of cooperation to consult with state officials in a search for solutions consistent with the decisions of the court.

The problems I have discussed here today present a serious challenge to all Americans in the days ahead. With an awareness of the gravity of these problems which face our nation there is but one course to pursue. We are one nation, with total dedication to the rule of law. We must always remain so.