THE GENERAL ASSEMBLY COMMITTEE ON SCHOOLS

ROOMS 352 - 353, STATE CAPITOL
ATLANTA, GEORGIA

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April 28, 1960

Honorable Garland T. Byrd
Lieutenant Governor and
President of the Senate

Honorable George L. Smith, II, Speaker
House of Representatives

Members of the General Assembly of Georgia

Dear Sirs:

The General Assembly Committee on Schools, created by House Resolution No. 369, has completed its reports and recommendations of the majority and minority of the Committee.

The majority report represents the views of the following:

John A. Sibley, Chairman; Howell Hollis, General Counsel; John W. Greer, Secretary; Robert O. Arnold; Samuel J. Boykin; Harmon W. Caldwell; Charles A. Cowan; John W. Dent; Zade Kenimer; Claude Purcell; and Homer M. Rankin.

The minority report represents the views of the following:

John P. Duncan, Vice-Chairman; George Brooks; H. Eulond Clary; J. Battle Hall; Render Hill; Wallace Jernigan; J.W. Keyton; and H. Walstein Parker.

The minority report is concurred in by Rep. Render Hill with an additional statement.

The Committee and the individual members thereof wish to thank and commend the officials of the State government and the people of Georgia for their unfailing courtesy and co-operation, without which our work would have been even more arduous.

Respectfully,

John A. Sibley

JOHN A. SIBLEY
Chairman

(For release not before 10:00 A.M., Thursday, April 28, 1960)

MAJORITY REPORT

1. THE BACKGROUND

In the 1896 case of Plessy v. Ferguson, 163 U.S. 537 (1896), the U. S. Supreme Court held that "separate but equal" facilities met the requirements of the Fourteenth Amendment that no state should deprive its citizens of the "equal protection of the laws." At least eight subsequent Supreme Court decisions and more than seventy lower federal and state court cases followed that doctrine. In reliance on that doctrine, many billions of dollars have been spent to make the separate schools for Negroes truly equal in all respects to those provided for white children.

At one time or another, after the adoption of the Amendment, twenty-three states maintained segregated schools by law, including New York, Illinois, California, and Kansas, among other non-southern states.

In 1954, with no change in the Constitution and no congressional legislation, the Supreme Court held that separate schools, regardless of the quality of their facilities, personnel, and program, are inherently unequal and therefore unconstitutional. Brown v. Board of Education of Topeka, 347 U. S. 483 (1954).

We consider this decision utterly unsound on the facts; contrary to the clear intent of the Fourteenth Amendment; a usurpation of legislative function through judicial process; and an invasion of the reserved rights of the states. We further consider that, putting aside the question of segregation, this decision presents a clear and present danger to our system of constitutional government, because it places what the Court calls "modern authority" in sociology and psychology above the ancient authority of the law, and because it places the transitory views of the Supreme Court above the legislative power of Congress, the settled construction of the Constitution, and the reserved sovereignty of the several states.

Nevertheless, we must recognize that the decision exists; that it is binding on the lower federal courts; and that it will be enforced.

II. GENERAL ASSEMBLY COMMITTEE ON SCHOOLS

Because of a pending suit in a federal court to bring about the integration of the races in the Atlanta school system, the General Assembly of Georgia at its 1960 session expressed the belief "that the people of Georgia may wish to make a deliberate determination as to whether future education is to be afforded through direct tuition payments for use in private schools devoid of governmental control, or whether the public school system as it presently exists shall be maintained notwithstanding that the school system of Atlanta and even others yet to come may be integrated . . ."

In order that the General Assembly might be in a better position to "make a determination as to the wisdom of presenting this question to the people," the Assembly felt that it should have "the advice and counsel of the people, not only as to the desirability of the presentation, but also as to its form and content."

As a means of obtaining expressions of opinion from the people, the General Assembly created the General Assembly Committee on Schools consisting of nineteen members. This Committee was directed, immediately upon the adjournment of the General Assembly, to conduct at least one public hearing in each congressional district of the State.

The Committee was directed to make positive recommendations to the General Assembly "regarding whether or not to submit the question to the people of Georgia for their determination," and in the event the Committee should recommend the submission of the question to the people, the Committee was asked to recommend "the time, manner and form of the submission, including its contents." The Committee was also directed to "make such other and further recommendations as

it may deem meet and proper."

The Committee held the hearings as directed. It received testimony from more than 1,300 witnesses, representing or purporting to represent more than 115,000 people. Among these witnesses were more than 1,600 white persons and 200 Negroes. In addition, the Committee has received over 600 letters from individuals and petitions bearing more than 6,000 signatures. A three to two majority of the witnesses favored maintaining segregation even at the cost of abolishing public schools.

The hearings disclosed a nearly unanimous feeling on basic principles regarding segregation and public schools, but a wide difference of opinion on the course of action that should be taken to meet the situation created by the federal court decision.

The testimony cannot be accurately assessed as to the mathematical proportion of the people of Georgia holding particular opinions, because of the defects inherent in the only procedures that the Committee could adopt and because of the comparatively small number of the people who could be heard. For example, 40 per cent of the counties were represented by three or fewer witnesses. Nevertheless, the Committee has been able to reach these conclusions, based on the testimony presented to it:

1. An overwhelming majority of people in Georgia have a deep conviction that separate school facilities for the white and colored races are in the best interest of both races, and that compulsory association of the races in the schools through enforced integration will be detrimental to the peace, good order and tranquility of the state and to the progress, harmony and good relations between the races. With this opinion your Committee is in full agreement.

2. The vast majority of the people prefer tax-supported, segregated public schools rather than private schools with or without grants in aid from

the state. It is their belief that it is in the public schools that the youth of the state receive training for the responsibilities of citizenship in a democracy; that to close the public schools and go to a system of private schools even with grants in aid would make it more difficult for many young people to obtain an adequate education. The burden would be particularly heavy on those in the lower income brackets. With these views your Committee is also in full accord.

3. Testimony received by the Committee indicated that if total segregation cannot be maintained in a state-wide system of public schools, there is no unanimity of opinion as to the course that should be followed. Three points of view were expressed:

(a) A large number of people are willing to close the schools on a state-wide basis, rather than allow any integration anywhere.

(b) A large number of people desire that the choice between closing the schools and accepting integration be left to the community affected. This viewpoint is predicated on two considerations: first, many people, believing that their own school systems will not be confronted with integration problems within the foreseeable future, are unwilling to sacrifice their schools to maintain segregation in other parts of the state; and second, a number of people feel that conditions are so varied throughout the state that the decisions on local problems should be left to local authorities.

(c) A large number of people, though believing in the desirability of segregation, would be willing to accept some degree of integration rather than to sacrifice their public schools.

III. THE PRESENT LEGAL SITUATION

If a Negro child is ordered into a white Atlanta school, the Governor

is required, under 1955 and 1956 laws (Code 32-801, et seq.), to close all the schools in the Atlanta system. Expenditures of state or local funds to operate an integrated school system are prohibited and made a felony, and personal civil liability is imposed on those making such expenditures.

Other Georgia laws also prohibit the support of integrated schools by state or local tax funds. Among them are these:

The Georgia Constitution requires that "Separate schools shall be provided for the white and colored races" (Code 2-6401); the 1956 appropriation act (Ga. Laws 1956, p. 753,758) under which the state is still operating, provides that funds are cut off for school districts ordered desegregated; a 1955 act (Code 32-802) requires that budgets submitted by local school districts to the State Board of Education provide that the funds therein requisitioned will lapse in the event of integration.

If any Atlanta school is closed, no other school district is necessarily affected. However, when the same situation arose in Norfolk, Virginia, parents of white children who had attended the closed schools brought suit and a three-judge federal court held:

> "Tested by these principles we arrive at the inescapable conclusion that the Commonwealth of Virginia, having accepted and assumed the responsibility of maintaining and operating public schools, cannot act through one of its officers to close one or more public schools in the state solely by reason of the assignment to, or enrollment or presence in that public school of children of different races or colors, and, at the same time, keep other public schools throughout the state open on a segregated basis. The 'equal protection' afforded to all citizens and taxpayers is lacking in such a situation. While the State of Virginia, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in Virginia may be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the state permits other public schools or grades to remain open at the expense of the taxpayers."
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> James v. Almond, 170 F. Supp. 331.

The decree based upon this decision ordered that the Norfolk schools be reopened on an integrated basis, and enjoined the State officials from continuing to operate other schools unless the Norfolk schools were likewise open. The decree did not order or contemplate closing all the schools of the state, and the state did not undertake closing the state-wide school system; instead it decided to accept integration in Norfolk and subsequently in other areas.

It must be assumed that a similar suit would be filed by Atlanta parents, and that a similar holding would follow, although the Committee cannot undertake to predict the form which the decree effectuating such a holding would take.

In any event, under such a holding the state would be faced with the necessity for deciding whether to close all the schools of the state, by legislation or otherwise, or to accept integration of the Atlanta schools.

IV. FREEDOM OF CHOICE

The Constitution of the United States, as interpreted by the Supreme Court, is controlling and binding upon the courts and the people; and the state laws, insofar as they are in conflict with the federal law, are unenforceable.

Any system of public education must now recognize that the Supreme Court decision in the Brown case destroyed the power of the state to compel by law separation of the races in public, tax-supported schools. Any continuance of public education must be adjusted to that fact.

It is important, therefore, to determine the scope and limitations of the Brown case as interpreted and applied by the federal courts. We quote from the decisions as follows:

> "Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.

"If it is a fact, as we understand it is, with respect to Buchanan School, that the district is inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live."

Brown v. Board of Education of Topeka Kansas, 139 F. Supp. 468 (D. C. Kan. 1955)

(This was a later decision in the Brown case, rendered after the case went back to the District Court for implementation.)

". . . having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the Federal Courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend school or must deprive them of the right of choosing the school they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals."

Briggs v. Elliott, 132 F. Supp. 776 (D.C. S. C. 1955)

"The Constitution as construed in the School Segregation Cases, Brown v. Board of Education ---, forbids any state action requiring segregation of children in public schools solely on account of race; it does not however, require actual integration of the races." (Court then quoted from Briggs case, quoted hereinabove.)

Avery v. Wichita Falls Independent School District, 241 F2d 230 (C.A. 5th 1957), cert. den. 353 U.S. 938.

"It must be remembered that the decisions of the Supreme Court of the United States in Brown v. Board of Education ---, do not compel the mixing of the different races in the public schools. No general reshuffling of the pupils in any school system has been commanded. The order of that court is simply that no child shall be denied admission to a school on the basis of race or color. Indeed, just so a child is not through any form of compulsion or pressure required to stay in a certain school, or denied transfer to another school, because of his race or color, the school heads may allow the pupil, whether white or negro, to go to the same school as he would have attended in the absence of the ruling of the Supreme Court. Consequently, compliance with that ruling may well not necessitate such extensive changes in the school system as some anticipate."

Thompson v. School Board of Arlington, 144 F. Supp. 239 (D.C. Va. 1956), affirmed sub nom. School Board of Charlottesville v. Allen, 240 F2d 59 (C.A. 4th 1956), cert. den. 77 S.Ct. 667 (2 cases).

". . . the equal protection and due process clauses of the Fourteenth Amendment do not affirmatively command integration, but they do forbid any state action requiring segregation on account of race or color of children in the public schools. Avery v. Wichita Falls Indep. School District, 5 Cir., 1957, 241 F2d 230, 233. Pupils may, of course, be separated according to their degree of advancement or retardation, their ability to learn, on account of their health, or for any other legitimate reason, but each child is entitled to be treated as an individual without regard to his race or color."

Borders v. Rippy, 247 F2d 268 (C.A. 5th 1957).

In Plessy v. Ferguson, which was good law for sixty-eight years until superceded by the Brown case, the Supreme Court very wisely recognized that compulsory association can only bring about the tensions and social disorder which have resulted from the 1954 decision:

"If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals. As was said by the Court of Appeals of New York in People v. Gallagher, 93 N. Y. 438, 448: 'This end can neither be accomplished nor promoted by laws which conflict with the general sentiment of the community upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law, and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all of the functions respecting social advantages with which it is endowed.' Legislation is powerless to

> "eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane."
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> Plessy v. Ferguson, 163 U.S. 537 (1896).

Thus it is seen that while the state is without power to enforce racial segregation in schools by law, the federal government under the Constitution is without power to impose integration upon the individual. As was pointed out by the Court in the Briggs case above, "Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution . . . does not require integration." The state therefore may within the bounds of the federal constitution establish a system of public education that preserves and guarantees this freedom of choice to the individual -- the right of the individual to select his own associates.

This right is especially valuable during the impressionable and formative school age. The educational process is as much a social matter as an intellectual one, and the parent has the right and the duty to place his child in a school where an atmosphere of harmony and congeniality prevails and where the child can work with acceptable companions toward the attainment of their common educational goals. The parent has the responsibility to avoid the selection of a school with an atmosphere of compulsory and undesirable associations and where there exist the contentions and hostilities that so often result from the strife of judicial proceedings and court orders.

This right of free choice of one's associates is in violation of no law, state or federal, and is sanctioned by all enlightened people. It is the foundation stone of all society and is the base upon which progress, happiness, good order, and good feeling among people are built.

The United States Supreme Court has very recently held that freedom of association is embraced within the First Amendment guarantees against governmental encroachment. N.A.A.C.P. v. Alabama, 357 U.S. 449 (1958); Bates v. Little Rock, 4 L. Ed. 2d 480, 485 (1960). The freedom to associate necessarily implies the freedom not to associate.

The question before the Committee is whether the people of Georgia should be permitted to say whether they desire to establish a system of public schools within the framework of the federal court decisions, with such safeguards as will protect the right of free choice of both the parent of the child and of the local community, and that will guarantee that no child in Georgia will be compelled to go to a mixed school against the wishes of his parent or guardian.

When Georgia in 1954 amended its constitution so as to make possible tuition grants from public funds to enable students to attend private schools, the plan offered what then seemed to be an effective alternative to mixed schools. These grants were to be in lieu of all other educational responsibility of the state, and it was assumed that schools could be closed on a system-by-system basis as they became subject to federal court decrees, and that tuition grants would be made available to each such system only upon the event of its closing. It was not contemplated that a situation would come about wherein the state could legally close its schools only on a state-wide basis. That situation has developed because of later decisions by the federal courts. The Amendment, however, in permitting grants in aid, was a far-sighted act of statesmanship and, regardless of the turn of events, can be of great help in working out a solution of the present problem.

V. CONCLUSIONS

The conclusion is inescapable that, to maintain total segregation everywhere in the state, the state will almost certainly have to withdraw from

the operation of public schools. Presumably, under the 1954 amendment to the Georgia Constitution (Code 2-7502), the state could give grants or scholarships to individual school children for use in such private schools as may exist or may be established. The state could have nothing to do with the organization, operation, or supervision of such private schools. "State support of segregated schools through any arrangement, management, funds or property cannot be squared with the Amendment's command that no state shall deny to any person within its jurisdiction the equal protection of the laws." Cooper v. Aaron, 358 U.S. 1 (1958).

Leasing publicly-owned facilities to private operators to avoid integration has been held invalid. Aaron v. Cooper, 261 F. 2d 97 (C.A. 8th 1958), and cases cited at page 108. Hence, existing public school buildings, busses, books and the like, could not be used except after a bona fide purchase by private schools at fair market value.

There are many other serious and difficult problems involved in the establishment and operation of private schools. Among them is the provision of adequate funds for the many phases of school operations. Buildings must be financed, transportation facilities must be secured, adequate funds for operation must be found. The problems of accreditation for the private schools will demand serious study. The costs per student are likely to be so high that many students will be unable to attend because any possible tuition grants will be inadequate to cover the costs. And perhaps most serious of all is the fact that a democratic state will lose all control over the institutions in which the minds, character and ideals of the future citizens of the state are molded.

It is our conclusion that, although there are some localities where such private schools could be maintained successfully, it will be impractical to develop a system of private schools that will provide adequately for the educational needs

of the masses of the people of the state.

Furthermore, even if a system of private schools is adopted, the state, having no control of such schools, would be powerless to prohibit integration in them if some private schools voluntarily integrated. Those who want to mix voluntarily can mix under the law and the state is powerless to prevent it.

The basic alternative to closing the public schools and turning to private schools or accepting integration by court order appears to be a system giving authority to local boards to assign students to particular schools in accordance with the best interests of all students; and the giving of as much freedom of choice as possible to parents and local communities in the handling of their problems; and the giving of assurance that no child will be required to go to school with a child of a different race except on a voluntary basis.

Under a pupil placement plan, the board of each school district, or the governing authority of a school administrative unit, in making assignments of students to particular schools, may properly consider the place of residence of the student, his level of intelligence, his educational attainments, his home environment, his physical condition, and any other facts and circumstances that may bear on the question of the student's ability and fitness to do successful work in a particular school and to maintain satisfactory relationships with those with whom he will be associated, but without reference to race or color.

As stated by Judge Hooper in the Atlanta case:

> "Essentially the Plan contemplates that all pupils in the school shall, until and unless transferred to some other school, remain where they are; all new and beginning students being assigned by the Superintendent or his authority, to a school selected by observance of certain standards as set forth in the proposed Plan."

Later Judge Hooper states:

> "(3) A general review of the measures taken in many southern states and border states since the rendition of the Brown decision,

"both by way of legislative enactments and by way of plans adopted without legislative action, show that the so-called Pupil Placement Plan (also referred to as Pupil Assignment Plans, Enrollment Plans, etc.) have been adopted in one form or another in many states, including Virginia, North Carolina, Alabama, Louisiana, South Carolina, Florida, and Tennessee. In some of these states the plans were adopted soon after the Brown decision, although there was at the time of the adoption of the same, no litigation pending nor any action being taken toward the elimination of racial discrimination. The plans were no doubt adopted against the day when such efforts would be made and they were adopted in full recognition of the fact that the people of the states adopting them had no desire to abolish segregation, but considered it wise to make plans for the future against the day when segregation in such states might be enjoined by the courts. Mississippi was one of the first states to adopt such legislation, though as yet there have been no efforts to abolish segregation in that state."

Similar plans have been held valid by the federal courts. Shuttlesworth v. Birmingham Bd. of Educ., 358 U. S. 101 (1958); Parham v. Dove, 271 F 2d 132 (C.A. 8th 1959); Covington v. Edwards, 264 F 2d 780 (C.A. 4th 1959).

A provision permitting each school district, confronted with an unsatisfactory situation, to determine for itself whether to close its schools, would give each community the maximum freedom of choice. It is assumed that such a provision would also allow subsequent action by the school district to alter the original decision; that is, the community could decide, from time to time, whether it wished to reopen closed schools or to close integrated ones. The validity of such a provision has not been tested in the courts, but, in the light of many analogous situations, it should be upheld. Such provisions are in effect in other states.

The evidence shows that public school problems throughout the state are infinitely varied. A plan giving to each local community the right to determine its own course of action on problems of a peculiarly local nature appears to offer the best and most democratic procedure for solving these peculiarly local problems.

A provision permitting each parent to withdraw his child from an integrated school and to have the child assigned to a non-integrated school, if one is available,

or else given a tuition grant for private schooling, appears to provide the maximum freedom of choice to each parent. The right of a parent to choose between public and private schools has never been questioned; in fact, such a right has been expressly upheld by the Supreme Court. Pierce v. Society of Sisters, 268 U.S. 510, (1925). It is difficult to see how a plan of tuition grants, available to all parents who desire private education for their children, could be challenged successfully.

If the schools are to be closed, the step should be taken as a deliberate choice, with the expectation that the state will go out of the school business permanently, except for providing tuition grants or scholarships and that the people will resort to private schools. Closing the schools otherwise is a useless gesture and can cause nothing but confusion, great economic loss, and utter chaos in the administration of the school system.

It should also be borne in mind that whatever the final decision may be as to the course of action to be followed, there will be far greater mobility and flexibility in the handling of local school situations, if the choice of the course of action can be made freely at the local level rather than under the compulsion of a court order. It has been abundantly demonstrated in other jurisdictions that the federal courts do not hesitate to strike down, as attempts to circumvent their orders, statutes or practices which might have been approved as valid if taken voluntarily.

Those who insist upon total segregation must face the fact that it cannot be maintained in public schools by state law. If they insist upon total segregation everywhere in the State, they must be prepared to accept eventual abandonment of public education.

Those who insist upon total segregation, but who back away from closing the schools, are not only deceiving themselves and the people, but are creating a very difficult and harmful situation: if the State stands upon the present laws, yet declines to accept the ultimate closing of the schools, the result will be integration in its worst form: coercive integration by court order, with no safeguards available to the local people and no freedom of action on the part of the parents of children affected.

The alternative is to establish a system of education within the limitations of the Supreme Court decision, yet one which will secure the maximum segregation possible within the law, which will vest the control of its schools in the people of the community, and which will ensure the parent the greatest freedom in protecting the welfare of his child.

To put this alternative into effect, the Committee believes that some changes are necessary in the Georgia Constitution. The guaranty that no child should be required to attend school with a child of another race ought to be one of the fundamental rights protected by the Constitution. The provision for local control of schools probably requires Constitutional authority vested in the General Assembly. There is no authority in law for a purely advisory referendum, and under a representative form of government. Any such referendum could not properly be made binding on the General Assembly.

Since any Constitutional amendment requires ratification by a vote of the people in a general election, this would provide the opportunity for the people to determine for themselves the course which they desire to take. The complex details of the necessary statutes are a responsibility of the General Assembly and could be developed practicably only through the legislative process.

VI. THE RECOMMENDATION

The Committee recognizes, as has been heretofore stated, that the people of Georgia, though overwhelmingly in favor of both segregation and public schools, are widely divided as to the best means of meeting the situation that confronts them; that the question profoundly affects every phase of the future life and activities of the people of the state; that the question should be considered in an atmosphere of calmness and far-sighted wisdom; that the question should be decided only after the most careful deliberation and the most thoughtful consideration of all the issues involved; and that the public school system is of such transcendent importance that its fate ought to be decided by a direct vote of the people. The people of Georgia have never been called upon to make a more important decision.

The Committee further recognizes that the primary concern of each Georgia citizen is the welfare of his own children and that, regardless of the fate of the public schools, each parent should be protected by the Georgia constitution from being forced to allow his child to attend a school under what the parent considers intolerable circumstances.

The Committee further recognizes that the situation before it is one subject to unforseen future developments and that the Legislature should have the maximum latitude in meeting such developments, including certain constitutional powers which it does not now possess.

WE, THEREFORE RECOMMEND:

1. That the General Assembly propose to the people of Georgia an amendment to the Constitution, reading substantially as follows:

> "Notwithstanding any other provision in this Constitution, no child of this state shall be compelled against the will of his or her parent or guardian, to attend the public schools with a child of the opposite race; that any child whose parent or guardian objects to his attending an integrated school, shall be entitled to reassignment, if practicable, to another public school, or shall be entitled to a direct tuition grant or scholarship aid, as provided by this Constitution and as may be authorized by the General Assembly."

2. That the General Assembly propose to the people of Georgia a further amendment to the Constitution substantially as follows:

> "Notwithstanding any other provision of this Constitution, the General Assembly may provide for a uniform system of local units for the administration of the schools and authorize any such local administration unit, as defined by the General Assembly, to close schools within the unit or to reopen the schools in accordance with the wishes of a majority of the qualified voters of the unit as expressed in a formal election called for the purpose of ascertaining the wishes of the voters."

3. That the General Assembly forthwith enact legislation providing for tuition grants or scholarships for the benefit of any child whose parent chooses to withdraw said child from an integrated school and for the benefit of any child

whose school has been closed, whether as a result of existing or future Georgia laws or as a result of a court order.

4. That the General Assembly forthwith enact legislation making the existing teacher retirement system available to teachers in private schools in the same manner and on the same basis as it now extends to teachers in public schools.

5. That the General Assembly consider whether, in view of the urgency created by the Atlanta case and other cases which may be brought, it will propose to close the public schools in order to maintain total segregation throughout the state or whether it will choose a course designed to keep the schools open with as much freedom of choice to each parent and community as possible; and, if it chooses the latter course, that it enact legislation enabling each school board or other local body to establish a pupil assignment plan; empowering the people of each community to vote whether to close their schools in the event of integration or to continue the operation of said schools; and enabling each parent to withdraw his child from an integrated school and have the child reassigned to a segregated school or receive a tuition grant or scholarship for private education.

THE GENERAL ASSEMBLY COMMITTEE ON SCHOOLS

JOHN A. SIBLEY, CHAIRMAN
HOWELL HOLLIS, GENERAL COUNSEL
JOHN W. GREER, SECRETARY
ROBERT O. ARNOLD
SAMUEL J. BOYKIN
HARMON W. CALDWELL
CHARLES A. COWAN
JOHN W. DENT
ZADE KENIMER
DR. CLAUDE PURCELL
HOMER RANKIN

(For release not before 10:00 A.M., Thursday, April 28, 1960.)

MINORITY REPORT

I

RESPONSIBILITY OF COMMITTEE

This Committee was created by the 1960 Session of the General Assembly to study the existing school problem in Georgia.

The General Assembly directed the Committee to hold hearings, at least one in each Congressional District of Georgia, to ascertain "whether future education is to be afforded through direct tuition payments for use in private schools devoid of governmental control, or whether the public school system as it presently exists shall be maintained notwithstanding that the school system of Atlanta and even others yet to come, may be integrated."

Said resolution creating this Committee further provides:

"The General Assembly Committee on Schools shall proceed immediately upon the adjournment of this session to hold public hearings under such rules and procedures as may be promulgated by the Committee, and after ample notice thereof, to the extent of at least one hearing in each Congressional District of this State on the subject of maintaining public schools in Georgia in light of the order and judgment of Judge Hooper, or whether the people prefer a system of direct tuition grants under the Georgia Constitution for use in private schools, and that such suggestions as may be offered on or

in modification of either course be received and considered, and that the Atlanta plan also be considered."

II

RESULTS OF HEARINGS

This Committee has conducted public hearings in eleven Georgia Communities, at least one in each Congressional District. The results show that of all witnesses testifying 940 were for option No. 1 and 779 for option No. 2. The counties voted 91 for option No. 1 and 48 for option No. 2; 9 counties were evenly divided. Seven districts voted clearly for option No. 1, and three for option No. 2. All of these computations include both white and colored witnesses.

MINORITY REPORT

The General Assembly did not cast us adrift on an unchartered sea of deliberation without any semblance of a plotted course to guide our processes of decision. The General Assembly was not concerned with our individual opinions on the issues presented. If an independent judgment unaffected by the forces of external public opinion were all that had been called for, the lawmakers could have made such a determination for themselves, and there would have been no occasion for a fact finding tribunal.

Instead, the Legislature stated its belief that "the people of Georgia may wish to make a deliberate determination. . .", and we were explicitly directed to hold "public hearings" and receive evidence "on the subject of maintaining public schools in Georgia in light of the order and judgment of Judge Hooper, or whether the people prefer a system of direct tuition grants . . ." (Emphasis supplied). The requirement by law of a hearing carries with it by implication the additional requirement that whatever decision is reached must be based on the evidence received at such hearing, I.C.C. v. L. & N. Railroad Co., 227 U. S. 88 (1913), and any finding completely contrary to the evidence so adduced is erroneous, and constitutes a denial of due process. Thompson v. Louisville, 4 L. Ed. 2d 654 (1960).

The Committee has held its hearings and received evidence in the form of personal testimony and written communication. The people having spoken in such unmistakeable language, it is nothing less than an intolerable affectation of superior virtue for us now to proclaim to them, "Well, notwithstanding that you have made clear your sentiments, we think that you are wrong and that we know what is best for you."

As a result of the hearings held, we find virtually unanimous sentiment among the people of this State of all races that continued maintenance of separate education is in the best interests of all our citizens.

We find further, upon considering all evidence presented, that any precipitant action, resulting in enforced integration at this time in any community, would do incalculable harm to the children and would result in disastrous consequences which could and should be averted.

We find that enforced integration in the schools of this State would cause serious civil turmoil, bitterness, rancor, and internal strife, inflicting much harm on the people of Georgia and accomplishing nothing for the welfare of its citizens.

This Committee finds further that those who instituted, and those who control, the present school litigation in Georgia are not interested in the true well-being of either race, and are motivated by designs inconsistent with the future happiness and progress of the citizens of this State.

III

PUPIL PLACEMENT OR "TOKEN INTEGRATION".

We believe that "Pupil placement", "token integration", or "controlled desegregation" are one and the same.

Those who provoked the pending litigation in Georgia and elsewhere have publicly proclaimed unequivocal dissatisfaction with any plan short of massive and total integration on all levels. Many of the witnesses, both white and colored, representing the NAACP and other radical elements which appeared before the Committee expressed themselves to this effect. Several such witnesses specifically attacked the Atlanta pupil placement plan as an illegal scheme designed to evade the Court's decision in the Brown case.

IV

PRESENT GEORGIA LAWS

The Constitution and laws of Georgia clearly do not envision, permit, provide, or authorize total school closings in Georgia in any circumstance. All persons who have read the law know this.

His Excellency, the Governor of Georgia, in a speech prepared for delivery before the Georgia Education Association on March 19, 1960, had this to say:

> "As long as I am governor, Georgia children will continue to receive a good education by Georgia teachers.
>
> "Let's give the lie once and for all to the canard that if one school is integrated in Georgia, all the schools will close.
>
> "The Georgia law simply does not authorize or contemplate massive school closings under any circumstances.
>
> "We don't want to see even one school closed, and this will come about only as a last resort after all other measures have failed.
>
> "The education of the children in that school would be provided for and the teachers would be taken care of and their retirement rights protected."

After a diligent search by responsible legal authorities and members of the Committee it was found that in no State has the result of litigation been the closing of all public schools.

Should any effort be made through any legal device or scheme to close all public schools of the State or to deny funds for their operation, the burden of responsibility must lie elsewhere than on the State Constitution, the State laws, State Officials or the General Assembly.

The Committee as a whole has definitely concluded that it is in the best

interests of this State for the newspapers, the radio stations, the television stations, other information media, civic, fraternal, farm, labor, veteran, educational, business, professional, and all other groups and organizations in this State to exert every influence to maintain separation of the races in this State, and the public schools thereof, on a voluntary basis. If public opinion would unite to this end, we are certain that there would be no integration in Georgia because there would be no litigation in the first instance.

This Committee further deplores and condemns efforts on the part of Communist-inspired organizations who would do otherwise, and thus, inflict incalculable damage on the welfare and future happiness of the people of this State.

V
RECOMMENDATIONS.

After due deliberation, and in full consideration of the facts as herein set forth, we recognize that it is difficult to formulate recommendations that would offer any perfect solution to the problem presented.

However, as the most effective means of dealing with the problem, we recommend that the General Assembly provide, either through the form of appropriate constitutional amendments, and/or through enactment of new statutes or amendments to the existing laws, measures which would accomplish the following purposes, to-wit:

1. Guarantee that no Georgia child shall be forced against the desire of his parent or guardian to attend any public school wherein a child of the opposite race is enrolled.

2. That the General Assembly of Georgia, pursuant to the 1954 Amendment to the Georgia Constitution, as advocated and proposed by Honorable Herman E. Talmadge, then Governor of Georgia, enact such appropriate enabling legislation as may be required to further effectuate the grants-in-aid amendment so as to provide for direct grants of State, County, and municipal funds to citizens of the State for educational purposes, in discharge of all obligations of the State to provide adequate education for its citizens.

3. That the public school system be preserved on a segregated basis as far as it is possible to do so unless closed by unprecedented Federal court decree, and that the system of grants be instituted only as a last resort.

4. That the Governor and the General Assembly of Georgia take such action and enact such measures as may be required from time to time, consistent with the welfare and best interests of the children of Georgia.

THE GENERAL ASSEMBLY COMMITTEE ON SCHOOLS

Vice-Chrmn.	JOHN P. DUNCAN	WALLACE L. JERNIGAN
	GEORGE BROOKS	J.W. KEYTON
	J. BATTLE HALL	H. WALSTEIN PARKER
	RENDER HILL	H. EULOND CLARY

(For release not before 10:00 A.M., Thursday, April 28, 1960)

ADDITIONAL STATEMENT BY RENDER HILL

Although having concurred in the Minority Report of the General Assembly Committee on Schools, I wish to express certain of my own conclusions and findings which are submitted herewith:

From the testimony of the witnesses appearing at these hearings my findings of fact are as follows:

1. Practically all of the people of Georgia favor segregated schools.
2. Practically all of the people of Georgia favor public education.
3. Approximately 55% of the witnesses appearing before the Committee believe it would be preferable to abandon the public education system rather than accept any integration.
4. Approximately 45% of the witnesses appearing before the Committee believe it would be preferable to accept some integration rather than abandon the public education system.
5. That the beliefs of the witnesses appearing before the Committee vary with the percentage of negro population in their particular locality. That is, the larger the negro population the greater the belief that it would be preferable to abandon public education than to accept any integration.

From the testimony of the witnesses appearing at the hearings my conclusions are as follows:

1. The best and most workable form of education for all the children of the State of Georgia is a public segregated school system.

2. That any form of integrated school system in any part of the State of Georgia would cause irreparable harm to the present good relationship of the races.

3. That the State of Georgia must resolve the problem as a whole because the State cannot support financially and equitably a dual system of public education and a system of private schools through individual grants.

I believe that the Federal Courts intend to enforce the edicts of the Supreme Court of the United States decreeing integrated public education.

I believe that the foundation of our form of government insures personal freedom and the absolute right of choice of association.

However, in view of the disparity of the testimony of the witnesses concerning these divergent principles and in view of the fact that the responsibility for the conduct of the affairs of the people of the State of Georgia rests in their General Assembly;

And in view of the fact that the members of the next General Assembly have not yet been elected, I recommend:

1. That each representative and senator elected to the 1961 General Assembly fully inform himself concerning the school situation in the State of Georgia and carefully determine the wishes of the people of his county, so that each may properly and fully present these views at the 1961 Session;

2. That the General Assembly exercise its inherent right at the 1961 Session to resolve these issues.

3. That the General Assembly enact legislation so that no child will be compelled to attend an integrated school and if necessary adopt such statutes as would enable each school to be created as a separate autonomous school district, with separate governing authorities.