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November 20, 1953

Personal

The President
The White House
Washington, D. C.



AIR MAIL

Dear Mr. President:

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The press quoted you as saying at your press conference Wednesday that you intended to personally consider the reply your Administration will make to the questions propounded by the Supreme Court in the school segregation cases. Because of this I have clipped from the first draft of a brief which has been prepared by Mr. John W. Davis, representing certain school trustees in South Carolina, several pages which I herewith enclose.

*Retained by
the A.G.*

In the brief our counsel will argue that the United States Supreme Court and every other court, federal and state, that has ever considered this question has held that the 14th Amendment did not prohibit a state from enacting a law requiring separation of races in public schools provided equal facilities were furnished all students. The question now is whether you will ask the Supreme Court to reverse its decisions and declare that the 14th Amendment now means something the Court has heretofore said it did not mean.

The Court has no right to legislate. That is the duty of the legislative branches of the federal and state governments. The excerpts I enclose you contain a discussion of the right of a state in the exercise of its police powers to make distinctions between people, provided such distinctions are not arbitrary and unreasonable. I hope your consideration will cause you to conclude that this is the proper position for you to take. There are five cases pending. The Court might well conclude the conditions in Kansas were such that a law making a distinction between the races was unreasonable. The Court might say that in the South Carolina case where the number of colored students in the school district in question is ten to every one white student, the Court cannot say that the action of the state is manifestly unreasonable.

This position would be in accord with the decisions of the courts and certainly it would be in accord with the position you have consistently taken, that the states should have the right to control matters that are purely local.

With best wishes to you, I am

Sincerely yours,

JFB:eh
Enc.