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Debate gets hotter over mixed schools

Strom Thurmond

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Once Labor Leader,
Now Business Owner, Tells:

HOW TO DEAL
WITH
LABOR UNIONS

INTERVIEW with HAROLD J. RUTTENBERG
Southern Spark Sets It Off:

DEBATE GETS HOTTER
OVER MIXED SCHOOLS

Lines now are being drawn in Congress for a struggle over this question:
Can the South be forced to accept the Supreme Court's order outlawing segregation in public schools?
In a manifesto, Southern members of the House and Senate assert that the decision must be reversed, by lawful means. They warn against abuse of judicial power.
Legislators from other parts of the country speak against "nullification," say no State can put itself above the Court.

Below, spokesmen for both sides give their views, set forth on the floors of Congress.

In the South Carolina school district where one of the segregation cases was instigated, the Negro schools are better than the schools for white children. Yet the Negroes continue to seek admission to schools for the white race.

This is sufficient proof that, while South Carolinians of both races are interested in the education of their children, the agitators who traveled a thousand miles to foment trouble are interested in something else. The "something else" they are interested in is the mixing of the races.

They may as well recognize that they cannot accomplish by judicial legislation what they could never succeed in doing by constitutional amendment.

Historical evidence positively refutes the decision of the Supreme Court in the school-segregation cases.

The 39th Congress, which, in 1866, framed the 14th Amendment to the Constitution—the Amendment which contains the equal-protection clause—also provided for the operation of segregated schools in the District of Columbia. This is positive evidence that the Congress did not intend to prohibit segregation by the 14th Amendment.

The Supreme Court admitted in its opinion in the school cases that "education is perhaps the most important function of State and local governments." But the Court failed to observe the constitutional guaranties, including the 10th Amendment, which reserve control of such matters to the States.

If the Supreme Court could disregard the provisions of the Constitution which were specifically designed to safeguard the rights of the States, we might as well not have a written Constitution. Not only did the Court disregard the Constitution and the historical evidence supporting that revered document; it also disregarded previous decisions of the Court itself.

Between the decision in Plessy against Ferguson in 1896 and the reversal of that opinion on May 17, 1954, 157 cases were decided on the basis of the separate-but-equal doctrine. The United States Supreme Court rendered 11 opinions on that basis: the United States courts of appeals 13; United States district courts 27; and State supreme courts, including the District of Columbia, 106.

Such disregard for established doctrine could be justified only if additional evidence were presented which was not available when the earlier decisions were rendered.

No additional evidence was presented to the Court to show...
the earlier decisions to be wrong. Therefore, the decision handed down on May 17, 1954, was contrary to the Constitution and to legal precedent.

If the Court can say that certain children shall go to certain schools, the Court might also soon attempt to direct the courses to be taught in those schools. It might undertake to establish qualifications for teachers.

I reject the philosophy of the sociologists that the Supreme Court has any authority over local public schools supported in part by State funds.

The Court's segregation decision has set a dangerous precedent. If, in the school cases, the Court can by decree create a new constitutional provision, not in the written document, it might also disregard the Constitution in other matters. Other constitutional guarantees could be destroyed by new decrees.

I respect the Court as an institution and as an instrument of government created by the Constitution. I do not and cannot have regard for the nine Justices who rendered a decision so clearly contrary to the Constitution.

The propagandists have tried to convince the world that the States and the people should bow meekly to the decree of the Supreme Court. I say it would be the submission of cowardice if we failed to use every lawful means to protect the rights of the people.

For more than half a century the propagandists and the agitators applied every pressure of which they were capable to bring about a reversal of the separate-but-equal doctrine. They were successful, but they now contend that the very methods they used are unfair. They want the South to accept the dictation of the Court without seeking recourse. We shall not do so.

Plea to Support the South

I hope all the people of this nation who believe in the Constitution—north, south, east and west—will support every lawful effort to have the decision reversed. The Court followed textbooks instead of the Constitution in arriving at the decision.

We are free, morally and legally, to fight the decision. We must oppose to the end every attempt to enroach on the rights of the people.

Legislation by judicial decree, if permitted to go unchallenged, could destroy the rights of the Congress, the rights of the States, and the rights of the people themselves.

When the Court handed down its decision in the school-segregation cases, it attempted to wipe out constitutional or statutory provisions in 17 States and the District of Columbia. Thus, the Court attempted to legislate in a field which even the Congress had no right to invade. A majority of the States affected would never enact such legislation through their legislatures. A vast majority of the people in these States would standly oppose such legislation.

The people and the States must find ways and means of preserving segregation in the schools. Each attempt to break down segregation must be fought with every legal weapon at our disposal.

At the same time, equal school facilities for the races must be maintained. The States are not seeking to avoid responsibility. They want to meet all due responsibility, but not under Court decrees which are not based on law.

I hope a greater understanding of the problem which has been thrust upon the South and the nation will be sought by our colleagues who do not face the segregation problem at home. Other problems of other areas require consideration and understanding. I shall try to give full consideration to them.

All of us have heard a great deal of talk about the persecution of minority groups. The white people of the South are the greatest minority in this nation. They deserve considera-

Signers of Southern Pledge

In a "Declaration of Principles" introduced in the Senate and House on March 12, members of Congress from the South pledged themselves to use "all lawful means" in resisting the Supreme Court decision outlawing racial segregation in public schools.

Full text of the declaration was published in the March 16, 1956, issue of U.S. News & World Report. Names of signers follow:


TENNESSEE: Representatives John B. Frazier, Jr., Joe L. Evins, Ross Bass, Tom Murray, Jere Cooper, Clifford Davis.


tion and understanding instead of the persecution of twisted propaganda.

The people of the South love this country. In all the wars in which this nation has engaged, no truer American patriots have been found than the people from the South.

I, for one, shall seek to present the views of my people on the floor of the Senate. I shall fight for them in whatever lawful way I can. My hope is that consideration of our views will lead to understanding and that understanding will lead to a rejection of practices contrary to the Constitution.

(Senator Wayne Morse) (Dem.), of Oregon: The hour is indeed historic. It has some of the characteristics of previous historic hours in the Senate, when there was before this body the great constitutional questions as to whether or not there was to be equality of justice for all Americans, irrespective of race, color or creed.

If we will check into American history at the time of Marbury against Madison, we will find a great similarity between the arguments then made and the arguments made on the floor of the Senate today. But in Marbury against Madison, decided in 1803, there was established the authority and the jurisdiction of the Supreme Court to determine for all Americans, irrespective of color, race and creed, equality of rights under the Constitution. The supremacy of the Supreme Court in passing on the constitutional questions was determined by that decision.

A unanimous Supreme Court has handed down a decision that makes it perfectly clear that under the Constitution of the United States there cannot be discrimination between white men and black men, so far as the Constitution is concerned.

I say again today that the doctrine of interposition means nothing but nullification, and it means really a determination on the part of certain forces in this country to put themselves above the Supreme Court and above the Constitution. If the gentlemen from the South really want to take such action let them propose a constitutional amendment that will deny to the colored people of the country equality of rights under the Constitution, and see how far they will get with the American people.

Mr. President, I recognize the problems of the South. Unfortunately, I respectfully say, I think too many of our Southern colleagues want to take the position that, because some of us may live in the North, we have no appreciation of the problems of the South. That is contrary to the fact. But we have reached a point in our history when the great South once again will have to determine whether we are to be governed by law or whether we are to be governed or subverted by the interposition doctrine which is the doctrine of nullification.

Mr. President, on the basis of the arguments of the proponents of the declaration of principles just submitted by a group of Southern Senators you would think today Calhoun was walking and speaking on the floor of the Senate.

"Decision Long Overdue"

I think that, as patriots all, those of us representing areas outside the South need to sit down with our brethren representing the South and see what we can do to solve, by reasoned discussion, the great problem which the Supreme Court decision has created. But I first want to say I think it is a correct decision, a sound decision, and a decision that was long overdue.

I say, respectfully, the South has had all the time since the War Between the States to make this adjustment. That is why I am not greatly moved by these last-hour pleas of the South, "We need more time, more time, more time." How much more time is needed in order that equality of justice may be applied to the blacks as well as to the whites in America?

Mr. President, I regret that this Declaration has been filed, because I respectfully say such a Declaration will not bring about the unanimity of action we will need in order to help solve the school problem in the South.

I close by saying a unanimous Supreme Court, which includes in its membership men with the tradition of the South in their veins, has at long last declared that all Americans are equal, and that the flame of justice in America must burn as brightly in the homes of the blacks as in the homes of the whites.

(Senator Hubert H. Humphrey) (Dem.), of Minnesota: Mr. President, this is a truly sad, bewildering and difficult day in the Senate of the United States. This great body is sworn to uphold the Constitution of the United States. To be sure, on every piece of legislation we make our own individual judgments as to whether or not we believe it is within the spirit and the letter of our great document, the Constitution.

Court's Ruling: the Final Word

I do feel, Mr. President, once the Supreme Court of the United States has spoken, not merely upon statutory law, but upon constitutional law, that the presumption is, and should be, that the order of the Court and the rule of the Court is the law of the land—to be obeyed and upheld.

While I do not profess to be an expert in constitutional law, I am familiar with the development of the doctrine of the power and the right of the Supreme Court of the United States to encompass within its jurisdiction the responsibility for ruling upon the constitutionality of State statutes which may or may not be in conflict with the Constitution, the power and the responsibility and the right to rule upon federal statutes which may or may not be in conflict with the Constitution, and finally the power of the Supreme Court to interpret and to apply the language of the Constitution itself.

Mr. President, the 14th Amendment is a new Art of the Constitution of the United States. The fact that the 14th Amendment has not been applied in some specific instances throughout the past decades does not in any way weaken or vitiate this power of law. That amendment is quite explicit in section 1. It reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

I continue to read from section 1 of the 14th Amendment:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Mr. President, this Amendment is all-important in our constitutional structure. For years it has been interpreted and primarily applied to the economic interests of our country, under the doctrine of what we call reasonableness, "due process of law" being interpreted as a reasonable rule of law. It was applied that way to economic matters and to large corporate interests.

The Supreme Court, in the case involving school segregation, applied the principle to citizens of the United States, to
human beings rather than corporate beings, to people rather than property.

So, Mr. President, I must say with all due respect—and I certainly respect the knowledge and experience of my colleagues—that the Supreme Court did not write the law; it merely applied existing constitutional law. It applied the principle of human equality—equal treatment under the law—Mr. President, which, since July 4, 1776, has been declared as the fundamental tenet of our republic.

Furthermore, Mr. President, in its ruling the Supreme Court took jurisdiction over one of the most complex, difficult, and trying questions of our time, namely, segregation in our public schools. I re-emphasize to my colleagues that the issue of segregation and desegregation is within the jurisdiction and the responsibility of the Supreme Court of the United States and the judicial process. I am pleased that it has been handled by the courts. I am displeased that it has become the subject of passion, emotion, bitterness and antagonism.

The Threat of Nullification

Frankly, Mr. President, the principle of federalism leaves no room for nullification; and, as the Senator from Oregon has said, it leaves no room for interposition. Interposition fully developed becomes nullification, as the courts of our country have stated again and again, and as the great, historic leaders of the nation have stated. Nullification is a violation of the Constitution. It cannot be condoned.

I have been pleased to see the great progress that was being made in the South toward equality amongst the peoples and the races. The Supreme Court decision should be a stimulant for further orderly progress. It requires that people of good will continue working together day after day.

Mr. President, if Governors, Senators, and Members of the House of Representatives will take a stand for the fulfillment of equal rights under the law, progress will become orderly, steady and certain. By holding back, we merely impede the fulfillment of what is inevitable, namely, the rule of law under the Constitution of the United States. The Constitution prescribes that there shall be no denial to citizens of the United States of equal privileges and rights under the law. This is the law. Our constitutional system is fixed, and can be changed only by alteration of the Constitution.

Mr. President, if we persist in the course of denying people in America equal rights, we shall bring down upon our nation the wrath of the world. In this world there are more people who are non-Caucasian and more people who are colored than those who are white. Frankly, we are talking about a matter which goes to the safety and security of our republic. No amount of atomic bombs or thermonuclear weapons can prevent the forward movement of the people. The people throughout the world want equal justice under the law; they want recognition and equal status. They want to be God's people as just people.

If America ever hopes to give world leadership we must set the pattern here in America. We have to set it up under God.

This is the very heart and core of an effective foreign policy, Mr. President. No amount of appropriations, no amount of armaments, can be as important today as being right and being moral and being just. Citizenship in America must be first-class citizenship. There can be no second-class citizenship.

Senator Richard L. Neuberger (Dem.), of Oregon: I think the President should call a White House conference of all the Governors, Senators, and Representatives of the States in which the Supreme Court ruling is being defied. He should confront them firmly but considerately with the fact that the nation now is faced with a choice between anarchy and the rule of law. If the Constitution can be flouted in one realm, what of all other realms?

In my opinion, the President of the United States must intrude into this situation his great influence and authority. White House conferences have been called on matters of far less importance than the preservation of our country's prestige abroad and its unity and solidarity at home.

In the House of Representatives the Southern Declaration was introduced by Representative Howard W. Smith (Dem.), of Virginia, with the following statement:

Representative Smith: Mr. Speaker, in the life of a nation there comes times when it behooves her people to pause and consider how far she may have drifted from her moorings, and in prayerful contemplation review the consequences that may ensue from a continued deviation from the course charted by the founders of that nation.

The framework of this nation, designed in the inspired genius of our forefathers, was set forth in a Constitution, born of tyranny and oppression in a background of bitter strife and anguish and resting upon two fundamental principles:

First, that this was a Government of three separate and independent departments, legislative, executive, and judicial, each supreme in, but limited to, the functions ascribed to it.

Second, that the component parts should consist of independent sovereign States enjoying every attribute and power of autonomous sovereignty save only those specific powers enumerated in the Constitution and surrendered to the central Government for the better government and security of all.

When repeated deviation from these fundamentals by one of the three departments threatens the liberties of the people and the destruction of the reserved powers of the respective States, in contravention of the principles of that Constitution which all officials of all the three departments are sworn to uphold, it is meet, and the sacred obligation of those devoted to the preservation of the basic limitations on the power of the central Government, to apprise their associates of their alarm and the specific deviations that threaten to change our form of government, without the consent of the governed, in the manner provided by the Constitution.

What the South Fears

Assumed power exercised in one field today becomes a precedent and an invitation to indulge in further assumption of powers in other fields tomorrow.

Therefore, when the temporary occupants of high office in the judicial branch deviate from the limitations imposed by the Constitution, some members of the legislative branch feel impelled to call the attention of their colleagues and the country to the dangers inherent in interpretations of the Constitution reversing long-established and accepted law and based on expediency at the sacrifice of consistency.

The sentiments here expressed are solely my own, but there is being presented at this hour in the other body by Senator George on behalf of 19 members of that body, and in this body by myself on behalf of 81 members of this body, a joint declaration of constitutional principles.