Washington in Focus

by Max Freedman

WHEN the Supreme Court was hearing the segregation cases last year there was one exchange between leading counsel on both sides that touched the central dilemma. Mr. John W. Davis cautioned the opponents of segregation to beware of the perils of hasty reform which might provoke a revulsion that would endanger many of the social gains won by Negroes in recent years. Mr. Thurgood Marshall replied that Mr. Davis was simply trying to persuade the court that it is unwise to interfere with any wrong provided its pedigree is sufficiently old. By a unanimous verdict the Supreme Court last May ruled that segregation in public schools is unconstitutional. But the issue raised by Mr. Davis still awaits adjudication. The court must still decide on the most orderly transition from the segregated schools to the unified system.

Three distinct points of view were brought before the court. Mr. Marshall and his colleagues argued for the swiftest transition to the nonsegregated system, for a start on a broad front by September of this year, and for the completion of the unified system by the outside date of September, 1956. The Southern states pleaded for delay, for a system of local variations which would respect the differences between various communities, and for a recognition that the problem required something more than a judicial decision for its solution. The Department of Justice, assuming a midway position, told the court that no community had the right to defy the court's ruling by claiming to exercise a local option, that even the claim of "popular hostility" had to yield to the compulsions of constitutional right, but that the court should avoid prescribing any single formula by which segregated schools would be abolished.

The court was told by opponents of segregation that there is no merit to the Southern claim that "local mores and customs justify delay" which might produce a more orderly transition." The Fourteenth Amendment, as they saw it, was designed for the express purpose of providing protection against the pressure of local customs in conflict with the Constitution. They argued that church groups and others in the South who are trying to win general acceptance of the court's decision of last May "cannot be effective wthout the support of a forthwith decree" from the Supreme Court. Finally, they warned the court that gradual adjustment might lead to delays that might prove interminable; and that any uncertainty or weakness in the attitude of the Supreme Court now would at once become the signal for an obstinate rear-guard action in defense of segregation.

THE clearest case for delay was put by Virginia, which said quite bluntly that it does not foresee "a complete solution at any future time." So long as the unified system is resolutely opposed by an united majority it saw no solution either by court decree or by executive order.

The proper procedure according to Virginia was to return the cases to district courts in accordance with "very general instructions to enforce the decisions of this court while permitting the preservation of the local school system."

The Department of Justice reminded the Supreme Court that its decision last year recognized the importance of psychological and emotional factors affecting colored children forced to endure segregatd schools. In similar fashion it called on the court to recognize that "psychological and emotional factors are involved—and must be met with understanding and goodwill—in the alterations that must now take place in order to bring about compliance with the court's decision." In discussing the problem of "popular hostility" the department spoke with great frankness. It said this hostility must be faced with understanding but "it can afford no legal justification for a failure to end school segregation." The department was opposed to the proclamation of any outside date by which the unified system would become universal and mandatory. It was afraid that the interval between now and any such date would be used to build up resistance to the unified system rather than to prepare honestly for it.

The Department of Justice made an argument which will count heavily with the court when it pointed out that the Constitution, while prohibiting segregation, does not compel the adoption of any specific type of non-segregated system. It advised the court to rule that racial segregation in public schools is unconstitutional and that all provisions of law requiring or permitting such segregation are invalid. It next suggested that the cases be turned back to the lower courts, which would require within ninety days a plan for ending segregation as quickly as is feasible. If a satisfactory plan is not submitted to the lower court, it would direct the admission of Negro children to non-segregated public schools at the beginning of the next school term. School authorities would be obliged to submit detailed reports to the lower courts showing what progress is being made toward the unified system. In turn, the lower courts would inform the Supreme Court of the measures being taken to comply with the Constitution.

No one studying the massive briefs before the court or listening to the involved argument can cherish the illusion that everything was settled last May 17 by the great decision of a unanimous court. But at no stage has the court shown any tendency to be impressed by the repeated claim that it would expose itself to a generation of litigation by forthright action. The decisiveness of the court's ruling rang round the world. There is nothing to suggest that it will act with less courage and wisdom now.