SCHOOL INTEGRATION — FOUR YEARS AFTER

The South vs. the High Court's 1954 Ruling

By JAMES J. KILPATRICK

IT HAS BEEN four years now, come May 17, since Chief Justice Warren gazed upon a packed courtroom and began reading the brief opinion we have come to know as Brown vs. Board of Education. In the whole history of the Supreme Court of the United States, no single decision has had an immediate impact more profound than this one, or created more controversy over a wider area, or fostered more bitter resentments. Those who support and defend the Court's opinion might accept those superlatives, but would contend that no decision ever has accomplished greater social good. However the School Cases are viewed, pro or con, few persons would question their surpassing place in the judicial history of the United States.

The point merits brief elaboration. Ask any freshman law student to name a dozen great landmark cases, and he probably would begin with Marbury vs. Madison, touch upon United States vs. Judge Peters, lump together Fletcher vs. Peck and the Dartmouth College Case, then emphasize McCulloch vs. Maryland, Gibbons vs. Ogden, and Martin vs. Hunter's Lessee. Your student certainly would include Dred Scott among his first, and perhaps nominate the Slaughterhouse Cases from the Reconstruction Period. The NLRB decisions of April, 1937, followed a year later by the sweeping pronouncements of United States vs. Darby, and still more recently by the Tidelands decision and the Watkins case — all these surely are landmarks.

Yet none of these opinions quite matches Brown vs. Board of Education, and the reasons why this is so go to the heart of this essay. The people — the five and a half million American human beings of 1803 — really had no great interest in Mr. Marbury's appointment as a justice of the peace, the profound implications of Marshall's assertion of judicial authority did not affect them personally. In the same way, the Supreme Court's declaration of power to invalidate state laws, as in Cohens and McCulloch, touched few persons intimately. The man in the street of 1824, reading the Gibbons case, had no vast concern for new doctrines of interstate commerce. Questions of state contracts, fugitive slaves, Federal taxation, even the issuance of currency — momentous as these decisions were, they were largely impersonal in their application. Seldom did these opinions upset institutions of long standing; and in almost every case, cogent reasons of law were advanced to support them.

The school cases of May 17, 1954, fall in a class by themselves. Here the Supreme Court held that the Fourteenth Amendment prohibits to the states the power of maintaining racially separate public schools; and, in a companion case, the Court held it "unthinkable" that the Constitution imposes a lesser inhibition on the Federal Government in Washington. (As Judge Ralph Catterall has remarked, what the Court held to be unthinkable, until that day had been universally thought.) The effect of the opinion was to wipe out an understanding of the Fourteenth Amendment that had prevailed for 86 years.

The ruling struck down the school segregation laws of 17 states and the District of Columbia; it immediately, personally and directly affected the lives of millions of school children and their parents. And the Court accomplished all this not on the basis of law, but upon "the extent of psychological knowledge." Members of the Court, agreeing to the Brown opinion, jettisoned some of the oldest rules of judicial construction; they usurped the power reserved to the states to amend the Constitution, and they substituted their own notions of desirable public policy for the plain meaning of the Constitution they were sworn to uphold.

SO VIOLENT an explosion must cause vast changes. It is entirely too soon to appraise these consequences fully; and those of us in the Old South, attempting to cope with what is seen as the devastation of a social order, are doubtless the wrong ones to attempt an appraisal anyhow. For the South, these four years have been like the day after an earthquake: the ground still trembles, and the damage may be more or less severe than it seems. Looking back, one senses a blur of names and faces: Atherine Lucy, Martin Luther King, the bear-like bulk of Thurgood Marshall; Orval Faubus, and Judge Davies, and the Clinton Eleven. One remembers, too, the torrent of