IN THE

SUPREME COURT OF THE UNITED STATES

AUGUST SPECIAL TERM, 1958

No. 1 Misc.

JOHN AARON, et al., *Petitioner,*

—vs.—

WILLIAM G. COOPER, et al., *Respondent.*

MOTION TO FILE BRIEF AMICUS CURIAE

William Burrow, a member of the Bar of the Supreme Court of the United States, moves for leave to file a brief *amicus curiae* in the form attached, on behalf of himself and the White and Negro people of the South on the following grounds:

1. Consent of the parties is unobtainable due to the shortness of time, and this is equivalent to refusal.

2. The true litigants are not before the court. The Petitioner speaks for but a few people and the Respondent speaks only for another narrow segment of the population; whereas, the South itself is on trial and no one speaks in this Honorable Court for the Southern People. They are entitled to be heard, before condemnation is made. Your movant's interests are: those of the Southern White and Negro People; and as an Officer of this Court for more than twenty years, the welfare, prestige and independence of this great

Court.

3. The questions of law involved are: the need for moderation, the Separation of Powers, the powers of this Honorable Court, the Fourteenth Amendment, and the Right of Peaceable Assembly of the First Amendment.

4. The reasons of believing that the appropriate arguments will not be presented by the parties are that their Proponents are too few to represent the national conflicting interests; and that in the past in the arguments on similar questions, no one presented the basic psychological factors involved, nor answered the alien unscientific theories of the sociologists which this Court has followed.

WHEREFORE, Movant prays that the attached brief be filed, and exception be made as to printing, at least temporarily until time can be had therefor.

Respectfully submitted,

/s/

WILLIAM BURROW,
Attorney for Amicus Curiae

AMICUS CURIAE BRIEF

William Burrow, on behalf of himself and the Negro and White People of the South, files this, his brief *amicus curiae*.

I.

STATEMENT

No court in history had attempted to enjoin fifty million people. The reason, however, is that court decisions do not ordinarily rest on force, but instead on the peoples' acquiescence and sanction through respect of law. Such an injunction, however, was issued as a part of *Brown* vs. *Board of Education*, 347 U.S. 483, 98 L.Ed. 873 (May 17, 1954). The people in the areas concerned considered the decision unjust and did not accept it as law. Their will hardened and has continued to harden against it. It was found that it could not be implemented without military force, which the President then employed in this case. Yet it is likely that in another year or so or later, another President, as did Andrew Jackson, may revive the theory of separation of powers by checks and balances in government and refuse to enforce the *Brown* decision.

The present situation is that there is a series of orders emanating from the *Brown* case opposed by the unanimous will of more than one-fourth of the nation which the President serving may or may not hereafter seek to enforce according to his particular beliefs. As was amply proven in reconstruction, integration cannot be enforced no matter what military or other government forces are brought to bear. The result then, and likely will be again, is violence, hate and oppression of the Negro who is in the minority. Lastly, no integration has ever taken place in a temperate clime in the history of the World. The situation leaves this Honorable Court in the awkward position of attempting to coerce millions of people and which may very well be impossible.

II.

ARGUMENT

As decisions of the court rest on the respect of the peo-

ples for the court, so solutions cannot be found in a course which engenders hate and violence, but must come on decisions that will stand with the reason of mankind. The solutions must come from affection and friendship between the races and must in each particular case, and ought to in each particular case, constitute a fair adjustment of the conflicting rights of each. Support in court should go to moderates such as the writer, who with reason and fairness may solve these problems.

The reasons for the agitation and violence precipitated by the *Brown* decision, aside from such agitation as Russian agents may achieve, are emotional. They reach deep in the basic instincts of man. Although all species of animals prefer their own kind that flock together, this herd instinct conflicts with the ego in that the Negro resents not being able to associate with whom he pleases, and the ego of the White resents being told with whom he must associate. This basic conflict is aggravated in schools where parents have concern for their children. The only solution is by emotional adjustment, which does not attempt to repeal by law the herd instinct, but seeks to remove the indignities to each race. Sometimes this adjustment must be legal, in court.

The Justices of this Honorable Court in the second half of the Twentieth Century may have to some extent forgotten and disregarded the hard lessons learned by experience through the tragedy of the Civil War and reconstruction and its aftermath throughout the second half of the Nineteenth Century, which resulted in the decision of *Plessy* vs. *Ferguson*, 163 U.S. 537, 41 L.Ed. 256 (May 18, 1896). For instance, it is not understood that laws and theories which work well in states like California and Wyoming, with minute numbers of Negroes, work not at all where the proportion is large. The reliance in the *Brown* case was on theory wholly disregarding experience. Yet, a wise Justice said "that the life of the law has been experience." A critical analysis of the books of the sociologists' theories shows

that they are all based on arbitrary assumptions, and one of the greater ones was certainly a Russian project. They do violence to scientific method of trial and error and will not stand the test of criticism. If a decision is to be based on psychology, then it is respectfully urged that psychological testimony by both sides should be taken.

In the great and critical struggle of human rights and in the long progress to freedom, many problems must be solved. Discrimination is insupportable; equality of opportunity is imperative; and the unity and not the disunity of the Nation is necessary in the presence of the major fact of our lives of the conflict of the tyranny of Russia against the freedom of America.

It is, therefore, respecfully urged that this Court be moderate in the exercise of its power; that time be taken to make fair and able and wise adjustments; that an end be brought to coercion; and that in the light of the experience since the *Brown* case, consideration be given to its modification and revision. Rights of White and Negro, and perhaps democracy itself, hang on this decision.

Respectfully submitted,

/s/

WILLIAM BURROW
Attorney for Amicus Curiae