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June 16, 1938

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Mr. Thurgood Marshall
Assistant Special Counsel NAACP
69 Fifth Avenue
New York, N.Y.

In Re: John Gilbert v. Board of Public
Instruction of Brevard County,
Florida

My dear Counsellor:

Last week Judge Smith entered his Order dismissing our petition in the above matter. A few days before his order of dismissal was entered he indicated that he would deny our petition thereby giving us an opportunity to amend but I did not want to amend the petition. I feel that it sets out a prima facie case entitling the petitioner to the issuance of an alternative writ so I asked the court to enter its order dismissing the petition so that I could take a writ of error to the Supreme Court of Florida and to the U.S. Supreme Court, if that becomes necessary. The Judge in his letter of the 8th inst., among other things stated:

"I have carefully considered the Petition and brief submitted in this cause.

The Petitioner seeks specifically to compel the School Board of Brevard County, Florida, 'To adopt and establish salary schedules for teachers in Brevard County, Florida, without distinction or discrimination - -'

As you know, mandamus will coerce the performance of any clear legal duty.

The statute provides and directs every School Board, among other things, 'To employ teachers for every school in the county and to contract with and pay the same for their services - -' I do not find, however, either in the statute or any authority cited, any duty on the part of the Board to adopt or establish any salary schedule. It would appear that the statute contemplates a separate contract with each individual teacher.

Mr. Thurgood Marshall #2

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The constitution requires that there shall be established and maintained 'A uniform system of public instruction -' This section, together with the statutes, provides for the accomplishment of a result and not the details of the means by which the same shall be accomplished.

I, therefore, deny the Writ....."

From this statement it is clear that his opinion is not in line with what I concieve to be the law in a question of this kind. Copy of his Order is herewith handed you for your files.

The next step now is an appeal to the Supreme Court of Florida. The Florida teachers have made some preparation in this regards so that no time will be spared now in the preparation of our record and thereafter it will be properly presented to the Appellate Court.

This matter should now be given the widest publicity. The articles in regards to this case appearing in the press last week have helped our cause very much. You have my permission to publish it in any way you think proper.

With every good wish, I am,

Sincerely yours,

McGILL & McGILL

S. D. McGILL

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