Vanderbilt Law Review

Volume 74 | Issue 5 Article 5

2021

Brown, Massive Resistance, and the Lawyer's View: A Nashville Story

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ESSAY

Brown, Massive Resistance, and the Lawyer's View: A Nashville Story

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Editors' Note: *For nearly 75 years, the* Vanderbilt Law Review *has sought to publish rigorous, intellectually honest scholarship. In publishing the following Essay, we seek to provide an equally unflinching look at one way in which Vanderbilt Law School and its graduates have participated in the creation of inequities that persist today.*

The Law School has produced legions of graduates committed to the pursuit of justice. Some alumni's legacies, however, are more complicated. *Brown*, Massive Resistance, and the Lawyer's View: A Nashville Story *tells the story of one such alumnus. In many ways, Cecil Sims is a model of an engaged lawyer-citizen. A 1914 Vanderbilt Law School graduate, he was deeply involved in Nashville's civil society, serving as an advisor to Vanderbilt University, Meharry Medical College, and the Davidson County Board of Education. Sims was a driving force in reopening Vanderbilt Law School after World War II—without his efforts, the school might not even exist. Today, the Law School's most prominent annual lecture series still bears the Sims name.*

Vanderbilt Law School's history is intertwined with Sims's story. Sims's story, in turn, is intertwined with the racial oppression and inequality still present in Nashville today. Sims was a key architect of the city's school desegregation plan, which, though in compliance with Brown v. Board of Education*, effectively maintained racial apartheid in public schools. If Sims's*

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legacy includes his contributions to the Law School, so too does it encompass his role in helping to create Nashville's still-segregated school system. An honest account of Sims's life—and of Vanderbilt Law School's institutional history—requires both stories.

Cecil Sims shows us that lawyers are not merely passive participants in the legal and political systems in which we work. Lawyers are leaders, for good or for ill. Stories like that of Cecil Sims, when told honestly, help us to think critically about our own roles as students, professionals, and scholars in the legal system. As Professor Sharfstein writes, lawyers construct worlds. We share this history in the hope that we may build better ones.

INTRODUCTION

On November 10, 1955, the Southern Historical Association began its twenty-first annual meeting at the Peabody Hotel in Memphis. At a pivotal moment in Southern history—two months after the lynching of Emmett Till, five months after the U.S. Supreme Court's *Brown II* decision, and three weeks before Rosa Parks's arrest—five hundred scholars filled a ballroom for the first session, a dinner discussion on "The Segregation Decisions." Two of the three panelists needed little introduction: William Faulkner, the South's Nobel Laureate, and Dr. Benjamin Mays, president of Morehouse College and a leading advocate for civil rights.[1] Members of the audience strained to hear Faulkner softly muse, "To live anywhere in the world of A.D. 1955 and be against equality because of race or color, is like living in Alaska and being against snow."[2] They celebrated Mays's "impassioned" remarks on how "segregation . . . damages the soul of both the segregator and the segregated," interrupting his speech with

1. WILLIAM FAULKNER, BENJAMIN E. MAYS & CECIL SIMS, THE SEGREGATION DECISIONS (1956); Fred A. Bailey, *The Southern Historical Association and the Quest for Racial Justice, 1954–1963*, 71 J.S. HIST. 833 (2005).

2. William Faulkner, *American Segregation and the World Crisis*, *in* THE SEGREGATION DECISIONS, *supra* note 1, at 9; Bailey, *supra* note 1, at 847 ("Anticipating a grand oration, . . . the expectant audience quickly realized that Faulkner was far 'better with a pen than on a platform.' ").

thunderous applause that one Emory professor described as "a phenomenon without precedent in the Association's history."[3]

Before Mays and Faulkner could speak, however, the Southern historians had to sit through the longest remarks of the evening. Few in the audience were familiar with the third panelist, a Nashville attorney named Cecil Sims. A last-minute addition to the program, he presented what he called "a lawyer's view" of *Brown v. Board of Education*. Peppered with historical references, his discussion of *Brown* and what he thought would follow from the landmark decision was, according to the Association's president, "a calm and judicious analysis . . . by one steeped in legal methods and traditions"—perhaps a polite way of saying that Sims's remarks were lost on the Southern historians.[4] "He outlined pretty well his idea of how desegregation would take place in the public school system," remembered a University of Kentucky professor. "I think that went over the heads of maybe a good many people in the audience."[5] If Sims's talk was barely heard, it nevertheless included a set of ideas that have remained remarkably resilient.

Even as many white Southerners were taking a range of actions against desegregation that would collectively become known as "massive resistance,"[6] the Southern historians finished their dinners at the Peabody Hotel full of optimism about the future. The impression

3. Bell I. Wiley, *Foreword* to THE SEGREGATION DECISIONS, *supra* note 1, at 5, 6; Benjamin E. Mays, *The Moral Aspects of Segregation*, *in* THE SEGREGATION DECISIONS, *supra* note 1, at 13, 15.

4. Wiley, *supra* note 3, at 6.

5. Bailey, *supra* note 1, at 853.

6. On popular and political segregationist responses to *Brown*, both before and after Virginia Senator Harry Flood Byrd's declaration of "massive resistance" in early 1956, see Clive Webb, *Introduction* to MASSIVE RESISTANCE: SOUTHERN OPPOSITION TO THE SECOND RECONSTRUCTION 3, 3–7 (Clive Webb ed. 2005); Tony Badger, Brown *and Backlash*, *in* MASSIVE RESISTANCE, *supra,* at 39, 46–47; NUMAN V. BARTLEY, THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950'S 110–16 (1969). The label "massive resistance" contains multitudes, from school bombings in the dead of night, to baroque constitutional arguments in legal briefs and newspaper columns about the illegitimacy of *Brown*, to white parent demands for school choice, to a range of legislative and executive actions, including the closure of public schools that would otherwise be desegregated. *See, e.g.*, STEPHEN A. BERREY, THE JIM CROW ROUTINE: EVERYDAY PERFORMANCES OF RACE, CIVIL RIGHTS, AND SEGREGATION IN MISSISSIPPI 6 (2015) (describing how recent scholars have "found a diversity of responses and attitudes among white Southerners" that have complicated the prevailing view of massive resistance as "a straightforward response" by a "united white Southern populace" that was "linked to overtly racist rhetoric and the tactics of bold defiance"); *see also* Justin Driver, *Supremacies and the Southern Manifesto*, 92 TEX. L. REV. 1053, 1127–28 (2014) (suggesting that labeling anti-integration positions as "massive resistance" has obscured segregationists' affirmative positions on liberty interests, federalism, and governmental power that have lived on as race-neutral conservative positions). This Essay uses "massive resistance" to describe overtly racist pro-segregation positions that rejected *Brown*, the Supreme Court's authority, and public institutions that were desegregating.

Sims and his co-panelists left was that there existed, in the Association president's words, "another and a liberal South—soft-spoken and restrained, but articulate and powerful—that is earnestly pledged to moderation and reason."[7] For his part, Sims stated outright that he thoroughly disapproved of "delay or subterfuge" or any other actions undermining the Supreme Court, "the agency set up by ourselves in our democracy to determine questions of this nature."[8] The Court was acting well within its powers when it overruled *Plessy*, he said: "A new and different interpretation of a constitutional provision to meet a crisis in a democracy is nothing new in the field of constitutional law."[9] Sims urged politicians and school boards to "examine the scope of the decision, to accept it, and to provide a rational plan that will come within the mandate of the Court and, if possible, one that will not destroy the public school systems."[10]

For whom did Cecil Sims speak? He was not what the Southern Historical Association's president would call a "known segregationist."[11] That title went to people such as Donald Davidson, the last Southern Agrarian[12] in Vanderbilt's English department, whose refusal to participate in an integrated panel had prompted the Association to invite Sims.[13] Yet Sims was not a progressive voice. What the Southern historians missed in his Memphis address was a fairly straightforward commitment to continued segregation in the schools. Sims disapproved of massive resistance, but also thought it unnecessary. As he read the *Brown* decisions, the Court "went no further than to condemn the compulsory separation of the races solely

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7. Wiley, *supra* note 3, at 7.

8. Cecil Sims, *The Segregation Decisions: A Lawyer's View*, *in* THE SEGREGATION DECISIONS, *supra* note 1, at 19, 27, 29.

9. *Id.* at 27–28.

10. *Id.* at 29.

11. Wiley, *supra* note 3, at 6.

12. The Southern Agrarians were a group of twelve writers centered in Nashville who in the 1920s and 1930s formulated an influential reaction to industrialization, modernization, and capitalism that glorified the "agrarian values" of the pre-Civil War South and expressed nostalgia for the "Lost Cause" of the Confederacy. *See* JOHN CROWE RANSOM ET AL., I'LL TAKE MY STAND: THE SOUTH AND THE AGRARIAN TRADITION (1930); PAUL V. MURPHY, THE REBUKE OF HISTORY: THE SOUTHERN AGRARIANS AND AMERICAN CONSERVATIVE THOUGHT (2001).

13. Bailey, *supra* note 1, at 845. Davidson had responded to what he called "[t]he nauseating and terrifying 'desegregation' issue," Letter from Donald Davidson to Russell Kirk (June 10, 1955) (Donald Davidson Papers, Box 3, Folder 11, Vanderbilt University Library Special Collections), and the "arrogant threats of Negro attorneys of the NAACP," Letter from Donald Davidson to Russell Kirk (July 13, 1955) (Donald Davidson Papers, Box 3, Folder 12, Vanderbilt University Library Special Collections), by founding Tennessee's chapter of the Federation for Constitutional Government. *See infra*, Part II; Sarah H. Brown, *The Role of Elite Leadership in the Southern Defense of Segregation, 1954–1964*, 77 J.S. HIST. 827, 833–34 (2011); Edward S. Shapiro, *Donald Davidson and the Tennessee Valley Authority: The Response of a Southern Conservative*, 33 TENN. HIST. Q. 436, 448–50 (1974).

because of color."[14] "[N]owhere in the opinion of the Court does the word 'integration' appear," he declared, "except in one quotation taken by the court from the opinion of the Supreme Court in Kansas in the Oliver Brown case."[15] The Court stopped well short of ordering "mandatory integration," he said, and "[t]here is a vast difference between mandatory integration and admission on a non-discriminatory basis."[16] In Sims's view, the psychological harms of segregation on which the Court relied

> result[ed] not from the *actual attendance* in a separate school, but from the legal requirement under which Negro children are *compelled* to attend a separate school. It would seem logical to conclude under the opinion of the Court that Negroes attending separate schools by choice, and not under compulsion, would be free of the detrimental effect of segregation sanctioned and required by law.[17]

Ultimately, he concluded, *Brown* "order[ed] the gradual elimination of this element of compulsion by the adoption in good faith of a plan which would permit but not require Negro children to attend the same schools as white children within proper geographical districts."[18] He predicted that few Black parents would choose to send their sons and daughters to integrated schools. Southern states could accept *Brown* and "provide a rational plan . . . within the mandate of the Court," and the likely result, Sims thought, was that the fabric of segregated Southern life and the "existing sound values in our public educational systems" would change very little.[19]

If Cecil Sims was not a "known segregationist," then who was he? He was not a career politician;[20] he had served a single term in the state senate back in 1925, long enough to cast a vote against the anti-

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14. Sims, *supra* note 8, at 22.

15. *Id.* at 20. Although Sims downplayed it, the Court strongly approved of the findings in the Kansas decision:

> The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case[:] . . . "Segregation with the sanction of law, therefore, has a tendency to (retard) the education and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

Brown v. Bd. of Educ., 347 U.S. 483, 494 (1954).

16. Sims, *supra* note 8, at 23.

17. *Id.* at 22.

18. *Id.* at 20.

19. *Id.* at 29.

20. On the political debates that took shape around desegregation, see generally JASON MORGAN WARD, DEFENDING WHITE DEMOCRACY: THE MAKING OF A SEGREGATIONIST MOVEMENT AND THE REMAKING OF RACIAL POLITICS, 1936–1965 (2011); ANDERS WALKER, THE GHOST OF JIM CROW: HOW SOUTHERN MODERATES USED BROWN V. BOARD OF EDUCATION TO STALL CIVIL RIGHTS 4–5 (2009); BARTLEY, *supra* note 6.

evolution bill that was tested in the Scopes Monkey Trial.[21] Rather, Cecil Sims was Nashville's most successful litigator and powerbroker—an independent insider. As the founder of Bass, Berry & Sims, described by civil rights attorney George Barrett as "sort of the crusty law firm in Nashville,"[22] Sims represented Western Union,[23] Ford Motor Company,[24] and many of Nashville's biggest businesses. Six days after he spoke at the Southern Historical Association, he argued a case in the U.S. Supreme Court on behalf of an automotive battery factory that refused to pay employees for the time that they spent in the showers after handling toxic chemicals.[25] Sims served as a trustee and university attorney of Vanderbilt University, from which he graduated first in the Law School Class of 1914. In the 1950s, he taught a course at Vanderbilt entitled "The Practice of Law," and eighty-five percent of third-year law students attended his Saturday morning lectures on the responsibilities of the modern legal profession.[26] For two decades he also sat on the board of Meharry Medical College, the private, historically Black institution in Nashville that trained half of the nation's African American doctors during the Jim Crow Era. In 1955 Sims had just helped to lay the legal foundation for the consolidation of Nashville and Davidson County government,[27] and he had one year left

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21. See *Tennessee Solons Explain Their Votes*, SPRINGFIELD REPUBLICAN (Mass.), June 11, 1925, at 6:

> I voted against the bill because I believe in the fundamental principle of the separation of church and state. This bill was but the first step, as evidenced by a companion bill, to prohibit Jews from teaching in the public schools. This was defeated. I do not approve of legislative efforts, direct or indirect, concerning the truth or error of either evolution or genesis. The Christian religion has survived centuries without legislative assistance and needs none now. Believing the Biblical injunction "know the truth and the truth shall make you free," and the Jeffersonian principle of freedom of thought so long as truth is left free to combat error, I opposed the bill.

22. Interview by Ben Houston with George Barrett, at 5 (June 27–28, 2003) (transcript available at https://ufdc.ufl.edu/UF00093255/00001/5j) [https://perma.cc/YZ3C-6WFN].

23. *Review to Be Sought*, TIMES-PICAYUNE (New Orleans), Sept. 25, 1946, at 2.

24. *See, e.g.*, Walker v. Ford Motor Co., 241 F. Supp. 526 (E.D. Tenn. 1965).

25. Steiner v. Mitchell, 350 U.S. 247 (1956).

26. D. DON WELCH, VANDERBILT LAW SCHOOL: ASPIRATIONS AND REALITIES 153 (2008) ("When asked in class if it was important for a lawyer to know Latin, [Sims] replied, 'No, but it is important for him to have forgotten it.' "). Among other things, Sims urged students to "cultivate and to implement his practice with a knowledge of both history and the classics of literature," including Joel Chandler Harris's Uncle Remus tales, which would help the students understand "the pitfalls and dangers of cross-examining the typical Southern Negro character." Cecil Sims, *The Lawyer and the Classics*, 8 ARK. L. REV. 345, 345, 350 (1953).

27. Before Nashville and Davidson County's merger was enacted by referendum in 1962, Tennessee's constitution had to be amended, which was notoriously difficult to do—the legislature asserted sole power to propose amendments, and none had succeeded in passing since 1870. *See* THE STATE OF TENNESSEE CONSTITUTIONAL CONVENTION OF 1953: THE JOURNAL AND DEBATES OF THE CONSTITUTIONAL CONVENTION, at v (1953). In 1946, Sims served on a Constitution Revision Commission appointed by the governor. *Id.* at vi; David Harold Grubbs, City-County Consolidation

to serve on the Davidson County Board of Education. He was a member of the exclusive Belle Meade Country Club,[28] right down the street from his home. He spent summers living as a "self-taught farmer" on his 420-acre spread south of town, sleeping on a screened porch of his log cabin and taking the bus twenty miles into work on weekdays.[29]

It can be hard to separate Sims's ideology from his professional identity. As an independent insider, he expressed views that did not toe the "known segregationist" line. And because he never strayed too far from the prevailing political current, he remained an influential voice through years of turmoil.[30] His work afforded him a deep understanding

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Attempts in Nashville and Knoxville, Tennessee 119 (1961) (Ph.D. dissertation, University of Pennsylvania) (on file with author). With city-county consolidations specifically in mind, the commission recommended a "limited constitutional convention" contrary to a state attorney general opinion that a convention would be unconstitutional. Grubbs, *supra*, at 115. Sims successfully obtained a declaratory judgment clearing the way for the convention to take place, Cummings v. Beeler, 189 Tenn. 151 (1949), served as a delegate at the 1953 constitutional convention, introduced an amendment providing for home rule for cities, THE STATE OF TENNESSEE CONSTITUTIONAL CONVENTION OF 1953, *supra*, at 39, and strongly advocated for a measure setting out a process for city-county consolidations, an issue that Sims described as "one of my pets, and I have been working on it for years." *Id.* at 1146–47; *see also Horse, Buggy Constitution Held to Bar State Progress*, NASHVILLE TENNESSEAN, Sept. 27, 1949, at 7 (describing Sims's speech to the Sewanee Woman's Club in which he spoke in favor of constitutional revision to create home rule and allow city-county consolidation).

28. Belle Meade Country Club Membership (Apr. 20, 1925) (Cecil Sims Papers, Box 17, Folder 1, Vanderbilt University Library Special Collections). In 2012 the Belle Meade Country Club admitted its first woman and first African American full members. *See* Jonathan Meador, *Belle Meade Country Club Admits First Black Resident Member*, NASHVILLE SCENE (Nov. 5, 2012), https://www.nashvillescene.com/news/article/13045650/belle-meade-country-club-admits-first-black-resident-member [https://perma.cc/GVS6-BSKX]; *Belle Meade Country Club Gives First Woman Full Membership*, NASHVILLE BUS. J. (May 2, 2012, 8:05 AM), https://www.bizjournals.com/nashville/morning_call/2012/05/belle-meade-country-club-gives-first.html [https://perma.cc/A4JM-59MT]; *see also* In re Complaint of Judicial Misconduct, No. 06-08-90031, at 4 (6th Cir. Jud. Council Apr. 8, 2011) (allowing a federal judge to retain an active membership); Adam Liptak, *Weighing the Place of a Judge in a Club of 600 White Men*, N.Y. TIMES: SIDEBAR (May 16, 2011), https://www.nytimes.com/2011/05/17/us/17bar.html [https://perma.cc/7Q6K-EABM]; Interview by Ben Houston with John Seigenthaler, at 5 (June 16, 2003) (transcript available at https://ufdcimages.uflib.ufl.edu/UF/00/09/32/56/00001/SRC28.pdf) [https://perma.cc/SA5P-L48U] ("Basically, as I grew up here and later came to understand the dynamics of power in Nashville, there were three interlocking directorates . . . the [Nashville] Chamber of Commerce, the Vanderbilt University Board of Trust[ees] [sic], and the Belle Meade Country Club.").

29. Rachel Norris, *Cecil Sims: The Grandfather of Fieldstone Farms*, FIELDSTONE FARMS HIST. (June 21, 2019), https://fieldstonefarmshistory.com/2019/06/21/cecil-sims-the-grandfather-of-fieldstone-farms/ [https://perma.cc/364P-YURG] ("With the help of trusted tenants the Sawyer family, Sims rotated fields of barley, oats, corn and wheat to sustain Cecilwood's livestock."). Sims called the farm "Cecilwood," after his son Cecil, Jr., who was killed in action in World War II. *See also* Irvin v. Bass, Berry and Sims, No. M2014-0061-COA-R3-CV, 2015 WL 9946272, at *1 (Tenn. Ct. App. Apr. 15, 2015) (describing the Cecilwood farm in a familial dispute over its sale).

30. Sims described how he kept his perspective during "dark days" with an anecdote from his experience as a World War I infantry officer. "During the first world war a Negro lieutenant taught me a lesson I have never forgotten," Sims wrote in a guest newspaper column:

of the internal operations of the schools, and he translated that understanding into potent advocacy to preserve what he saw as education's crucial function at the foundation of a rational and prosperous American society. Sometimes Sims expressed that function in narrow, instrumental terms. "[I]n representing my clients in trying a case, where I have a mixed jury of white and Negro," Sims told a U.S. Senate subcommittee in 1959, "I certainly want that Negro to be educated if he passes on my client's rights as they do in many cases."[31] Other times, he touted education's broader importance. "[I]f our public schools are destroyed or impaired, democracy itself is endangered," Sims told an audience in 1954. "People who are half educated and half hungry lead revolutions."[32] After *Brown*, he regarded integration and massive resistance as equivalent systemic threats to public schools.[33] As Sims conceived it, his lawyerly role serving the public school system demanded that he help "work out a sound and practical plan generally acceptable to a majority of both races."[34] In his view, any such plan would necessarily minimize integration.

Sims's positions were elastic. Six months before he addressed the Southern Historical Association, he introduced the motion that the Vanderbilt Board unanimously passed to advise the Law School faculty "that they should not decline to admit a [qualified] student solely because of race, creed, or color."[35] Sims's motion was of a piece with his stated position that *Brown* required only nominal elimination of racially discriminatory policies, and by the fall of 1956, Frederick T. Work and Edward Melvin Porter had enrolled as the Law School's first Black students.[36] At the same time, in the months and years that

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> We were crawling together through the darkness to an advanced position in the front line trenches. He whispered that we were approaching an outpost but I was unable to distinguish it in the blackness of the night. In helping me locate it, he said: "Lieutenant, the best way to see in the dark is to get close to the ground and look up against the sky."

Cecil Sims, *There's Light at Darkest Times If You Know Where to Look*, NASHVILLE TENNESSEAN, Feb. 9, 1951, at 4.

31. *Constitutional Amendment Reserving State Control Over Public Schools: Hearings on S.J. Res. 32 Before A Subcomm. of the S. Comm. on the Judiciary*, 86th Cong. 167–68 (1959) [hereinafter Cecil Sims Testimony] (statement of Cecil Sims, Nashville, Tenn.).

32. Cecil Sims, Member, Davidson Cnty. Sch. Bd., Presentation at the Second Regional Conference, State Boards of Education and Chief State School Officers, Atlanta, Georgia: Legal Implications of the Supreme Court Decision on Segregation 2 (Sept. 7, 1954) (Cecil Sims Papers, Box 20, Folder 8, Vanderbilt University Library Special Collections). In 1959, Sims could testify, "I believe the Negro is entitled to an education," but not without adding a telling qualification: "I also believe it is safer to provide an education for the Negro rather than to leave him in ignorance." Cecil Sims Testimony, *supra* note 31, at 171.

33. Sims, *supra* note 32, at 12.

34. Cecil Sims Testimony, *supra* note 31, at 170.

35. WELCH, *supra* note 26, at 140.

36. *Id.*

followed the Memphis panel, Sims was also, in the words of historian Ansley Erickson, "a key architect of Nashville's approach to [school] desegregation," which she describes in her book *Making the Unequal Metropolis* as "resistance in the name of moderation."[37] The work of keeping Nashville schools largely segregated was also consistent with Sims's position on *Brown*.

If the civil rights litigator Charles Hamilton Houston famously envisioned lawyers as "social engineers,"[38] Cecil Sims aspired to be an "architect in public affairs."[39] Sixty-six years after his remarks in Memphis, this Essay explores how and why his designs remain visible in Nashville's persistently unequal schools[40] and situates the story of his world alongside other historical accounts of "opponents of integration at the grassroots."[41] Recent "grassroots" civil rights legal histories have looked beyond the traditional focus on the NAACP's Supreme Court docket to recover alternative conceptions of civil rights and modes of civil rights lawyering that were discarded after *Brown* yet remain vital.[42] In a similar turn, new histories of resistance to civil

37. ANSLEY T. ERICKSON, MAKING THE UNEQUAL METROPOLIS: SCHOOL DESEGREGATION AND ITS LIMITS 72 (2016); *see also* BENJAMIN HOUSTON, THE NASHVILLE WAY: RACIAL ETIQUETTE AND THE STRUGGLE FOR SOCIAL JUSTICE IN A SOUTHERN CITY 57 (2012) ("[T]he Nashville school board . . . leaned heavily on one influential attorney [Sims].").

38. *See* MARK V. TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936–1961, at 6 (1994) ("Houston . . . described law as 'social engineering.' As social engineers, lawyers had to decide what sort of society they wished to construct, and then they had to use the legal rules at hand as tools."); *see also* Kenneth W. Mack, *Rethinking Civil Rights Lawyering and Politics in the Era Before* Brown, 115 YALE L.J. 256, 265 ("[R]ather than primarily preparing the ground for Brown, as is often assumed, Houston's vision was initially more voluntarist than legalist, and focused more on training lawyers for intraracial institutional work than on training a cadre of lawyers who would attack de jure segregation.").

39. Sims, *supra* note 26, at 345. Sims took inspiration from a passage in Sir Walter Scott's *Guy Mannering*: "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these he may venture to call himself an architect." *Id.*

40. *See* ERICKSON, *supra* note 37, at 11–12 ("Nashville demonstrates educational inequality made and remade."); Meribah Knight, *The Promise*: *Season 2*, WPLN (Oct. 19, 2020), https://wpln.org/programs/the-promise/ [https://perma.cc/R4CL-8GYS]. Court-ordered busing, which started in the 1970s, effectively integrated the schools, ERICKSON, *supra* note 37, at 2, but in 2008, ten years after settling a desegregation lawsuit initially filed in 1955, the Metropolitan Nashville Public Schools rezoned and resegregated. *Id.* at 308. Sims's work consolidating Nashville and Davidson County, which diluted Black political power and empowered conservative suburbs, had enormous effect later in the 1960s and 1970s in fostering inequality in the schools. *Id.* at 49–60.

41. Ariela Gross, *A Grassroots History of Colorblind Conservative Constitutionalism*, 44 LAW & SOC. INQUIRY 58, 59 (2019).

42. *See, e.g.*, TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT (2011); RISA L. GOLUBOFF, THE LOST PROMISE OF CIVIL RIGHTS (2007); KENNETH W. MACK, REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER (2012); Ariela J. Gross, *From the Streets to the Courts: Doing Grassroots Legal History of the Civil Rights Era*, 90 TEX. L. REV. 1233, 1234 & n.4 (2012) (reviewing BROWN-NAGIN, *supra*); *see also*

rights have revealed and traced an elided intellectual lineage from segregationism to modern conservatism by shifting focus away from the realignment of American electoral politics in the 1970s and 1980s and the Supreme Court's corresponding rightward shift.[43] Delving into local contexts of opposition, historians have calibrated how segregationists adjusted their message over the course of the decade following *Brown*, abstracted out the overt racism of their views, and settled on a deceptively neutral matrix of ideas about colorblindness, states' rights, freedom of choice, and freedom of association that resonated outside the South.[44] These local stories have effectively denaturalized the Court's conservatism on issues relating to race and civil rights, showing its deliberate manufacture, largely by opponents of integration, "from the ground up as well as from the top down."[45] As strange as it may seem

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Risa Goluboff, *Lawyers, Law, and the New Civil Rights History*, 126 HARV. L. REV. 2312, 2317–21 & n.3 (2013) (reviewing MACK, *supra*):

> The . . . scholarship generally shares several key characteristics: decentering the Supreme Court, *Brown* . . . and the NAACP's campaign for school desegregation and including many more actors involved in and events associated with the process of legal change; taking a prospective rather than retrospective approach to the past; emphasizing lawyers as particularly important intermediaries between the legal claims of lay actors and legal doctrine as constructed by courts; identifying the importance of class and economic issues to the ways in which various groups of lay and professional legal actors interacted with and understood the law; taking legal doctrine seriously but viewing it as a field of contestation rather than the authoritative output of judges; and finally, as a result of these other shifts in focus, highlighting the contingency of the law-creation process.

43. *See* Gross, *supra* note 41, at 59–60; Gross, *supra* note 42, at 1250–51. Recent histories of the right have extended far beyond the South. *See* Gross, *supra* note 41, at 60; THE MYTH OF SOUTHERN EXCEPTIONALISM (Matthew D. Lassiter & Joseph Crespino eds., 2010); THOMAS J. SUGRUE, SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH (2008); MATTHEW D. LASSITER, THE SILENT MAJORITY: SUBURBAN POLITICS IN THE SUNBELT SOUTH (2006).

44. *See, e.g.*, Christopher W. Schmidt, *Beyond Backlash: Conservatism and the Civil Rights Movement*, 56 AM. J. LEGAL HIST. 179, 188–92 (2016); Gross, *supra* note 42, at 1253–54; KEVIN M. KRUSE, WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM 161–63, 237–38 (2005); Kevin M. Kruse, *The Fight for "Freedom of Association": Segregationist Rights and Resistance in Atlanta*, *in* MASSIVE RESISTANCE, *supra* note 6, at 99, 100:

> Even though conventional wisdom . . . held that segregationists were only fighting *against* the rights of others, in their own minds, these whites were instead fighting *for* rights of their own—such as the supposed "right" to select their neighbors, their employees, and their children's classmates, the "right" to do as they pleased with their private property and personal businesses, and, of course, the "right" to remain free from what they perceived to be dangerous encroachments by the federal government.

A few years after *Brown*, segregationist editor and columnist James J. Kilpatrick shifted his efforts away from attacking the decision directly, turning instead to the Supreme Court's obscenity jurisprudence in a bid to discredit the Court and "create a climate of opinion nationally in which the decision itself, if not actually reversed, will be effectively modified." *See* Anders Walker, *"A Horrible Fascination": Segregation, Obscenity, and the Cultural Contingency of Rights*, 89 WASH. U. L. REV. 1017, 1019–20 (2012).

45. Gross, *supra* note 41, at 59.

to cast an insider like Cecil Sims as a "grassroots" figure, he is one of many lawyers and politicians across the South who engaged in on-the-ground "strategic constitutionalism,"[46] yielding legal arguments and policies that have long survived Jim Crow and extended its reach.[47]

Every grassroots story complicates what we already know, and the history of Cecil Sims and his world[48] stands out in at least two important ways. First, Sims's work on issues relating to segregated education predates *Brown*. In the late 1940s, as Southern states responded to Supreme Court decisions desegregating graduate education, Sims assumed a central role in developing nominally race-neutral proposals that involved a series of complex transactions and legal forms.[49] Just as the Civil Rights Movement began years before *Brown* and the Montgomery Bus Boycott, Sims is emblematic of the segregated South's "long history" of resistance to civil rights.[50] Scholars have discussed how massive resistance moderated in the mid-1960s and assumed more race-neutral forms. But that transformation was not a simple story of evolution and reactive change, necessitated by passage of the Civil Rights Act of 1964 or the exigencies of litigation and its "chastening effect" after years of countering civil rights lawsuits, challenging statutes, and losing in court.[51] Sims's story suggests that the arguments that massive resistance mellowed into were there all along—lost in the glare, perhaps, but taking root in the shadows.

Second, while historians have generally regarded the kind of advocacy in which Cecil Sims engaged as moderate,[52] Sims and his

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46. WALKER, *supra* note 20, at 4–5.

47. The Court's current view of school integration is arguably more of a piece with Cecil Sims's reading of *Brown* than with the positions staked by the *Brown* litigators, whom members of the *Parents Involved* majority quoted at length. *See* Parents Involved in Cmty. Schs. v. Seattle Sch. Dist., 551 U.S. 701 (2007).

48. Sims was hardly alone among elite Nashville lawyers in working to resist, manage, and control the impact of *Brown*. *See* Part II., *infra*.

49. *See* Part I, *infra*. Sims's work stands apart from the more common response by segregationist Southern lawyers and politicians in the 1940s who "redoubled their efforts to affirm the moral and constitutional basis for their crusade," promising equalized funding for Black education while threatening defiance of federal authority—a response that after *Brown* would curdle into massive resistance. WARD, *supra* note 20, at 125–26, 142; Mary Ellen Maatman, *Speaking Truth to Memory: Lawyers and Resistance to the End of White Supremacy*, 50 HOW. L.J. 1, 28–37 (2006).

50. *See* Jacquelyn Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, 91 J. AM. HIST. 1233, 1235 (2005) ("[A] wall of resistance . . . did not appear suddenly in the much-maligned 1970s, but arose in tandem with the civil rights offensive in the aftermath of World War II.").

51. Christopher W. Schmidt, *Litigating Against the Civil Rights Movement*, 86 U. COLO. L. REV. 1173, 1212–16 (2015).

52. After all, Sims rejected massive resistance, called for deference to the courts, and eschewed blunt white supremacist rhetoric. *See* HOUSTON, *supra* note 37, at 58 ("[Sims] adopted a

world beg the question: How does a moderate position become a moderate position? In the years before *Brown*, civil rights lawyers and activists regarded Sims as segregationist, obstructionist, and hypocritical.[53] But the hysteria, lawlessness, and magical thinking of post-*Brown* massive resistance moved the goalposts. What had once been derided as extreme became moderate.[54] The construction of Sims's position as moderate reveals the utility and legitimating function of extreme white supremacist claims and methods.[55] It also helps explain how hardline segregationists and white supremacists were able to find their way back to arguments that had been pioneered by people such as Sims, legitimate "conservative" views that were not too far off in effect from what resisters had been advocating in the first place. Sims opposed massive resistance, and at the same time, massive resistance gave his arguments and proposals legitimacy, gravitas, and a gloss of good faith. If ultimately his position prevailed over massive resistance, it also prevailed because of massive resistance.

Before proceeding, a final word: as useful as Sims's story may be for understanding the long history of resistance to civil rights and the construction of moderation, this Essay was written because Sims is a Vanderbilt Law School icon. The legal history of resistance to integration in Nashville has a long cast of characters with Vanderbilt Law diplomas. It should surprise no one that a private university for white students in the South produced graduates who believed in and

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legal model painstakingly proper in its moderate etiquette; he knelt to judicial authority while still firmly hand-in-hand with southern custom."); *see also* WALKER, *supra* note 20.

53. *See* Part II, *infra*.

54. Donald Davidson described it in another way: "[T]he so-called 'moderate' position [is] an impossibility. In fact, those who call themselves 'moderates' are quite often radicals in disguise; that is true in Tennessee, and the disguise is quite thin!" Letter from Donald Davidson to Floyd C. Watkins, Professor, Emory Univ. 1 (June 11, 1956) (Donald Davidson Papers, Box 3, Folder 14, Vanderbilt University Library Special Collections).

55. This is not unique to the Civil Rights Era. The legitimating function of the most extreme and violent forms of white supremacy has a past—Jim Crow as a formalized legal structure always worked in tandem with extralegal violence. *See, e.g.*, JASON MORGAN WARD, HANGING BRIDGE: RACIAL VIOLENCE AND AMERICA'S CIVIL RIGHTS CENTURY (2016). And it undoubtedly has a future. *Cf.* Roxanne Roberts, *Donald Trump May Be the Best Thing That Ever Happened to George W. Bush*, WASH. POST (May 13, 2018), https://www.washingtonpost.com/lifestyle/style/donald-trump-may-be-the-best-thing-that-ever-happened-to-george-w-bush/2018/05/11/69ae6c7a-5319-11e8-9c91-7dab596e8252_story.html [https://perma.cc/GQ6F-ZC84] (quoting Jon Meacham: "The current rising fondness for [Bush] has a lot to do, obviously, with the temperamental contrast he offers to the incumbent. . . . Disagree with him as you will, he inarguably upheld the dignity of the office and represented a center-right sensibility that's facing an existential crisis right now."); Chris Cillizza, *How Liz Cheney Became the Conscience of Republicans*, CNN: POLITICS https://www.cnn.com/2021/01/12/politics/liz-cheney-donald-trump-impeachment-vote/index.html (last updated Jan. 12, 2021, 6:03 PM) [https://perma.cc/N84L-Z6G3] ("[H]er father, prior to the Trump presidency, was the Republican who Democrats most loved to hate. And yet now his daughter has emerged as a voice of reason and sanity within a party that has gone full Trump.").

fought for Jim Crow.[56] Even so, Cecil Sims stands out. From the time he was a third-year law student in the spring of 1914 until his death more than half a century later, he was a singular force in turning Vanderbilt Law School into an elite, national institution.[57] At exactly the same moment that Sims was formulating Nashville's response to *Brown*, he was also leading the campaign to construct the Law School's building. It is little exaggeration to say that the Law School is the house that Cecil Sims built.[58] Making sense of his choices is a first step towards a candid and transparent account of the Law School's relationship to Nashville's infrastructure of inequality,[59] and the

56. *See* MELISSA KEAN, DESEGREGATING PRIVATE HIGHER EDUCATION IN THE SOUTH: DUKE, EMORY, RICE, TULANE, AND VANDERBILT (2008). Plenty of other elite schools produced segregationist graduates as well. *See* Maatman, *supra* note 49, at 33, 35–36, 54 n.414 (describing segregationist graduates of Columbia and Georgetown); WALKER, *supra* note 20, at 61–62 (describing a segregationist Harvard graduate). Vanderbilt also counts notable civil rights lawyers as graduates, including George Barrett, Cecil Branstetter, Rita Sanders Geier, and Richard Dinkins.

57. WELCH, *supra* note 26, at 45. After Vanderbilt Law closed during World War II, Sims led the fundraising that allowed the school to reopen. When most of the faculty resigned in 1949, Sims volunteered to teach classes. *Id.* at 118, 133. In 1972, the law school's dean described Sims as "primarily responsible for the reopening of the Law School after World War II." Quoted in *id.* at 133.

58. *Id.* at 132–33:

> Sims presented the building on behalf of the alumni at the [1963] dedication ceremony. He was introduced by [Chancellor Harvie] Branscomb, who identified Sims' loyalty and services to the School for nearly four decades, as "probably its greatest assets," noting that Sims had taught and inspired its students, found jobs for its graduates, fought its battles, and "corrected its chancellor," in addition to chairing the building fundraising committee.

At Sims's direction, one room in the Law School was decorated as an "old fashioned law office," with a sawdust floor, potbellied stove, bare lightbulb, bronze spittoon, and roll-top desk. When elderly alumni visited the school, Sims would meet them there, and they would sit in rocking chairs and whittle sticks. *Brevia Addenda*, AM. J. LEGAL HIST. 176, 177 (1963); *Whittlin' Days Relived*, NASHVILLE TENNESSEAN, Apr. 7, 1963, at 14-A; Frank Ritter, *Birmingham Boy's Dream Came True*, NASHVILLE TENNESSEAN, June 23, 1968, at 11-A; *Oldest VU Law Grad Visits Past*, NASHVILLE TENNESSEAN, Apr. 7, 1963, at 14-A (quoting Sims on the visit of Lewis S. Pope, Class of 1900: "He told us when we were planning the building he would never come here unless we gave him a place to spit.").

59. On the relationship more generally between legal education and injustice and inequality, see, for example, ROBIN L. WEST, TEACHING LAW: JUSTICE, POLITICS, AND THE DEMANDS OF PROFESSIONALISM 26–27 (2014) ("Legal education . . . is colored by a widely decried amoralism. . . . [T]he legal profession itself is educated in such a way that eschews systematic study of the moral ideal that might guide its exercise of professional judgment."); John Bliss, *From Idealists to Hired Guns?: An Empirical Analysis of 'Public Interest Drift' in Law School*, 51 U.C. DAVIS L. REV. 1973, 1984 (2018) (describing longstanding critiques that legal education trains students "to approach the social world in a narrowly legalistic fashion . . . so as to facilitate their market cooptation and steer them away from altruistic and public-interest career goals" and transform their motives "from 'public interest' to 'zealous advocacy' for one's client irrespective of the client's cause"); Samuel Moyn, *Law Schools Are Bad for Democracy: They Whitewash the Grubby Scramble for Power*, CHRON. HIGHER EDUC., Dec. 16, 2018:

beginning of a necessary conversation for Vanderbilt and Nashville about who we are and what we are here to do in this world—our responsibility as individuals, as a community, and as an institution in a larger society.[60]

I. SIMS BEFORE *BROWN*: THE SOUTHERN STATES' ATTEMPT TO TAKE OVER MEHARRY MEDICAL COLLEGE IN THE 1940S

Cecil Sims's Memphis speech was not the first time he had publicly discussed *Brown*. As the 1954–55 school year was starting, he spoke on the "Legal Implications of the Supreme Court Decision on Segregation" at a conference of Southern school boards and superintendents.[61] Although many segregationists spoke of *Brown* as if it were a total surprise, like a sudden stock market collapse—across the South, the date of decision, May 17, 1954, became known as "Black Monday"[62]—Sims offered a different perspective. "While the opinion of the Court came as a shock to the South, and perhaps to the entire country," he told the group in Atlanta, "it did not come without

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> Having entertained inchoate dreams about social transformation, [law] students themselves are transformed . . . , especially when they accept a set of beliefs about how the world is likeliest to change—through a politics of marginal legal reform by insiders to the system. That is, if the world can change at all.;

Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 594 (1982) ("The basic experience [of law school] is of double surrender: to a passivizing classroom experience and to a passive attitude toward the content of the legal system.").

60. On reconceiving and reorienting legal education to promote a more just society, see WEST, *supra* note 59, at 174 *et seq.*; Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201, 205 (2016) (describing "a [new] vision of law schools that defend community and solidarity against the effects of concentrated wealth and subordination along multiple dimensions of identity, status, and power; a vision of law schools that confront the structural changes in the market for legal services and originate new modalities of legal practice"); Martha S. Jones, *A Law School That Fuels Democracy*, 65 CHRON. HIGHER EDUC., Jan. 25, 2019 (describing CUNY as "a law school committed to the best of democracy" with an "alternative approach to legal education" that "train[s] lawyers in the service of human needs. . . . Law training need not be a straight-jacket that serves the powerful. It can also be a foundation upon which lawyers build their capacities to be practitioners, activists, cultural workers, and citizens."). *Cf.* Sara Mayeux, *What* Gideon *Did*, 116 COLUM. L. REV. 15, 93 (2016) ("If the indigent defense crisis derives not from intransigent political realities but from contingent choices made by lawyers, then lawyers may retain not only more responsibility but also more power than they realize to mitigate the conditions they diagnose as crisis."); Calvin Schermerhorn, *Colleges Confront Their Links to Slavery and Wrestle with How To Atone for Past Sins*, CONVERSATION (Mar. 1, 2021, 8:18 AM), https://theconversation.com/colleges-confront-their-links-to-slavery-and-wrestle-with-how-to-atone-for-past-sins-152308 [https://perma.cc/KK5M-HT2Z].

61. Sims, *supra* note 32, at 2.

62. *Black Monday* was a widely circulated book, "the first great rallying cry for southern segregationists," written two months after the *Brown* decision by Thomas Pickens Brady, a Mississippi judge and vice president of the state bar association. *See* Maatman, *supra* note 49, at 31.

warning."[63] Citing a progression of higher education decisions from *Missouri ex rel. Gaines v. Canada* (1938)[64] to *Sweatt v. Painter* (1950)[65], Sims said that "leaders in Southern education" had long maintained that "our continued failure to provide equal and adequate educational opportunities for the Negro in the South was building up storm clouds of resentment that might ultimately prove disastrous to our dual system of public education in the South."[66]

Sims could speak with authority about the roots of *Brown* because long before he staked his position on the desegregation of primary and secondary schools, he had been devising strategy and policy to keep higher education in the South segregated. In early 1948, after the Supreme Court revived *Gaines* by holding that Ada Lois Sipuel, a Black Oklahoman who qualified for admission to the state law school, was entitled to a public legal education,[67] Sims began advising the Southern Governors' Conference as part of a multistate campaign to keep desegregation at bay. Six years later, he was not formulating a response to *Brown* on the fly; he was already a seasoned advocate. Just as the NAACP's road to *Brown* was full of stops and starts as legal theories and strategies took shape and evolved over years, the canon of segregationist arguments in the 1950s and beyond had an essential prehistory.[68] While Mary Ellen Maatman has traced how elite lawyers in Mississippi, Alabama, and Georgia moved from the white primary

63. Sims, *supra* note 32, at 2. The *Brown* decision was not even the first "Black Monday" for the segregated South. A Texas Congressman used the same phrase to describe June 5, 1950, the day the U.S. Supreme Court released its opinions striking down segregated higher education, *McLaurin v. Oklahoma Regents*, 339 U.S. 637 (1950), and *Sweatt v. Painter*, 339 U.S. 629 (1950). *See* WARD, *supra* note 20, at 125.

64. 305 U.S. 337 (1938).

65. 339 U.S. 629 (1950).

66. Sims, *supra* note 32, at 2.

67. Sipuel v. Bd. of Regents of Univ. of Okla., 332 U.S. 631 (1948).

68. Sims was hardly alone among white Southern lawyers in responding and adapting to the NAACP's desegregation efforts before *Brown*. Sued in 1942 for paying Black and white teachers at different rates, for example, Nashville's Board of Education attempted to argue that Black teachers were paid less not because of their race, but because they taught at Black schools. Thomas v. Hibbitts, 46 F. Supp. 368, 370 (1942). Representing the board, the city attorney dropped the argument at trial, arguing instead that the pay gap was based "solely upon an economic condition in that, colored teachers were more numerous than white teachers, their living conditions less expensive, and that they could be employed to work at a lower salary than white teachers." *Id.* The district court enjoined the board from setting racially discriminatory salaries. Despite the NAACP's success in Nashville, dozens of other districts facing similar suits in the 1930s and 1940s began making arguments about judicial deference to local boards and the importance of gradual implementation of policies to equalize education funding. School districts also began experimenting with supposedly neutral merit rating systems as a way of avoiding paying equal salaries to Black and white teachers. *See* TUSHNET, *supra* note 38, at 117; BROWN-NAGIN, *supra* note 42, at 87–93.

cases of the early 1940s[69] to the 1948 Dixiecrat split from the Democratic Party[70] and finally to massive resistance movements after *Brown*,[71] Cecil Sims cut a different path. Long before the turmoil sparked by *Brown*, Sims felt little pressure to play to the crowd. Drawing on his professional expertise, he could stymie desegregation as an "architect," not a politician.[72] The policies and arguments that Sims devised for the Southern Governors' Conference in the late 1940s and early 1950s were an intricate response to the potential desegregation of public higher education that prompted several modes of argument he would retrofit for post-*Brown* debates about primary and secondary education.

By 1946 Southern governors were openly searching for ways to avoid the desegregation of public higher education, and they discussed a longstanding interest in regional education as a potential solution.[73] With a finger in every pot in Nashville, Sims was positioned to make these discussions a reality. As an advisor to Tennessee Governor Jim McCord and a trustee of Meharry Medical College,[74] he attempted to broker a deal that he regarded as a win-win: the Southern states would take over Meharry and turn it into a segregated public regional medical school. With access to Meharry's financial records,[75] Sims knew that the

69. The Democratic Party in Southern states, which was classified under state law as a private "voluntary association," restricted primary voting to whites, essentially disenfranchising Black voters in the one-party Jim Crow South. In 1944, the U.S. Supreme Court held that the Party-run primaries constituted state action within the ambit of the Fifteenth Amendment and that "the right to vote in . . . a primary . . . without discrimination by the State . . . is a right secured by the Constitution." Smith v. Allwright, 321 U.S. 649, 661–62 (1944); *see also* TUSHNET, *supra* note 38, at 100–07.

70. *See* KARI FREDERICKSON, THE DIXIECRAT REVOLT AND THE END OF THE SOLID SOUTH, 1932–1968 (2001).

71. Maatman, *supra* note 49. Jason Morgan Ward describes a similar trajectory for politicians in South Carolina, Georgia, and Mississippi from school salary equalization cases to massive resistance. *See* WARD, *supra* note 20, at 121–42.

72. *Cf.* PETER H. IRONS, THE NEW DEAL LAWYERS (1982) (discussing lawyers as politicians, reformers, and "craftsmen").

73. REDDING S. SUGG, JR. & GEORGE HILTON JONES, THE SOUTHERN REGIONAL EDUCATION BOARD: TEN YEARS OF REGIONAL COOPERATION IN HIGHER EDUCATION 5–11 (1960). While this paper focuses on Cecil Sims's role, the best general discussion of the Southern Governors' Association's attempts to use regional education to avoid desegregating higher education is Jennifer Bennett Shinall, *An Idea Whose Time Has Come: The Southern Regional Education Board and the Opportunity for Segregation* (unpublished manuscript) (on file with author).

74. *Negro Hospital in Nashville Saved by City*, EVENING INDEP. (St. Petersburg, Fla.), July 14, 1949, at 15 (identifying Sims as a member of Meharry's "board of trusts"); *Meharry Medical School Won't Close: City Will Aid Hubbard Hospital*, CHI. DEFENDER, July 23, 1949, at 5. In January 1948 Sims presented Meharry's board with plans and procedures for the institution's transformation into a regional medical school for Southern states. Board of Trustees Minutes (Jan. 20, 1948) (on file with Meharry Medical College Library Archives Department).

75. Letter from Cecil Sims to Jim McCord, Governor, Tenn. (Apr. 14, 1948) (Governor Jim Nance McCord Papers, GP-45, Box 1, Folder 8, Microfilm Reel 1, Tennessee State Library & Archives) ("Meharry has furnished me with supporting data covering its operations during the

institution teetered on insolvency. In his view, a public takeover would keep Meharry open, allow Southern states to expatriate Black medical applicants without running afoul of *Gaines*,[76] and channel the money that the Supreme Court was requiring Southern states to spend on public higher education for Blacks into Nashville.

McCord proposed the plan to his fellow governors at the end of 1947. In February 1948, Sims convinced Meharry's board to approve the takeover,[77] and at a meeting in Wakulla Springs, Florida, the Southern Governors' Conference appointed him to be one of three members of a committee charged with drafting an interstate compact for "the establishment, acquisition, operation and maintenance of regional educational schools and institutions."[78] "The committee did its work rapidly," according to a tenth-year report on the activities of the Southern Regional Education Board, "partly because of Mr. Sims's extensive experience with interstate agreements." It only took Sims a day to draw up the document, and all sixteen Southern governors signed on immediately.[79] When the compact became operational, Sims became a member of the Southern Regional Education Board and its "adviser on constitutional law."[80]

For two years, Sims was one of the primary public proponents of the interstate compact and the Meharry takeover plan. He addressed at least one legislature as well as meetings of educators, governors, and Rotarians. His drafting decisions and comments are telling. The Dixiecrat revolt of 1948 had attempted without particular success to embed a commitment to segregation within a broader appeal to states' rights,[81] but Sims staked a more pragmatic strategic position. While the

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past five years. For the present time I would like to retain the supporting data in my files as I am constantly referring to it in connection with the furthering of the enterprise.").

76. Within a couple of years, *Sweatt v. Painter*, 339 U.S. 629 (1950), and *McLaurin v. Okla. State Regents*, 339 U.S. 637 (1950), made Sims's position all but untenable, even when Meharry's venerable tradition and reputation are taken into account. *See Sweatt*, 339 U.S. at 632–34 (listing the many tangible and intangible differences between a segregated graduate school and a flagship state university).

77. The Meharry board chair's "definite proposal" for the takeover was attached to Sims's April 14 letter, *supra* note 75; Letter from T. Graham Hall, Chairman, Meharry Med. Coll., to Jim McCord, Governor, Tenn. (Feb. 5, 1948) (Governor Jim Nance McCord Papers, GP-45, Box 1, Folder 8, Microfilm Reel 1, Tennessee State Library & Archives).

78. SUGG & JONES, *supra* note 73, at 15.

79. *Id.*

80. John N. Popham, *Area School Plan Backed: Program Approved by Heads of 11 States Permits Negro Participation Policy*, N.Y. TIMES, Dec. 14, 1948, at 33.

81. As a Tennessee delegate at the 1948 Democratic Convention, Sims urged the Convention to adopt a States' Rights plank and "give to us in the South the weapon of our fathers, a declaration of our ancient faith, that we may use it as our sword and as our shield, as did our forefathers before us." Without mentioning segregation, he made a floor speech arguing that it was not incompatible

compact mentioned in its preamble that "Meharry Medical College . . . has proposed that its lands, buildings, equipment, and the net income from its endowment be turned over to the Southern States," the agreement made no reference to race or segregation,[82] and Sims never argued that innate racial differences compelled the segregation of higher education. Nor did he defend the constitutionality of segregated graduate schools; as he read the Court's higher education decisions, there was no need to. Applying the same kind of narrow focus to *Gaines*, *Sipuel*, and the cases that followed as he would to *Brown*, Sims would later stress that the Court had "brush[ed] aside or ignor[ed] the constantly pressed contention that mere separation itself was per se a violation of Negro rights guaranteed by the Fourteenth Amendment."[83]

Instead, Sims made his case by speaking despairingly of the possibility that Meharry might close,[84] stressing the need for more Black doctors and noting the importance of saving an institution that was central to their training. "If Southern States do take over under a joint compact and operate [Meharry]," Sims said in a South Carolina speech in March 1948, "they will be doing an act of justice to colored people and discharge an obligation to the colored race."[85] The next month, Sims opined that state funding of Meharry would improve the institution and "contribute to the upgrading of the Negro."[86] By year's end, he had drafted an amendment to the compact expanding board membership to give "Negro educators a full policy-making position in the council." Like the rest of the compact, the amendment was race neutral. "The proposed amendment," Sims told the *New York Times*, "did not require that the new members be Negroes, but most of the Governors indicated that Negro educators would be named by them."[87]

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to support states' rights while also accepting a plank on civil rights. "My friends," he said, "if we can put into our platform a statement that we call upon Congress to exert its authority within the Constitution, why cannot you recognize the South by the simple statement that we also recognize the right of the States to regulate their domestic affairs?" Sims pledged total party loyalty but also warned that a failure to adopt a States' Rights plank would destroy the Democratic Party in the South. *See Remarks by Cecil Sims*, *in* DEMOCRACY AT WORK: BEING THE OFFICIAL REPORT OF THE DEMOCRATIC NATIONAL CONVENTION 184, 184–85 (1948).

82. The compact said that Meharry would simply be "operated as a regional institution for medical, dental, and nursing education." *The Southern Regional Education Compact*, *in* SUGG & JONES, *supra* note 73, at 159.

83. Sims, *supra* note 32, at 7.

84. *See Regional Council Set-up Considers Medicine, Health, Graduate Studies*, ATLANTA DAILY WORLD, Nov. 28, 1948, at 1.

85. *Meharry's Use by South Urged*, AFRO-AMERICAN (Baltimore, Md.), Mar. 13, 1948, at 14.

86. *Meharry Medical School May Close Doors in July*, PLAIN DEALER (Kansas City, Kan.), Apr. 16, 1948, at 1.

87. Popham, *supra* note 80.

Moreover, Sims argued that integrated higher education was a "fatal fallacy":[88] that most Black students would not be able to gain admission to white graduate schools or, in the alternative, that integrating graduate education would lower admission standards and "forc[e] the Negro into unequal competition with other students who are better prepared."[89] "The National Association for the Advancement of Colored People," Sims said, "has taken the position that it is better to have one Negro studying medicine at Harvard than to have 450 studying medicine at segregated institutions like Meharry."[90] Expressing carefully couched views of "pluralism" and diversity like those that were then circulating among elite white Southerners from Eudora Welty to Lewis Powell,[91] Sims was anticipating aspects of what would become the debate over affirmative action.[92] He deployed his arguments to address multiple audiences, attempting to build support from local Black educators,[93] defuse and undermine Northern criticism and the NAACP's litigation strategy, and promote among Southern whites—or at least Southern governors—a paternalistic norm that would preserve the segregationist status quo.[94]

Sims's arguments gained no traction among people who supported integrated graduate schools, however. Editorialists and activists denounced his plans for Southern regional education and excoriated Sims's work as "preposterous and hypocritical,"[95] "nothing more than a device to get around the rulings of the Supreme Court in the *Gaines* and *Sipuel* cases."[96] Meharry alumni overwhelmingly opposed any takeover by the Southern states, and ultimately Sims's deal was shelved.[97] NAACP president Walter White singled out Sims as

88. Walter White, *Writer Says Dixie Much Like Traditional Mule*, CHI. DEFENDER, Dec. 30, 1950, at 7.

89. *Meharry Medical School May Close Doors in July*, *supra* note 86, at 1.

90. White, *supra* note 88, at 7.

91. *See* ANDERS WALKER, THE BURNING HOUSE: JIM CROW AND THE MAKING OF MODERN AMERICA 4, 189, 237 (2018).

92. *Cf. id.* at 189–90 (probing Justice Powell's views of diversity in Regents of Univ. of Cal v. Bakke, 438 U.S. 265 (1978)).

93. Sims was a featured speaker at the 1949 meeting of the Tennessee Negro Education Association. *See Dr. Jenkins Speaks at Tenn State*, PLAIN DEALER (Kansas City, Kan.), Apr. 29, 1949, at 10.

94. *See* FREDRICKSON, *supra* note 70, at 219 (describing how the governors took a harder segregationist line following the 1950 Supreme Court decisions on segregated graduate education).

95. White, *supra* note 88, at 7.

96. *School Compact*, WASH. POST, May 15, 1948, at 6; *see also* Louise Stephens, *Truman Commission Says Jim Crow Schools Should Go!*, CHI. DEFENDER, Jan. 31, 1948, at 2 ("[T]here can be little doubt that it is not brotherhood, but fear of integration, which motivates the suggestion for regional schools.").

97. SUGG & JONES, *supra* note 73, at 19.

the embodiment of "[t]he bullying tactics and philosophy of threats upon which the neanderthal South has relied."[98] The public statements of "Brother Sims," in White's words, were "inaccura[te] and fals[e]," little more than a "pious[ ] attempt[ ] to pull a red herring stunt."[99] If Sims's brand of segregation was called out as illegitimate in 1950, its standing in the marketplace of ideas would dramatically rise as fights over segregated education shifted from universities to primary and secondary schools.

II. SIMS AFTER *BROWN*: MODERATE BY DEFAULT

When *Brown* was decided, several lawyers with credentials that rivaled Sims's quickly cast their lot with massive resistance. Theresa Davidson, a 1922 Vanderbilt Law graduate who taught Roman law in the university's classics department,[100] joined the legal staff of the Federation for Constitutional Government, a group founded by her husband Donald Davidson which proclaimed *Brown* to be "judicial tyranny" and refused to acknowledge the legitimacy of the Fourteenth Amendment.[101] Joining her was Sims Crownover, a successful Nashville lawyer and Confederate Lost Cause history buff who graduated first in the Vanderbilt Law Class of 1936.[102] Working closely with the Federation's lead attorney, Paul Bumpus, who had a long history as a race-baiting prosecutor,[103] they flatly rejected the Supreme

98. White, *supra* note 88, at 7.

99. *Id.*

100. WELCH, *supra* note 26, at 63.

101. *Statement of Principles, Purposes and Policies by the Tennessee Federation for Constitutional Government* (1958) (Donald Davidson Papers, Box 44, Folder 1, Vanderbilt University Library Special Collections); John B. Mason, *A Brochure on the 14th Amendment* 33–34 (1956) (Donald Davidson Papers, Box 44, Folder 1, Vanderbilt University Library Special Collections).

102. WELCH, *supra* note 26, at 135; *see* Sims Crownover, *The Battle of Franklin*, 14 TENN. HIST. Q. 291 (1955).

103. Bumpus had been the Maury County district attorney general who was humiliated by NAACP lawyers over the course of multiple trials relating to the February 27, 1946, race riots in Columbia, Tennessee. As Bumpus appealed to the jury to convict Black defendants on very little evidence "in the name of a chivalrous manhood and a pure and precious womanhood," Bumpus described civil rights attorneys as "lousy pinks and pimps and punks . . . nothing but traitors and anarchists, who would crucify America on a cross of hate and bigotry . . . to further a well-organized and far-advanced scheme to destroy every remaining vestige of democratic government in America." "May it please the Court and you Gentlemen of the Jury," Bumpus intoned, "there are some persons in the United States, male and female, who need to learn to stay at home, and to quit gallivanting over the country spraying discord and racial hatred like a pole-cat." GAIL WILLIAMS O'BRIEN, THE COLOR OF LAW: RACE, VIOLENCE, AND JUSTICE IN THE POST-WORLD WAR II SOUTH 49–50 (1999). After one of the Columbia trials, Thurgood Marshall narrowly escaped being lynched. TUSHNET, *supra* note 38, at 52–55. After moving to Nashville and working with the Federation for Constitutional Government, Bumpus joined the local prosecutor's office and helped prosecute the Nashville sit-in protesters in 1960. Later in life, he privately published a collection

Court's authority. Like leading resisters such as Senators Harry Flood Byrd of Virginia and James Eastland of Mississippi and journalist James J. Kilpatrick, the Federation's lawyers urged the revival of a doctrine of "interposition," attributed to the 1798 Virginia and Kentucky Resolutions, that required the Southern states to use their power to stymie and effectively nullify *Brown*.[104] "[S]o violent a disruption in our long-established customs should not be thrust upon us by judicial fiat alone," Crownover wrote in the *ABA Journal*. "We of the South know the sound reasons behind school segregation, that immense differences divide the races in the South in terms of moral standards, education, aptitude, customs and culture."[105] Soon Crownover would call for eliminating public schools altogether to avoid desegregation.[106] White supremacist groups in Chattanooga and Memphis petitioned for "interposition and mandatory statewide segregation,"[107] and one eighty-five-year-old state senator from West Tennessee introduced a handful of bills designed to bolster the ability of school boards to keep their districts segregated.[108] The governor, at least in the immediate aftermath of *Brown*, preached moderation, kept his legislative allies in line, and vetoed the few pieces of overtly segregationist legislation that managed to pass.[109]

While Tennessee's different constituencies worked out their responses to *Brown*, Cecil Sims struck his own course and began expressing his views publicly.[110] From the start, he thought massive

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of speeches and writings by one of the most racist politicians in Tennessee history. PAUL FRANKLIN BUMPUS, CARMACK: THE EDWARD WARD CARMACK STORY (1977). Davidson, Crownover, and Bumpus also worked with the Federation's vice chairman Jack Kershaw, who in years to come provided postconviction counsel to Martin Luther King, Jr.'s, assassin James Earl Ray, founded the secessionist League of the South, and sculpted an enormous statue of Nathan Bedford Forrest that still stands, albeit doused in pink paint, by I-65 on the southern edge of Nashville. *See* HOUSTON, *supra* note 37, at 53.

104. BARTLEY, *supra* note 6, at 126–37; Brown, *supra* note 13.

105. Sims Crownover, *The Segregation Cases: A Deliberate and Dangerous Exercise of Power*, 42 AM. BAR ASS'N J. 727 (1956).

106. HOUSTON, *supra* note 37, at 61.

107. BARTLEY, *supra* note 6, at 143.

108. *Id.* at 79–80. Tennessee's legislature became more aggressive about passing pro-segregation measures in 1957. *Id.* at 143.

109. *Id.* at 80. In 1957, however, shortly before he faced reelection, Governor Frank Clement proposed and signed eight anti-integration bills. *Id.* at 275.

110. Sims had long experience comfortably interacting with die-hard racists. On a train through Georgia with Tennessee Governor Jim McCord in early October, 1948, Sims found himself chatting with Charles J. Bloch, a Macon lawyer active in the States' Rights Party that had broken with the Democrats that year. He would later emerge as a leading lawyer for massive resistance. *See* Maatman, *supra* note 49, at 34–35 (quoting opposing counsel Morris B. Abram's description that Bloch "could spin legally respectable arguments upholding segregation as easily as a carnival vendor spun cotton candy"). Sims raised as a topic of conversation *Eneas Africanus*, a nostalgic

resistance was not necessary to preserve the status quo. He attacked legislative proposals that gave school boards "power to assign pupils to schools they may designate . . . [without] regarding boundaries of attendance areas previously established" as "superfluous, since boards of education were already empowered to do what the bill proposed."[111] As a Vanderbilt trustee, Sims operated on an entirely different frequency from his fellow alum Crownover, who in the fall of 1956 founded a group of Law School alumni to revolt against the school's integration and protect "the traditions of Vanderbilt University," fulminated against Vanderbilt's connections to "left-wing" philanthropic foundations and the Association of American Law Schools,[112] warned the chancellor that the NAACP was "communist sponsored and inspired," and protested an integrated campus event on desegregation that featured a Fisk University professor as sullying Vanderbilt's "hallowed ground."[113] Before *Brown*, Cecil Sims had discouraged or delayed attempts by the Vanderbilt chancellor to integrate the university, citing a Tennessee statute requiring segregation in private institutions, even after the University of Tennessee had tested state law by admitting its first Black students in 1951. However, once *Brown* was decided, Sims in his capacity as a university trustee opened the door to integration.[114]

When Sims spoke to educators across the South—including those attending the Southern Historical Association meeting—in the years following *Brown*, he developed a consistent message. He first stressed the importance of the public schools as critical to democracy.[115] He then presented *Brown* as an inescapable challenge for school boards "that will not solve itself by delay or putting it aside."[116] For Sims,

1919 novel about a loyal slave by another Macon lawyer, Harry Stillwell Edwards. Evidently, Sims's comments about *Eneas Africanus* were of enough interest that Bloch sent Governor McCord a copy the next week, Letter from Charles J. Bloch to Jim McCord, Governor, Tenn. (Oct. 14, 1948) (McCord Papers, Box 1, Folder 8, Microfilm Reel 1, Tennessee State Library & Archives), much to McCord's delight. Letter from Jim McCord, Governor, Tenn. to Charles J. Bloch (Oct. 22, 1948) (McCord Papers, Box 1, Folder 10, Tennessee State Library & Archives) ("I have not enjoyed anything in a long time more than the reading [sic] and picturing the incidents of the life of this loyal old man to his Master.").

111. George N. Redd, *Educational Desegregation in Tennessee—One Year Afterward*, 24 J. NEGRO EDUC. 333, 342 (1955).

112. WELCH, *supra* note 26, at 135 (citing a letter Crownover wrote in December 1955); KEAN, *supra* note 56, at 161, 163.

113. KEAN, *supra* note 56, at 162.

114. *See id.* at 23–24, 245 n.38; WELCH, *supra* note 26, at 139.

115. Untitled Memorandum by Cecil Sims 2 (n.d. [before September 1954]) (Cecil Sims Papers, Box 20, Folder 2, Vanderbilt University Library Special Collections).

116. Cecil Sims, Legal Implications of the Supreme Court Decision on Segregation at the 17th Annual Convention of the Tennessee School Boards Ass'n 2 (Jan. 12, 1955) (Cecil Sims Papers, Box 20, Folder 7, Vanderbilt University Library Special Collections).

desegregation was "the most complex, the most difficult, and most baffling problem[ ] that ha[s] ever confronted any school board in Tennessee, or anywhere else in our Southern states."[117] Deploying a rhetoric of caution and complexity rather than overt white supremacy,[118] Sims suggested that gradual desegregation not only was essential to preserving the schools, but was also encouraged by the Court.[119] By engaging with the Court and proposing long-range "conservative and sensible" desegregation plans, he urged, the states could "gain the protection to be afforded thereby so that no hasty action will be required, or could be insisted upon by NAACP or others."[120] He insisted that under the terms of *Brown*, these gradual plans did not require integration. Rather, schools had the "opportunity to comply with the law and at the same time conform with social customs that

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117. *Id.* at 1; Sims, *supra* note 32, at 11.

118. Sims's rhetorical choice is reflected in two brief excerpts from a 1954 article by University of North Carolina sociologist Howard W. Odum, *An Approach to Diagnosis and Direction of the Problem of Negro Segregation in the Public Schools of the South*, 3 J. PUBL. L. 8, that Sims had typed out for his private files. The first excerpt quotes an 1888 speech by the *Atlanta Constitution* editor and advocate for an industrialized, segregated New South, Henry W. Grady:

> The supremacy of the white race of the South must be maintained forever, and the domination of the Negro race resisted at all points and at all hazards, because the white race is the superior race. This is the declaration of no new truth; it has abided forever in the marrow of our bones and shall run forever with the blood that feeds Anglo-Saxon hearts.

In the margin Sims wrote and underlined the word "Wrong." Undated Typescript, Cecil Sims Papers, Box 20, Folder 3, Vanderbilt University Library Special Collections. He wrote the word "Correct" by Odum's own cautious, agonized response to desegregation:

> If there is apparently no single, immediate 'solution' possible, in the framework of all or none, now or never, right or wrong, good or bad, white or Negro, is it possible that there may be several 'solutions'? Are the main inferences of decisions necessarily to be 'either-or', so much 'both-and'? If it is possible to construct reasonable and attainable programs and objectives, what will it take to bridge the distance between what we have and what is wanted? And what is the best way of going about getting what is needed? What will it actually cost in financing—as well as in the 'tragedies of progress'? And who will pay the costs? Is a part of that obligation upon the Federal Government, whose compulsion sets the incidence for the change?

Id.

119. Sims, *supra* note 32, at 13:

> There is nothing in the opinion of the Supreme Court which indicates a desire to coerce or stampede the South into a hasty and perhaps unwise reconstruction of the present school systems in order to meet the requirements of the Fourteenth Amendment. . . . [T]he entire attitude of the Court as expressed in the opinion goes no further than to say to those states where segregation is required or permitted by law that the time has come when they should sit down and plan carefully and deliberately for the gradual elimination of those conditions which the Court has found to be detrimental to the education of the Negro child.

120. Memorandum, Sims, *supra* note 115, at 2–3.

have long existed in the South."[121] Repurposing his earlier defense of segregated higher education, Sims opined that continued segregation in primary and secondary schools would be good for Black children, who would otherwise face "unfair . . . competition with consequent failure."[122] "On the basis of attained ability to learn as a race—as distinguished from the occasional individual genius," Sims told a group of Alabama university women, "an inferiority assumed from compulsory segregation may become a fact demonstrated by forced integration."[123] Ultimately, he opined, African Americans would choose not to integrate, contented with the end of the stigma of legally mandated segregation.

While Nashville's NAACP began developing a "prompt desegregation" plan and petitioned the city's board of education as well as the Davidson County School Board, on which Sims served, to desegregate by the fall of 1955, Sims was able to start putting his ideas into action.[124] The city and county school boards referred the question to committees, which tried to conduct surveys of Southern cities as well as a school census and made every effort to identify the many complexities of districting, hiring and training, and curriculum.[125] When the NAACP finally sued the Nashville Board of Education in September 1955, the school board repeated Sims's rhetoric of complexity and gradualism and echoed his view that *Brown* "does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation."[126]

Sims did not represent the Nashville school board in court—that was the task of Reber Boult, Vanderbilt Law Class of 1929, and his partner Edwin Hunt, who graduated first in the Law School Class of 1927.[127] All the same, Sims is widely credited with crafting the city's

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121. Sims, *supra* note 116, at 2.

122. "Notes—Washington Testimony," (n.d.) (Cecil Sims Papers, Box 20, Folder 5, Vanderbilt University Library Special Collections).

123. *Integration Will Hurt Negro, Attorney Says*, NASHVILLE TENNESSEAN, July 7, 1956, at 14.

124. Redd, *supra* note 111, at 340.

125. *See* Answer & attached exhibits, Kelley v. Board of Educ., No. 2094 (M.D. Tenn. Nov. 16, 1955).

126. *Id.* at 10. For a thorough and enlightening discussion of *Kelley v. Board of Education of Nashville*, see Rachel Weisshaar, *Kelley v. Board of Education of Nashville* and the "Original" Meanings of *Brown v. Board of Education* (unpublished manuscript) (on file with author).

127. Boult and Hunt's firm, Boult Hunt Cummings & Conners, rivaled Cecil Sims's firm as one of the major white shoe practices in Nashville. Boult and Hunt were active Vanderbilt alums. Boult led the capital campaign in the early 1970s that quadrupled the Law School's endowment, WELCH, *supra* note 26 at 185, and Hunt, the 1934 U.S. checkers champion, was one of the practitioners who taught alongside Sims in 1949 after most of the full-time faculty left, posing an existential threat to the Law School. *Id.* at 118. In the NAACP's companion lawsuit against the Davidson County School Board, *Maxwell v. Davidson County Board of Education*, the board was represented by K. Harlan Dodson, top graduate in the Vanderbilt Law Class of 1940, whose arguments mirrored the Nashville school board's. *See* Nellie Kenyon, *County Board to Offer Plan*

response to the NAACP.[128] It took more than a year for the school board to propose a plan for the fall of 1957 that assigned 115 African American first graders to formerly white schools and fifty-five white first graders to formerly Black schools. Because of a Sims-devised plan called "intelligent zoning," the board drew new geographic school zones "without reference to race," but reverse-engineered them exactly along the lines of the old segregated zones. As a result, only six of the thirty-six elementary schools in the city drew from Black and white populations.[129] Liberal transfer policies meant that only nineteen Black children would be integrating white schools, and no whites would be attending African American schools. What eventually became known across the South as the "Nashville Plan" provided for integrating the second grade in 1958, followed by another grade each year until all grades were desegregated in 1968. In January 1957 a federal judge approved the plan to desegregate the first grade that fall.[130]

NAACP lawyers condemned the painfully slow Nashville Plan, but Sims's plan—and his basic approach to *Brown*—also drew the wrath of hardline segregationists. In a 1957 speech to the Nashville Kiwanis Club, the executive vice president of the Southern States Industrial Council, a longstanding anti-labor group that took a lead role in resisting integration, intoned that

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on Integration, NASHVILLE TENNESSEAN, Sept. 27, 1960, at 1 ("Dodson said the board 'recognizes the opinion and position of the U.S. Supreme Court on desegregation,' but argued that immediate desegregation would create a 'chaotic' condition in the schools.").

128. *See, e.g.*, Interview by Ben Houston with George Barrett, *supra* note 22, at 5. Sims suggested a one-grade-a-year type plan in his remarks to the Southern Historical Association in 1955. Sims, *supra* note 8, at 24–25 (citing a similar plan for Memphis State College). Earlier that year, the *Nashville Tennessean* described the school board's options as:

> (1) Permitting Negroes to decide for themselves whether they prefer to continue in their present segregated schools or to register at white schools in their zones. (2) Abolishing school zones completely, making it possible for both whites and Negroes to attend any school they prefer within the system. (3) Beginning the program of integration in the first grade and moving up gradually through the twelfth grade.

Redd, *supra* note 111, at 345 (quoting Eugene Dietz, NASHVILLE TENNESSEAN, June 3, 1955, at 1).

In September 1954 and January 1955, Sims pointed to a one-grade-a-year desegregation plan in Evansville, Indiana, where Nashville had sent a delegation to study the desegregation issue, that also included "some creative zoning to allow parents to choose schools according to their personal desire." HOUSTON, *supra* note 37, at 58; *Planning Urged on Segregation*, NASHVILLE TENNESSEAN, Sept. 15, 1954, at 19.

129. ERICKSON, *supra* note 37, at 74.

130. *See* Gene Graham, *School Plan Start Upheld*, NASHVILLE TENNESSEAN, Jan. 22, 1957, at 1; *Text of Judge's Ruling on Nashville Schools*, NASHVILLE TENNESSEAN, Jan. 22, 1957, at 6–7. Judge William Miller required the school board to submit a complete desegregation plan and timetable by December 1957. The following June, the judge approved the full one-grade-a-year plan, which the Sixth Circuit affirmed a year later in June 1959. Kelley v. Bd. of Educ., 270 F.2d 209, 214 (6th Cir. 1959).

> [t]hose who would take no steps to oppose the order to desegregate the Nashville public schools . . . have law and order confused with dictatorship. . . . It is a terrible thing for people to say that because the Supreme Court of the United States says something is the law that it must be obeyed and there is nothing we can do about it. This is a reversion to the philosophy of the Divine Right of Kings.[131]

The Federation for Constitutional Government attempted to intervene in the lawsuit and then guided the efforts of a Parents Preference Committee that mobilized thousands of white residents to pressure the school board to replace the Nashville Plan with three separate types of schools: Black, white, and integrated.[132] Through August 1957, large crowds gathered at white supremacist rallies across the city. As the school year started on September 9, 1957, mobs menaced Black first graders at newly integrated schools and threatened their families. Early on the morning of September 10, before the second day of school, a bomb exploded outside Hattie Cotton Elementary in East Nashville.[133]

In charting his course, Sims repeatedly suggested the moral equivalence of "forced segregation and compulsory integration." He took pains to condemn both the "crusaders who would force immediate integration by law irrespective of its impact and effect" with the "reckless suggestions of those who would destroy our systems of public education merely to maintain a social caste based on an assumption of white supremacy."[134] While the Parents Preference Committee, amplified by the segregationist *Nashville Banner*, successfully pushed the school board to instruct its attorneys to ask the federal court to replace the one-grade-per-year proposal with the three-tiered system, the judge stuck with Sims's original Nashville Plan, characterized in an early assessment as the "middle way between extremes."[135] The U.S. Court of Appeals for the Sixth Circuit upheld the ruling in a decision that, in historian Ben Houston's words, "would have made Cecil Sims proud."[136] Sims was instantly moderate, despite the fact that his plan kept Nashville segregated.

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131. Thurman Sensing, *Sacrifices Upon the Altar of Integration*, at 9–10 (Aug. 23, 1957) (Donald Davidson Papers, Box 43, Folder 14, Vanderbilt University Library Special Collections).

132. Letter from Donald Davidson to Mrs. Oliphant (Feb. 24, 1958) (Donald Davidson Papers, Box 3, Folder 18, Vanderbilt University Library Special Collections) (describing Theresa Davidson's "big round of legal work on the Nashville school case").

133. *See* ERICKSON, *supra* note 37, at 78–82.

134. Sims, *supra* note 32, at 12. Sims also equated Southern resistance to *Brown* with the Northern response to *Dred Scott*. *See* Sims, *supra* note 8, at 19. Sims's position remained consistent while Governor Clement could tack much farther to the right in 1957 and still be considered a moderate. BARTLEY, *supra* note 6, at 275.

135. Hugh Davis Graham, *Desegregation in Nashville: The Dynamics of Compliance*, 25 TENN. HIST. Q. 135, 150 (1966).

136. *See* HOUSTON, *supra* note 37, at 75 ("The decision asserted simply that 'if a child is free to attend an integrated school, and his parents voluntarily choose a school where only one race

Though massive resisters railed against the Nashville Plan, it marked the beginning of the ultimate triumph of Sims's vision. It showed white Nashville that, in the words of civil rights attorney George Barrett, "the world wasn't going to collapse,"[137] and quickly fostered pride among Nashville whites in their commitment to law and order, as well as a widespread sense that race relations were on a better standing there than in other Southern cities.[138] Yet very little had changed. By the end of the 1957 school year, only ten Black children remained in white schools. Two years later, in March 1959, Sims testified before the U.S. Senate against a proposed constitutional amendment to strip all federal supervision from the field of education. While opposing the amendment's end run of the Supreme Court, Sims asserted, as he had since 1954, that *Brown* was perfectly compatible with a "gradual plan . . . under which Negroes are given the right to attend mixed schools . . . if they choose to do so, but with the future right to elect to remain in the existing Negro schools."[139] Much of his testimony repeated his 1955 Memphis speech verbatim. Nothing in the intervening years had altered Sims's vision for schools. It had emerged from the crucible of white resistance all the stronger.

A decade after *Brown*, not even five percent of Nashville's Black school-age children attended formerly white schools, and no white children attended formerly Black schools.[140] It would take until the 1970s and 1980s for court-ordered busing to succeed in integrating schools and significantly narrowing disparities in educational outcomes.[141] Even then, the merger of Nashville with the surrounding county in the early 1960s cabined how integration would take shape,

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attends, he is not being deprived of his constitutional rights.' "); *see also* Kelley v. Bd. of Educ., 270 F.2d 209, 229 (6th Cir. 1959) ("The choice, provided in the plan of the Board, is, in law, a free and voluntary choice. It is the denial of the right to attend a nonsegregated school that violates the child's constitutional rights.").

137. Interview by Ben Houston with George Barrett, *supra* note 22, at 5. After the Hattie Cotton Elementary bombing, opposition to integration became notably less violent. *See* Erickson, *supra* note 37, at 83 ("Asked to choose between the kind of violence the bombing represented or acceptance of minimal desegregation, the vast majority of Nashvillians chose the latter.").

138. Interview by Ben Houston with George Barrett, *supra* note 22, at 6 ("Here you had something similar with Atlanta . . .'the city too busy to hate.' ").

139. Cecil Sims Testimony, *supra* note 31, at 171.

140. ERICKSON, *supra* note 37, at 84.

141. While Sims had defended gradualism as a means to preserve the school system and defend it from massive resistance's call to disinvest from public institutions, the Nashville Plan cemented white expectations that the schools would remain segregated and merely postponed white flight. In 1971–72, the first year of court-ordered busing, the Metropolitan Nashville Public Schools lost eighteen percent of its white students to private schools and suburban districts. *Id.* at 211, 236–39 (discussing how narratives of "white flight" distorted district policy, further privileging white families and ignoring the experiences of Black families and students).

diluting Black voices and all but assuring that new school construction would focus on the ring suburbs.[142] The suburban focus meant that Black students would be bused out of the city to school, imposing the burdens of integration on them.[143] The NAACP's lawsuit would remain in the federal courts for forty-three years. In the two decades since Nashville schools achieved "unitary status" under a 1998 settlement, the district has substantially resegregated and continues to be plagued by racial segregation and inequality.[144]

CONCLUSION

On February 13, 1960, almost exactly three years after a federal judge approved the Sims-designed Nashville Plan, 124 college students staged a sit-in protest at three downtown Nashville lunch counters. Organizers said they were opting for direct action and civil disobedience instead of litigation largely because they had seen up close how ineffective *Brown* had been. The schools they had attended, in Nashville and elsewhere across the South, were still segregated years after the decision.[145] By 1960 the Nashville Plan had also radicalized the city's Black lawyers, who wholeheartedly supported the student protesters despite any qualms the national NAACP had with their tactics.[146]

During the ensuing weeks of protest, which occurred at the same time that he was advocating for the consolidation of city and county governments,[147] Cecil Sims's polished neutrality began to tarnish. James Lawson, a Vanderbilt Divinity School student who was one of the leaders of the sit-in movement, specifically denounced "legal hairsplitting" and how the law was frustrating true civil rights reform[148]—a critique that hit uncomfortably close to what Sims had

142. *Id.* at 59–60.

143. *Id.*

144. *See* Ansley T. Erickson, *Building Inequality: The Spatial Organization of Schooling in Nashville, Tennessee, after* Brown, 38 J. URB. HIST. 247 (2012). A lawsuit relating to the resegregation of Nashville schools after a July 2008 rezoning decision was dismissed and upheld on appeal, even though the school district knew that the plan would result in more segregation. *See, e.g.*, Jeff Woods, *Testimony: Metro Forced Black Students Into North Nashville Schools*, CITY PAPER (Nashville, Tenn.), Nov. 3, 2009; *see also* Knight, *supra* note 40.

145. BROWN-NAGIN, *supra* note 42, at 138.

146. *See* Will Sarvis, *Leaders in the Court and Community: Z. Alexander Looby, Avon N. Williams, Jr., and the Legal Fight for Civil Rights in Tennessee, 1940-1970*, 88 J. AFR. AM. HIST. 42, 51 (2003).

147. *See B&PW Club Will Have Meeting*, NASHVILLE TENNESSEAN, Mar. 7, 1960, at 8 ("Cecil Sims will speak on the merits of metropolitan government.").

148. KEAN, *supra* note 56, at 196; *see also* CHRISTOPHER W. SCHMIDT, THE SIT-INS: PROTEST AND LEGAL CHANGE IN THE CIVIL RIGHTS ERA 31–32 (2018) (describing Lawson's critique of the NAACP's court-focused strategy because "[t]he legal redress . . . is far too slow for the demands of our time").

been doing for years. Sitting on the six-man executive committee of the Vanderbilt Board of Trust, Sims voted to expel Lawson. After much of the Divinity faculty threatened to resign, the chancellor scrambled to reach an accommodation that would have allowed Lawson to graduate. Sims and the executive committee stood together and scuttled the settlement, even though it threatened the Divinity School's existence.[149] In doing so, Sims found himself openly aligned for the first time with "known segregationists" such as Sims Crownover. Four years after agitating against the Law School's integration "lest our great Southern Institution with a heritage and tradition second to none was in a process of degeneration," Crownover wrote in 1960 that he had finally found himself in accord with Vanderbilt's board. "[T]hose fears have now been dissipated by the manner in which you have handled the Lawson matter," Crownover told the chancellor. "I am proud of you."[150]

While sit-in protesters faced prosecution and the mayor convened a biracial committee to negotiate a settlement, Sims stepped into the spotlight. Towards the end of March, at a large community forum called "Nashville 1960: Its Problems and Possibilities," he appeared on a panel alongside Vanderbilt professors, the city's reform rabbi, and Reverend Kelly Miller Smith, a civil rights leader whose church provided the staging ground for the sit-ins. Alone among the panelists, Sims condemned civil disobedience as well as anything that would speed up the city's desegregation. "It is one thing to guarantee the Negro the right to vote, but is another thing to expect mandatory social amalgamation of our cultures," he said. "Enforced togetherness may go too far too fast. . . . Discrimination is not just a question of skin color as many contend, but the problem is one of clashing cultures. . . . The progress of the Negro must be gradual."[151]

When the sit-in movement drew attention from the press, Sims was interviewed as a "white leader." On national television, he denounced the very idea that Black Nashvilleans had a right to eat alongside whites in restaurants. "Now the people of the South have always fed people who came and knocked at the back door and asked for something to eat, but they have always reserved the right to eat only with invited guests," Sims said in an NBC documentary narrated by

149. KEAN, *supra* note 56, at 202.

150. *Id.* at 201.

151. *400 Attend Conference on Community Relations* (n.d.) (Box 15, Folder 6, Cecil Sims Papers, Vanderbilt University Library Special Collections); *see also* Program for Nashville Community Relations Conference Panel (March 30–31, 1960) (Cecil Sims Papers, Box 20, Folder 16, Vanderbilt University Library Special Collections).

Chet Huntley.[152] "Breaking bread is essentially a family custom, almost a sacrament. Now when you claim that you have been denied equal rights in participating in something that is regarded as a family custom or sacrament, and insist on being recognized, you're getting into dangerous ground."[153] Sims contrasted the restaurant protests with school desegregation, suggesting that education should be the primary pathway to major societal reform—even though a paltry forty-three Black students only in grades one, two, and three were attending integrated Nashville schools in early 1960.[154] "I think that if I were called in to advise the Negro race on the basis of what is their best interest for the next century," Sims told NBC, "I would say, 'Consolidate your gain in the field of education and become the type of people who would be invited to dinner, rather than breaking down the door to eat a piece of pie on a stool next door to a white person.' "[155]

Sims's comments shocked John Seigenthaler, a *Nashville Tennessean* reporter and editor who knew him well. Four decades later, Seigenthaler still remembered the man's "restrained anger" and remarks on camera about "degrading the sacrament." "That is nut-ball stuff from a brilliant, thoughtful, intelligent lawyer, and a friend of mine," Seigenthaler said. "I admired him, except when I heard that." After defining the middle ground in the 1950s, Sims grew less interested in compromise. Still, his reputation held. When groups of foreign journalists passed through Nashville during the civil rights era, they often asked Seigenthaler to introduce them to a "thoughtful segregationist." Seigenthaler would steer them to Cecil Sims.[156]

As explicit advocacy for segregation and white supremacy lost momentum and grew increasingly obsolete following passage of the Civil Rights Act of 1964, Southern resistance movements became "national, color-blind, and ahistorical."[157] If this process has led

152. Transcript reprinted in 107 CONG. REC., 1262, 1300 (1961).

153. *Id.*

154. ERICKSON, *supra* note 37, at 84. In the fall of 1960, as the fourth grade integrated, the number rose to 157 students. *Id.*

155. 107 CONG. REC., *supra* note 152, at 1303.

156. Interview by Ben Houston with John Seigenthaler, *supra* note 28, at 44; *see also* Letter from Don Binkley to Cecil Sims (July 17, 1962) (Cecil Sims Papers, Box 20, Folder 4, Vanderbilt University Library Special Collections) (inviting Sims to address foreign journalists on "the problems presented by desegregation in the South").

157. Brown, *supra* note 13, at 864. Despite his opposition to the lunch counter sit-ins in 1960, Sims remained at least situationally committed to his version of race neutrality. When polled in 1965 about whether the Nashville Bar Association should admit Black lawyers, Sims responded, "I favor desegregation. A lawyer is a lawyer, regardless of his color. Most of our problems in the South have been caused by denial of constitutional rights. I think we should put this responsibility on the Negro lawyer." Frank Ritter, *Lawyers Asked: Admit Negroes to Bar Group?*, TENNESSEAN, May 30, 1965, at 1-B, 3-B. Other elite lawyers remained to the right of Sims. *Id.* (quoting Dick L. Lansden: "Personally, I don't see any reason to change the present situation. We [the white

historians of modern conservatism to comment on the "chameleon quality of segregationist elites,"[158] their transformation—and soft landing in the post-Civil Rights Era—was able to occur because massive resistance legitimated less strident visions for preserving the status quo in a rapidly changing world. Cecil Sims seemed to anticipate this possibility. When he spoke to the Southern Historical Association back in November 1955, he concluded, "We must remember that the forces which generate heat may, with intelligent handling, be used to provide light."[159]

It may be curious that Sims's "intelligent handling" of school desegregation and massive resistance did not take place in court. While other attorneys litigated against the NAACP, he maintained a broader view of the lawyer's role. As much as litigation matters in civil rights history, Sims teaches us that lawyers do more than press lawsuits. They construct worlds. They build intellectual, ideological, and administrative structures designed to weather political and cultural storms. At a fundamental level, Sims approached segregation and desegregation less as a cause lawyer and more as a professional engaged in routine and relentless lawyerly practice. It was the kind of work he had been carefully taught to do at Vanderbilt. Sims's work—the work of a consummate lawyer—demonstrates the resilience of an effaced Jim Crow and the legal practice that made it possible. We might think of the transformation of segregationism into modern conservatism as a process by which the explicit racism was abstracted out. But Sims, the "thoughtful segregationist," and his conservative heirs never had much use for the harshest rhetoric of white supremacy. Although Sims did not live long enough to see his infrastructure fully realized, it proved to be an enduring legacy. He died in June 1968, only months before the first school year in which all grades under the Nashville Plan would be ostensibly desegregated.

lawyers] have a bar association. The Negroes have a bar. Our library facilities are open to them and they can vote in elections when we're nominating candidates for judgeships.").

158. Brown, *supra* note 13, at 864.

159. Cecil Sims, *The Segregation Decisions: A Lawyer's View*, *in* THE SEGREGATION DECISIONS, *supra* note 1, at 29.