In accordance with the suggestion of the Conference, I submit

the attached memorandum as a starting point for discussion of the segre-
gation cases. For your information, I will here state the considerations

which to my mind are inherent in it and which caused me to make this

approach to the problem.

1. The four state cases are sufficiently alike in principle to

   be considered in one opinion.

2. The District of Columbia case, calling into play a different

   Constitutional Section, should be considered separately.

3. Because of the varying conditions in states that authorize

   or require segregation, no single decree could meet the

   problems of all, and the Court has had little enlightenment

   on the subject. The decree should, therefore, be separated

   from the decision on segregation.

4. The decision on segregation should be made at this Term of

   Court. The formulation of decrees should be put over to the
next Term for further argument on Questions IV and V, consideration of which was blanketed this Term by the attention given to the substantive question in the briefs and on argument.

The Government, as well as the parties and the Attorneys General of all the states having a segregation problem could be invited to express their views.

5. On the question of segregation in education, this should be an end of the line case. The courts of the country have labored with the "separate but equal" doctrine in education from many vantage points for over 50 years. This Court has considered it several times in higher education. In some of them, the basic question of whether educational opportunities can be made equal by equal facilities has been reserved. In some of these cases, the record indicates that the facilities are or shortly will be equalized.

6. We must answer the question - "Can we have "separate but equal" public schools?"
7. We must hold that the doctrine of "separate but equal" as stated in *Plessy v. Ferguson* cannot apply to public education, but should not go beyond that.

8. The case cannot be decided on legislative intent because the evidence concerning it is inconclusive.

9. The approach should be made on the change of concept of public education since adoption of the Fourteenth Amendment, and on its present status in American life.

10. It should be so written as not to give concern to private schools.

11. The opinion should be short, readable by the lay public, non-rhetorical, unemotional and, above all, not accusatory.

No section of the country and no segment of our population can justly place full responsibility for segregation on others.

They must assume a measure of that responsibility themselves.