TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 101

HARRY BRIGGS, JR., ET AL., APPELLANTS,

vs.

R. W. ELLIOTT, CHAIRMAN, J. D. CARSON, ET AL., MEMBERS OF BOARD OF TRUSTEES OF SCHOOL DISTRICT No. 22, CLARENDON COUNTY, S. C., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

FILED JUNE 3, 1952

Probable jurisdiction noted June 9, 1952

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[fol. 1] [Caption omitted]

[fol. 2] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION

Civil Action No. 2657

HARRY BRIGGS, JR., THOMAS LEE BRIGGS and KATHERINE BRIGGS, Infants, by Harry Briggs, Their Father and Next Friend and Thomas Gamble, an Infant by Harry Briggs, His Guardian and Next Friend,

WILLIAM GIBSON, JR., MAXINE GIBSON, HAROLD GIBSON and Julia Ann Gibson, Infants, by Anne Gibson, Their Mother and Next Friend,

MITCHELL OLIVER and RICHARD ALLEN OLIVER, Infants, by Mose Oliver, Their Father and Next Friend,

CELESTINE PARSON, an Infant by BENNIE PARSON, Her Father, and Next Friend,

SHIRLEY RAGIN and DELORES RAGIN, Infants, by EDWARD RAGIN, Their Father and Next Friend,

GLEN RAGIN, an Infant, by WILLIAM RAGIN, His Father and Next Friend,

ELANE RICHARDSON and EMANUEL RICHARDSON, Infants, by Luchrisher Richardson, Their Father and Next Friend,

JAMES RICHARDSON, CHARLES RICHARDSON, DOROTHY RICHARDSON and Jackson Richardson, Infants, by Lee Richardson, Their Father and Next Friend,

DANIEL BENNETT, JOHN BENNETT and CLIFTON BENNETT, Infants, by James H. Bennett, Their Father and Next Friend,

LOUIS OLIVER, JR., an Infant, by MARY OLIVER, His Mother and Next Friend,

GARDENEIA STUKES, WILLIE M. STUKES, JR., and LOUIS W. STUKES, Infants by Willie M. Stukes, Their Father and Next Friend,

JOE NATHAN HENRY, CHARLES R. HENRY, EDDIE LEE HENRY and Phyllis A. Henry, Infants, by G. H. Henry, Their Father and Next Friend,

[fol. 3] CARRIE GEORGIA and JERVINE GEORGIA, Infants, by Robert Georgia, Their Father and Next Friend,
REBECCA I. RICHBURG, an Infant, by REBECCA RICHBURG, Her Mother and Next Frned.
MARY L. BENNETT, LILLIAN BENNETT and JOHN MCKENZIE, Infants, by Gabrial Tyndal, Their Father and Next Friend,
EDDIE LEE LAWSON and SUSAN ANN LAWSON, Infants, by Susan Lawson, Their Mother and Next Friend.
WILLIE OLIVER and MARY OLIVER, Infants, by FREDERICK OLIVER, Their Father and Next Friend,
HERCULES BENNETT and HILTON BENNETT, Infants, by Onetha Bennett, Their Mother and Next Friend,
ZELIA RAGIN and SARAH ELLEN RAGIN, Infants, by HAZEL RAGIN, Their Mother and Next Friend,
IRENE SCOTT, an Infant, by Henry Scott, Her Father and Next Friend, Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, J. L. CARSON and GEORGE KENNEDY, Members of Board of Trustees of School District #22, Clarendon County, S. C.; Summerton High School District, a Body Corporate; L. B. McCord, Superintendent of Education for Clarendon County and Chairman A. J. Plowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. B. Betchman, Superintendent of School District #22, Defendants

[fol. 4] COMPLAINT—Filed December 22, 1950

1. (a) The jurisdiction of this Court is invoked under Title 28, United States Code, section 1331. This action arises under the Fourteenth Amendment of the Constitution of the United States, section 1, and the Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144 (Title 8, United States Code, section 41), as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00).

(b) The jurisdiction of this Court is also invoked under Title 28, United States Code, section 1343. This action is authorized by the Act of April 20, 1871, Chapter 22, section

1, 17 Stat. 13 (Title 8, United States Code, section 43), to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation, under color of a state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, section 1, and by the Act of May 31, 1870, Chapter 114, section 16, 16 Stat. 144 (Title 8, United States Code, section 41) providing for the equal rights of citizens and of all other persons within the jurisdiction of the United States, as hereinafter more fully appears.

(c) The jurisdiction of this Court is further invoked under Title 28, United States Code, section 2281. This is an action for a permanent injunction restraining the enforcement, operation and execution of provisions of the Constitution and statutes of the State of South Carolina by restraining action of defendants, officers of such state, in the enforcement and execution of such constitutional provisions and statutes as will appear more fully hereinafter.

2. This is a proceeding for a declaratory judgment under Title 28, United States Code, section 2201, for the purpose [fol. 5] of determining questions in actual controversy between the parties, to wit:

(a) The question whether Article II, section 7 of the Constitution of South Carolina (1895) and section 5377 of the Code of Laws of South Carolina of 1942 which prohibit infant plaintiffs from attending the only public schools of Clarendon County, South Carolina affording an education equal to that afforded all other qualified students who are not Negroes and which force said plaintiffs to attend segregated public elementary and secondary schools set apart for Negroes in said Clarendon County, South Carolina are unconstitutional and void as a violation of the Fourteenth Amendment to the Constitution of the United States.

(b) The question whether the policy, custom, practice and usage of defendants, and each of them, in denying on account of race and color, the infant plaintiffs and other Negro children of public school age residing in Clarendon County, South Carolina, educational opportunities, advantages and facilities in the public elementary and second-

ary schools of Clarendon County, South Carolina, including those hereinafter specified, equal to the educational opportunities, advantages and facilities afforded and available to white children of public school age, similarly situated, is unconstitutional and void, as being a denial of the equal protection of the laws guaranteed under the Fourteenth Amendment to the Constitution to the United States.

(c) The question whether the policy, custom, practice and usage of defendants, and each of them, in denying on account of race and color, the adult plaintiffs and other parents and guardians of Negro children of public school age, similarly situated, residing in Clarendon County, South Carolina, rights and privileges of sending their children to public schools in Clarendon County, South Carolina, with educational opportunities, advantages and facilities, including those hereinafter specified, equal to the edu- [fol. 6] cational opportunities, advantages and facilities afforded and available to white children of public school age is unconstitutional and void, as being a denial of the equal protection of the laws guaranteed under the Fourteenth Amendment to the Constitution of the United States.

3. (a) Infant plaintiffs Harry Briggs, Jr., Thomas Lee Briggs, Katherine Briggs, Thomas Gamble, William Gibson, Jr., Maxine Gibson, Harold Gibson, Julia Ann Gibson, Mitchel Oliver, Richard Allen Oliver, Celestine Parson, Shirley Ragin, Dolores Ragin, Glen Ragin, Elane Richardson, Emmanuel Richardson, James Richardson, Charles Richardson, Dorothy Richardson, Jackson Richardson, Daniel Bennett, John Bennett, Clifton Bennett, Louis Oliver, Jr., Gardeneia Stukes, Willie M. Stukes, Jr., Louis W. Stukes, Joe Nathan Henry, Charles R. Henry, Eddie Lee Henry, Phyllis A. Henry, Carrie Georgia, Jervine Georgia, Rebecca I. Richburg, Mary L. Bennett, Lillian Bennett, John McKenzie, Eddie Lee Lawson, Susan Ann Lawson, Willie Oliver, Mary Oliver, Hercules Bennett, Hilton Bennett, Zelia Ragin, Sarah Ellen Ragin, and Irene Scott are among those generally classified as Negroes; are citizens of the United States and of the State of South Carolina. They are within the statutory age limits of eligiblity to attend the public schools of Clarendon County, South Carolina. They satisfy all the requirements for admission to such schools and are

in fact attending public schools under the supervision, operation and control of the defendants. These plaintiffs comprise two general categories, viz., those who are eligible to attend and are attending public elementary schools and those who are eligible to attend and are attending public secondary schools in Clarendon County, South Carolina, both types of schools being under the direct supervision, operation and control of defendants.

(b) Adult plaintiffs Harry Briggs, Anne Gibson, Mose Oliver, Bennie Parson, Edward Ragin, William Ragin, Luchrisher Richardson, Lee Richardson, James H. Bennett, [fol. 7] Mary Oliver, Willie M. Stukes, G. H. Henry, Robert Georgia, Rebecca Richburg, Gabrial Tyndal, Susan Lawson, Frederick Oliver, Onetha Bennett, Hazel Ragin and Henry Scott are among those classified as Negroes; are citizens of the United States and of the State of South Carolina; are residents of and domiciled in Clarendon County, South Carolina. They are taxpayers of Clarendon County, of the State of South Carolina, and of the United States. They are guardians and parents of the infant plaintiffs referred to in the paragraph above and designated in the caption of this bill, and are required by the laws of the State of South Carolina to send their children under their charge and control to public or private schools.

4. Plaintiffs bring this action in their own behalf and in behalf of all other Negro children attending the public schools in the State of South Carolina, and their parents and guardians, similarly situated and affected with reference to the matters here involved. They are so numerous as to make it impracticable to bring them all before the court. There being common questions of law and fact, a common relief being sought, as will hereafter more fully appear, plaintiffs present this action as a class action, pursuant to Rule 23 (a) of the Federal Rules of Civil Procedure.

5. (a) Defendant, County Board of Education of Clarendon County, South Carolina, exists pursuant to the laws of the State of South Carolina as an administrative department of the State discharging governmental functions. (Code of Laws of South Carolina of 1942, section 5316). Defendants A. J. Plowden and W. E. Baker are members of

the aforesaid Board and are being sued in their official capacity.

(b) Defendant, L. B. McCord is chairman of the County Board of Education of Clarendon County and County Superintendent of Schools. He holds office pursuant to the laws of South Carolina as an administraive officer of the State, charged with overall supervision and government of the [fol. 8] public schools maintained and operated within the County of Clarendon. (Code of Laws of South Carolina of 1942, sections 5301, 5303, 5306, 5316) He is being sued in his official capacity.

(c) Defendant, the Board of Trustees of School District #22 of Clarendon County, South Carolina exists pursuant to the laws of South Carolina as an administrative department of the State, discharging governmental functions, specifically the maintenance and operation of the public schools in District #22. (Code of Laws of South Carolina of 1942, section 5238)

(d) Defendant, R. W. Elliott, is chairman of the Board of District #22 and of Board of Trustees of Summerton High School District; defendant J. D. Carson is a member of the Board of Trustees of School District #22 and Secretary of the Board of Trustees of Summerton High School District; and defendant George Kennedy is a member of Board of Trustees of District #22 and of the Board of Trustees of Summerton High School District: all three defendants hold office pursuant to sections 5328, 5343 and 5405 of the Code of Laws of South Carolina of 1942. All are being sued in their official capacity.

(e) Defendant, J. B. Betchman is the Superintendent of Schools of School District #22. He is the executive officer of the Board of Trustees of School District #22, charged with the responsibility of maintaining, managing and governing the public schools in the aforesaid District in accord-[fol. 9] ance with the rules, regulations and policy laid down by the Board of Trustees. He is being sued in his official capacity.

(f) Defendant, the Summerton High School District is a body corporate pursuant to sections 5404, 5405, 5409 and 5412 of the Code of Laws of South Carolina of 1942 and is being sued as such.

6. (a) The State of South Carolina has declared public education a state function. The Constitution of South Carolina, Article II, section 5, provides:

> "Free Public Schools—The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years . . ."

Pursuant to this mandate the General Assembly of South Carolina has established a system of free public schools in the State of South Carolina according to a plan set out in Title 31, Chapter 122 of the South Carolina Code of 1942. The Constitution of South Carolina, Article XI, Section 6 provides for the levying of taxes by the counties of South Carolina for the purpose of financing public education in the respective counties. Provision is also made for the distribution of other state funds for this purpose.

7. The Constitution of South Carolina, Article II, section 7, provides:

> "Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race."

Section 5377 of the Code of Laws of South Carolina of 1942 provides:

> "It shall be unlawful for pupils of one race to attend the schools provided by boards of trustees for persons of another race."

8. The establishment, maintenance and administration of public schools in Clarendon County, South Carolina is vested [fol. 10] in the County Board of Education, County Superintendent of Education, Board of Trustees and a Superintendent of Schools of each school district of the County. (Constitution of South Carolina of 1895, Article II, sections 1 and 2, Code of Laws of South Carolina of 1942, sections 5301, 5316, 5328, 5404 and 5405)

9. The public schools of the County of Clarendon, South Carolina, are under the direct control and supervision of defendants acting as administrative departments or di-

visions of the State of South Carolina. (Code of Laws of South Carolina 1942, sections 5301, 5328, 5404, 5405) Defendants are under a duty to maintain an efficient system of Public Schools in Clarendon County, South Carolina (Code of Laws of South Carolina 1942, sections 5301, 5303 and 5328)

10. The defendants and each of them have at all times enforced and unless restrained as the result of this action, will continue to enforce the provisions of the Constitution and laws of the State of South Carolina set out in paragraph "7", of this complaint. In enforcement of these provisions the defendants have set up and are maintaining one group of elementary and high schools for all eligible students of Clarendon County other than Negroes and another group of schools for students considered to be of Negro descent. This separation, segregation and exclusion is based solely upon the race and/or color of the plaintiffs and those on whose behalf this action is brought and is in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. No group of students save those of Negro descent are excluded from the public schools of Clarendon County set apart for "white" students.

11. The public schools of Clarendon County set apart for white students and from which all Negro students are excluded are superior in plant, equipment, curricula, and in all other material respects to the schools set apart for Negro students. The defendants by enforcing the pro- [fol. 11] visions of the Constitution and laws of South Carolina as set out above exclude all Negro students from the "white" public schools and thereby deprive plaintiffs and others on whose behalf this action is brought solely because of race and color, of the opportunity of attending the only public schools in Clarendon County where they can obtain an education equal to that offered all qualified students who are not of Negro descent.

12. The public school system in School District #22, and in the Summerton High School District, Clarendon County, South Carolina, is maintained on a segregated basis. White children attend the Summerton Elementary School and Summerton High School, Negro children are compelled to

attend the Scotts Branch High School, the Liberty Hill Elementary School and the Rambay Elementary School solely because of their race and color. The Scotts Branch High School, Liberty Hill Elementary School and the Rambay Elementary School are unequal and inferior to the Summerton High School and the Summerton Elementary School maintained for white children of public school age. In short, plaintiffs and other Negro children of public school age in Clarendon County, South Carolina are being denied equal educational advantages in violation of the Constitution of the United States.

13. Plaintiffs have filed petitions with defendants, County Board of Education of Clarendon County, County superintendent of Schools and the Board of Trustees for School District #22, requesting that defendants cease discriminating against Negro children of public school age attending public schools in Clarendon County, South Carolina and defendants have failed and refused to cease discriminating against plaintiffs and the class they represent solely because of their race and color in violation of their rights to equal protection of the laws provided by the Fourteenth Amendment of the Constitution of the United States.

14. Plaintiffs and others similarly situated are suffering irreparable injury and are threatened by irreparable in- [fol. 12] jury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of other than this suit for declaration of rights and an injunction. Any other remedy to which plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience not only to the plaintiff and those similarly situated, but to defendants as governmental agencies.

15. Wherefore, plaintiffs respectfuly pray that upon the filing of this complaint, as may appear proper and convenient, the Court convene a three-judge court as required by Article 28, United States Code, Section 2281, 2284, advance this cause on the docket and order a speedy hearing

on this action according to law, and that upon such hearing:

1. This Court adjudge, decree and declare the rights and legal relations of the parties to the subject matter here in controversy in order that such declaration shall have the force and effect of a final judgment or decree.

2. This Court enter a judgment or decree declaring that the policy, custom, practice and usage of defendants, and each of them, in denying on account of their race and color, to infant plaintiffs and other Negro children of public school age in Clarendon County, South Carolina, elementary and secondary educational opportunities, advantages and facilities equal to those afforded to white children is a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

3. This Court enter a judgment or decree declaring that the policy, custom, practice and usage of defendants, and each of them, in refusing to allow infant plaintiffs, and other Negro children, to attend elementary and secondary public schools in Clarendon County, South Carolina which are maintained and operated ex- [fol. 13] clusively for white children is a violation of the equal protection of the laws as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

4. This Court enter a judgment or decree declaring that Article II, section 7 of the Constitution of South Carolina (1895) and section 5377 of the Code of Laws of South Carolina of 1942 which require that infant plaintiffs be forced to attend separate and segregated schools solely because of their race and color is a denial of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and are therefore unconstitutional and void.

5. That the Court issue a permanent injunction forever restraining and enjoining the defendants, and each of them, from denying, failing or refusing to provide to infant plaintiffs and other Negro school children in Clarendon County, South Carolina, on account

of their race and color, rights and privileges of attending public schools where they may receive educational opportunities, advantages and facilities equal to these afforded to white children.

6. That the Court issue a permanent injunction forever restraining and enjoining the defendants, and each of them, from making any distinction based upon race or color in making available to the plaintiffs whatever opportunities, advantages and facilities are provided by the defendants for the public education of school children in Clarendon County, South Carolina.

7. That the Court issue a temporary and permanent injunction restraining and enjoining the defendants and each of them from operating, executing or enforcing Article II, section 7 of the Constitution of South Carolina (1895) and section 5377 of the Code of Laws of South Carolina of 1942.

8. Plaintiffs further pray that the Court will allow them their costs herein and such further, other or additional relief as may appear to the Court to be equitable and just.

Harold R. Boulware, 1109½ Washington Street, Columbia, S. C.; Robert L. Carter, Thurgood Marshall, 20 West 40 Street, New York 18, N. Y., Attorneys for Plaintiffs. (Seal.)

A True Copy. Attest: Ernest N. Allen, Clerk of U. S. District Court, East Dist., So. Carolina.

Dated: December 19, 1950.

[fol. 14] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed January 18, 1951

The defendants above named, answering the complaint herein, respectfully show and allege:

For a First Defense:

1. That on information and belief the defendants admit the allegations contained in paragraph 1 of the complaint, except so much thereof as alleges that the amount in controversy exceeds, exclusive of interest and costs, the sum of $3,000, and so much of paragraph 1 of the complaint as alleges that the plaintiffs, or any of them, have been deprived of any right, privilege or immunity secured by the Constitution of the United States or by the laws of the United States, which on information and belief they deny.

2. The defendants deny the allegation contained in paragraph 2 of the complaint, and on the contrary allege and show that the only matter in controversy between the plaintiffs and the defendants is whether on account of race or color the defendant The Board of Trustees for School District No. 22, Clarendon County, South Carolina, had denied to plaintiffs schools and educational opportunities, [fol. 15] advantages and facilities substantially equal to those afforded white children attending the schools of School District No. 22 in Clarendon County.

3. That on information and belief the defendants admit the allegations contained in paragraph 3 (a), and on information and belief admit the allegations contained in paragraph 3 (b), of the complaint.

4. That on information and belief the defendants deny the allegations contained in paragraph 4 of the complaint.

5. Answering the allegations contained in paragraph 5 (a) of the complaint, they admit so much thereof as alleges that the defendants A. J. Plowden and W. E. Baker are members of the County Board of Education of Clarendon County, South Carolina, and that the said Board was

created by Section 5316 of the Code of Laws of South Carolina, 1942, and for its powers, duties and functions they crave reference to the Constitution and Statutes of the said State.

6. Answering the allegations contained in paragraph 5 (b), the defendant admit that the defendant L. B. McCord is Chairman of the County Board of Education of Clarendon County and County Superintendent of Education of the said county, and crave reference to the Constitution and Statutes of the said State for his powers, duties and functions.

7. Answering the allegations contained in paragraphs 5 (c) and 5 (d) of the complaint, they admit so much thereof as alleges that the defendant R. W. Elliott is Chairman of the Board of Trustees of School District No. 22 of Clarendon County, South Carolina, and that the defendants J. D. Carson and George Kennedy are members of the said Board, and that the defendant R. W. Elliott is the Chairman of the Board of Trustees of Summerton High School District, and that the Board of Trustees of School District No. 22 of Clarendon County, South Carolina, exists pursuant to the laws of South Carolina, and they crave reference to the Constitution and Statutes of said State for its powers, duties and functions.

[fol. 16] 8. Answering the allegations contained in paragraphs 5 (e) and 5 (f) of the complaint, they admit the same.

9. Answering the allegations contained in paragraphs 6 (a), 7 and 8 of the complaint, they crave reference to the Constitution and Statutes of the State of South Carolina applicable to public education, the system of free public schools, the establishment of separate schools for colored and white persons, and the establishment, maintenance, management, control and administration of the public system in Clarendon County, South Carolina.

10. Answering the allegations contained in paragraph 9 of the complaint, they deny the same on information and belief, and on the contrary allege and show that School District No. 22 is by law under the management and control of the Board of Trustees of the said school district, and they crave reference to the Constitution and Statutes of the State of South Carolina relating to and prescribing

the powers, duties and functions of the several defendants in relation to the public schools in Clarendon County, South Carolina, and in said School District No. 22 of the said county.

11. Answering the allegations contained in paragraphs 10, 11 and 12 of the complaint, they admit so much thereof as alleges that in obedience to the constitutional mandate contained in Article 11, Section 7, of the Constitution of South Carolina, separate schools are provided for the children of the white and colored races, and that no child of either race is permitted to attend a school provided for children of the other race. They also admit so much thereof as alleges that the Summerton Elementary School has been provided in said district for white children, and that Scott's Branch High School, the Liberty Hill Elementary School, and the Rambay Elementary School have been provided for Negro children. They allege that the school known as the Summerton High School is not a school of School District No. 22, but is a school of Summerton High School District, a separate corporate school district over which the Board of Trustees of said School District No. 22 have no control, which is attended by the white high school children residing in School District No. 22, along with the [fol. 17] white high school children of the other four school districts which comprise such centralized high school district. They deny the remaining allegations contained in said paragraphs, and on the contrary allege on information and belief that the schools of School District No. 22 and the educational opportunities provided for Negro school children attending the schools of said district are substantially equal to those provided for white school children attending the schools of said district.

12. Answering the allegations contained in paragraph 13, the defendants admit so much thereof as alleges that the petition dated November 11, 1949, a copy of which is hereto attached and marked "Exhibit A" and made a part hereof, was filed by the plaintiffs. They deny on information and belief so much of said paragraph as alleges that the plaintiffs and the class they represent are discriminated against solely because of their race and color, and that their right to equal protection of the laws provided by the Fourteenth

Amendment to the Constitution of the United States is being violated. On the contrary, they allege on information and belief that the facts and circumstances relating to the controversy between the plaintiffs and the defendants are as set forth and found in the decision of the Board of Trustees of the said School District No. 22 filed February 20, 1950, a copy of which is hereto attached and marked "Exhibit B" and made a part hereof.

13. That on information and belief they deny the allegations contained in paragraph 14.

For a Second Defense:

That this action is in part predicated upon the alleged failure of the defendant The Board of Trustees for School District No. 22, Clarendon County, South Carolina, and the individual members comprising the same, to provide schools and educational opportunities for colored school children attending the schools of School District No. 22 in Clarendon County which are substantially equal to those provided for the white school children attending the schools of the said school district.

[fol. 18] That on the 9th day of February, 1950, the said Board of Trustees of School District No. 22 held a hearing upon a petition presented to said board by the plaintiffs herein, a copy of which petition is hereto attached and marked "Exhibit A" and made a part hereof, at which hearing the plaintiffs as petitioners were represented by and heard through their counsel.

That on the 20th day of February, 1950, the said Board of Trustees of School District No. 22, after due consideration of the matters and things set forth in the said petition, made and filed its decision thereon, a copy of which decision is hereto attached and marked "Exhibit B" and made a part hereof.

That the matters and things set forth in the said petition, and passed upon in the said decision, are matters of local controversy between the Board of Trustees of the said school district and the plaintiffs in reference to the construction and administration of the school laws, to determine which the County Board of Education of Clarendon County is by Section 5317 of the Code of Laws of

South Carolina, 1942, constituted a tribunal, with the power to summon witnesses and take testimony, if necessary, and make a decision which is binding upon the parties to the controversy, with either of the parties having the right to appeal to the State Board of Education under Sections 5281 and 5317 of the said Code of Laws, whose decision "shall be final upon the matter at issue."

That the provision of school buildings is within the functions devolved by law upon the trustees of the respective school districts of each county, and each school district is by law placed under the management and control of the board of trustees thereof, and the matters and things set forth in the said petition and involved in this action are matters of local controversy in reference to the construction or administration of the school laws, for the determination of which the administrative procedure and administrative remedies are provided in said laws, so that administrative means and power will exist to direct affirmative action on the part of boards of trustees in cases where it may [fol. 19] be determined that they have not properly or lawfully constructed or administered the said school laws.

That the plaintiffs have taken no action to challenge the validity or correctness of the decision of the Board of Trustees of School District No. 22, filed on the 20th day of February, 1950, before the County Board of Education of Clarendon County, or to appeal the same to the State Board of Education, and it is respectfully prayed and moved by the defendants that the Court conclude and hold that this action for a declaratory judgment should not be entertained and decided by this Court unless and until the plaintiffs have availed themselves of the administrative procedure and remedies provided in and by the school laws of the State of South Carolina.

For a Third Defense:

That this action is in part predicated upon the assertion that Article 11, Section 7, of the Constitution of the State of South Carolina, 1895, and Section 5377 of the Code of Laws of South Carolina, 1942, providing that separate schools shall be provided for children of the white and colored races, and prohibiting children of either race from

attending schools provided for children of the other race, deny equal protection of the laws to the plaintiffs, in violation of Article Fourteen of the Amendments to the Constitution of the United States.

That the State constitutional and statutory provisions referred to were adopted in the exercise of the police power of the State of South Carolina, and are a reasonable exercise of such power, taking into account the established usages, customs and traditions of the people of the said State, the promotion of their comfort, and the preservation of the public peace and good order.

That in and by said constitutional and statutory provisions the State of South Carolina has secured to each of its citizens equal rights before the law and educational opportunities, advantages and facilities which, while not identical, are substantially equal.

[fol. 20] That the constitutional and statutory provisions under attack herein, as a reasonable exercise of the State's police power under all of the considerations and circumstances which it may in good faith take into account in measures for the promotion of the public good, is valid under the powers possessed by the State of South Carolina under the Constitution of the United States, and cannot be held unconstitutional by this Court.

Wherefore, Having fully answered the said complaint, the defendants pray that the same be dismissed.

(S.) S. E. Rogers, Summerton, S. C. (S.) Robert McC. Figg, Jr., 207 Peoples Office Building, Charleston, S. C. Attorneys for the Defendants.

[fol. 21] "EXHIBIT A" TO ANSWER

PETITION

STATE OF SOUTH CAROLINA,
County of Clarendon:

To: The Board of Trustees for School District Number 22, Clarendon County, South Carolina, R. W. Elliott, Chairman, J. D. Carson and George Kennedy, Members; The County Board of Education for Clarendon County, South Carolina, L. B. McCord, Chairman, Superintendent of Education for Clarendon County, A. J. Plowden, W. E. Baker, Members, and H. B. Betchman, Superintendent of School District #22.

Your petitioners, Harry, Eliza, Harry, Jr., Thomas Lee, Katherine Briggs, and Thomas Gamble; Henry, Thelma, Vera, Beatrice, Willie, Marian, Ethel Mae and Howard Brown; James Theola, Thomas Euralia and Joe Morris Brown; Onetha, Hercules and Hilton Bennett; William, Annie, William Jr., Maxine and Harold Gibson; Robert, Carrie, Charlie and Jervine Georgia; Gladys and Joseph Hilton; Lila Mae, Celestine and Juanita Huggins; Gussie and Roosevelt Hilton; Thomas, Blanche E., Lillie Eva, Rubie Lee, Betty J., Bobby M. and Preston Johnson; Susan, Raymond, Eddie Lee and Susan Ann Lawson; Frederick, Willie and Mary Oliver; Mose, Leroy and Mitchel Oliver; Bennie, Jr., Plummie and Celestine Parson; Edward, Sarah, Shirley and Deloris Ragin; Hazel, Zelia and Sarah Ellen Ragin; Rebecca and Mable Ragin; William and Glen Ragin; Lychrisher, Elane and Emanuel Richardson; Rebecca and Rebecca I. Richburg; E. E. and Albert Richburg; Lee, Bessie, Morgan and Samuel Gary Johnson; Lee, James, Charles, Annie L., Dorothy and Jackson Richardson; Mary O., Francis and Benie Lee Lawson; Mary, Daisy and Louis, Jr., Oliver; Esther F. Singleton and Janie Fludde; Henry, Mary and Irene Scott; Willie M., Gardenia, Willie M. Jr., Gardenia, and Louis W. Stukes; Gabriel and Annie Tindal, Mary L. and Lilliam Bennett, children of public school age, eligible for elementary and high school education in the public schools of School District #22, Clarendon County, South Carolina,

their parents, guardians and next friends respectfully represent:

[fol. 22] 1. That they are citizens of the United States and of the State of South Carolina and reside in School District #22 in Clarendon County and State of South Carolina.

2. That the individual petitioners are Negro children of public school age who reside in said county and school district and now attend the public schools in School District #22, in Clarendon County, South Carolina, and their parents and guardians.

3. That the public school system in School District #22, Clarendon County, South Carolina, is maintained on a separate, segregated basis, with white children attending the Summerton High School and the Summerton Elementary School, and Negro children forced to attend the Scott Branch High School, the Liberty Hill Elementary School or Rambay Elementary School solely because of their race and color.

4. That the Scott's Branch High School is a combination of an elementary and high school, and the Liberty Hill and Rambay Elementary Schools are elementary schools solely.

5. That the facilities, physical condition, sanitation and protection from the elements in the Scott's Branch High School, the Liberty Hill Elementary School and Rambay Elementary School, the only three schools to which Negro pupils are permitted to attend, are inadequate and unhealthy, the buildings and schools are old and overcrowded and in a dilapidated condition; the facilities, physical condition, sanitation and protection from the elements in the Summerton High in the Summerton Elementary Schools in school district number twenty-two are modern, safe, sanitary, well equipped, lighted and healthy and the buildings and schools are new, modern, uncrowded and maintained in first class condition.

6. That the said schools attended by Negro pupils have an insufficient number of teachers and insufficient class room space, whereas the white schools have an adequate complement of teachers and adequate class room space for the students.

7. That the said Scott's Branch High School is wholly deficient and totally lacking in adequate facilities for teach-

[fol. 23] ing courses in General Science, Physics and Chemistry, Industrial Arts and Trades, and has no adequate library and no adequate accom-odations for the comfort and convenience of the students.

8. That there is in said elementary and high schools maintained for Negroes no appropriate and necessary central heating system, running water or adequate lights.

9. That the Summerton High School and Summerton Elementary School, maintained for the sole use, comfort and convenience of the white children of said district and county, are modern and accredited schools with central heating, running water, adequate electric lights, library and up to date equipment.

10. That Scott's Branch High School is without services of a janitor or janitors, while at the same time janitorial services are provided for the high school maintained for white children.

11. That Negro children of public school age are not provided any bus transportation to carry them to and from school while sufficient bus transportation is provided to white children traveling to and from schools which are maintained for them.

12. That said schools for Negroes are in an extremely dilapidated condition, without heat of any kind other than old stoves in each room, that said children must provide their own fuel for said stoves in order to have heat in the rooms, and that they are deprived of equal educational advantages with respect to those available to white children of public school age of the sam*d* district and country.

13. That the Negro children of the public school age in School District #22 and in Clarendon County are being discriminated against solely because of their race and color in violation of their rights to equal protection of the laws provided by the 14th amendment to the Constitution of the United States.

14. That without the immediate and active intervention of this Board of Trustees and County Board of Education, the Negro children of public school age of aforesaid district and county will continue to be deprived of their constitutional rights to equal protection of the laws and to freedom from discrimination because of race or color in the educational facilities and advantages which the said

[fol. 24] District #22 and Clarendon County are under a duty to afford and make available to children of school age within their jurisdiction.

Wherefore, Your petitioners request that: (1) the Board of Trustees of School District Number twenty-two, the County Board of Education of Clarendon County and the Superintendent of School District #22 immediately cease discriminating against Negro children of public school age in said district and county and immediately make available to your petitioners and all other Negro children of public school age similarly situated educational advantages and facilities equal in all respects to that which is being provided for whites; (2) That they be permitted to appear before the Board of Trustees of District #22 and before the County Board of Education of Clarendon, by their attorneys, to present their complaint; (3) Immediate action on this request.

Dated 11 November 1949

(Signed) Harry Briggs
(Signed) Eliza Briggs
(Signed) Harry Briggs, Jr.
(Signed) Thomas Lee Briggs
(Signed) Katherine Eliza Briggs
(Signed) Thomas Gamble
(Signed) Henry Brown
(Signed) Thelma Brown
(Signed) Vera Brown
(Signed) Beatrice Brown
(Signed) Willie H. Brown
(Signed) Marion Brown
(Signed) Ethel Mae Brown
(Signed) Howard Brown
(Signed) James Brown
(Signed) Theola Brown
(Signed) Thomas Brown
(Signed) Euralia Brown
(Signed) Joe Morris Brown
(Signed) Onetha Bennett
(Signed) Hercules Bennett
(Signed) Maxine Gibson
(Signed) Harold Gibson
(Signed) Robert Georgia
(Signed) Carrie Georgia
(Signed) Charlie Georgia
(Signed) Jervine Georgia
(Signed) Gladys E. Hilton
(Signed) Joseph Hilton
(Signed) Henrietta Huggins
(Signed) Lila Mae Huggins
(Signed) Celestine Huggins
(Signed) Juanita Huggins
(Signed) Gussie Hilton
(Signed) Roosevelt Hilton
(Signed) Thomas Johnson
(Signed) Blanch E. Johnson
(Signed) Lillie Eva Johnson
(Signed) Rubie Lee Johnson
(Signed) Betty J. Johnson

[fol. 25] (Signed) Hilton C. Bennett
(Signed) William Gibson
(Signed) Annie Gibson
(Signed) William Gibson, Jr.
(Signed) Eddie Lee Lawson
(Signed) Susan Ann Lawson
(Signed) Frederick Oliver
(Signed) Willie Oliver
(Signed) Mary Oliver
(Signed) R. M. Mose Oliver
(Signed) Leroy Oliver
(Signed) Mitchel Oliver
(Signed) Bennie Parson, Jr.
(Signed) Plummie Parson
(Signed) Celestine Parson
(Signed) Edward Ragin
(Signed) Sarah Ragin
(Signed) Shirley Ragin
(Signed) Deloris Ragin
(Signed) Hazel Ragin
(Signed) Zelia Ragin
(Signed) Sarah Ellen Ragin
(Signed) Rebecca Ragin
(Signed) Mable Ragin
(Signed) William Ragin
(Signed) Ellen Ragin
(Signed) Luchrisher Richardson
(Signed) Elane Richardson
(Signed) Emanuel L. Richardson
(Signed) Rebecca Richburg
(Signed) Rebecca I. Richburg
(Signed) E. E. Richburg
(Signed) Albert Richburg
(Signed) Lee Johnson
(Signed) Bessie Johnson
(Signed) Morgan Johnson
(Signed) Samuel Gary Johnson
(Signed) Bobby M. Johnson
(Signed) Preston Johnson, Jr.
(Signed) Susan Lawson
(Signed) Raymon Lawson
(Signed) Lee Richardson
(Signed) James Richardson
(Signed) Charles Richardson
(Signed) Annie L. Richardson
(Signed) Dorothy I. Richardson
(Signed) Jackson Richardson
(Signed) Mary O. Lawson
(Signed) Francis Lawson
(Signed) Bennie Lee Lawson
(Signed) Mary J. Oliver
(Signed) Daisy D. Oliver
(Signed) Louis Oliver, Jr.
(Signed) Esther F. Singleton
(Signed) Janie L. Fludde
(Signed) Henry Scott
(Signed) Mary Scott
(Signed) Irene Scott
(Signed) Willie M. Stukes
(Signed) Gardenia Stukes
(Signed) Willie Modd Stukes, Jr.
(Signed) Gardenia E. Stukes
(Signed) Louis W. Stukes

(Signed) Gabriel Tindal
(Signed) Annie S. Tindal

[fol. 26] Attorneys for Petitioners:
(Signed) Harold R. Boulware

(Signed) Mary L. Bennett
(Signed) Lillian Bennett

(Signed) Thurgood Marshall
(Signed) Robert L. Carter

[fol. 27] "EXHIBIT B" TO ANSWER

Before the Board of Trustees of School District No. 22

STATE OF SOUTH CAROLINA,
County of Clarendon:

In Re: HARRY BRIGGS, et al., Petitioners

Decision of the Board

This matter comes before the Board on the Petition of Harry, Eliza, Harry, Jr., Thomas Lee, Katherine Briggs, Thomas Gamble, and others, dated November 11, 1949; the matters and things alleged in the Petition are clearly matter of local controversy with reference to the construction and administration of school laws, and clearly come within the purview of Section 5317, 5343, 5358, and related sections of the Code of Laws for South Carolina for 1942, and the Board of Trustees has original jurisdiction to hear the matters and things complained of. Accordingly, the Petitioners were granted a hearing on the 9th day of February, 1950, at which all of the members of the Board were present, and at which the Petitioners were represented by Counsel, who made an argument to the Board. Although an opportunity was afforded to the Petitioners to introduce any testimony relating to the allegations of the Petition, the Attorney for the Petitioners, conceding that the Board was familiar with all of the facts relating to the matters and things complained of, did not offer testimony or other evidence of any kind whatsoever.

After investigation and careful consideration, the Board finds as follows:

1. The allegations of the first and second paragraphs of the Petition are found to be true;

2. It is true that the public school system in School District No. 22 is maintained on a separate and segregated basis [fol. 28] as required by the Constitution and Laws of the State of South Carolina, with the Negro children attending schools maintained for them and the white children attending schools maintained for them. The records of the district show that there — 684 negro children of elementary school age residing in, and attending the public schools of, School District No. 22, and that there are 102 white children of elementary school age residing in, and attending the public schools of, School District No. 22. That likewise, there are 34 white children of high school age residing in School District No. 22, and 150 negro children of high school age attending the public schools of School District No. 22; that because of the great number of negro elementary school students, the Board, in the exercise of its discresion and in order to furnish education facilities which it deemed to be to the greatest advantage and convenience of the children and the patrons of th- school system, established and maintains three elementary schools for negro children, located in different parts of the District, to-wit: The Rambay Elementary School, Liberty Hill Elementary School, and Scott's Branch Elementary School; because of the small number of white elementary school children residing in District 22, it was impracticable to operate and maintain more than one elementary school for white children in the District, and this is maintained in Summerton. The number of negroes of High school age warranted the establishment and maintenance of a high school in the District for negroes and this is maintained in Summerton as the Scott's Branch High School. The number of white high school students residing in the District would not, in the opinion of the Trustees, warrant the maintenance of a high school for white students by District No. 22; therefore, no high school for white students is maintained;

3. The allegations of paragraph 4 are true;

[fol. 29] 4. With reference to the allegations of paragraph 5 of the Petition, the Rambay School was erected within the last 6 years, the Liberty Hill School and the Scott's Branch School were erected less than 15 years ago; that these schools were erected with the advice and co-operation of the State Department of Education and according to the latest

approved plans for educational buildings in use at the time; and in line with the trends for school buildings, are of one-storied construction for safety in the event of storm or fire, with proper placement of windows for correct lighting for student use for the prevention of eye strain, are strongly constructed and storm sheeted, and in all respects were properly constructed and maintained and are not in poor physical condition or in a delapidated condition. The white school, maintained by School District No. 22 in Summerton, being the only one maintained by the District, is a two-storied building made of sand block dug from the premises, erected in 1907; improperly lighted and fails in every respect to meet the requirements of modern school architecture. A comparison of the white school and the colored school in Summerton, both maintained by the District is revealing. The white school as stated above is more than 43 years old, is a two-storied structure, contains 8 rooms, is improperly lighted according to modern standards, is antiquated, and its physical condition is such that it has been a source of dissatisfaction to both patrons and trustees. It was erected at an original cost of approximately $25,-000.00, is now insured with the sinking fund for $28,000.00, and there is a possibility of the insured value being cut even lower than this. The Scott's Branch School is less than 15 years old, is built according to approved plans for educational buildings, taking into consideration the proper lighting and protection from fire, contains in the main building 10 rooms and 3 additional rooms have been recently constructed by the Trustees, making a total of 13 rooms available. Its original cost was approximately $18,000.00 and [fol. 30] the building is now insured for $24,000.00. Neither of the schools has a central heating system, both being heated by individual stoves in the various rooms. The playgrounds provided and used in connection with Scott's Branch School are approximately 7 times the size of the playgrounds of the white school. The white school is located in one of the lowest areas in the Town, and on two highways and on a Street over which passes the traffic of two main North-South Highways. Since its erection, the shift of white population has caused it to be most inconvenient and hazardous. The Scott's Branch High School is erected on a site selected with advice of the patrons with due regard for

the safety of the children and the convenience of the patrons. A cursory inspection only will reveal that the facilities, physical condition, equipment, safety, and protection from the elements are accordingly better with the negro schools than the whites, although the Trustees are of the opinion that they are in all respects substantially equal;

With reference to sanitation, all of the negro schools are provided with sanitary toilet facilities erected according to the specifications of the State Health Department. These same facilities were in use in the white schools until the Town of Summerton installed a municipal water and sewerage system. This system happens to service the area in which the white school is located, and after its installation by the municipal authorities, the Board of Trustees permitted the white Parent-Teacher Association to install sanitary toilet facilities in two of the cloak rooms of the white school. The municipal sewerage system does not serve the area in which the Scott's Branch School is situate, and no such request has been received from the Patrons' organization of the Scott's Branch School, and because of the fact that the municipal system does not serve the area in which [fol. 31] Scott's Branch School is located, it would be impracticable for sanitary toilet facilities to be installed therein. Certainly, however, there has been no discrimination by the Board on account of color in its failure to provide such facilities, first because the municipal sewer system is not available, and second because the Board of Trustees did not make the installation in the white school, but the same was done by the patrons of the school. It is worth comment, however, that although the municipal water system does not serve the area in which the negro school is located, the Board, at a great expense to itself, laid a water line from the municipal system to the Scott's Branch School for the purpose of furnishing municipal water, which is regularly inspected, to the negro students, which line was installed and terminated under the direction of the colored school authorities. The patrons of the white school, not the school board, furnished drinking fountains for the white school. There are no inside drinking fountains in the Scott's Branch School, but if the patrons desire to install them, there certainly would be no objections to their being installed. The School Board even went further and installed the outside

drinking fountains at the Scott's Branch School, although they did not do so at the white school;

5. With reference to the allegations of paragraph 6, the Board calls attention to the fact that the State Aid for the payment of teachers' salary is based upon average attendance. The average attendance in the white school of the district is 95%, while the average attendance at the negro school is 72%. The Board, in hiring teachers for both white and colored schools, is governed by the State Aid, and teachers for all schools, both white and colored, in the District, are hired on the basis of this, and there is no discrimination in the hiring of teachers on the basis of color; [fol. 32] The school operated for whites has 7 rooms for class room *for class room* purposes, and 7 teachers. The Scott's Branch School has 13 rooms for class room purposes and 14 teachers. The average attendance in the white school is 190. The average attendance in the Scott's Branch School is 468. Attention should be called to the fact that the white school building, errected in 1907, formerly housed an elementary school and a high school, but that the number of white high school students available in the district became so small as not to warrant the continuance of a high school by the District, and the same was eleiminated in 1935, while District has conducted no white high school since then, the white elementary school continues to use the building;

6. The allegations of paragraph 7, 8, 10 and 12 allege that the Scott's Branch High School is deficient and totally lacking in adequate facilities for teaching courses in general science, physics, chemistry, and industrial arts and trades, has no adequate library, and no adequate accommodations for the convenience of the students. That there is no central heating system, running water, or adequate lights, and that the Scott's Branch High School is without the services of a janitor or janitors, while paragraph No. 9 alleges that the white schools have such services. These allegations are based upon incorrect information. The fact that neither the white nor the colored schools have central heating system has been clarified hereinabove. Both have running water and both have adequate electric lights. There is no running water at the Rambay or Liberty Hill Schools, because there is no running water available. Liberty Hill

School has electric lights. There is no electric line in the vicinity of Rambay School. Fuel for all schools in the District, both white and colored, is furnished by the Board on request of the principal of the school, and it appears that all such fuel has been furnished for the present school year by the Board.

[fol. 33] Facilities are furnished in Scott's Branch High School for the teaching of general science, chemistry, and agriculture. No such facilities are furnished by the District at the white High School, inasmuch as the district maintains no high school for whites, there being insufficient white pupils in the District to warrant the maintenance of such a school. The Scott's Branch School Library contains 1678 books, containing 56 encyclopedias, 21 progressive reference sets, 3 dictionaries, and other books of suitable material for a school library. The white school library contains only 642 volum-s with 9 reference sets. None of the libraries are furnished to any of the schools but have been donated by various individuals and organizations. The white elementary school has part time janitorial service. The janitorial services of the white school are furnished by one janitor, while at the request of the principal of the Scott's Branch School, the janitorial services there are performed by various students selected by the principal. The janitor is under the authority of the principal and should perform, and does perform, such services as the principal requests. The cost of janitorial services for the white school to the district is $18.00 per month, while the cost of the janitorial services to the colored school is $16.00 per month. If the method of using students as janitors is not satisfactory to the patrons of the colored school, we feel sure that the principal would be glad to discontinue the same;

7. The allegations of paragraph 11 allege that the negro children of public school age are not provided any bus transportation, while sufficient bus transportation is provided for white children. This allegation is based upon misinformation. School District No. 22 provided no transportation by bus or otherwise for any students, white or colored;

At the request of the Board, the principal of Scott's Branch School made a survey on October 25, 1949, listing

[fols. 34-36] the needs of the school. Under that date he transmitted to the Board the following recommendations:

"Wood and Coal
Twelve sc*h*ttles and shovels
Six Boxes of crayon and 12 erasers
11 doors and window locks
Material (Lumber and Nails) to repair windows and sashes
Three additional classrooms
Three additional teachers
One teacher for the 7th grade, one for the second grade, and a music teacher for eighth grade, through twelfth grade
Sanitary material, toilet paper, soap, powder, etc.
A Janitor for the school which is very essential to good health; who will keep plant in a good condition;"

The Board granted every request listed and all of the things requested have been furnished, except a music teacher. The Board made diligent efforts to locate a teacher who could handle music, but so far has not been able to find the proper combination. It is fitting to call attention to the fact that no music teacher is furnished in connection with the white school;

In conclusion, the Board finds that the negro children of public school age in school district No. 22 are not being discriminated against them because of their race and color, and that there is no violation of the rights to equal protection of the laws as provided by the Constitution of the United States, but on the contrary, the Board finds that the facilities afforded to the white and negro children of District No. 22, though separate, are substantially equal.

R. M. Elliott, Chairman; C. D. Kennedy, J. B. Carson, Clerk, Trustees of School District No. 22, of Clarendon County, South Carolina.

Summerton, S. C.

February 20, 1950.

[fol. 37] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Testimony at Trial—Filed July 25, 1951

At a special term of court, trial of the above case was held at Charleston, South Carolina, in the United States Courtroom on May 28-29, 1951, at 10 o'clock a. m.

Before Honorable John J. Parker, United States Circuit Judge (4th Circuit); Honorable J. Waties Waring, United States District Judge (EDSC); Honorable George Bell Timmerman, United States District Judge (E&WDSC)

APPEARANCES:

Thurgood Marshall, Esq., (Admitted pro hac vice); Robert L. Carter, Esq., (Admitted pro hac vice); Harold R. Boulware, Esq.; Spotswood W. Robinson, III, Esq., (Admitted pro hac vice); A. T. Walden, Esq., (Admitted pro hac vice); Arthur Shores, Esq., (Admitted pro hac vice), for Plaintiffs.

[fol. 38] Robert McC. Figg, Jr., Esq., S. E. Rogers, Esq., T. C. Callison, Esq., Attorney General, State of South Carolina, for Defendants.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Parker: This court is convened in special session to hear this case, Briggs and others vs. R. W. Elliott and others. Is counsel for the plaintiffs ready?

Mr. Boulware: We are ready, your Honor.

Judge Parker: Are defendants ready?

Mr. Figg: Defendants are ready and I would like to make a statement for the defendants, if the Court please. This is an action brought by colored children of elementary, grammar and high school grades residing in School District No. 22 in Clarendon County, and their parents and guard-

ians, for a declaratory judgment on questions which, from the complaint, may be stated as follows:

(a) Whether their rights under the equal protection of the laws clause——

Judge Parker: Are you making an opening statement? If so, we will hear that in due course.

Mr. Figg: If the Court please, I wanted to make a statement on behalf of defendants that it is conceded that inequalities in the facilities, opportunities and curricula in the schools of this district do exist. We have found that [fol. 39] out from investigating authorities.

Judge Parker: You will do that when you make your opening statement.

Mr. Figg: I just thought that if we made the record clear and clarified the answer in this case at this time, it would serve perhaps to eliminate the necessity of taking a great deal of testimony.

Judge Parker: All right: I still think the time to do it is when you are making your opening statement, but if you want to make it now, go ahead.

Mr. Figg: (a) Whether their rights under the equal protection of the laws clause of the Fourteenth Amendment to educational opportunities, advantages and facilities equal to those offered and available to white children of the same grades have been denied; and

(b) Whether the provisions of the South Carolina Constitution and statutes "which prohibit" the colored children of the school district "from attending the only public schools of Clarendon County, South Carolina, affording an education equal to that afforded" to white children are violative of the equal protection clause of the Fourteenth Amendment.

The Answer of the defendants was predicated upon a decision of the Board of Trustees of the school district made February 20, 1950, a copy of which is attached to the Answer, which decision finds that the colored children of [fol. 40] the district are not being discriminated against because of their race or color, and that the facilities afforded to the white and colored children are substantially equal, though separate.

The decision of the trustees was subject to review by the

county board of education, with the right of appeal to the State Board of Education, but no review of the decision of the trustees was sought.

The trustees found them, and insist now, that they have never intended to discriminate against any one on account of race or color in the discharge of their duties, although they conceded in their decision, and they now concede the existence of differences and inequalities in the white and colored school systems in their district. They felt that in some respects some colored pupils had inferior facilities, and that in some other respects some white pupils had inferior facilities, and their finding of substantial equality was arrived at by a process of addition and subtraction of advantages afforded to one race balanced against those afforded to the other, a method of determining equivalency which, however, was rejected by the Court of Appeals of this circuit in *Carter v. School Board of Arlington County,* 182 F. 2d 531, decided May 31, 1950. It is of no moment now whether the sum was right under the method used.

Investigation of the matter and of the authorities bearing on the question has satisfied counsel for the defendants [fol. 41] that the educational facilities, equipment, curricula, and opportunities afforded in School District No. 22 for colored pupils of the school grades mentioned are not substantially equal to those afforded in the District for white pupils, and counsel for the defendants have been authorized so to state to this Court on the record in this case. The differences existing have been a residue of growth over a long period of years. Causes could be discussed, and explanations given which we feel certain would sustain the good faith of the trustees in their efforts to carry out the difficult and often thankless functions devolved upon them.

The school district in question is a rural school district, whose economy is almost entirely agricultural. It is well known that the smaller and largely rural school districts in South Carolina have not kept pace in recent years with the larger and urban school districts in the provisions of educational opportunities and facilities to the children of both races. Limited resources have often led trustees to spend the funds available to them for the most immediate demand rather than in the light of an overall picture. This action

does not involve one of the many large urban districts where modern and efficient educational opportunities in the school district's system have been increasingly developed for the pupils of both races alike.

The State of South Carolina has taken cognizance of [fol. 42] the situation and of the educational problems presented, particularly in the rural sections of the State.

In his Inaugural Address delivered January 16, 1951, Governor James F. Byrnes said:

> "A primary responsibility of a State is the education of its children. While we have done much, we must do more. It must be our goal to provide for every child in this State, white or colored, at least a graded school education. . . . We must have a state school building program. We will never be able to give the boys and girls in the rural sections of the State the school buildings and equipment to which they are entitled as long as these facilities are furnished only by taxes on the real property of a school district. Funds spend for school buildings by local governments should be supplemented by a state building program. This program will involve the issuance over a period of twenty years of bonds to provide 75 million dollars for school construction, which should begin as soon as the national emergency permits. . . . One cannot speak frankly on this subject without mentioning the race problem. It is our duty to provide for the races substantial equality in school facilities. We should do it because it is right. For me that is sufficient reason."

The program recommended by Governor Byrnes has been enacted into law, and has the support of the whole State. The General Assembly in its 1951 session passed statewide legislation of a broad and sweeping nature, dealing with the State's educational problems, and providing among other things for a statewide school building program, state operation of school transportation, and increased teachers salaries. Its purpose is specifically declared to be to insure equality of educational opportunity for all children throughout the State, and it also declares that the responsibility for the maintenance of adequate physical facilities in the public

[fol. 43] school system of the State is henceforth a responsibility both local and statewide in nature.

The legislation imposes a 3% sales tax and devotes the whole of its proceeds to school purposes. It provides for a State bond issue against the funds derived from the sales tax, over a 20 year period and of the nature of a revolving fund, with a maximum limit at any one time of $75,000,000. From the bond funds loans are to be made to the school districts of the State over 20 year periods for establishing and maintaining adequate physical facilities for the public school system, such loans to be on the basis of average daily attendance, and also additional annual cash credits to the districts on the same basis and for the same purposes.

The legislation will be executed by the State Educational Finance Commission, with Governor Byrnes as Chairman, and no plan for the improvement of the schools in a county can be effective until approved by this Commission, as carrying out the stated purposes of the law.

Governor Byrnes has publicly stated that if necessitated by a decision of the Supreme Court in a test case pending now in that court in reference to this legislation, he will immediately call a special session of the General Assembly to consider any further legislation necessary to carry out the purposes of the act in insuring equality of educational opportunity to all the children throughout the State.

[fol. 44] The sales tax takes effect July 1, 1951, but the administrative organization to carry out its other provisions has already been implemented. The defendant trustees have already requested a survey by the Director of the State Educational Finance Commission of the schools of the district, so that they may formulate and submit to the proper authorities a plan to bring about as speedily as possible equality of buildings, equipment, facilities, and other physical aspects of the school system of the district. The plan being formulated will include measures to eliminate all other inequalities of educational opportunity existing in the district's schools, such as curricula. The trustees propose to employ every resource at their command under the new school legislation to carry out its declared purpose in their district.

The end to be attained is the education of the children of the State. The State of South Carolina, having this

responsibility, has moved to discharge it, and has provided the legislation, resources, and control adequate to its discharge. The defendants want to avail themselves of the means now at hand to afford to the children of the district equal educational opportunity.

The defendants do not oppose an order finding that inequalities in respect to buildings, equipment, facilities, curricula, and other aspects of the schools provided for the white and colored children of School District No. 22 in [fol. 45] Clarendon County now exist, and enjoining any discrimination in respect thereto.

They urge the Court in its discretion to give them a reasonable time to formulate a plan for ending such inequalities and for bringing about equality of educational opportunity in the schools of the district, so that they may present such plan, with the approval of the State authorities necessary under the 1951 Act, for the Court's consideration, the Court retaining jurisdiction of the cause in the meantime so that it may be enabled to grant such relief as may be proper in the event that the defendants should fail to comply with the constitutional standards prescribed in the applicable decisions.

Judge Parker: Have you filed a copy of that with the record?

Mr. Figg: No, sir. I have a copy.

Judge Parker: You wish to have it filed as an amendment to your answer or what status do you give it?

Mr. Figg: Well, I wanted it on the record, if your Honor please, for the reasons explained. The answer does not correctly reflect the situation.

Judge Parker: Let it be filed then as an amendment to the answer. Do you wish to reply to it?

Opening Statement on Behalf of Plaintiff

Mr. Marshall: May it please the Court, I would, with the permission of the Court, make an opening statement, [fol. 46] and I think I can at the same time answer the statement that has been already made. As I understand, the pleadings in this case raise the issue as to whether or not in District 22 of Clarendon County and the Summerton High School District the Negro pupils and their parents who

represent them are being denied equal protection of the laws as guaranteed by the Fourteenth Amendment. I think the issues are clearly drawn. It is our position that the statutes, which by the answer and by the designation of District 22 on the original petition, are clearly in issue. The defendants admit that they are required by these statutes to educate Negroes in separate schools and to prevent them from being admitted into the schools which are concededly the better schools. In attacking these statutes, it is our position that there is a two-fold problem: (1) is that the schools are unequal physically as to buildings, equipment, and other items, and (2) is that the segregation of pupils in and of itself is a form of inequality. As to the conceding of the inequality, as representative of the plaintiffs in this case, we take the position that the mere, general conceding of these facts is not sufficient. If we are to be permitted to put in evidence the material factors necessary to show that these statutes as applied are unconstitutional, we must be able to show the inequalities as they actually exist. The expert witnesses that we want to present to the Court will need for their opinions these actual factors of inequalities. [fol. 47] And I submit that we should not be prevented from presenting the evidence as to these inequalities because we conceive of these inequalities as a necessary factor to this second point, which is that segregation in and of itself is unlawful. In proof thereof we intend to present witnesses of two calibre, one to show the actual inequalities, and two, to show from an expert point of view the effect of segregation in the County under discussion. And for that reason, I submit, may it please the Court, that the statement just made has no bearing on this litigation at this stage. I think it is an effort to prevent the plaintiffs in this case from developing their case in the only fashion which will enable us to present a full and complete case.

Judge Parker: We have not objected to any testimony as yet. We will pass on that when the objection is made.

Mr. Marshall: Thank you, sir.

Judge Parker: Do you wish to make a further opening statement in respect to the case?

Mr. Marshall: No, sir.

Judge Parker: Do you wish to make one other than what you have read?

Mr. Figg: Nothing but what we have read, sir.
Judge Parker: Proceed with the witnesses.

[fol. 48] Testimony for plaintiffs:

L. B. McCord, sworn.

Direct examination.

By Mr. Marshall:

Mr. Marshall: May it please the Court, Mr. McCord is a defendant and we would like to proceed under Rule 43 (b).
Judge Parker: All right. Go ahead.

Q. What is your present position in the public school system?
A. County Superintenednt of Education.
Q. For Clarendon County?
A. Clarendon County.
Q. How long have you held that position?
A. I have been there about 9 years—about 8 years. I am in my 9th year.
Q. You are also Chairman of the County Board of Education, are you not?
A. I am.
Q. Will you explain your duties as Chairman of the County Board of Education of Clarendon County in a general way.
A. Well, as Chairman, I naturally would call a meeting of the Board when a meeting is necessary, preside over that meeting, and generally direct the affairs.
Q. What jurisdiction is exercised by the County Board as to public education in Clarendon County?
A. We have general supervision, I would say.
[fol. 49] Q. Do you have general supervision over the public school system in District 22?
A. Well, over certain phases of it.
Q. What phases?
A. Well, we have a board, a County Board of Education, and we have a Board of Trustees, and if and when any

complaint is brought before the Board of Trustees with respect to the district, they have a right, of course, either side has a right, to appeal to the County Board.

Q. Maybe it would be easier, Mr. McCord, if you would explain how this school system in Clarendon County operates. I mean, as to the District Board of Trustees and as to the special High School District.

A. Well, they operate the elementary, the district operates. The trustees of the respective districts have charge of the schools in that district.

Q. Is that district set up on geographical boundary lines?

A. We have certain lines, yes, certain territories.

Q. Now, as County Superintendent of the schools, what are your duties?

A. General supervision.

Q. Do you supervise the schools in District 22?

A. I do, in all of them.

Q. Do you also supervise the Summerton High School District?

A. I make visits to all of the schools.

[fol. 50] Q. How is the school system in Clarendon County, the public school system, financed?

A. It is financed by the district and of course also from the State.

Q. And who decides how the funds are distributed among the districts?

A. The State Board of Education. It all depends on what you are talking about. If it is school teachers' salaries, it is decided entirely by the State Board of Education, based solely on the type of certificate held by the several teachers.

Q. I am speaking, for example, of the current expenditures for the running of the schools. Who determines, for example, how much money is to be spent for running the schools in District 22? Do you have anything to do with that?

A. No, that is entirely with the Board of Trustees. They are the custodians of the funds of the various, several districts.

Q. The Summerton High School District, is that under your supervision?

A. Well, I suppose in a general way. All schools in the County are under the supervision of the County Board.

Q. In your general supervisory powers, do you make any rules as to the racial character of students as to what school they shall attend in Clarendon County?

A. I have never had any occasion to.

Q. Do you enforce the State segregation laws? Do you know what laws I am speaking about?

[fol. 51] A. I think I do.

Q. Do you enforce those laws?

A. I enforce all laws. I know nothing but the law.

Q. It is true, is it not, that Negroes in Clarendon County attend one group of schools and people who are not Negroes attend other schools? Is that correct?

A. That is true.

Q. Why is that true?

A. Well, I couldn't answer it exactly. You would have to ask the children why. None of them have ever asked me to go to one school or the other.

Q. Well, isn't it a fact that you do it because of the State Statute?

A. It is the law, the Constitution.

Q. And you would enforce it?

A. I would enforce the Constitution.

Q. Would you explain who determines who goes to what school?

Judge Parker: Explain your question. I don't know myself what you mean.

Mr. Marshall: What I am trying to find out, Judge Parker, is whether or not he determines who is a Negro, or somebody else determines that.

A. The law determines it entirely. The legal school of all elementary children is the local school in the district, and [fol. 52] they have to attend that under the law. They have to attend that school unless they get permission of the trustees to attend a school outside.

Judge Parker: Aren't you asking him questions about which there is no dispute in the world?

Mr. Marshall: In general, sir.

Judge Parker: Let's come to the disputed matter.

Mr. Marshall: I thought that we were obliged to show that they were enforcing the statute.

Judge Parker: Well, I think we will assume that they are enforcing the statute. The defendants admit that the schools are segregated in their answer, don't they?

Mr. Marshall: Yes, sir, but I wanted to find out whether or not it applied to anybody but Negroes.

Judge Parker: All right. Ask him the question, and let him answer it.

Q. The schools set aside for white pupils, is any other racial group excluded from those schools except Negroes?

A. Well, I don't know of any others that is in those schools.

Q. Are you familiar with the school population of Clarendon County?

A. Well, fairly familiar.

Q. Is it not true that there are a total of 2,375 white pupils?

A. Approximately, yes.

[fol. 53] Q. And a total of 6,531 Negro pupils in Clarendon County?

A. That is approximately right.

Q. Is it not also true that the expenditures, the current expenditures, exclusive of transfers, and including additional expenses for County administration, for white pupils is $395,000 and for Negro pupils is $282,000? Is that approximately correct?

A. Well, I am not prepared to answer that. I would suppose it is not far off.

Q. So then, despite the fact that Negro pupils in Clarendon County are almost three times as many in population as white pupils, the expenditures for Negro pupils is about $90,000 less than for white pupils?

A. If the record shows it. However, I may say this though, that in some instances it may be that those claims are not clearly designated.

Q. Well, is it not true that more money is spent currently for the education of white pupils in Clarendon County than for Negro pupils?

A. What do you mean by "currently?" You mean apart from teacher salary?

Q. Including teachers' salaries.

A. Why, no. I think there is considerably more money spent for Negro schools.

Q. For teachers' salaries?

[fol. 54] A. Decidedly more.

Q. When we remove the item of teachers' salaries and take the other expenditures, is it not true that more money is spent for white pupils than for Negro pupils in Clarendon County?

A. I couldn't answer that question definitely, but I would suppose it is true.

Q. Can you give us a reason for that, why you spend less money to educate more Negro pupils than you do to educate the white pupils?

A. Well, the only explanation that I could give, possibly, is this: It is not, I don't think, because of the color, because we have certain white schools that considerably less is spent per pupil than certain other white schools.

Q. Are you familiar with the 82nd Report of the State Superintendent of Schools of the State of South Carolina?

A. I don't know that I am particularly. No, not too familiar.

Q. Don't you make regular reports to the State Board of Education?

A. We do.

Q. Aren't those reports summed up in the State Superintendent of Schools' Report?

A. They are.

Q. Directing your attention to Page 298 of that Report, as to page 298, on the level of Clarendon County, does it not show that the expenditures, all expenditures, exclusive of transfers, and including additional expenditures for [fol. 55] County administration for Clarendon County for white schools, were $395,329?

A. That is what the report says.

Q. Sir?

A. That is what is in the report.

Q. Well, is that correct?

A. I couldn't tell you. I couldn't answer that. I don't know whether it is or not.

Q. Does that report also show on the same page and for

the same item an expenditure for Negro schools of $282,-980?

A. That is right.

Judge Waring: Where does the State Board get that information from? Through your office?

A. Yes, sir, we give them an annual report.

Q. I ask you frankly, sir, do you dispute those figures?

A. Well, I have no reason to dispute them. If it is an exact copy of the copy we sent to the State Board, they are correct.

Judge Parker: If those are official reports of the State, you don't have to prove them by a witness. All you have got to do is to introduce them.

Mr. Marshall: I wanted them merely for the basis of getting an answer to the question, and I do not have the answer yet, sir.

Judge Parker: The question you want answered is what amount is spent for Negro Schools and White Schools [fol. 56] in this County? Is that correct?

Mr. Marshall: Yes, sir.

Judge Parker: Doesn't that appear in the report?

Mr. Marshall: Yes, sir.

Judge Parker: Is that all you wanted to know?

Mr. Marshall: No, sir. The next question, I wanted to know, and I haven't got an answer, is: Despite the fact that the Negro school population is almost three times the white population, why is it that the expenditures in the Negro schools is less than in the white schools?

Judge Parker: You have asked him that question. You can ask it again and you can answer it again.

A. I will answer the question again and I will answer it just this way: In Clarendon County we have some 60-odd Negro Schools, whereas we have, I think, just about a dozen white schools, and all of the rural schools, whether white or Negro, the expenditures isn't anything like in proportion to the larger schools.

Mr. Figg: We have no questions.

R. W. ELLIOTT, sworn.

Direct examination.

By Mr. Robinson:

Mr. Robinson: If the Court please, Mr. Elliott is one of the defendants in the case and is being examined under [fol. 57] Rule 43 (b).

Q. Your name is R. W. Elliott?
A. R. W. Elliott.
Q. What position, if any, do you hold in the school system of Clarendon County?
A. Chairman of the Board of Trustees.
Q. Of which school district?
A. 22.
Q. Do you hold any office in Summerton High School in Clarendon County, South Carolina?
A. Any what?
Q. Do you hold any other position in the Summerton High School District in Clarendon County, South Carolina?
A. No, sir.
Q. You do not?
A. I am Chairman of the grammar school—I am Chairman of District 22 Board of Trustees.
Q. How long have you held this position?
A. About 25 years.
Q. Have you ever held any other important offices in District 22 or in the Summerton High School District in Clarendon County?
A. Have I done what?
Q. Have you ever held any other positions either in District 22 or the Summerton High School District in Clarendon County?
A. No.
[fol. 58] Q. Mr. Elliott, I would like to ask you about the school set up in District No. 22. What are the geographical boundaries of District 22?
A. I don't know.
Q. Are you familiar with the school district known as Summerton High School District of Clarendon County?

A. Yes.

Q. Do you know whether or not the district boundaries of District 22 and Summerton High School District are the same?

A. I don't think they are, no.

Q. Are you in position to state definitely whether or not they are or not the same?

A. No.

Q. District No. 22 is of course in Clarendon County, is it not?

A. Yes, it is in Clarendon County.

Q. Is this district under the jurisdiction of the County Board of Education for Clarendon County?

A. Yes.

Q. To what extent?

A. I don't know.

Q. Are you in position to testify as to whether or not there is any jurisdiction over that school exercised by the County School Board of Clarendon County?

A. Ask that one over, please, sir.

Judge Parker: Aren't these matters of jurisdiction fixed [fol. 59] by statute?

Mr. Robinson: I think so, sir. Yes, they are.

Judge Parker: Why waste time to ask this witness?

Mr. Robinson: I am departing from that, if your Honor please.

Q. What are your duties as Chairman and responsibilities of the Board of Trustees of District 22?

A. I am Chairman. We elect teachers and so forth.

Q. Are you familiar with the public schools operated by District 22?

A. To a certain extent, I am, yes.

Q. Do you know what schools are operated by that district in which Negro students residing therein exclusively attend? Are you familiar with the Negro public schools of District 22?

A. Yes, I am familiar with them.

Q. Do you know the number of such schools?

A. No.

Q. You don't know how many schools there are in district 22?

A. Oh, yes.

Q. What number of schools do you have there?

A. There are 3 schools, I think. It is 3.

Q. Will you state whether or not these schools are elementary schools or secondary schools? I am speaking about the Negro public schools?

A. Well, the Scotts Branch is a high school and elementary school, and the other two are elementary schools.

[fol. 60] Q. Do you recall the names of the other two elementary schools?

A. Rambay and Liberty Hill, I believe.

Q. What about the white schools, if any? How many white schools, if any, does District 22 operate?

A. 2 white schools.

Q. Will you state the names of those schools?

A. One is a high school and one is a grammar school.

Q. Is that the school known as Summerton elementary school?

A. Yes, that is right.

Q. Mr. Elliott, Summerton High school is operated by District 22, or is it operated by a separate district known as Summerton High School District?

A. It is operated by the Summerton High School District.

Q. What, if anything, is the connection between District 22 and Summerton High School District with respect to the operation of that school?

A. Well, the elementary school is operated by the Summerton High School, and the other trustees, the trustees of the other district, and the elementary schools, we work that together. Then the high school is supposed to be operated by the trustees of the Summerton High School.

Judge Parker: Let me ask you, Mr. Robinson. Aren't these matters that you can agree on with counsel for the other side?

[fol. 61] Mr. Robinson: If your Honor please, we are trying to get the picture before the Court of the school setup, particularly the matter of the operation of the Summerton High School.

Judge Parker: The Court understands it. All of these things you have set up in your pleadings. You can agree with counsel on these matters and if there is any trouble

about it, let's straighten it out right now, and not waste time.

Mr. Robinson: That is all.

Cross-examination:

By Mr. Figg:

Q. You are the Chairman of the trustees of School District 22?

A. Yes, sir.

Q. As chairman of that district you are one of the Summerton High School board, along with the Chairmen of the other four districts that establish that centralized high school?

A. Yes, sir.

Q. And District 22 has a Superintendent, Mr. Betchman?

A. Yes, sir.

Q. And it is his function to carry out the determinations of your Board of Trustees and to operate the public school system of School District 22? Is that correct?

A. Yes, sir.

Q. And he is in court today?

[fol. 62] A. Yes, sir.

Judge Parker: You are doing the same thing that I called your adversary on.

Mr. Figg: Your Honor he had gotten off on facts that we didn't recognize and I wanted to refer counsel to Mr. Betchman.

Judge Parker: All right. There isn't any question about the set up of the schools down there, about the jurisdiction, or how they are operated, is there?

Mr. Figg: No, sir. We understood there was no question, but if you took Mr. Elliott's testimony, I think we would both begin to wonder if we understood it.

MATTHEW J. WHITEHEAD, sworn.

Direct examination.

By Mr. Carter:

Q. Will you please state your name?

A. Matthew J. Whitehead.

Q. What is your occupation?

A. I am Assistant Registrar and Associate Professor of Education at Howard University, and off-campus lecturer in the Graduate School of Education for New York University.

Q. How long have you had this position?

A. 7 years.

Q. What other positions have you held?

[fol. 63] A. Positions as teacher of English in High Schools of North Carolina, Assistant Principal of Senior High School in North Carolina, Professor of Education, State Teachers' College, Elizabeth City, North Carolina, Director of summer schools, State Teachers College in North Carolina, and Registrar of State Teachers College, near Elizabeth City, North Carolina.

Q. Will you give us your educational background, please.

A. My undergraduate work was done at Johnson Smith University in Charlotte, North Carolina. There I received the degree of Bachelor of Arts in English and Education in 1930. Following that, graduate work in the School of Education at the University of Wisconsin. My Master's degree from Columbia University in administration. My doctor's degree from New York University School of Education, a major in college administration.

Q. Do you belong to any professional societies?

A. I do.

Q. Would you mind naming them?

A. Phi Delta Kappa, Kappa Delta Pi, Society for the Advancement of Education, The E. George Payne Educational Foundation, the NEA, the American Association of Personnel Workers for Higher Education, the National Association of Collegiate Deans and Registrars, and American Association of Collegiate Registrars.

Q. Have you published any books or articles of any kind?

A. Yes, I have.

[fol. 64] Q. Will you generally list them for us.

A. A study, a book on Negro Liberal Arts College Deans at New York University in 1944, and various magazine articles which have appeared in professional magazines and schools and societies, the Junior College Journal, the Journal of Higher Education, the Journal of Education, Sociology, the Quarterly Review of Higher Education, and the Journal of Negro Education.

Q. Mr. Whitehead, have you had any experience in evaluating schools?

A. Yes, I have.

Q. What is that experience?

A. I have conducted surveys in the State of North Carolina in the Public School System. I was a member of the survey committee that surveyed St. John's College in Annapolis, Maryland. I worked on surveys in the District, and surveys—consultant rather than surveys, for New York University in the Department of Education.

Q. Did you examine the public schools involved in this litigation?

A. Yes, I did.

Q. Why?

A. I was asked to survey them by Mr. Carter.

Q. When did this examination take place?

A. It was of a two-fold nature. The first was in the [fol. 65] month of *month of* November 1950. The subsequent one was in April 1951.

Q. Would you describe what you did in making this examination, briefly.

A. Well, first of all, I examined the documentary sources as they related to the public school program in Clarendon County and District 22, which consisted of visits to the State House, conferences with officials at the State House, the examination of the records of the County Superintendent of Schools of District 22 and Clarendon County, and the report of the State Board of Health of the State of South Carolina, conferences with principals and superintendents of the respective schools in District 22, teachers and other workers within the school of a non instructional nature.

Q. Did you inspect the buildings?

A. Yes.

Q. Would you describe, Mr. Whitehead, what you found with respect to the buildings in District 22, and by that I mean including the Summerton High School.

A. The buildings in District 22 were the Rambay Elementary School for Negroes, the Liberty Hill Elementary School for Negroes, the Scotts Branch Union School for Negroes, a combination of elementary and high school, the Summerton Elementary School, and the Summerton High School.

Judge Waring: What are the last two—for whites or [fol. 66] Negroes?

A. For whites. I am sorry, the last two are for white—the Summerton Elementary School and the Summerton High School. In regard to the grounds, the grounds at the Rambay Elementary School for Negroes were in a very poor condition. The topography was exceptionally poor, and the antiquacy by way of grounds did not conform to any possible educational standards. At the Liberty Hill Elementary School, as far as acreage and site, there was no conformity by any of the criteria which would be used generally or were used by this investigator in his survey as to adequacy or topography. At the Summerton Elementary School, there we had many of the elements which lend themselves to educational measurements. The grounds were surfaced at the Summerton Elementary School, whereas we did not find surfaced grounds at either the Rambay Elementary School or the Liberty Hill School, or the Scotts Branch School. There was fence protection for pupils' safety at the Summerton Elementary School, and an absence of same at each of the three Negro schools. As for surfacing and landscaping, we did not find that at the Rambay or Liberty Hill, and a dearth at the Scotts Branch School.

Q. Mr. Whitehead, did you note what type of building structure the Liberty Hill, Rambay and Scotts Branch Schools were made of?

A. Yes; the Liberty Hill School was a wooden structure. So were the two at Rambay and Scotts Branch, whereas the [fol. 67] two for whites, the Summerton Elementary School was of white stone, and the Summerton High School was brick, red brick.

Q. Were you able to get any information in regard to the monetary evaluation of the schools for whites and Negroes?

A. Yes, I was. An examination of the Superintendent's report reveals the data, that is, as far as the buildings were concerned. The 3 Negro schools, the actual cost by way of buildings was $10,900, and for the elementary school $40,000.

Q. You mean the white elementary school?

A. The white elementary school. As far as the aggregate cost for grounds in the 3 Negro schools, Rambay, Liberty Hill, and Scotts Branch, they were valued at $12,500; whereas the value of grounds for the Summerton Elementary School and the Summerton High School, were valued at $12,000 —— at $4,000. As to furnishings and fixtures, which were also included in the same report, $1800 for all of the Negro schools, as compared with $12,000 for the white schools.

Q. What is the Negro school population, including the High School, in District 22?

Judge Parker: Isn't that in the record and isn't it conceded already?

Mr. Carter: All right, sir. I won't go into it.

Judge Parker: I don't want to cut you off, but I see no use of going into it again if it is already in.

Mr. Carter: I am advised, your Honor, that only the [fol. 68] County figures are in and not in School District 22.

Judge Parker: All right. Ask him.

A. At the Scotts Branch, there are 694 students; at the Liberty Hill School, 92; and at Rambay 84.

Judge Waring: A total of how many colored?

A. 808.

Q. Did you ascertain how many Negro students were in the High School?

A. Yes, sir. 151, according to the report of the principal, Mr. Wright.

Q. What is the school population for the whites?

A. The school population for white: The Summerton Elementary School, 195 students, and the Summerton High School carried an enrollment of 81 students.

Q. Do you have any information in regard to the number of teachers, Negro and white?

A. Yes, I do.

Q. Would you give those.

A. At the Rambay Elementary School, there were 2 teachers; at the Liberty Hill School, 4 teachers; at the Scotts Branch School, 9 teachers. These are the 3 schools for Negroes. The 2 schools for whites: The Summerton High School and Summerton Elementary School, 7 for the white, and 5 in the high school.

Q. In the High School for Negroes?

A. In the High School for Negroes, 5.

[fol. 69] Did you visit any of the classes?

A. Yes, I did. I visited classes at both schools, Negro schools and white schools.

Q. Did you get any information with regard to class size at the white schools as compared with the class size at the Negro schools?

A. I was able to secure these data from all 5 of the schools. The data presented to me by the principal and superintendent are as follows: At the Rambay School, in the first grade there were 15 students; the second grade 12 students; the third grade 13 students; the fourth grade 10 students; the fifth grade 6 students; the sixth grade 4 students; the seventh grade 3 students.

Q. One moment. At the Rambay School where you listed these various grades, are the grades in separate rooms?

A. No. There are 7 grades but there are just 2 rooms and 2 teachers. At the Liberty Hill School, in the first grade, 18 pupils; second grade, 13; third grade, 16; fourth, 12; fifth, 9; sixth, 9; seventh, 7; and eighth, 8. There were 4 teachers there teaching the eight grades.

Q. Were there 4 rooms?

A. There were 4 rooms.

Q. What about the Scotts Branch School?

A. At the Scotts Branch, there were 2 first grades; one first grade class carried an enrollment of 60 pupils; another [fol. 70] enrollment of 67 pupils; both first grade classes.

The second grade had an enrollment of 69 pupils; the third grade, an enrollment of 56; the fourth grade, an enrollment of 63; the fifth grade an enrollment of 72; the sixth grade, 41; seventh grade, 39; eighth grade, 24; ninth grade,

47; tenth grade, 38; eleventh grade, 33; twelfth grade, 33.

Q. What did you find with respect to the Summerton Elementary School and the Summerton High School, both schools being for white students?

A. At the Summerton elementary school there were 30 students in the first grade; 29 in the second grade; 31 in the third grade; 31 in the fourth grade; 30 in the fifth grade; 26 in the sixth grade; and 19 in the seventh grade.

Q. How many in the high school?

A. That is the Summerton Elementary School.

Q. What about the High School?

A. In the High School: In the eighth grade, 24; ninth grade, 19; tenth grade, 18; eleventh grade, 11; and the twelfth grade, 9.

Q. Now, in your visits to the classes, Mr. Whitehead, what did you note, or did you note anything at all with respect to instructional supplies, and visual aids to aid the teacher in conducting the class?

A. Yes, I did.

Q. Will you describe that.

[fol. 71] A. At the Rambay School—and the same will be true of Rambay, Liberty Hill and Scotts Branch Schools, if I may include the three together. The data will be applicable as to all three cases. There was an absence of all types of visual aids for instructions, with the exception of blackboards, which were very inadequate by all standards, even standards of the Department of Health of South Carolina, as listed in the Bulletin approved in 1948, but at the Elementary School, the Summerton Elementary School, for whites, and the Summerton High School for whites there were the following visual aids and instructional adjuncts to education, namely, blackboards, music rooms, charts, maps, globes, slides, stereopticans, and an auditorium which lent itself toward the display of various types of visual aids to instruction.

Q. Now, with regards to the rest of the facilities of the schools, did you make any observation in regard to the facilities for water, drinking water for children at either of the two sets of schools?

A. Yes, I did.

Q. Describe that.

A. At the Rambay School the only source of water was an

out-of-door pump. The water was supplied from the pump to the building by way of a galvanized bucket, an open galvanized bucket, in which was inserted a dipper, and the children had glasses that they drank the water, from glasses [fol. 72] rather than from the dipper, and these buckets were not at all covered,—these buckets were not covered at all. They were open to germs, etc. The same was true at the Liberty Hill School, the only difference being that instead of getting the water at the Liberty Hill School from the school pump, there was no water at all on the school property at Liberty Hill School. The water was procured from a Minister who lived next door, and brought to the school, but the bucket arrangement prevailed in both cases. At the Scotts Branch School for Negroes, the Union School, there was no inside running fountain, but there were outside running fountains. At the Summerton Elementary School there were inside running fountains, and at the Summerton High School, the same condition prevailed.

Q. Were there such facilities as lunch rooms at the Summerton Elementary School and the Summerton High School?

A. At the Summerton Elementary School, there was a lunch room. The Superintendent, Mr. Betchman, informed me that the lunch room and many of the facilities, due to the proximity of the Elementary School and the High School, are interchangably used from the point of building utilization. There was an organized lunch room at the Summerton Elementary School with a paid worker and two assistants. I met the three persons. I also saw lunch being served at the time Mr. Betchman and a Mr. Rogers and I went through that building. There was no lunch room whatsoever in either of the three Negro institutions. There was no pro- [fol. 73] visions for lunches.

Q. Did you make any observation with regard to the desks for pupils in any of the schools?

A. Yes, I did. In the Summerton Elementary School each pupil had a desk. In the Summerton High School each pupil had a desk. At the Rambay School for Negroes, there was not a single desk in the entire school. There were two long tables that were not surfaced by way of shellac or any type of furniture wood curing that would make those accessible to students for easy writing. In fact cracks were in the desks

—in the long tables where the students sat. These students sat together as one would see in a picture. The sort of table around which the counsel is sitting this morning (indicating). The same was true in the other room at the Rambay School. At the Liberty Hill School there were desks for students. However, they were not of the type of construction that lend themselves to educational facilities on the part of students. That is to say, rather than single desks, they were desks, many of them, that had a double compartment. Two students would slide in. That is to say, the student who sits on the end of the row could not get out in a case of panic or fire without either jumping over everyone else and getting out. At the Scotts Branch School, there was a combination of this same type double desk. They were, however, some single desks in many of the rooms of the Scotts Branch School, but in one room a class, a seventh grade [fol. 74] class, which is conducted by Mr. Ragan, there was not a single desk in the room. It so happened that at the time we visited it, the students were taking work from the blackboard. All of the students—we saw the students having to write in their laps. There was not a desk in that entire room.

Q. What did you find with regard to facilities such as Auditorium, gymnasium, at the two types of schools?

A. Well, there was an absence of these features in all of the Negro schools, but in the white schools, the Summerton Elementary School there was a very large auditorium with a balcony, an elevated stage, footlights, dressing rooms, a velour curtain, and at the Summerton High School they did not have an auditorium but Mr. Betchman stated that this was interchangably used, but they did have a gymnasium, a large gymnasium, which may be used for group activities. There was no gymnasium, however, for either of the Negro schools nor auditorium.

Q. Would you describe the toilet facilities available for Negro pupils as compared with the toilet facilities you found for white children in District 22.

A. As to the toilet facilities at the Rambay School, the only facilities available were two out-of-door toilets. They were constructed of wood and the seats within these buildings were also of wood construction. There was the same thing at the Liberty Hill School, out-of-door construction.

[fol. 75] They were not of the type which the State Department of Health of South Carolina describes as privies. It is what they describe as earth toilets, earth toilets.

Judge Waring: Was there any running water for flushing them?

A. There was no running water at all, nor any urinals in any of these places for boys. At the Scotts Branch School, the same situation prevailed, only to a greater degree of disgust on the part of one who made such a survey, to see 694 students serviced by 2 toilets for boys and 2 toilet seats for girls, of the same out-of-door type construction, no running water, no urinals, in the light of standards of so many toilet seats for so many girls, so many for boys, and so many urinals for so many boys. We were able in the light of this to work out some rather specific data if it would be asked for and felt worthwhile to the court.

Q. What did you work out?

A. The types of urinals that we found—that we did not find in either of the 3 institutions which should have been for the elementary school at Rambay, where we had one seat for girls and one seat for boys. The enrollment there would warrant at least one urinal for boys and more seats for girls, and more seats for boys. At Liberty Hill School, with an enrollment of 92, there were no urinals for boys and 2 seats for girls and 2 seats for boys. There again we had the enrollment too large to service the physical needs of pupils. [fol. 76] At the Scotts Branch School, with an enrollment of 309 boys and 694 girls, where we find one toilet for boys and one toilet seat for girls. There was a minimum need of toilet seats for boys alone of 11, based on the criteria, and a minimum of 19-plus toilet seats for girls.

Q. You say that at the Scotts Branch School with a school population of over 600, there were only 2 toilet seats available?

A. That is correct.

Q. What was the situation with respect to Summerton Elementary School and Summerton High School?

A. The Summerton Elementary School, there were flush toilets for boys and for girls, 3 for boys and 3 for girls, inside. There was also urinals for boys. The same was true at the Summerton High School. There were flush

toilets for girls and flush toilets for boys, and urinals for boys at the Summerton High School. All in-door.

Q. Now, at the elementary school, you said there were 3 flush toilets for girls?

A. And 3 for boys.

Q. And how many urinals did they have?

A. There was one urinal, as I recall. The reason I say "as I recall," I should point out here, we were not able at that specific time to go into the other one, and the persons who accompanied me stated that the same number of toilets [fol. 77] were on the other side as were on the other side that we went in. We went on the boys' side of course.

Q. Now, in the Negro schools that you saw, the elementary schools, was there a teacher for each grade?

A. No, there was not.

Q. Will you describe the situation.

A. In some of the schools, at the Scotts Branch school there was a teacher for every grade. At the Rambay School there was not a teacher for every grade. There were 2 teachers for 7 grades. At the Liberty Hill School there were 4 teachers for 8 grades. At the Summerton Elementary School there were 7 teachers for 7 grades, and at the Summerton High School there were 5 teachers for the High School program.

Q. Did you make any observation with regard to the curricula in the High School?

A. Yes, we noted that the curricula at the Summerton High School was different from the curricula at the Summerton Elementary School in that the curricula at the Summerton High School carried a larger number of what is termed academic courses, and the pre-skilled courses in the Commercial subjects, namely typing and bookkeeping. At the Scotts Branch School, the comparable—the companion school for Negroes, there we had agriculture, vocational agriculture and home economics, with the same types of academic courses which were in the minority from those [fol. 78] offered at the High School at Summerton High School.

Q. As a result of this investigation, Mr. Whitehead, have you reached an opinion as to whether the Negro children are receiving equal classroom instructional opportunities as compared to white children?

A. May I hear your question again?

Q. As a result of this investigation, have you reached an opinion as to whether the Negro children in the schools that you observed are receiving equal classroom instructional opportunities and advantages as compared to white children in the schools that you observed?

A. I have.

Q. What is that opinion?

A. That opinion is based on actual observation, together with documentation from such basic sources as George D. Strayer, Fred Denglehardt, and Langford, and the standards of the NEA, as well as the State of South Carolina, I found that the type of instruction was not applicable or comparable, and it was not applicable to both groups, Negro and white. I found also that the quality of instruction would also be different of necessity, if one would stop to compare or contrast the various types of educational features within the framework of both programs. In the absence of many of the minor necessary tools of instruction, one could not expect an adequate educational program to insue, namely, the absence of school lunches. Practically all educators [fol. 79] have agreed, as well as dieticians in the United States Public Health Department has agreed long since that school lunches are a necessary part to the growth and progress of a student. The absence of these features in the Negro schools and the presence of these in the other schools would not of necessity present a comparable picture. The same inequities may be further pointed out by way of actual class size. At the Scotts Branch School, let's take an illustration. At the Scotts Branch School, there we had a situation of 8 classes being crowded by way of any standards acceptable in the realm of college administration—in the realm of public school administration. There were classes with a range of classes from—the range of classes at the Scotts Branch School, which would certainly not lend itself to instructional adequacy or efficiency, may be seen from such enrollment. In a first grade class, where the basic preliminary school is begun by students, there are two such classes, one with 60 pupils in it, the other with 69 pupils in it. The floor space of the two rooms in which these students were being instructed were also inadequate by way of National standards and standards approved by the Depart-

ment of Health of the State of South Carolina. That same pattern existed in six of the classes at the Scotts Branch School. In other words, eight of the nine above had enrollments ranging from 38 to 79, whereas the acceptable figure for the elementary school is 30. At least the recommended [fol. 80] figure is 30. The preferred figure is 28. Whereas, in the High School it is generally accepted that the figure should be even lower. 22 preferred, 28 acceptable. Here, we had 8 classes, ranging with an enrollment span from 39 to 79. The quality of instruction of necessity must suffer when one stops to consider the basic processes in learning. That condition did not prevail at the Summerton Elementary School nor at the Summerton High School, inasmuch as all of the classes at the Summerton Elementary School, by these same standards, there were only two classes that were oversize and there were 31 pupils each. The oversizing by way of National standards would be 1 more than the 30 generally accepted for elementary schools. In the High School none of the classes were oversized by way of National accepted standards, nor by the preferred standards, that of 22. There was only one class with 24 pupils.

Q. Your overall opinion then is that the children in the Negro schools are not getting equal classroom instruction as compared with the white children?

A. Not at all.

Mr. Carter: Thank you.

Judge Parker: Do you wish to cross-examine him?

Mr. Figg: Yes, sir.

Judge Parker: All right. Go ahead.

[fol. 81] Cross-examination.

By Mr. Figg:

Q. When was the first time that you examined the schools in School District 22?

A. The first time that I examined the schools in School District 22 were the dates November 16th and 17th.

Q. And did you make a report of that examination to anyone?

A. Yes, I did.

Q. In writing?

A. Yes.

Q. And when did you next examine the schools?

A. April 18 and 19.

Q. Of this year?

A. That is correct.

Q. Now, I noticed in your testimony that you have given the school population on a basis of enrollment. Did you make any study of the average daily attendance figures also?

A. No, I did not.

Q. You are not familiar with them?

A. I am.

Q. You are familiar with the average daily attendance?

A. They were in the Superintendent's report, but they were not broken down by schools and we were concerned in the collection of data with a breakdown by schools rather than the breakdown by county.

Q. Well, in your survey, though, when you were there [fol. 82] making inquiry as to the school systems, you did not then ask for figures on the average daily attendance of each school and each class?

A. Yes, I did.

Q. Did you get those figures?

A. I did not get it.

Q. Who did you ask for it?

A. I asked the principals at the schools.

Q. Well, they didn't give you that information?

A. No, they did not give me that information.

Q. Did you ask Mr. Betchman?

A. No, I didn't ask Mr. Betchman.

Q. You knew he was the Superintendent of this district and had the information, didn't you?

A. No, I couldn't say that I did.

Q. Were you interested in average daily attendance?

A. No, I was not too much interested, inasmuch as I had seen the report of the superintendent of schools.

Q. Did you take into account, in examining these schools, anything of an attendance problem, either at the beginning of the school year or at the end of the school year, or in the middle of the school year?

A. It would be hard to answer that question in the framework in which it is placed due to any number of situations

that one was faced with. That is to say, I asked questions [fol. 83] in re the matter of which you now speak, but I was given information that the schools didn't open at the same time, they didn't close at the same time, and in the Negro schools they had to go to school on Saturday to make up time, whereas they didn't do it in the white schools. There was something known as a growing season or planting season or something of the sort.

Q. That interfered with the beginning of the school year at one of the stages of the agricultural operation and interfered with it at the end of the school year with the other stage, isn't that correct?

A. That was what was presented to me. That is, there was no method of keeping the children in school.

Q. And, did you inquire as to whether efforts had been made to enforce attendance during those periods?

A. Yes, I did. I inquired of Mr. Wright, who is the Principal at the Scott's Branch School and a Miss Adger, I think was her name, who was acting building Principal at the Liberty Hill School, and Miss Hamilton, I think, was the lady's name at the Ram Bay school. I made inquiries of each of those, and I was given this information, that there was no enforcement by way of students remaining in school. And, the reason I raised the question was because I was able to see myself that there were any number of students who should have been in school, being of school age, who were in the fields plowing and working and what-not as we made the tours from school to school.

[fol. 84] Q. You never found that cases had been made before Magistrates and what-not under the compulsory law?

A. I beg your pardon.

Q. You didn't find that any cases had been made before Magistrates in trying to enforce compulsory education in those cases?

A. No, I did not.

Q. Now, coming to this school called Ram Bay School, that is the two-teacher school, isn't it?

A. That's correct.

Q. And, did you ascertain that the Trustees sometime ago—several years ago—had closed that school?

A. No.

Q. You didn't find that out?

A. No,

Q. And you didn't find why it was re-opened?

A. No, I did not.

Q. And therefore you wouldn't know whether it had been closed by the Trustees and then re-opened on the petition of the patrons of the school?

A. No, I would not.

Q. That was right in an agricultural section, wasn't it—that school?

A. I would say yes.

Q. And there is no electricity in that area of the county, is it?

[fol. 85] A. I couldn't answer that question.

Q. You didn't check that up?

A. As to electricity in that section of the county?

Q. Was it available?

A. I said I could not answer that question.

Q. And, it was no running water or sewerage in that area either, was it?

A. I couldn't answer that. You must keep in mind that the only place that I visited was the school. I didn't visit the outlaying areas.

Q. Well, I thought perhaps when you found certain conditions existing in the schools about lights and toilets and what-not, you would have checked up to see whether facilities were available to extend the electricity to that school.

A. No. The reason I wouldn't do that is because I would assume the fact that the school was operated as a public school, and that there were certain responsibilities on the Board of Education *in* insure health and safety.

Q. And, as to electricity, the fact that a school was in a community that didn't have electricity and nobody that lived in the community had electricity, you wouldn't expect to find electric facilities in the school either, would you?

A. No. If you will note, throughout my testimony I did not point up the fact of no electricity at this particular institution, but had I done so, in furtherance of your question, [fol. 86] I will say that educational standards don't say electricity as such. I think they will point up artificial lighting. And, there are various types of artificial lights that may be used.

Q. Now, this Ram Bay School, I think, is the school you said where the students had tables, is that correct?

A. I didn't hear the question.

Q. The Ram Bay School has tables and chairs around them instead of desks?

A. That's correct, sir.

Q. Isn't it a fact that tables and chairs are being increasingly used in the more modern schools instead of desks?

A. A certain type, but not the type that was found at the Ram Bay School. I will agree with you that portable furniture—even portable fixtures like blackboards—are the newest concerns we have in the field of educational supplies. But, these were fixed tables in the center of the floor that could not be used for purposes of grouping and what-have-you.

Q. Wasn't it the kind of equipment that might be used with the school population that might have a large enrollment but a fluctuating attendance because of the agricultural occupations of the parents of the school children?

A. I regret, sir, that I could not agree with you. They could be used anywhere except in a kitchen.

Q. In a what?

A. In a kitchen. There were cracks. They were sup- [fol. 87] posed to be used for instructional purposes for students to write on and to read on, and there were actually holes in the tables. The lady who taught the first grade at the school showed me three chairs which she had just received that had been sent over from the white school, that were dilapidated and the children could not sit in them. Other chairs had spokes and rounds out in them and the bottoms were out in many of them. And, it was a health hazard and a hazard of safety to those first, second and third grade pupils.

Q. Now, did you check in Clarendon County to find out how many two-teacher white schools there are in that county?

A. No, I did not. I was concerned not with Clarendon County but with District 22 of Clarendon County. That's where my survey was made.

Q. You do know that there are a lot of two-teacher schools in the State of South Carolina, don't you?

A. In the State of North Carolina, there are not.

Q. Well, how about South Carolina?

A. South Carolina I should say yes.

Q. And you did not ascertain then that the Trustees did not want the Ram Bay School in operation?

A. No, I did not ascertain that. However, I will say in fairness to you that Mr. Betchman as a culminating factor of my last conference with him volunteered the information. I didn't ascertain it.

[fol. 88] Q. I just thought perhaps you might have run into that fact in your investigation either in November or April.

A. No, that was in April.

Q. Now, the Liberty Hill School is the four-teacher school?

A. That's correct, sir.

Q. Now, the enrollment in these two-teacher and four-teacher schools were not particularly heavy, were they?

A. In the two-teacher school, the answer would be no, but in the four teacher school, I would say that they would have a normal load by all acceptable standards.

Q. And, adequate and proper instruction could be given in the four-teacher school, couldn't it?

A. Very definitely, provided that there were the necessary instructional provisions made by someone to insure that that type of adequacy would exist.

Q. Well, such as what? I don't mean to enumerate all items.

A. All right, such as visual aids, adequate buildings, lighting.

Q. Now, by "visual aids" you mean blackboards?

A. No, not blackboards alone.

Q. There were blackboards there?

A. Inadequate blackboards, yes.

Q. Well, at Liberty Hill weren't the blackboards adequate for the rooms that were in that school?

A. No. They were not because we must admit that the [fol. 89] height*k* arrangement and quality in blackboard materials are of grave importance in the instructional program within a school. Here we had an elementary school with the blackboards arranged at the level for children over and above their age levels. That's number one.

Number two, it should also be pointed up that blackboards constitute in the vernacular of visual aid to education only a mere sampling or sprinkling of instructional materials on visual aids. Blackboards are just a small portion of them. You asked, however, what aside from visual aids. Visual aids is one of the items that I listed. Another one is the matter of health standards and proper provision for the protection of children and the comfort of children.

Judge Parker: Hasn't this been covered heretofore?

Mr. Figg: Well, I didn't ask the witness to list it all, your Honor.

Judge Parker: I don't want to hurry you along too much, but let's get along.

Q. Did I understand you to say that the desks in Liberty Hill School were double desks?

A. No, sir. I said some of the desks, those in Miss Adger's room. They are two seats together. The reason I can certainly point that up, I sat in one of the desks and a little boy was sitting over next to the window and he wanted to get out while I was sitting there and I had to get up.

Q. Two students were sitting side by side at the same desk?

[fol. 90] A. That is correct.

Q. Now, the Scotts Branch School, did you check the attendance records at any time you were at the Scotts Branch School in any of the classes?

A. No, I did not.

Q. Did you check the percentage of attendance in the Scotts Branch School in the course of your survey?

A. I did not.

Q. And did you check the percentage of attendance in the Summerton Elementary School?

A. I did not.

Q. Now, the Summerton Elementary School, I think you said was of white stone. Did it appear to be stone?

A. I guess it would be—could be termed as sand stone. I am not in position to answer that.

Q. Was that in what you would call good condition?

A. Many repairs could be made on it.

Q. Isn't it a fact that it was in poor condition?

A. I would not say poor condition.

Q. Would you say it was in acceptable condition?

A. No.

Q. As a matter of fact, as you approached it, you could see the necessity of a good bit of work that could be done on it?

A. No, I could not.

Q. What kind of lights did they have in that school?

[fol. 91] A. I don't recall.

Q. Didn't they just have a wire dangling from the ceiling with an incandescent bulb in it? Did you see that?

A. No, I did not see that.

Q. You went into the Summerton High School, you know that is the centralized high school and not a school in District 22?

A. No, I did not know that.

Q. You know it is operated by five school districts and not one, do you not?

A. No, I do not know that.

Q. Did you find out how many high school pupils in District 22 attended the Summerton High School?

A. I did not.

Q. The Summerton High School, did you find out when it was built?

A. Yes, I did make that notation. I think the corner stone was either 1906 or 1907.

Q. Well, that is the elementary school, isn't it?

A. That is the elementary school.

Q. I meant the high school.

A. No, I did not find out when the high school was built because it was so modern.

Q. Did you find out which was the last school building built in the school district?

A. No, sir.

[fol. 92.] Q. You didn't find out when the last school was built?

A. No.

Q. You went inside of the Scotts Branch School, didn't you?

A. That is correct.

Q. And the interior of those buildings is very similar?

A. No.

Q. I mean the plan or layout?

A. You mean the architectural plan?

Q. The general effect inside.

A. No.

Q. Did you find out whether the Scotts Branch School was built according to plans approved by the State Board of Education and according to the specifications laid down for schools?

A. No, I did not.

Q. You didn't check that. And I think you said that there are 12 grades in the Scotts Branch School and 14 teachers. Is that correct?

A. No, in the Scotts Branch School there were 12 grades and——

Q. And 14 teachers?

A. And 9 teachers in the elementary school and 5 in the high school, a total of 14.

Q. 14 teachers. And I believe you said there were two classes of one grade, for instance the first grade. Is that correct?

A. Well, when we say there were 2 first grades, that may be interpreted to mean two sections, I mean the same class.

[fol. 93] Q. You would expect more pupils to be in the first grades and less in the top grades, would you not?

A. Definitely. That is why you would expect more first grade classes.

Q. And in the Scotts Branch School, taking classroom by classroom, approved and efficient education could be given in that school, could it not?

A. If it were improved.

Q. No, I said taking classroom by classroom, efficient and approved education could be given in those classrooms of the Scotts Branch School, could it not?

A. To answer that question,—that question could not be answered yes or no, because the equalizing of an instructional program must of necessity bring into operation, aside from pupils and teachers,——

Q. Excuse me a minute. I am talking about the physical classrooms. These classrooms in the Scotts Branch School are efficient classrooms, are they not?

A. No.

Q. What was wrong with them?

A. All right. The things that were wrong with them are as follows: No. 1, there was inadequate floor space in many of them, according to the standards, the floor space per child, and it is a very unhealthy situation related to the room. The room is used by the school library. The matter [fol. 94] of drinking water. These do not smack of academic qualifications but are included in the learning program.

Q. When you went there in April were there drinking fountains inside?

A. No, sir.

Q. Are they inside today?

A. They are today.

Q. You knew the materials were there to put them inside in April, did you not?

A. I did not. And I was not told either by the superintendent or principal; Mr. Wright, I am sure, could verify that and also Mr. Betchman.

Q. The principal is a colored man?

A. The principal is a Negro.

Q. And that is true of the other Scotts Branch teachers too?

A. That is correct.

Q. And Mr. Betchman, I think you saw on both occasions?

A. I did.

Q. From a physical standpoint and leaving aside any intangible force, just comparing the buildings physically, would you say that the Summerton Elementary School was inferior or superior to the Scotts Branch School as a school house?

A. Superior.

Q. In what respect?

A. The masonry and landscaping, plumbing, room size, [fol. 95] ventilation, instructional supplies, auditorium, play grounds, fence protection.

Q. You would say that the masonry of the building, as you call it, is superior to the Scotts Branch building?

A. By far.

Q. You don't think school houses should be anything but masonry?

A. No, I wouldn't answer that way.

Q. Scotts Branch building is a frame school building, is it not?

A. It is a frame school house.

Q. Isn't it of pretty good construction?

A. The real value of a frame structure, I would not be in position to say. The only thing I would say, the condition of that frame structure at the time I observed it, it would add up to a picture of this sort: There were many of the panellings—I think you call them clapboards, that were off of the building around the side. There was no underpinning of the building, which would be increased insulation as far as heat goes. For plumbing, there was an absence of equipment and supplies necessary for promotion of health. By way of cleaning of the building, there was the absence always of other facilities for health.

Q. How many clapboards were off?

A. I could not answer the exact number because there were clapboards off at more than one junction of the building.

[fol. 96] Q. Did you note in any report that you made that any clapboards were off of the Scotts Branch School?

A. Do what?

Q. Did you note in any report that you made of your two investigations that clapboards were off of the Scotts Branch School?

A. No, that was minor as far as the report goes.

Q. Isn't it a fact that the school building was in pretty good condition both times you saw it?

A. I just answered that question and said no.

Q. I am not talking about—you mention health conditions, I am talking about the physical building, the physical structural building, wasn't it in a pretty good condition as a school?

A. My answer is no.

Q. What did you mean when you talked about the surfacing around the school? Did you mean hard surfacing or just landscaping or an open space or what?

A. No, I meant what we call improved and unimproved surfacing. The playgrounds at the Summerton elementary school were not of mud; they were not of earth.

Q. What were they of?

A. They were a combination construction of asphalt or

cement all around the building of some type of construction; some type of mixture or combination mixture of tar and rock or tar and gravel, as I recall, on certain parts of the [fol. 97] playground. The same was true——

Q. Are you positive of that, that there was asphalt and rock on the playground at the elementary school?

A. We may not call it asphalt and rock, but—well, let us say a tar substitute, then.

Q. Was there any of that around the Summerton High School?

A. Definitely.

Q. I am not talking about the roadway in there, now. Are you?

A. Well, that is part of the campus.

Q. Were you talking about the playground? I am not talking about the roadway into the school.

A. No, we spoke of the location of the school and——

Q. You testified to hard surfaced or improved playgrounds.

A. I beg your pardon. I don't think my testimony will show that.

Q. Let's eliminate the road into the school then. What else were you talking about?

A. I was talking about the site—the school site.

Q. The school site?

A. Yes.

Q. Now, is there tar around the Summerton Elementary School on the school site outside of the roadway leading up to it?

A. Yes.

Q. There is?

A. Yes.

Q. The playground is improved by artificial means?

[fol. 98] A. No.

Q. Well, then, what do you mean by this "tar?"

A. I just pointed out that we still are speaking of the school site, but to speak of school sites does not of necessity mean that the entire site must be surfaced, for you, yourself, pointed out that at the Summerton High School you have a more or less arc or semi-circle runway leading into the Summerton High School. Now, that is of a tar-concrete construction. But, I wouldn't dare say that the entire

physical grounds of the Summerton High School are of the same composition.

Mr. Figg: That is all, your Honor.

Judge Parker: Do you wish to examine him further?

Mr. Marshall: No, sir.

Judge Parker: Stand down. Court will recess for five minutes.

[fol. 99] Judge Parker: Call the next witness.

Mr. Harold McNalley was duly sworn.

Direct examination.

By Mr. Carter:

Q. Mr. McNalley, would you kindly state what your occupation is.

A. I am Associate Professor of Education.

Q. At where?

A. At Teacher College, Columbia University.

Q. How long have you held that position?

A. I have been associate professor for the past two years, and assistant professor for three years prior to that.

Q. Have you had any previous teaching experience?

A. Yes. I taught elementary school in Delaware from 1934 to 1936, in New Jersey in 1936 and 1937, and was Director of Special Education in Aleghany County, Maryland, from 1942 to 1946.

Q. Now, would you mind giving your educational background and the degrees that you hold?

A. I was graduated from the Philadelphia Normal School in Philadelphia, Pennsylvania, and granted a teaching certificate. I hold the Bachelor's degree, the Master's degree and the Ph. D. degree from Columbia University in the field of education.

Q. All right. What duties do you perform as the Associate Professor of Education at Teacher's College?

A. I might say that in addition to my duties as Associate Professor, I am also the Executive Officer of the Col-

[fol. 100] lege Elementary School at Teacher College, and my duties include the instruction of graduate students, the advisement of master's degree and doctor's degree candidates, the conducting of research seminars, the overseeing of the administrative policies of the College Elementary School, and the conducting of field work in the field for students.

Q. Have you published any articles relating to the question of education and school administration?

A. Quite a number of them in any number of different professional journals such as the Teacher College Record; The Journal Consulting Psychology, Educational Administration and Supervision; and the National Elementary Principal, all State journals of education in the United States—and some other probably. I can't recall them all offhand.

Q. Do you belong to any professional societies?

A. Yes.

Q. Which?

A. I am a member of the American School of Administrators; The Association of Curriculum Departments of Elementary School Principals; The National Society for the Study of Education; The Kappa Delta Phi; the Phi Delta Kappa; The American Association of University Professors; of the National Conference of Professors of Educational Administration; and state organizations of elementary school principals in New York State and New Jersey.

[fol. 101] Q. What is the particular field of education that you would consider your specialty?

A. The field of specialization for my graduate degree was Educational Psychology. My experience has been in teaching in administration, and I am now working in the Department of Educational Administration at Teacher's College as a Professor of Educational Administration.

Q. Mr. McNalley, have you had any experience at all in evaluating elementary and secondary schools?

A. Yes, particularly elementary schools. I participated in a number of surveys of school systems, such as the school system of Pittsburgh, Pennsylvania, Great Neck, New York, Montclaire, New Jersey, and I have directed

other surveys, most recently in Warwick, New Jersey, and in Edgewater, New Jersey.

Q. I see. Mr. McNalley, you heard Mr. Whitehead's testimony?

A. Yes.

Q. Assuming the facts relating to the conditions of the schools as regarding Negro and white schools in District 22; assuming the facts as he related to be true, what is your opinion as to whether or not Negro children in those schools can secure equal classroom instructional facilities as compared to white children?

A. Well, it seems obvious to me that there is not equivalent provision for the education of the children in the Negro schools as compared with the White schools, for a number of reasons: First of all, the fact that the amount [fol. 102] of money spent for the Negro schools is considerably less than that spent for the white schools, the differentiation becoming greater if one looks at it in terms of "per pupil expense," I would assume is an indication that there are not equal facilities provided. If one wanted to adduce research evidence on that, we could go to certain researches that were made in the past decade in relation to what educational money buys. Researches of Paul Mort —Doctor Paul Mort—Doctor Loren Willard, Doctor Francis Cornell, Doctor William Vincent and others have established a strong relationship between the quality of education and the cost of education. Now, of course, there are varying factors. You can have certain conditions such as one pupil in a school district, in which case the general relation would not hold good. But, by and large, that is true, that the more money spent for educational progress is just as in other respects, like the more money spent for other things generally the more likely you are to get a better product. That is one conclusion that seems to me to be pretty obvious. Certain of the other factors that were brought out in Doctor Whitehead's statements also point to factors which I don't believe one needs even professional educational competency to see certain inequalities there, such as the amount of floor space—the differentiation in the floor space—the per-pupil or teacher-pupil load. Modern education is stressing particularly the need for the individualization of instruction; knowledge of the nature and

[fol. 103] the needs of each pupil. It seems, then, rather obvious that the more pupils a teacher has to teach, the less able she can be to know what the individual needs of each are. And there is the rather definite defferentiation in the provision of physical facilities relating to health such as the toilet facilities, and the drinking water facilities particularly. And, may I say this, that in the modern conception of education, all the experiences the child has in the school constitute his education. And, it would seem to me that if you have poor health facilities provided children, they are learning poor health habits as well as being exposed to health hazards. Consequently, that would constitute a definite inequality of education offered in the two groups of schools. The furniture, of course, was mentioned as being different in each school, and if I understand the testimony correctly, I would say again that the quality of instruction in the Negro schools could not help being handicapped by the nature of the facilities provided in the way of furniture, toilets and instruction.

Q. Well, Mr. McNalley, assuming only the fact that the Negro children in District 22 are educated in segregated classrooms and schools from which the white children in District 22 are excluded, in your opinion can the Negro children receive equal classroom instructional opportunities as compared to the opportunities of the average white children?

[fol. 104] A. Well, I would say no, and for this reason: If one considers what is the purpose of education in a country such as ours—a Democracy—one must be led to this conclusion, I think: The public schools are about the only institutions in the United States where children of all social-economic circumstances—all levels, all beliefs and in many places at least all races and colors—coming together for instruction and to know one another, that one of the purposes of education, it seems to me in a country such as ours, is to develop in each individual a real meaning for the phrase "Respect for Personalities" or "Respect for Individualities" and respect for others—the historic concept of equality. And, if we accept children for instruction, whether we accept them on the basis of race, on the basis of creed or what-have-you, it seems to me that both groups are being discriminated against in terms of good

education for a good Democratic State. That is, I think the white children as well as the colored children are being short-changed in that respect. They are not having the opportunity to learn to value each other and one another as individuals, as persons. And, secondly, that there is basically implied in the separation—the two groups in this case of Negro and White—that there is some difference in the two groups which does not make it feasible for them to be educated together, which I would hold to be untrue. Furthermore, by separating the two groups, there is implied a stigma on at least one of them. And, I think that that [fol. 105] would probably be pretty generally conceded. We thereby relegate one group to the status of more or less second-class citizens. Now, it seems to me that if that is true—and I believe it is—that it would be impossible to provide equal facilities as long as one legally accepts them.

Q. I see. Now, all of the items that you talked about that you based your reason for reaching your conclusion, you consider them to be important phases in the educational process?

A. Very much so.

Mr. Carter: You may have the witness.

Judge Parker: Cross examine the witness.

Cross-examination.

By Mr. Figg:

Q. Have you ever made a study of any school systems in South Carolina?

A. No, sir.

Q. In any other southern state?

A. No, sir.

Q. In any state which by law has a separate school for the white and colored races?

A. No.

Q. You have made no inquiry into the factors and facts, the problems and what-not which have motivated those states in establishing separate schools for the two races?

A. No.

[fol. 106] Mr. Figg: That's all.

Judge Parker: Go down. Call your next witness.

MR. ELLIS O. KNOX was duly sworn.

Direct examination.

By Mr. Carter:

Q. Mr. Knox, would you kindly indicate what your occupation is.

A. Professor of Education, Howard University.

Q. In Washington, D. C.?

A. In Washington, D. C.

Q. How long have you held that position?

A. Twenty years.

Q. Have you held any previous teaching positions?

A. Yes. I have taught in public as well as private schools in such states as Texas, Arizona, California, and for a brief time in Kansas.

Q. Thank you. Would you mind stating what your educational background is and what degrees you hold?

A. I graduated from the public schools of Lake County, California, got my A. B. Degree in 1922 at the University of California, A. M. Degree in 1928 at the University of Southern California, Ph. D. Degree in 1931 at the University of Southern California, received graduate study in the field of Education at Columbia University, Ohio State University and in Chicago, Los Angeles, and Arizona State College—and one or two others.

Q. Well, what experience have you had, Mr. Knox, in [fol. 107] evaluating schools?

A. Well, I have been a part of educational survey committees and groups in what amounts to about eleven major cities. That is, I have participated in, sometimes conducted, sometimes merely as participant, in educational surveys for a period of longer than twenty years, but about eleven major cities, inclusive in such cities as the schools in San Diego, California, schools in Kansas City, Kansas, schools in Washington, D. C., the most recent of the largest surveys being the survey or auspices for the United States Congress directed by Doctor George D. Strayer in the public schools of Washington, D. C.

Q. Have you published any articles or books dealing with the problem of education?

A. One book dealing with the trend of progress in pri-

vate and denominational higher institutions, and many other articles over a period of years insofar as public school administration and methods of teaching in public schools—that which would have to do with subject matter, content, changes in regard to our various concepts of education.

Q. Thank you. Now, Mr. Knox, assuming only the fact that schools in District 22 in which Negro children attend are segregated and that white children cannot attend those schools—assuming only those facts—what is your opinion as an educator as to whether or not the Negro child can receive equal classroom instructional opportunities under those conditions?

[fol. 107a] A. In light of the facts which I have heard and the testimony this morning, and assuming the fact that one is segregated and the other is not segregated—rather . . . Will you state your question again, Mr. Counsel?

By Mr. Carter:

Q. I said, assuming only the fact that the schools in District 22 . . .

A. Yes.

Q. To which Negro children attend are segregated—in other words, that they have to attend segregated schools—and white children are excluded from those schools, in your opinion as an educator, can the Negro children receive equal classroom instructional opportunities under those conditions?

Judge Parker: Do you mean for him to exclude all the other facts that were testified?

Mr. Carter: Yes, sir,—just the fact of segregation.

Judge Parker: All right.

Mr. Figg: If your Honor please, we object to that question because just the fact that there is segregation could hardly be a matter of opinion by a witness.

Judge Parker: Well, what he's asking him is whether or not in his opinion it is discriminating against the Negro children to segregate them in the schools. That is what he's asking him. Why isn't that competent?

Mr. Figg: We think it's irrelevant and immaterial. It's been settled that the states can provide public schools

[fol. 108] and that they may provide separate schools for the different races. And, his opinion is irrelevant and immaterial under the legal situation as laid down in the decisions. That is a political matter for the legislature under our situation and not for witnesses on the witness stand. That may be his opinion, but it's . . .

Judge Parker: Well, if that's so, we might as well let it come in, and the Court can pass on it, don't you think so? Go ahead and answer the question.

The Witness: In my opinion, if the schools are segregated, there are inferior educational opportunities afforded Negro youth. Now, that opinion is based upon surveys, studies, visitations and even participation in the educational programs in segregated areas over a number of years. It has never been my experience to have either visited for the purpose of surveying or investigating for the purpose of conducting model or what is called "Demonstration" lessons, which I have done in different states with segregated schools, or to merely observe and engage in the social and civil conditions of the areas in which schools are segregated. I have never found the segregated schools to afford equal conditions, and at all times the schools for Negroes were inferior insofar as the complete school district and the educational opportunities and instructional provisions afforded as compared to that for whites.

Judge Parker: I don't think he's answered your ques-[fol. 109] tion. He has said that where there is segregation he has observed that the Negroes have inferior schooling qualities. That wasn't the question you asked him at all, was it?

Mr. Carter: No, sir.

By Mr. Carter:

Q. I want to know from you, Mr. Knox, based on that experience, whether it's possible in your opinion for a segregated school in District 22—or the segregated schools in District 22—to give equal educational opportunities to the Negro children?

A. It is my opinion that it is impossible to give equal educational opportunities to Negro children.

Q. Well, Mr. Knox, leaving out all the elements of inequality which you have found—the physical inequalities which you have found to exist in your visitations and surveys in the schools—what is the reason for your having reached that conclusion?

A. The reason is that when children are segregated, that segregation cannot exist without discrimination, disadvantages to the minority group, and that the children in the Negro schools very definitely are not prepared for the same type of American citizenship as the children in the white schools. They are not afforded the same instruction or other opportunities. We are preparing children to become members, in my opinion, of the human race and not distinct races as such. And, in the light of that overall objective for public education and in our American Democracy, I don't believe that educational conditions which [fol. 110] more or less are centered around racial differentiations and distinctions are Democratic or equal.

Mr. Carter: Thank you. Your witness.

Judge Parker: Examine the witness.

Cross-examination.

By Mr. Figg:

Q. I think you said that you had been in school work in Texas?

A. Right.

Q. They had segregated schools in Texas?

A. They did.

Q. And, have you determined why Texas had segregated schools?

A. Due to the law.

Q. Did you make any inquiry into the purpose of that law?

A. In Texas?

Q. Yes.

A. I did not.

Q. You wouldn't be of the opinion that that law had something to do with the fact that certainly at the present time and under present conditions that the element of considerable emotionalism evolves in the education of races

where they live in great numbers in the same area? That's true, isn't it?

A. Will you state that again, Mr. Counsel?

By Mr. Figg:

Q. I say, there is a difference in a situation where the two races live in large numbers together in the same area and where one or the other is in a very small number as compared with the other race?

[fol. 111] A. Well, in Texas there are a large number of Negroes.

Q. I know that.

A. And in many areas the proportion of Negroes is greater than that of whites.

Q. And then there are some where it's the other way?

A. Yes.

Q. And then there are some where they are about equally divided?

A. Correct.

Q. And there are ways of life and emotionalisms and whatnot to be taken into account as a practical matter whether they think that theoretically it ought to disappear or not, isn't that correct?

A. Definitely yes. We must take into account the ways of life and emotionalisms, but I do not want to in any sense of the word say that we should not control emotionalisms and direct our ways and lives in terms of our Democratic goals at all times.

Q. Well, I understand that, but emotionalism does exist in connection with racial relations in the kinds of places we have talked about, isn't that correct?

A. My experience has been that it exists to a degree at times, and sometimes in those same areas it's not readily apparent nor of a great amount. And, in other areas there is a relatively minimum amount of emotionalism.

[fol. 112] Q. Sometimes it's an acute problem and sometimes it's not, isn't that correct?

A. Such as all other problems which tend to face the human race in their evolutions, I would say.

Q. And, in places where it's an acute problem, as a school administrator you might very well assign the chil-

dren of one race to one school and of another race to another school in the light of that problem, isn't that correct?

A. If I understand you, Mr. Counsel, in cases where it's an acute problem, I would not assign the children of one race to one school.

Q. It might be good school administration, though, apart from law, isn't that correct?

A. I would not admit to that. It would be very poor school administration if the administrator did not direct his efforts at all times in terms of the overall purpose of our American public schools.

Q. Well, where the problem was acute, wouldn't it interfere considerably with the proper administration of a school system not to take into account that background?

A. I would say that my opinion tends to show the administrators of public schools are of sufficient stature and leadership ability so that they can more or less direct—mold even—and control public opinion so as to preserve the best interests of all the children in any community or given area.

[fol. 113] Q. Now, let me ask you another question? Isn't it a fact that rural school education has perhaps lagged behind the development of education in the urban centers in recent years?

A. Not only in recent years, but throughout history . . .

Q. Throughout history.

A. And the evolution of education, there has been a lagging behind of rural areas in education and the development of other social institutions.

Q. And one of the difficulties with rural education has been the fact that it has had to be supported under a great many public school systems by local taxation, isn't that correct?

A. I believe in every state in the United States the State Executive Officers act as State Boards of Equalization of educational funds, and therefore that the rural schools are not supported entirely——

Q. Where is that?

A. In the states. The State Superintendents observe to see that there is some degree of equalization of educational funds.

Q. You mean in South Carolina?

A. No. I'm saying that insofar as the United States as a whole.

Q. You mean that should be done?

A. That should be done.

Q. And it's a distinct step forward in the development of education generally, and particularly in rural education [fol. 114] when a state undertakes to make the matter of physical facilities in the school system a matter of state concern and distribute the burden over the whole state rather than to leave it lay on any particular school district? That is a step forward, isn't it?

A. That is. That has existed, Mr. Counselor, for a number of years in most states, and it's very essential and desirable to see that the educational facilities are to a degree at least equalized throughout the state.

Q. I'm talking now in reference to the State of South Carolina. You know that the State this year has taken that step, don't you?

A. I did not know it prior to this time.

Q. You heard that today?

A. I'm learning it from you.

Q. And, that should be a distinct factor in the development of rural education in this state, shouldn't it?

A. Now, may I ask you to kindly explain so we can be sure we are talking about the same thing in reference to that. The antecedent of that was the equality of school opportunities for rural and urban areas.

Q. I mean the provision of funds from the state treasury to aid the school districts in providing school facilities and equipment should be a distinct aid to the development of education in rural sections, shouldn't it?

A. Yes.

[fol. 115] Q. You haven't yourself been to School District 22 in Clarendon County that we're talking about here today?

A. I have not.

Q. Your knowledge of that you obtained by listening to a witness on the witness stand?

A. And from what I have been able to read and learn through studies.

Q. But, I mean you haven't studied that school district

yourself, have you, except what you read from somebody else?

A. I haven't studied the school district other than the reports which have been made and the extent to which the school district appears in literature.

Q. You haven't seen anything about school district 22 in literature, have you?

A. No—the extent to which School District 22, of course, is part of the whole program of South Carolina—the extent to which information in regard to the school program of South Carolina would be applicable.

Mr. Figg: All right. That's all.

Judge Parker: Do you wish to ask him anything in rebuttal?

Mr. Carter: Not a thing.

Judge Parker: Stand down. Call your next witness.

Mr. Carter: I would like to call Mr. Kenneth Clark as a witness.

[fol. 116] Mr. KENNETH CLARK was duly sworn.

Direct examination.

By Mr. Carter:

Q. Mr. Clark, would you kindly state your occupation?

A. I'm Assistant Professor of Psychology at the New York City College, and Associate Director of the North Side School for child development in New York City.

Q. How long have you been Assistant Professor of Psychology at the New York City College?

A. I have been associated with New York City College since 1942, and I have been Assistant Professor since 1948, I think.

Q. How long have you been Director of the North Side Center?

A. My wife and I founded the North Side Center in 1946.

Q. And, what is the purpose of that organization?

A. It's a child guidance center. It seeks to help children with emotional problems. Children with behavior problems are helped by us in obtaining psychiatric aid for living a more adjusted life.

Q. Have you held any other positions other than those two?

A. Yes, I have. I was a reserve consultant for the American Youth Commission in their study of the effects of a minority status on the personalities of Negro youth. I was reserve associate with the Cornachie-Murdaugh study of the Negro in America. I was reserve associate with the Office of War Information during the war in their studies of morale problems in the American Negro. I worked rather recently with the mid-century White House con-[fol. 117] ference on Children In Youth, preparing for them a manuscript on the effects of prejudice and discrimination on the personalities of children—white and Negro children. This manuscript was used last December in Washington at the White House conference on Children and Youth.

Q. Have you published any books or articles on this or any related subjects?

A. I have.

Q. Would you generally list them and where they appear?

A. Yes. Within the last ten years, I have published about twenty-five articles on the problem of social psychology with children and the effects of social situations on the personalities of children. They have appeared in the Journal of Abnormal and Social Psychology, the Journal of Social Psychology, the International Bulletin on Social Sciences published by the United Nations Organization. Some of these articles or chapters have appeared in books, such as Civilian Morale by Goodwin Watson, Human Nature and Enduring Peace by Gardner Murphy, and Readings and Social Psychology by Newman Hartley.

Q. Would you indicate your memberships, and the measures, in professional societies of your profession?

A. I am a Fellow in the Division of Personalities and Social Psychology of the American Psychological Association. I am a Fellow in the Society for the Socialogical study of social issues, and I am a member of the Columbia Uni-[fol. 118] versity Chapter of The Honorary Scientific Research Organization.

Q. Well, is your Major or emphasis on child psychology?

A. Child and Social.

Q. Now, Mr. Clark, are there any methods of scien-

tifically determining a child's sensitivity to racial discrimination and its effects on its personality and development?

A. Yes, there are.

Q. Would you tell us what those methods are?

A. There are many methods which psychologists have developed in their attempts to measure the child's sensitivity, his awareness of racial problems, and the effects which these have upon him. These methods are generally listed under what psychologists call projective methods, in which the child, depending upon his age—younger children and some older ones too are presented with pictures; pictures of individuals in which the racial group is clear by the color of one or more of the pictures. And, the child is asked to interpret the meaning or significance of that picture. Sometimes the child may be asked to identify himself with one or the other individuals on the picture. Then, there are methods which my wife and I have developed of presenting the child with dolls—dolls which are equal in every respect—that is coming from the same mould, except skin color, and asking the child a number of questions about these dolls. Would you care to hear the questions that we ask?

Q. Well, just generally.

[fol. 119] A. Well, we ask the child which one of these dolls does he like best, which one is a "Nice" doll, which one is "bad," and we're interested not only in the child's response to the specific question, but we're also interested in his spontaneous remarks as he attempts to justify it. Then, in order to find out whether that is predicated upon the child's knowledge of the racial factor, which these dolls are supposed to symbolize, we ask the child which one is like a white child, which one is like a colored child, and finally the last question that we ask the child, after the child has expressed his opinion about the dolls, we ask the child "Which one is like you?" Another method which we have is the coloring method. We present the child with some pictures—line drawings—of various objects like the leaf, an orange, a mouse and an apple in order to see whether the child has any stable concept of color-object relationship. And, if we find that that's true, we then give the child a drawing of a little boy if he is a little boy and say "This

little boy is you,'' ''Color him the color that you are.'' And, we get some picture of the child's concept of his own color, and we also get an indication of the child's anxieties and confusions about his color and his feelings. And, we present him with a picture of a little girl and we say to him ''Color this little girl the color that you would like little girls to be.'' Here we get an indication of the child's preference or feelings about different shades of skin color. These are the [fol. 120] methods which are generally used.

Q. Now, am I correct in stating that you have examined all of the literature relating to this method—to this subject—in preparation of the manuscript for the White House Conference?

A. You are correct, sir.

Q. Now, what did the literature which you examined adduce?

Judge Parker: What's that question?

Mr. Carter: Sir, I have asked him about the methods in determining racial discrimination. Mr. Clark has taken all of the literature that has been written about the use of these methods by other psychologists and their results and their findings, and he has collated those in a book—a manuscript—which he has edited for the White House Conference. And, I merely wanted to get from him the general conclusions which were reached.

Judge Parker: Well, you have asked him about his opinion, but you can't ask him about conclusions reached from literature, can you? I have never heard of that being a competent question.

Mr. Carter: Well, sir, I thought that I——

Judge Parker: You can ask him what authorities he studied.

Mr. Carter: All right, sir.

Judge Parker: You know, we'll never end this case if [fol. 121] we go into that sort of question.

Mr. Carter: I didn't want to drag it out.

Judge Parker: All right.

By Mr. Carter:

Q. Well, are the methods which you have described accepted by child psychologists as being accurate aids to

determine what part racial discrimination plays in the development of the personality pattern?

A. These methods are generally accepted as indications of the child's sensitivity to race as a problem and the child's reactions—his own personal reactions to race as a problem.

Q. Now, based upon your own use of these methods and upon your study of the literature in the field, have you reached any conclusion as to the effect of racial discrimination on the personality development of the Negro child?

A. Yes, I have.

Q. What is that conclusion?

A. I have reached the conclusion from the examination of my own results and from an examination of the literature in the entire field that discrimination, prejudice and segregation have definitely detrimental effects on the personality development of the Negro child. The essence of this detrimental effect is a confusion in the child's concept of his own self esteem—basic feelings of inferiority, conflict, confusion in his self image, resentment, hostility towards himself, hostility toward whites, intensification of sometimes a [fol. 122] desire to resolve his basic conflict by sometimes escaping or withdrawing. And, if you care to see some of the results, I'll be happy to show them. They attempt to withdraw from the situation which threatens so basically their self-esteem. This is not only my opinion, but in a study conducted by two social scientists, Doetcher and Schime, they studied opinions of representative samples of social psychology, anthropology and sociology by those who have worked in this field, and they found that ninety percent of these social psychologists and social scientists agree that segregation definitely has negative detrimental effects on the personalities of those individuals who are the victims of segregation. And, in these specific areas which I have just enumerated, that was true.

Q. Now, Mr. Clark, have you any occasion——

A. May I continue because that is an answer only to one-half of your question because, actually, the problem is further explored by those of us who know the literature by showing that prejudice, discrimination and segregation have an effect upon the personality of the child who belongs to the discriminating or segregating group—the white child in this particular regard. The Doetcher and Schime re-

search again showed that in this case eighty-two percent of the social scientists believed that the consequences of belonging to a segregating group also is detrimental. The pattern of the detriment is different in this case. Here it's the feeling of the social scientists that the basic personality [fol. 123] problem is guilty feelings. Another problem is confusion in the mind of the child—confusion concerning basic moral ideology—and a conflict which is set up in the child who belongs to the segregating group in terms of having the same people teach him Democracy, brotherhood, love of his fellow man, and teaching him also to segregate, and to discriminate. Most of these social scientists believe that this sets off in the personalities of these children a fundamental confusion in the entire moral spheres of their lives.

Q. Now, Mr. Clark, you had occasion, did you not, to test the reactions of the infant plaintiffs involved in this case by the use of the methods that determine sensitivity to racial discriminations?

A. Yes, I did.

Q. Now, will you tell us when you made these tests and what you did?

A. I made these tests on Thursday and Friday of this past week at your request, and I presented it to children in the Scott's Branch Elementary school, concentrating particularly on the elementary group. I used these methods which I told you about—the Negro and White dolls—which were identical in every respect save skin color. And, I presented them with a sheet of paper on which there were these drawings of dolls, and I asked them to show me the doll—— May I read from these notes?

[fol. 124] Judge Waring: You may refresh your recollection.

The Witness: Thank you. I presented these dolls to them and I asked them the following questions in the following order: "Show me the doll that you like best or that you'd like to play with," "Show me the doll that is the 'nice' doll," "Show me the doll that looks 'bad'," and then the following questions also: "Give me the doll that looks like a white child," "Give me the doll that looks like a colored

child," "Give me the doll that looks like a Negro child," and "Give me the doll that looks like you."

By Mr. Carter:

Q. "Like you?"

A. "Like you." That was the final question, and you can see why. I wanted to get the child's free expression of his opinions and feelings before I had him identified with one of these two dolls. I found that of the children between the ages of six and nine whom I tested, which were a total of sixteen in number, that ten of those children chose the white doll as their preference; the doll which they liked best. Ten of them also considered the white doll a "Nice" doll. And, I think you have to keep in mind that these two dolls are absolutely identical in every respect except skin color. Eleven of these sixteen children chose the brown doll as the doll which looked "bad." This is consistent with previous results which we have obtained testing over three hundred children, and we interpret it to mean that the Negro child [fol. 125] accepts as early as six, seven or eight the negative stereotypes about his own group. And, this result was confirmed in Clarendon County where we found eleven out of sixteen children picking the brown doll as looking "bad," when we also must take into account that over half of these children, in spite of their own feelings,—negative feelings—about the brown doll, were eventually required on the last question to identify themselves with this doll which they considered as being undesirable or negative. It may also interest you to know that only one of these children, between six and nine, dared to choose the white doll as looking bad. The difference between eleven and sixteen was in terms of children who refused to make any choice at all and the children were always free not to make a choice. They were not forced to make a choice. These choices represent the children's spontaneous and free reactions to this experimental situation. Nine of these sixteen children considered the white doll as having the qualities of a nice doll. To show you that that was not due to some artificial or accidental set of circumstances, the following results are important. Every single child, when asked to pick the doll that looked like the white child, made the correct choice. All sixteen of

the sixteen pickd that doll. Every single child, when asked to pick the doll that was like the colored child; every one of them picked the brown doll. My opinion is that a fundamental effect of segregation is basic confusion in the individuals and their concepts about themselves conflicting in [fol. 126] their self images. That seemed to be supported by the results of these sixteen children, all of them knowing which of those dolls was white and which one was brown. Seven of them, when asked to pick the doll that was like themselves; seven of them picked the white doll. This must be seen as a concrete illustration of the degree to which the pleasures which these children sensed against being brown forced them to evade reality—to escape the reality which seems too overburdening or too threatening to them. This is clearly illustrated by a number of these youngsters who, when asked to color themselves—— For example, I had a young girl, a dark brown child of seven, who was so dark brown that she was almost black. When she was asked to color herself, she was one of the few children who picked a flesh color, pink, to color herself. When asked to color a little boy, the color she liked little boys to be, she looked all around the twenty-four crayons and picked up a white crayon and looked up at me with a shy smile and began to color. She said, "Well, this doesn't show." So, she pressed a little harder and began to color in order to get the white crayon to show. These are the kinds of results which I obtained in Clarendon County.

Q. Well, as a result of your tests, what conclusions have you reached, Mr. Clark, with respect to the infant plaintiffs involved in this case?

[fol. 127] A. The conclusion which I was forced to reach was that these children in Clarendon County, like other human beings who are subjected to an obviously inferior status in the society in which they live, have been definitely harmed in the development of their personalities; that the signs of instability in their personalities are clear, and I think that every psychologist would accept and interpret these signs as such.

Q. Is that the type of injury which in your opinion would be enduring or lasting?

A. I think it is the kind of injury which would be as en-

during or lasting as the situation endured, changing only in its form and in the way it manifests itself.

Mr. Carter: Thank you. Your witness.

Cross-examination.

By Mr. Figg:

Q. How many children did you say that you talked to up there last week?

A. I can give you the exact number, sir. I talked to sixteen children between the ages of six and nine, and I talked to some children between the ages of twelve and seventeen.

Q. How many?

A. Ten.

Q. Twenty-six, then, total?

A. Twenty-six total, yes, sir.

Q. And where did you talk with them?

A. I talked with them in a room provided for me by the [fol. 128] Principal in the Scott's Branch School.

Q. Do you remember his name?

A. I think his name is Mr. Wright. I think so.

Q. Who was present when you talked with these children?

A. In general no one, but there was one situation in which a Mr. Betchman, I think, opened the door and entered and asked me what I was doing, and I told him I was testing and if he wanted any further information he could ask Mr. Montgomery.

Q. Well, he wasn't present when you were talking to the children?

A. No.

Q. Well, that's what I asked you; not who opened the door.

A. That's the only situation I remember in which there was another person present.

Q. You didn't talk with the children with Mr. Betchman there at all?

A. I was talking to a child. That's why it stuck in my mind, because usually that doesn't happen.

Q. So, in each case you and the child only were present?

A. That's correct.

Q. And you asked these questions and presented these exhibits and let the children make the selections?

A. That's right.

Q. And then you say you were forced to the conclusion, after talking to these children, that they had suffered harm [fol. 129] by attending the Scott's Branch School?

A. I was forced to the conclusion that they have definite disturbances and problems in their own self esteems; that they had feelings of inferiority that related to race.

Q. Because they had attended the Scott's Branch School?

A. No, because they perceived themselves in an inferior status—generally inferior.

Q. Well, the Scott's Branch School had nothing to do with it?

A. Well, I wouldn't say that, Counselor.

Q. Well, what would you say?

A. Well, I would say it would definitely——

Q. And why?

A. Because of some information which I got from the children between the ages of twelve and seventeen. As you can see, this method is not as sensitive for older children as it would be for younger children. So, it became apparent to me as I talked to the older children that I could get similar data by a different method; namely the interview method. And, I interviewed the older children, and I got from them definite and categorical statements concerning their feelings and their attitudes about attending Scott's Branch School, and I shall read some of them if you care for them.

Q. Well, you can read them; but who was present when you had this interview method with these older children? [fol. 130] A. No person is ever present.

Q. Just you and the child?

A. No person can be present under these circumstances.

Q. Just you and the child?

A. That's right.

Q. And you refer to that as the interview method?

A. The interview method.

Q. That means you ask them questions?

A. That's right.

Q. And they give you answers?

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Q. And you refer to that as the interview method?

A. The interview method.

Q. That means you ask them questions?

A. That's right.

Q. And they give you answers?

A. That's right.

Q. And the other method, you say, you devised yourself also?

A. It's a modification of methods which have been used by others too.

Q. Now, do you believe that there is such a conception as the universal consciousness of kind?

A. No, sir, I do not.

Q. You don't subscribe to that?

A. I don't believe that such a conception has any modern psychological validity.

Q. Do you believe that there is such a thing as recognizing the visible difference between races?

A. Oh, certainly, that is perceptible.

Q. And these children recognized the visible differences between those dolls that you showed them, didn't they?

[fol. 131] A. They recognized the visible differences between these two dolls.

Q. Do you recognize the psychology that people, based upon the Universal Consciousness of Kind, Social Heritage and the degree of Visibility of Differences between Races and so forth, enters into the problem of dealing with the existence of two different races in great numbers in a particular area?

A. I do not recognize that at all, sir.

Q. You don't recognize that?

A. I do not recognize it as a principle which should govern Democratic relations.

Q. Do you recognize that there is an emotional facet in the problem of two different races living in large numbers together in the same area?

A. I have just given you results which indicate the consequences of that kind of emotional tension.

Q. Well, did you examine any white children while you were up there?

A. I did not examine any white children in Clarendon County.

Q. Have you ever made any examination on what the effect would be in taking into account the present conditions at the present time in South Carolina of forcibly mixing the two races, say between the ages of seven and fourteen in the public schools?

A. I have no direct knowledge of that, sir, because I don't [fol. 132] know that.

Q. You haven't made any study of that?

A. May I ask for clarification of your question?

Q. I say, have you ever made any study sufficient to form an opinion as to what would be the effect psychologically upon the white children at the present time and under present conditions forcing them together in mixed schools—children of two races in such a place as School District 22 in Clarendon County?

A. Would you care for me to answer that question in terms of my opinion?

Q. I say, have you ever gone into that subject to determine what the contrary effect would be?

A. No, I could only give you an opinion as to what I believe would happen, but I couldn't tell you what I know would happen.

Judge Parker: The time for recess has arrived. How long is it going to take you to finish this cross examination?

Mr. Figg: I would just as soon take it up when we come back, your Honor, and I won't lengthen it.

Judge Parker: All right. We'll adjourn until half past two o'clock.

(Recess for lunch.)

Afternoon Session, Monday May 28, 1951.

Judge Parker: All right. Let the witness come back. Go ahead, Mr. Figg.

[fol. 133] Cross-examination.

By Mr. Figg—Continued.

Q. I think you said that you came down last Thursday and Friday to School District 22 in Clarendon County?

A. That's correct.

Q. And you administered this test that you had devised to some total twenty-six pupils?

A. That's correct, sir.

Q. Now, how were those pupils chosen?

A. A list of the children of the plaintiffs in this case was——

Q. Who had the list when you got there?

A. The person who accompanied me had the list.

Q. The person accompanying you?

A. The person who accompanied me had the list.

Q. Who was that?

A. A Mr. Montgomery.

Q. And who is he?

A. Mr. Montgomery is the person who lives and works in this area for the N. A. A. C. P.

Q. All right. Does he live in Summerton?

A. I do not think so.

Q. But he had a list of the children?

A. He had a list of the children of the plaintiffs.

Q. And you asked the principal for those particular children?

A. I asked the principal for all of those children between [fol. 134] the first and fourth grades.

Q. Well, I mean, every child that you talked to or administered the test to was on the list?

A. No, that's not true.

Q. What?

A. That's not true. I also asked for a child from each grade in which there was a plaintiff child that was of the same age and the same sex, between the ages of six and nine.

Q. Who selected those children?

A. I asked that they be selected at random except in terms of these things which I wanted controlled.

Q. Who did you ask to select them at random?

A. I asked Mr. Montgomery to ask the principal that.

Q. You didn't yourself ask the principal?

A. I talked to the principal when I first went in myself, yes.

Q. And got the permission for the entire thing?

A. Yes.

Q. Now, you said you arranged these tests yourself?

A. Yes. My wife and I developed these.

Q. Your wife and you?

A. We devised these particular tests.

Q. You and your wife devised these particular tests?

A. Yes.

Q. And how many times had it been used before you used [fol. 135] it at Clarendon?

A. I would say about—— You mean how many different people?

Q. Yes.

A. About four hundred.

Q. About four hundred. And, where was that done?

A. It was done in Springfield, Massachusetts and——

Q. How many there?

A. How many?

Q. How many at Springfield?

A. Oh, I would say about a hundred and fifty or something like that.

Q. About fifty?

A. A hundred and fifty.

Q. A hundred and fifty?

A. I would say so.

Q. And where else?

A. In Arkansas.

Q. How many there?

A. In Pine Bluff, Arkansas; Little Rock, Arkansas; and Hot Springs, Arkansas. I would say about a hundred and sixty or a hundred and seventy, or something of that sort.

Q. At any other places?

A. Some in New York. The results of the children we have tested in New York have not been published.

[fol. 136] Q. So that this method that you and your wife devised had been used on about four hundred children before this occasion?

A. Approximately, yes.

Q. And, would you say that that was a satisfactory demonstration of its accuracy and merit to base an opinion of its value on?

A. I would say so, particularly in the light of its use and its acceptance by other psychologists.

Mr. Figg: That's all.

Re-direct examination.

By Mr. Carter:

Q. Mr. Clark, this method that you and Mrs. Clark used, has this method been employed or used by other psychologists? Is your test a variation of the standard tests that are used or what?

A. I would say that it's a modification of a general type of test which has been used by some psychologists, yes, sir. It is a projective test.

Q. When you spoke of four hundred experiences, you are merely talking about the four hundred times in which you have used the test?

A. The four hundred times that I have used the method, yes.

Mr. Figg: May I ask him one more question, Your Honor?
Judge Parker: All right.

Recross examination.

By Mr. Figg:

Q. Has it been used by anybody else that you know of?
[fol. 137] A. Yes, sir, it has.

Q. Where was that?

A. A graduate student at Columbia University has used our method with white children. Unfortunately I have not gotten those results, but I have permitted her to use our dolls and our methods on a master's thesis which she was using.

Q. Well, may I ask why the standard or general tests were not used on this occasion?

A. Because there are no standardized or general tests for exploring this particular problem. This particular problem is a problem which has just been recently studied by the use of these tests. It therefore follows that the techniques are being developed and are being used.

Mr. Figg: That's all.
Judge Parker: Stand down. Call your next witness.
Mr. Marshall: May it please The Court, we had a conference during the luncheon recess. We only have available

at the present time this afternoon two more witnesses, and they will not take long, and I think it's obvious, if your Honors please, for the concessions made by the defendant this morning, which we did not know about and had no idea about, the other witnesses that we have are all busy people and they are all out of town people, and we had arranged for them to come in tonight on the theory that our case would still be going on. And, I was wondering, sir, since [fol. 138] there is no jury involved in this case, if the defendants would put on their testimony with us with the right to some back. I don't want to rest. I don't think we have enough to rest.

Judge Parker: Well, you'd better put all the witnesses you have up.

Mr. Marshall: The two we have will be very short, though.

Judge Parker: All right. Put them up and let's get through with them.

Mr. James L. Hupp was duly sworn.

Direct Examination.

By Mr. Carter:

Q. Mr. Hupp, what is your present occupation?

A. I am Dean of Students and Professor of Education and Psychology at the Wesleyan College of West Virginia at Buchanan, West Virginia.

Q. How long have you held that job?

A. Eight years.

Q. What other teaching experience have you had?

A. I have taught in a one-room elementary school and in a graded elementary school, been Principal of an elementary school, taught in high school and been principal of high schools, and have taught in college and universities.

Q. What is your educational background?

A. I'm a graduate of Ohio University at Athens, Ohio, where I received a Bachelor of Science and Education [fol. 139] Degree; from Columbia Teacher's College, Columbia University where I received a Master of Arts Degree; from Ohio State University where I received a Doctor of Philosophy Degree.

Q. Now, Mr. Hupp, what exactly is your specific field or specialization in the field of education?

A. I majored at Columbia University and at Ohio State University in School Administration and received a diploma in school administration along with my Master's degree at Columbia.

Q. Have you published any articles or books on the subject of education?

A. I have.

Q. And what are they?

A. Well, I have made a study of the administration and the curriculum in the field of history. I made a study of the items used on report forms used throughout the United States in making reports on school affairs. I made a study of the teaching of social sciences in the State of Ohio, and others.

Q. Do you belong to any professional societies?

A. I do.

Q. Will you name a few of them?

A. Well, I belong to the American Association of Political Science, Social Science and History, I believe it is. I forget the exact title of it. And, the American Association of Science, and I am a member of the National Society for the Study of Education. I am a member of the American [fol. 140] College Personnel Association. I have been a member of the West Virginia Academy of Science, and the West Virginia Association of Higher Education. I'm an immediate Past President of the West Virginia Association of Higher Education—and many others.

Q. All right, sir. Is the college at which you are now teaching a public or a private school?

A. It is a private school owned and operated by the West Virginia Conference of the Methodist Churches.

Q. Now, Dean Hupp, based on your experience and background as an educator, assuming a situation in which the public schools for Negroes are segregated, that they are required to attend schools which are segregated from those which are maintained for the rest of the population, in your opinion, would the Negro child educated under those circumstances be able to secure equal educational facilities?

A. My answer is no, that he would not.

Q. Now, what do you base that opinion upon?

A. It is my opinion that when Negro children and white children are separated so far as education is concerned, that Negro and white students do not get a clear picture of each of the races. Therefore, their education is distorted to that extent, and is not a clear-cut all around education.

Q. Now, what do you conceive to be the function of public education?

A. Well, I could use one word to describe it. I could say [fol. 141] that the business of education in our societies is to produce good citizens—citizens able to function efficiently in a Democracy as we have. From another point of view, it is the business of education to help children as they grow and develop in facing the tasks that they meet because of the fact that they are growing, developing persons. And, in this growing up, a child matures physically, socially, intellectually and emotionally. And, if he's going to grow up and be an all-around well, developed integrated personality, every one of these phases of development must be given attention by educators because they are all interrelated and inter-dependent, and if one is not taken care of as well as it should be, all of the others are injured to some extent. Therefore, since social development is one of these phases, and a very important phase, I don't believe our children, white or black, get the social development that they really should get when education is carried on in segregated schools.

Q. Now, Dean Hupp, have you any experience in participating or observing a school situation which formerly had excluded Negroes; we'll say a segregated school which kept Negroes out, and then admitted them; began to abandon that policy and admit Negroes? Have you had any experience with that type of situation?

A. I have.

Q. And where?

[fol. 142] A. At West Virginia Wesleyan College.

Q. How did that transition take place?

Mr. Figg: Your Honor, we object to any testimony as to any events in West Virginia because it's a very different evidentiary situation.

Judge Parker: How is that competent?

Mr. Carter: Well, your Honor, as I understood the

questions raised by the defense, there is emphasis on the emotional situation development. It seems to me that the defense was raising the question that there would be a great deal of emotional tension involved in a situation in which Negroes and whites were thrown together for the first time in a school system, and it seemed to me that, having raised that point, we were called upon to meet it.

Judge Parker: Well, isn't the question that you are addressing to this witness directed to the policy of education rather than to the rights under education? It's not the function of the Court to determine what is the best educational policy; it is the function of the Court to see that all men are given their rights.

Mr. Carter: I agree, your Honor. That's true, but the defense, it seems to me, having raised this question as to whether this would be wise by virtue of some of the questions directed at our witnesses, I thought that it was necessary for us to attempt to meet that with this witness.

[fol. 143] Judge Parker: Well, go ahead, but make it as short as you can.

Mr. Carter: I won't delay it.

The Witness: Are you ready for the answer?

By Mr. Carter:

Q. Please.

A. A little over two years ago, the Administration Committee of West Virginia Wesleyan College voted to admit students—qualified students—without reference to race, creed or color. This, of course, had to be taken before the faculty committee, and then from the Faculty Committee to the Board of Trustees. It passed through the faculty and then a week or so later went before the Board of Trustees, and was passed by the Board of Trustees. Two years ago we admitted our first Negro student, and we have had Negro students on the campus for the past two years. And, these emotional tensions and so forth that you hear about, we have had no experiences of that kind. Our student body accepted these people with open arms. In fact, at the first meeting of the freshman class, they selected one of these Negro students to represent them on what we call the Community Council, which in many schools is called a student government.

Q. Do you consider the opportunity to go to an unsegregated school an essential element in public school education?

A. I do.

Q. Why?

[fol. 144] A. Well, I think that in America, that people ought to have the right and privilege to attend schools of their choice. And, by opening up the doors of West Virginia Wesleyan to colored people, we had persons, of course, who chose to attend our school in preference to segregated schools. I think that's a right that American citizens should possess.

Mr. Carter: Your witness.

Mr. Figg: We have no questions, your Honor.

Judge Parker: Stand down. Call your next witness.

Mr. Louis Kesselmann was duly sworn.

Direct Examination.

By Mr. Carter:

Q. Mr. Kesselmann, what is your present occupation?

A. I am Associate Professor of Political Science at the University of Louisville.

Q. How long have you held that position?

A. I have been at the University of Louisville since 1947. I have been Associate Professor starting this year.

Q. What other teaching experience if any have you had?

A. Prior to my coming to Louisville, I taught for six years at Ohio State University as an instructor in the Department of Political Science.

Q. Have you published any articles of any kind?

A. Yes. I have one book which was published by the University of North Carolina press on the Social Politics of F.E.P.C. and a series of articles on F.E.P.C. and Labor questions.

[fol. 145] Q. Would you indicate where you received your education and degrees that you hold?

A. I received all three of my degrees—the Bachelor of

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[fol. 145] Q. Would you indicate where you received your education and degrees that you hold?

A. I received all three of my degrees—the Bachelor of

Arts, the Master of Arts, and the Doctor of Philosophy—at Ohio State University.

Q. Are you affiliated with any professional societies?

A. Yes. I am a member of the American Political Science Association in which I am a member of the International Relations Committee. I am also a member of the International Relations Reserve Association, the American Arbitration Association, and various other organizations.

Q. Now, Professor Kesselmann, your field is the field of Government or Political Science, is that right?

A. That's correct.

Q. Do you have any opinion as to whether a public school system, which is operated on a racial segregated basis; do you have any opinion as to whether such a system would cause adverse effects or would have adverse effects in operation among the individuals?

A. Yes, I do have such opinion. My particular interest in the field of Political Science . . .

Mr. Figg: Your Honor, I object to that question because I don't think that this witness has been qualified to answer that question. He said his work is in the field of Government. This question would have been properly addressed [fol. 146] perhaps to another witness, but I don't think this one has been qualified to answer that question.

Judge Parker: What do you say as to that?

Mr. Carter: Well, your Honor, this Professor Kesselmann is not an expert in terms of Government; he is a person who has studied the science of government. He is an educator to that extent.

Judge Parker: He's not a specialist in education is he?

Mr. Carter: No, sir.

Judge Parker: Well, how can he express an opinion on a matter of educational policy?

Mr. Carter: He can express an opinion, your Honor, because of what we will bring out, or attempt to bring out, as a person who deals in the science of government, he would have to investigate the effect of certain things upon certain matters, and in the development of citizenship, the question of what method is usable or is best used in determining whether a person would use a ballot of a certain form, and so forth—whether or not an idea is developed in the child

or in the people as to support Democratic institutions. And, I think that he would be preemptorily qualified for that question.

Judge Parker: It seems to me that any lawyer or any man who has any experience in government would be just as well qualified as he would be to express an opinion on that. [fol. 147] He is not a scientist in the field of education.

Mr. Carter: No, sir, he's not a scientist in the field of education.

Judge Parker: Do you seriously contend he is qualified to testify as an educational expert? What do you say about that, Mr. Marshall?

Mr. Marshall: May it please the Court, what we have been trying to do is to present as many experts in the field with as many different reasons why we consider that segregation in and of itself is injurious to the child who is segregated. Professor Kesselmann, we hoped, would be able to testify as to the effect insofar as the study of government and the development of necesary fundamentals. We deliberately haven't brought witnesses who testified accumulatively. We want as many reasons as we can get.

Judge Parker: Are you going to offer any more witnesses along this line?

Mr. Marshall: No, sir. The other witnesses are REAL scientists.

Judge Parker: Well, I'll take it for what it's worth. Go ahead.

By Mr. Carter:

Q. Do you remember the question?

A. I think that I do. My particular interest in the field of Political Science is citizenship and the Political process. And, based upon studies which we regard as being scien- [fol. 148] tifically accurate by virtue of use of the scientific methods, we have come to feel that a number of things result from segregation which are not desirable from the standpoint of good citizenship; that the segregation of white and Negro students in the schools prevents them from gaining an understanding of the needs and interests of both groups. Secondly, segregation breeds suspicion and distrust in the absence of a knowledge of the other group. And, thirdly,

where segregation is enforced by law, it may even breed distrust to the point of conflict. Now, carrying that over into the field of citizenship, when a community is faced with problems which every community would be faced with, it will need the combined efforts of all citizens to solve those problems. Where segregation exists as a pattern in education, it makes that cooperation more difficult. Next, in terms of voting and participating in the electorial process, our various studies indicate that those people who are low in literacy and low in experience with other groups are not likely to participate as fully as those who have . . .

Judge Parker: I don't think his answer is addressed to your question. Bring him to the question.

By Mr. Carter:

Q. Mr. Kesselmann . . .

Judge Parker: He's just arguing generally about things. Bring him to the question and let him answer the question.

By Mr. Carter:

Q. What I wanted to get at, Professor Kesselmann, is [fol. 149] what do you regard as the adverse effects, from the point of view of a political scientist, on the individual who is educated in a segregated school—the specific adverse effects on the individual.

A. I thought I was answering the question.

Judge Parker: He's asking you what the effect is on the individual. You're talking about the community. Can you answer the question on the individual?

The Witness: No, sir, I cannot, unless you generalize about the community.

Judge Waring: I'm assuming you are testifying to the community as being a group of individuals, are you?

The Witness: That's true.

Mr. Carter: That's all.

Mr. Figg: We have no questions.

Judge Parker: Anything else?

Mr. Marshall: Now, if your Honor pleases, I don't know what to do at this stage except to make the suggestion that we suspend. We are not ready to rest.

Judge Parker: Well, I think in view of the fact that your adversary made that admission this morning that curtailed the length of the case, that it's nothing but fair that they go ahead with their testimony.

Mr. Figg: What's that, sir?

Judge Parker: I say, I think it's nothing but fair that [fol. 150] you go ahead with your testimony. He says he has no other witnesses here, but he'll have them here in the morning.

Mr. Figg: Well, we were not ready to go ahead with our testimony, your Honor. We had been told that his testimony would take two or three days.

Judge Parker: Well, I'm hoping all of it is not going to take three days.

Mr. Figg: I haven't conferred with our witnesses present preparatory to examining them. If you gave us some kind of a recess, we can probably do something along that line.

Judge Parker: Could you get ready to go ahead in fifteen minutes?

Mr. Figg: I can report in fifteen minutes, sir.

Judge Parker: All right. Court will take a recess for fifteen minutes?

(Recess.)

* * * * * * *

[fol. 151] AFTER RECESS

Judge Parker: All right, gentlemen, are you ready to proceed?

Mr. Figg: If the Court please, we have two witnesses that we can call at this time, and I would like to ask Mr. E. R. Crow to take the stand.

E. R. CROW, called as a witness by and on behalf of the defendants, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Figg:

Q. You are Mr. E. R. Crow?

A. I am, sir.

Q. And where do you live, Mr. Crow?

A. At Sumter, South Carolina.

Q. How long have you lived at Sumter, Mr. Crow?

A. Since 1946; six years.

Q. And during the period from 1945 until recently did you hold any position with the Public Schools of Sumter?

A. Yes, sir.

Q. And what was that position, sir.

A. I have been Superintendent of Schools.

Q. Of the City of Sumter?

A. That's right.

Q. Mr. Crow, approximately how large a school system is that?

A. Approximately 7,200.0

[fol. 152] Q. Does that include White and Negro children?

A. Yes, sir.

Q. What is the approximate proportions of white and Negro children?

A. Approximately 53-47.

Q. Fifty-three per cent white and forty-seven per cent Negro?

A. Yes, sir; that is just approximately the figure.

Q. Now, Mr. Crow, prior to being Superintendent of the schools in Sumter, what other educational positions did you hold and where did you fill them?

A. Prior to going to Sumter I was a Principal in the Columbia School System.

Q. That is in the City of Columbia, South Carolina?

A. Yes, sir. For a year and a half I was in the Elementary Schools and then for fifteen years with the Columbia High School, and immediately prior to that I was Principal of the High School at Union, South Carolina.

Q. Where did you get your education, Mr. Crow?

A. At Furman University, where I got my A. B. Degree, and I got my Master's Degree from the University of South Carolina. I have also attended Summer Quarters at Chicago, Peabody, Virginia and also at the University of South Carolina.

Q. Now, were you recently appointed Director of the State Educational Finance Commission?

A. Yes, sir; I was appointed Director of the State Educational Finance Commission.

[fol. 153] Q. Now this is the State Commission that was set up by the 1951 Legislature?

A. Yes, sir.

Q. It was set up to handle the educational problems provided for in the educational legislation in the State appropriation, a part of which was the imposition of a three per cent Sales Tax and the authorization of a Seventy-five Million Dollar bond issue, and so forth. Is that correct?

A. That is correct.

Q. And were you asked by the Trustees of School District No. 22 in Clarendon County last week to come there and make a survey of their schools?

A. Well——

Q. Perhaps "survey" is not the word. Were you asked to look at it?

A. I was asked to go to Summerton, School District No. 22, to be able to point out the potentialities of this new problem in respect to building and other aids and how it would affect this particular school district.

Q. What day were you there, Mr. Crow?

A. May 22d.

Q. Did you also give consideration to the centralization of the High School Districts while you were there?

A. Yes, sir.

Q. What did you do along that line, sir?

[fol. 154] A. I secured enrollment figures and the average daily attendance figures from the Superintendent of Schools there, these figures applying to both the Summerton District No. 22, and the other districts in the centralization High School setup there.

Q. What were the districts?

A. What were the districts?

Q. Yes, sir; besides District 22.

A. Districts Nos. 3, 4, 8 and 30.

Q. And what information did you receive as to the enrollment at the Summerton High School?

A. That is the White High School?

Q. Yes, sir.

A. The enrollment was 78.

Q. And what was the average daily attendance at that school?

A. Seventy-three.

Q. What was the enrollment at the Summerton Elementary School?

A. One hundred and ninety-nine.

Q. What was the average daily attendance, sir?

A. It had an average daily attendance of 180.

Q. Now, Mr. Crow, what was the enrollment at the Scott's Branch School in the High School grades?

A. One hundred and forty-nine.

Q. With an average daily attendance of what?

A. Of 124.

Q. What was the enrollment in District 22 for the elementary grades?

[fol. 155] A. Seven hundred and seventeen.

Q. What was the average daily attendance?

A. Four hundred and sixty-nine.

Q. Four hundred and sixty-nine, you say?

A. Yes, sir.

Q. Now what was the total white enrollment in the five districts?

A. Two hundred and seventy-seven.

Q. There is no separate white enrollment in the other four centralized districts?

A. No, sir; all the white enrollment is in the Summerton Schools, High School and Elementary Schools.

Q. Now, Mr. Crow, what is the total Negro enrollment in the five districts?

A. Two thousand one hundred and forty-four (2,144).

Q. And the average daily attendance in the Negro Districts is what?

A. One thousand five hundred and thirty-eight. (1,538).

Q. Now on the basis of the information that you obtained in those districts, did you ascertain the potential, the financial potential toward the providing of school buildings and equipment and facilities under the 1951 legislation?

Mr. Marshall: If the Court please, we object to any testimony as to what will be done in the future. Our Supreme Court on several occasions has spoken on that, as has the Court of Appeals, that those rights guaranteed

[fol. 156] under the Fourteenth Amendment are rights as of now, not the future.

Judge Parker: That is right, but what this Court may do in its decree might depend on whether they were making efforts in good faith to better the condition of these people.

Mr. Marshall: Except, sir, that in a recent opinion in the McKissick case, in the North Carolina case——

Judge Parker: Yes, I know that, and we will hear you on that when you come to argue the case. Let's get it in the record now and we can argue it later. Answer the question.

A. What was the question?

Q. That potential you received there as a result of your study was what?

A. The Act in question appropriates Fifteen ($15.00) Dollars per pupil per year times the number of pupils in average daily attendance, and that amounts to $12,690.00 per year in District No. 22. Now in the combined area embracing all five districts in the centralized high school set-up, the total would be $26,865.00.

Q. That is a year?

A. Yes, sir; that is a year. Now the Act permits borrowing against the future on the same basis up to a period of twenty years to the extent of 75% of the total expected accruals over a twenty year period, it being understood that the average daily attendance will remain constant.

Q. What would that mean for the districts, Mr. Crow?

[fol. 157] A. That would mean that District No. 22, could borrow against the State Fund, $190,350.00. The combined Districts 22, 3, 4, 8 and 30, could borrow against the State Fund $402,975.00. That would be to pledge 75% of the expected amount to be received over a period of twenty years.

There would be in addition to that amount 25% thereof, less interest paid on money borrowed, which under the Act is set at 2½%.

Q. And that twenty-five per cent you refer to, that would be paid annually in cash to the district?

A. It would be available annually to the district, yes, sir. The amount would be reduced by any amount of inter-

est, however, that would be due to the State on money borrowed from the State.

Q. On the existing 75% loan?

A. Yes, sir.

Q. Now would the potential of the district borrowing remain stationary as of the time of the loan, at the time the loan was made, or would it increase as the average daily attendance increased?

A. The Act appropriates $15.00 per pupil per year average daily attendance, and as the average daily attendance increases, the amount of money for the district would likewise increase proportionately.

Q. And in that particular district, Mr. Crow, with an average low daily attendance, particularly in the Negro [fol. 158] districts, the potential would increase in their borrowing power, would you say to around a substantial amount?

A. Yes, sir; I would say that it would. I haven't figured out the percentage, but it seems to me it would be about a 65% or 70% potential increase of daily average attendance of nearly one third of those pupils and that would increase the borrowing potential also.

Q. The average white daily attendance is a little more than 90?

A. Yes, sir. I believe that is about right.

Q. Then would you say that there is quite a potential increase of borrowing power of the average daily attendance among the 2,144 pupils enrolled in the Negro schools, is that correct?

A. Yes, sir; that is correct. Now there is another possible source of increase for those schools, and that is that the attendance is also increasing, and that would bring in another possible source.

Q. Now at this time let me ask you this; if under this 1951 Act the Commission of which you are the Director, would have to approve the plan arrived at in any school district, or county, before it became effective; is that right?

A. That is true, sir.

Q. And the declared purpose of the Act, I believe, was to provide the quality of educational opportunity for all the children throughout the State, is that correct?

A. That is its purpose; yes, sir.

[fol. 159] Q. And has the Commission gone on record to specifically carry out that policy?

A. As you know, the Commission has just been organized under the Act setting up this new Commission and this Act was just signed by the Governor on the 20th of May.

The Commission has had two meetings for organization purposes and no policies have been adopted as yet, but I can testify that it is the objective of all connected with the Commission to carry out the purposes as stated in the policy of the Act, which are two-fold.

First, to guarantee equal educational opportunities to all the children of the State, and

Second, I consider this of almost equal importance to the first perhaps, to bring about the existence of responsible school jurisdictions to take the place of some fifteen school districts that now exist in South Carolina.

Q. And does that Commission have authority in reference to possible consolidation of school districts?

A. Yes, sir; it does.

Q. Is that one of the provisions of the Act?

A. It definitely states that; that it is the function of the Commission to approve consolidations. That is definitely stated in the Act.

Q. As to school transportation in the event of consolidation; is that to be a state or a local function?

[fol. 160] A. The financing of it will be a State function and it will be administered through the County Boards of Education on routes set up and approved by the State Commission.

Q. It will be financed by the State, and administered by the local Boards after it has been approved by the State Commission?

A. That is correct.

Q. It will be entirely financed by the State?

A. Yes, sir.

Q. And there are statutory standards laid down in reference to transportation in the Act, are there not?

A. Yes, sir.

Q. Now did your figures determine the amount per en-

rolled pupil in these five districts that could be borrowed at this time?

A. Yes, sir.

Q. Will you state that amount?

A. The amount per pupil in the combined district?

Q. Yes, sir.

A. The total amount is based upon, not the enrolled pupils, but upon the average daily attendance, and the amount would be $402,975.00.

Q. Now that is $187.00 for each pupil enrolled?

A. Approximately; yes, sir.

Q. Assume that a class-room unit of thirty pupils is being considered by your Board, how much per class-room unit could that secure in the way of loans, under this legislation?

[fol. 161] A. It would be thirty times $187.00, which would be $5,610.00.

Q. Five thousand six hundred and ten dollars?

A. Yes, sir.

Q. Has District No. 22 communicated with you or with your Commission with reference to making application for financing under this Act?

A. Yes, sir.

Q. I believe that the Sales Tax goes into effect on July 1st?

A. That is correct, sir.

Q. But the organization has been set up?

A. The organization has been set up; yes, sir.

Q. Is it the purpose of the Commission of which you are Chairman, under the Act, and are you charged with making a survey of all the schools in the State?

A. Yes, sir; it is.

Q. Now, Mr. Crow, in Sumter, in the City of Sumter School System, do you have both white and Negro schools?

A. Yes, sir.

Q. Was that true of the Columbia schools, also where you were formerly employed?

A. Well, there were both white and Negro schools in the Columbia system but I was only connected with the white schools.

Q. But in Sumter you are Superintendent of the whole system?

A. That is correct.

Q. And that includes both white and colored schools?

[fol. 162] A. It does.

Q. Now, let me ask you this; in the light of your experience as a school administrator, if it were assumed that separate schools for the white and colored races were neither commanded or prohibited by law, and it was also assumed that the several schools of the school system afforded substantially equal educational facilities and opportunities, would you state whether or not in your opinion it would be wise or unwise at the present time and under present conditions for South Carolina and for the two races, that they be mixed in the same schools in administrative practice?

A. I think, sir, it would be unwise.

Q. Unwise?

A. Yes, sir.

Q. In your opinion as a school administrator, Mr. Crow, do you believe that a system at the present time and under present conditions in South Carolina would be possible of proper administration with mixed schools?

A. No, sir.

Q. Will you tell us why?

A. The existance of the feeling of separateness between the races of this State would make it such that it would be impossible to have peaceable association with each other in the public schools.

In my opinion it would be impossible to have sufficient [fol. 163] acceptance of the idea of mixed groups attending the same schools to make it possible to have public education on that basis at all.

Q. In your opinion, Mr. Crow, would the mixing of the two races in the same school under present conditions and at the present time in South Carolina improve the education that they would both get or would it cause it to deteriorate?

A. In my opinion it would eliminate public schools in most, if not all of the communities in the State.

Q. Would or not, in your opinion, there be community acceptance of mixed schools at this time?

A. There would not be.

Q. Would or not there be a probability of violent emotional reaction in the communities?

A. There would be, I am sure.

Mr. Figg: The witness is with you.

Cross-examination.

By Mr. Marshall:

Q. Mr. Crow, what is the name of this Commission you are a member of?

A. The State Educational Finance Commission.

Q. And do I understand you correctly that the Commission has full charge of disbursing all funds under this 1951 Act of the Legislature?

A. It has control, by approval of the disbursing of the funds for State aid for public schools, that is for public [fol. 164] school construction and also transportation funds.

Q. About what is the percentage of Negro population to white population in South Carolina?

A. I do not have the information at once.

Q. I mean just approximately, if you can.

A. Well, it would be, I would say, about forty per cent, or forty-five.

Q. Are you administering funds that would be distributed in school systems, forty of which happen to be Negro?

A. Yes, sir.

Q. My next question is, are there any Negroes on your Commission?

A. No.

Q. Has there been any discussion as to whether there will be any Negroes on that Commission by the members?

A. There has not been any discussion as to that by the Commission. The Act provides that the members be appointed by the Governor and be confirmed by the Senate.

Q. Do you have any Negro employees on your Commission?

A. Not as yet.

Q. When did District 22 inquire about this application?

A. About a week ago, I don't remember the exact date.

Q. Have they filed their application yet?

A. No. The fact is, the Commission has just been organized. It has not established the procedure for the processing

of applications, but as soon as that is done, the district will [fol. 165] be notified.

Q. When the money is sent down, is it allocated in a lump sum to the counties? Or to the districts; just how is that done?

A. It is allocated to the districts in those counties that operate on the district system. A few counties in the State operate on the county unit system, and in such cases it goes to the counties.

Q. It goes in a lump sum?

A. It does; yes, but it goes to projects that have been previously approved by the Commission.

Q. What I want to know is, is it possible within the framework of the State quota for the Negroes to be counted on daily average attendance in order to get a lump sum of money, and as a matter of fact be entirely possible for the Negro schools not to get a nickel of it?

A. That would be in violation of the stated objectives of the Act, and would be going contrary to it, and contrary to the reason for creating the State Educational Finance Commission.

Q. Is there anything in the Act to prevent that from happening?

A. I recall only the fact that the Commission is directed to proceed to guarantee equal educational advantages and opportunities to all of the children of the State.

Q. Mr. Crow, how much study have you done on the question of racial tension?

A. If you mean formal study to qualify myself as an ex- [fol. 166] pert, I have done none.

Q. I mean any kind of study, Mr. Crow.

A. I would not say any study especially, but I have observed conditions and people in South Carolina all of my life, but I have not studied racial tensions as such.

Q. Do you know of any situation in which previously segregated schools were mixed?

A. In South Carolina?

Q. In any place.

A. I have never been connected with any schools outside of this State, and I have never known of any in this State that come under your question.

Q. How do you draw your conclusion as to what will happen if they are mixed?

A. Because of my knowledge of what people say, from their expressions with reference to this issue are.

Q. You are speaking of white people?

A. Mainly.

Q. How many Negroes do you know?

A. That would be impossible to answer. I know a great many Negroes.

Q. Well, approximately how many?

A. I couldn't answer that; I couldn't answer as to how many white people I know. That is an impossible question. I do not know how many Negroes I know.

[fol. 167] Q. Do you know anything about the Negroes' beliefs in this thing?

A. Probably so; yes.

Q. You think so?

A. Yes, sir.

Q. Do you know what the Negroes' reaction would be to mixed schools?

A. Well, I have heard——

Q. Of your own knowledge, now.

A. I could not predict what they would do, but I have an opinion that is based upon what a number of Negro school administrators have said to me, that if this issue should be settled on a voluntary basis that you would have a continuance of substantially the same situation.

Q. You are speaking of Negro public school administrators?

A. Yes, sir.

Q. Are any of the administrators you are talking about not employed by white school boards and responsible to them?

A. All the school administrators I know are employed by white school boards.

Q. Do you consider the people in South Carolina to be law abiding? Are they a law-abiding group of people?

A. That is a comparative question I presume and I do not have the information with reference to comparative statistics as to crime, but I would say that one's life is not in [fol. 168] danger in South Carolina. I would say it is a law-abiding state.

Q. I am not trying to confuse you, I am just trying to get your testimony as to this. If this Court issues an injunction, a Federal Court of your State ending segregation in your schools, is it your testimony that the people of South Carolina would disobey it? Is that what you want to say?

A. No, I didn't say that.

Q. Well, do you think they will obey it?

Mr. Figg: That injunction would not be directed to the people of South Carolina, it would be directed to certain——

Judge Parker: Any injunction issued by this Court would be obeyed.

Mr. Marshall: I am sure of that, your Honor.

Q. You spoke, Mr. Crow, of community acceptance.

A. Yes, sir.

Q. What community do you mean; the white or the Negro community?

A. Well, of course I am thinking, as I stated, of the white community, but as I have stated, a good many Negroes, Negro school administrators have said that if they remained free to choose the schools to which they would go, they would prefer to have schools of their own race.

Q. Can you give me the names of some of those administrators?

A. No, sir.

Q. You don't remember their names?

A. No, I do not.

[fol. 169] Q. If I understand your testimony correctly, you said one of the reasons it would be impossible to remove segregation was because there was a feeling of separateness in existence that had been there for a long time, is that correct?

A. That is right.

Q. And it is your opinion that if that feeling of separateness exists, that it will prohibit or prevent, or to use your own words, make it impossible to get the schools to become mixed?

A. Under any circumstances at the present time, yes, sir.

Q. Didn't you also say that the schools would not be in operation?

A. I did not say they would not be in operation, I said in

my opinion the public schools of the state would be abandoned.

Q Would be abandoned?

A. Yes, sir.

Q. Do I understand you correctly to say that the people in South Carolina, the white people, would deprive their own children of an education for this reason?

A. I didn't say they would do that.

Q. I thought you said they would abandon the schools, maybe I misunderstood you.

A. I don't think the General Assembly of South Carolina would appropriate money for the public schools if segregation is eliminated, and I don't think that the local communities would vote taxes for the current operation of schools, if segregation is eliminated.

[fol. 170] Q. Is that an opinion or a surmise?

A. It's an opinion.

Q. Your opinion?

A. Yes, sir.

Q. Do you think you are qualified to give an opinion as to what the Legislature of South Caroilna will do in the future?

A. I would not claim that I am, but I have heard a good many of the members of the Legislature express similar views.

Q. Are you aware of any colleges or universities of the Deep South that have admitted Negroes for the first time during the past year, in the Deep South, I mean?

A. I have seen where some have admitted Negro graduate students.

Q. Assuming that Negroes were admitted to the University of Arkansas on a professional level and nothing happened, would that in any way change your opinion as to what would happen in South Carolina?

A. I would say that mixed groups in graduate courses is quite a different thing from the mixing of public school pupils of all ages in our public schools.

Q. What is the difference other than age?

A. Well, in the first place few people are involved in graduate courses, they are on a mature level and that eliminates a good deal of the feeling, shall I say discrimination as between the two races.

Q. That is your only difference?

[fol. 171] A. I don't know; there may be others. The college is removed from the community in the sense that it is further removed than the public schools.

Q. How is that different?

A. You have an entirely different question when you consider adults that have entered graduate schools than when you consider pupils entering our local public schools.

Q. Would the fact that Negroes have been admitted to public schools in Indiana for the first time within the last year, change your opinion?

A. No.

Q. Why?

A. We have in South Carolina a different ratio of the two races, and all the testimony which has been given here today with reference to these places where segregation can be eliminated, has been in communities where after all segregation has never been a problem.

Q. Where segregation has never been a problem you say; now I am just trying to get it clear what you said.

A. What I was trying to say, Mr. Marshall, is that the problem of the mixed groups and racial tensions is less in communities where the minority population is smaller. That has been true of the testimony that I have heard here today with reference to the success of the elimination of segregation in other communities.

[fol. 172] Q. Mr. Crow, assuming that in Clarendon County, especially in School District No. 22, the population was 95% white and 5% Negro, would that change your opinion?

A. No.

Q. Then that is not really the basis of your opinion, is it?

A. The question that you have asked me is in my opinion will the elimination of segregation be fraught with undesirable results, and I said that I thought it would. That may not be stating your question exactly, but that is still my answer.

Q. As a matter of fact, Mr. Crow, isn't your opinion based on the fact that you have all of your life believed in segregation of the races, isn't that reason the real basis of your opinion?

A. That woudn't be all.

Q. Is that part of it?
A. I suppose that is part of it.

Mr. Marshall: Your witness.
Judge Parker: Do you wish to ask him anything further, Mr. Figg?
Mr. Figg: Yes, sir.

Redirect examination.

By Mr. Figg:

Q. When you were employed as director of this Committee what was the date?
A. May 7, 1951.
Q. And I believe you said the Commission has not as yet [fol. 173] established its entire employee setup?
A. That is true.
Q. It hasn't as yet formed it?
A. No, sir.

Mr. Figg: That is all.
Judge Parker: Come down.

(Whereupon, the witness was excused.)

Mr. Figg: We call Mr. Betchman as our next witness.

H. B. Betchman called as a witness on behalf of the Defendants, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Figg:

Q. Mr. Betchman, where do you live?
A. Summerton.
Q. How long have you lived there in Summerton?
A. Twenty-five years.
Q. What official position there do you have in the public school system of Summerton, District No. 22?
A. I am Superintendent of schools.
Q. How long have you been superintendent of schools?

A. For about fourteen years.

Q. What did you do before that?

A. I was principal of the school for about four or five years and two years at Chafin and coach.

[fol. 174] Q. And what schools does School District No. 22 presently operate?

A. Summerton elementary, and High, Scott's Branch elementary, and High School, Ram Bay elementary, and Liberty Hill elementary.

Q. Summerton High School is operated by what districts?

A. Well, it is operated by districts 8, 30, 22, 4 and 3, if I said a while ago it was operated by 22, I did not mean that was the only district.

Q. And that is a centralized High School District?

A. Yes, sir.

Q. A separate body politic from School District No. 22?

A. Yes, sir.

Q. And the Board of that High School District is composed of the board Chairmen of the component districts?

A. Yes, sir.

Q. School District 22 is represented on that Board by whom?

A. Mr. R. M. Elliott.

Q. Who testified this morning?

A. Yes, sir.

Q. He is Chairman of School District No. 22?

A. On the District 22 Board and Summerton High School Body.

Q. And Mr. Crow has testified that he was down there last week to look at the schools and get information for the purpose of establishing the district potential under the new school Act, is that correct?

[fol. 175] A. Yes, sir.

Q. He saw you while he was there?

A. Yes, sir.

Q. And got the information that he has from you?

A. Yes, sir.

Q. Where did you get it from?

A. I compiled it from the County Superintendent of Education's Office.

Q. You got it from the official record.

A. Yes, sir.

Q. Now the Ram Bay, two-teacher school is located where in your district?

A. That is in the far eastern corner of the district.

Q. And is that in a rural section of the district?

A. Yes, sir; it is.

Q. How many miles is it from Summerton?

A. I would say five or six miles.

Q. Now the Town of Summerton is in School District 22?

A. Yes, sir.

Q. How large approximately, is the Town of Summerton in population?

A. It has about 1,500 people in it.

Q. About 1,500?

A. Yes, sir.

Q. Is there any other town in that school district?

[fol. 176] A. No, sir.

Q. The rest of them are outside the corporate limits of Summerton and that is in strictly an agricultural section?

A. It is entirely agricultural.

Q. Where is the Liberty Hill School in that District, that four-teacher school?

A. In the extreme western part of the district.

Q. About how far from the Town of Summerton?

A. About three miles.

Q. Is or not that school located there for the benefit of people living in that section of the school district?

A. Yes, sir.

Q. Now do the Trustees propose to continue the Ram Bay school indefinitely, that two-teacher school?

A. No, sir.

Q. Have they made efforts to get rid of it before?

A. Yes, sir.

Q. When was that?

A. I would say about 1936 or 1937.

Q. Was it actually discontinued by the Trustees at one time?

A. I am not sure, but I think it was.

Q. Well, why was it kept if it was once discontinued?

A. Well, Summerton, District 22, does not have any transportation for white or colored, and those colored people in that section of the country wished it continued, if

they would not continue it, those children would have a long [fol. 177] ways to go to come to Summerton.

Q. So it was continued there because of the number of people whose children lived in that area and who wished that school to be kept in operation?

A. Yes, sir.

Q. Rather than have it closed and have their children transferred to Scotts Branch or some other school in the district.

A. Yes, sir.

Q. You say there was no transportation for school pupils of either race furnished by the school district No. 22?

A. No, sir.

Q. Is that transportation to Summerton High School from the other component Districts?

A. Yes, sir.

Q. And the High School itself is located in District No. 22, and there is none in the others, so those pupils are brought to this centralized high school by transportation furnished by these other component districts?

A. Yes, sir.

Q. And do the white pupils from other districts come to Summerton elementary schools?

A. They do, sir.

Q. Do these other districts have any other elementary or grammar schools?

[fol. 178] A. No, sir.

Q. These other four do not have any schools except the Negro schools?

A. That's right.

Q. And those pupils come to the elementary and high school located in the Town of Summerton?

A. Yes, sir.

Q. For all practical purposes there has already been a consolidation as far as the white schools are concerned?

A. Yes, sir.

Q. Are you familiar with the colored schools in those four districts?

A. No, sir.

Q. Now, something was said here about improving the grounds around the Summerton elementary school, what about those grounds?

A. There was no tar or treatment or anything within the Summerton school grounds, other than the high school; you are speaking of the elementary school now; well there is not anything in there.

Q. What about the High School?

A. The High School has a drive-way around, around in front which is surface treated by the Highway Department, and I understand the State Highway Department took over that part and have it marked off.

Q. That is a curcular drive up to the front of the school and that is surface treated?

[fol. 179] A. Yes, sir.

Q. How about the rest of the grounds around there, have they been surface treated, too?

A. No, sir.

Q. That centralized High School was built by the five districts?

A. Yes, sir.

Q. Which came together under a separate body politic and issued bonds and built that school?

A. Yes, sir.

Q. Prior to that time where had the white High School pupils gone?

A. Well, they had, but not all, come to Summerton.

Q. What school did they go to?

A. To Summerton, some came to Summerton elementary school, too.

Q. How many rooms has that got?

A. Eight.

Q. Eight rooms?

A. Yes, sir.

Q. When was the Summerton High School built?

A. In the fall of 1936, we went into it.

Q. It was built in 1936?

A. Yes, sir.

Q. What kind of project was that?

A. A PWA project.

[fol. 180] Q. A loan and grant project when the Federal Government was trying to stimulate employment?

A. Yes, sir.

Q. And the District applied for a loan and grant project to build that school?

A. Yes, sir.

Q. And from that loan and grant project came the Summerton elementary school, that eight-room building?

A. Yes, sir.

Q. Do you know whether there was an application for a project for a colored school also at that time?

A. Yes, sir; it was tried, but as the education of eight percent faced us, and the PWA went out of business, we were taxed up to our limitation.

Q. Which was built first, the Summerton High School or the Scott's Branch school?

A. Summerton High School.

Q. Which was the last school built in the district?

A. Scott's Branch.

Q. How long was that built after Summerton High School?

A. After we built the High School, it was about a year or two, their school burned down, then we built the Scott's Branch School about two years after, I guess.

Q. How did you build the Scott's Branch School?

A. Where did we get the money?

[fol. 181] Q. Yes.

A. We borrowed it from the Sinking Fund.

Q. From the Sinking Fund?

A. Yes, sir.

Q. According to what specifications was the Scott's Branch built?

A. We used the same specifications as for our High School. We had those approved and used them.

Q. Were those plans approved by the State Department of Education for school house construction?

A. Yes, sir.

Q. And you would say the floor-plan was substantially the same as that used in the Summerton High School?

A. Yes, sir.

Q. Did it actually have more room?

A. Scott's Branch?

Q. Yes.

A. I think it has one, two, four, six; yes, it has one or two more rooms.

Q. Has it been necessary to add additional rooms to Scott's Branch since it was built?

A. Yes, sir; we had a tremendous increase over there ever since Santee-Cooper was built. I have a scale back from that time as to how the increase has come along and we have had to build three more rooms there since then, some just recently.

[fol. 182] Q. How did the building of the Santee-Cooper increase your school population?

A. It run a lot of people out as the water filled in, it ran them out of the water.

Q. They had to move from where the water was going and so they moved up your way?

A. Yes, sir.

Q. They were practically all Negroes?

A. I think we increased about 190 students from that area. I have a document compiled by one of my school principals, and he traced them from back there up to Summerton.

Q. And that was when—do you recall when that project was being built; was it not in the late '30s, since the Scott's Branch School was built?

A Yes, sir; since the first building was built.

Q. And you have had to add on extra rooms?

A. Yes, sir.

Q. Now you have how many grades in Scott's Branch School?

A. Twelve grades.

Q. How many teachers there?

A. Fourteen teachers.

Q. Fourteen?

A. Yes, sir.

Q. Now I note of the figures Mr. Crow had as to your potential borrowing power of your district, that the average [fol. 183] daily attendance of the Negro schools was not available, have you any figures on the percentage?

A. Yes, sir; I have them all, sir.

Q. Would you give them to us?

A. In Scott's Branch, the enrollment was 694, average daily attendance was 462.

Q. Where did you get those figures?

A. Those reports were given to me by the various principals of these different schools.

Now in the Ram Bay school, the average enrollment was 67, and the average daily attendance was 43.4.

Liberty Hill had an average enrollment of 105 and an average daily attendance of 72.61. That is up through the eighth month. I am mighty afraid it is going to be lower after the eighth month.

Q. These are current figures through the eighth month of this school year?

A. Yes, sir.

Q. Are there any particular times of the year when your average daily attendance suffers worse than at others?

A. Yes, sir; at the beginning and at the ending of the year.

Q. For how long at the beginning?

A. Well, they ask us all along, we survey the county and keep in touch with things, and they want us to keep the schools closed until we can get the cotton picked and sometimes that runs us a little late.

[fol. 184] I know my principal this year asked about running on Saturdays and I asked him a question about running on Saturdays as to whether his attendance wouldn't be lower, and he said "They will be absent a day whether we run on Saturday or not." Then at the end of the year the attendance is down again.

Q. And that lasts about how long?

A. It starts just about the end of the eighth month and runs through the ninth month, four weeks, I'd say.

Q. What accounts for that absenteeism?

A. Well, I will say because they are most all small farmers and live in rural sections and say they want the children to go out to work, and then my principal tells me that he is going to be out one day a week anyway all during the year, I don't know why, but I guess he can tell you when he gets on the stand.

Q. Does that two months at the beginning and at the end of the school year become a definite problem in the operation of the schools?

A. Yes, sir; it is a tremendous problem. Under that setup we have twenty teachers in the three schools and with an average attendance of thirty, it looks like I am going to lose a teacher if attendance does not pick up.

Q. That is based on what?

A. On enrollment and average attendance, on both.

Q. It is based on both?

A. Yes, sir.

[fol. 185] Q. So it has an effect upon the financial ability of the district to carry a certain number of teachers?

A. Yes, sir.

Q. Does it also have an effect upon the educational situation in general in the schools?

A. Yes, sir. Absenteeism hurts.

Q. Is it good to have that much absenteeism from an educational standpoint?

A. No, sir.

Q. Have efforts been made under the compulsory education law to militate against that?

A. We insist upon that, and we have our teachers to teach the bad result of absenteeism, and also insist that the teachers go around quite a bit among the people, it is hard for me to ever find them, so the teachers do what they can about it.

Q. What are they doing?

A. Working they say.

Q. You mean working the field?

A. Well, I can't say about that, sir; I don't know.

Q. That is what you understand is the reason they are at home?

A. Yes, sir.

Q. That their parents keep them home to work?

A. Yes, sir.

Q. Do a lot of parents of these colored pupils operate their own farms?

[fol. 186] A. A good many are small farmers; yes, sir.

Q. Now what is the daily average attendance in the white schools?

A. Can I look at my notes?

Judge Parker: Yes, that is all right, read them, if you want to.

A. Up through the eighth month it is 254 and that is 91%.

Q. Ninety-one percent daily average attendance on the white pupils, and I believe you said the white pupils come from the five districts?

A. Yes, sir.

Q. Now, Mr. Betchman, in reference to the furnishing of the building, and facilities and educational opportunities in your District to all pupils, will the 1951 legislation be of substantial assistance to that district?

A. Yes, sir.

Q. And do you know that an application has already been requested for permission to use the full potential of the district to obtain the necessary funds?

A. Yes, sir.

Q. Is it the policy of the Trustees and yourself and your administrators of this district to utilize to the fullest advantage the resources that will now be at hand to develop the educational facilities and education in that district?

A. Yes, sir.

[fol. 187] Q. What is the condition of the Summerton elementary school physically?

A. It is bad, too, sir.

Q. That was built, I believe in 1907?

A. In 1907, yes.

Q. They got the sandstone right on the spot did they not, or I believe the legend so has it.

A. No, they built the cement blocks right there on the spot.

Q. Is the building now in a good state of repair?

A. It is practically beyond repair.

Q. It is practically beyond repair?

A. Yes, sir.

Q. Which would you say, if you had to compare the two, was in a better state of repair, or better condition, Scott's Branch or Summerton?

A. From a physical condition I would a lot rather have Scott's Branch over a plant that was provided in 1934 or 1935 and that was planned similar to our high school and has lighting that is so much better.

Q. The lighting is better in the Scott's Branch School?

A. Yes, sir; it is.

Q. The lay-out is modern?

A. Yes, sir; it is a single story building and Summerton is a two-story building and the stone is beginning to crack on the corners and is beginning to decay, and——

[fol. 188] Judge Parker: In the light of your admission of this morning what is the significance of all this, Mr. Figg?

Mr. Figg: Perhaps I am going off the track a little, your Honor, but I was just trying to develop the background.

Judge Parker: That would be most material if you hadn't made those admissions, but having admitted the conditions are not equal, you are now trying to bring up the equality, and I do not see where that is pertinent. You need not waste much time on this.

Mr. Figg: I agree with your Honor, I was attempting to explain something that did not count. I will turn the witness over to the other side.

Cross-examination.

By Mr. Marshall:

Q. I will just ask you two or three questions. Isn't one of the reasons for absenteeism from school is that the schools are in such bad shape?

Judge Parker: I didn't understand that question.

Q. Isn't one of the reasons for absenteeism from school the fact that the schools are in bad shape?

A. I won't say that, because in comparison with our two schools the elementary school enrollment is up. I think it absolutely the case of small farmers and their work, wanting their children to help on the farm.

Q. I am not asking you, sir, about District 22 alone, I am [fol. 189] speaking about the general rule for absenteeism, isn't that one of the reasons accepted by educators?

A. That absenteeism is due to schools being in bad condition?

Q. Yes, that sometimes the condition of the school gives no encouragement to the child to come back.

A. Yes, sir; sometimes that is true.

Mr. Marshall: That is all.

Judge Parker: Do you have any more questions, Mr. Figg?

Mr. Figg: No, sir.

Judge Parker: Come down.

(Whereupon, the witness was excused.)

Judge Parker: All right, gentlemen, proceed.

Mr. Figg: Those are the witnesses that we had arranged to put up today, your Honor. We are not prepared to put up any others at this time.

Judge Parker: Will your witnesses be here in the morning, Mr. Marshall?

Mr. Marshall: As far as we know, sir; they will all be here in the morning.

Judge Parker: How much longer will it take to complete your case?

Mr. Marshall: The most of the day, if possible, I will complete it in less than a day.

Judge Parker: Do you think you can get through with your case during the morning hours?

Mr. Marshall: That depends on the cross examination, sir.

[fol. 190] Judge Parker: We want you to have your witnesses here on both sides in the morning, if they are not here it is just too bad, for we will go ahead.

What about beginning court in the morning at 9:30? We are taking out a few minutes ahead of time this afternoon, so if it suits we will start in the morning at half past nine.

Mr. Marshall: That is all right with us, your Honor. I want to say that we have some of the defendants here under subpoena and now we find we do not need them and we would like to have them excused, as I imagine they have business to attend to. Also the principals of the schools.

Judge Parker: Those you have under subpoena you are excusing now, if they wish to be excused?

Mr. Marshall: Yes, sir.

Judge Parker: They may be excused. Is there anything else? We will now adjourn court until 9:30 in the morning.

(Whereupon Court was adjourned at 4:30 o'clock p. m. Monday, May 28 until 9:30 o'clock a. m., May 29th, 1951.)

[fol. 191] Trial of the above cause continued this 29th day of May, 1951, in the United States Courtroom at Charleston, South Carolina, at 10 o'clock a.m.,

[fol. 192] Mr. Marshall: May it please the Court, two of our witnesses are in court and two will be in this afternoon. We are ready with the two.

Judge Parker: All right. Call them now.

DAVID KRECH, Sworn.

Direct examination.

By Mr. Carter:

Q. Mr. Krech, what is your occupation?

A. I am at present on leave from the University of California as visiting professor of social psychology at Harvard University.

Q. How long have you been associate professor?

A. I have been doing research and teaching psychology since 1933.

Q. What is your educational background? What degrees do you hold?

A. I have a Master of Arts degree from New York University, a Ph.D. in Psychology from the University of California.

Q. Have you published any books or articles?

A. Quite a number; about 40 scientific articles in psychological journals and three or four books.

[fol. 193] Q. What professional societies do you belong to?

A. I am a fellow of the American Psychological Association, and President of one of the Divisions of the American Psychological Association. I am a member of the American Association for the Advancement of Science, and a member of the American Association of University Professors, and a member of Sigma Xi, the honorary scientific society of the United States.

Q. Now, Mr. Krech, is the examination of legal segregation in education and its effect upon the individual a proper function of a social psychologist?

A. It is one of the most significant problems which social psychologists have dealt with and one of the books that I refer to devotes as many as two chapters to that very problem. It is a problem which has taken the attention of research psychologists, perhaps that one problem more so than any other single problem of our social behavior.

Q. Have you studied the problem?

A. Well, as I pointed out, since I devoted about two chapters of our book, I have spent quite a good deal of time studying that problem.

Q. Now Mr. Krech, assume that segregated public schools are required by law for Negroes, have you formed any opinion as to what effect this situation will have upon the Negro child?

A. Very definite, and if I may say considered opinion.

Q. Will you kindly say what that opinion is and on what [fol. 194] do you base it?

A. My opinion is that legal segregation of education is probably the single, most important factor to wreak harmful effect on the emotional, physical and financial status of the Negro child, and may I also say, it results in a harmful effect on the white child.

Q. Would you explain in a little more detail this harmful effect that you describe, emotionally, financial and physical.

A. Well, the reason why I make such a statement, and I realize it is a rather strong statement, that in my opinion legal segregation which involves (1) a legal definition of an individual in terms of race, and involves a statement of some of his rights in relation to race, is the most significant factor to promote, encourage and enhance racial prejudice and racial segregation of all kinds. The reason for that psychologically is primarily this: No one, unless he is mentally diseased, no one can long maintain any attitude or belief unless there are some objective supports for that belief. We believe, for example, that there are trees. We would not long continue to believe that there are trees if we never saw a tree. Legal segregation, because it is legal, because it is obvious to everyone, gives what we call in our lingo environmental support for the belief that Negroes are in some way different from and inferior to white people, and that in turn, of course, supports and strengthens beliefs of racial differences, of racial inferiority. I would say [fol. 195] that legal segregation is both an effect, a consequence of racial prejudice, and in turn a cause of continued racial prejudice, and insofar as racial prejudice has these harmful effects on the personality of the individuals, on his ability to earn a livelihood, even on his ability to receive adequate medical attention, I look at legal segregation as an extremely important contributing factor. May I add one more point. Legal segregation of the educational system starts this process of differentiating the Negro from the white at a most crucial age. Children, when they

are beginning to form their views of the world, beginning to form their perceptions of people, at that very crucial age they are immediately put into the situation which demands of them, legally, practically, that they see Negroes as somehow of a different group, different being, than whites. For these reasons and many others, I base my statement.

Q. These injuries that you say come from legal segregation, does the child grow out of them? Do you think they will be enduring, or is it merely a sort of temporary thing that he can shake off?

A. It is my opinion that except in rare cases, a child who has for 10 or 12 years lived in a community where legal segregation is practiced, furthermore, in a community where other beliefs and attitudes support racial discrimination, it is my belief that such a child will probably never recover [fol. 196] from whatever harmful effect racial prejudice and discrimination can wreak.

Q. Mr. Krech, assume another situation, assume that in segregated public schools to which Negroes attend are inferior to white schools, will education in that situation have any adverse effect on the Negro child?

A. Very definitely. Psychologists have a long time ago given up the notion that what we call intelligence, I. Q., is independent of the education and of the experiences of the individual, and an inadequate education reflects itself, and we have empirical data to substantiate this, reflects itself in a lowered I. Q., in lowered ability to cope with the problems of life. I might point out that I do not hold with some people who suggest the white man, who is prejudiced against the Negro, has no cause to be so prejudiced. I would say that most white people have cause to be prejudiced against the Negro, because the Negro in most cases is indeed inferior to the white man, because the white man has made himself through the practice of legal segregation. There is no psychologist that I know of who would maintain that there is any biological, fundamental difference between the two groups of people, but through the practice of inadequate education, that was a hypothetical situation that you gave me, as a consequence of inadequate education we build into the Negro the very characteristic, not only intellectual, but also personality characteristics, which we then use to justify [fol. 197] prejudice.

Cross-examination.

By Mr. Figg:

Q. Where were you born?
A. Poland.
Q. And at what age did you come to this country?
A. Three.
Q. Where did you live when you came here?
A. New Britain, Connecticut.
Q. And then where? California?
A. No. I also lived in New York City, Chicago, Colorado, Pennsylvania,—I taught at those places, and California, and the last year I was visiting professor of social psychology at Oslo University in Norway.
Q. Have you ever lived in one of the States which has legal segregation?
A. Only when I was taking my basic training in the United States Army.
Q. And what state was that?
A. Florida.
Q. And have you ever made any study on this problem we are discussing in any State which has legal segregation?
A. I am sorry I didn't hear the question.
Q. Have you ever made a study of this problem we have been discussing in a State which has legal segregation? [fol. 198] A practical study.
A. As a man who is primarily devoted to the science of psychology, I think I am familiar with perhaps every study that has been made in this area. I base my conclusions not on my own studies obviously but on the field of psychology.
Q. You base your opinion not on your own practical investigation of the problem but on the sum total of the reading which you have done on the study which you have made.
A. Reading and research. That is right.
Q. But no practical research in a State which has legal segregation?
A. All research is practical.

Judge Parker: Answer the question.

Q. I am talking about, have you?
A. I myself, no, I haven't.

Mrs. Helen Trager, sworn.

Direct Examination.

By Mr. Carter:

Q. Mrs. Trager, what is your occupation?
A. I am a teacher. I am a lecturer at Vassar College in Poughkeepsie, New York, and consultant in curricula at Vassar.
Q. How long have you held this position?
A. Just this year. At the present time I am also a consultant in curriculum and human relation to a special project sponsored by Yale University and the Bureau of [fol. 199] Intercultural Education in the rural schools of Connecticut.
Q. What other teaching experience have you had?
A. I have taught in the elementary school, both public and private. I have been educational consultant to city schools in New York, Philadelphia, Denver, Colorado, San Diego, California, Detroit, Michigan. I have been lecturer and group leader of workshops for teachers and administrators in the field of elementary education and human relations education at Columbia University Teachers College, at the University of Minnesota, at the University of Utah, at New York University, and San Diego College.
Q. Would you describe your educational background briefly for us?
A. I am a graduate of the New York Training School for Teachers, from which I received a diploma to teach in elementary schools. I have a Bachelor of Science, New York University, and a Master of Arts from the same University.
Q. Have you published any books or articles?
A. Yes, in the last ten years I have published under my own name or with colleagues about twenty manuscripts; about six of them are pamphlets in the general field of democratic education; others are articles on problems of

curriculum, child development, human relations. They have appeared in professional journals such as the NEA, the National Education Association, the Journal of Supervision [fol. 200] and Curriculum Development, Genetic Psychology Monograph, Journal of Psychology. I have done some writing which has appeared in Year Books. One was reprinted by the National Mental Hygiene Association, also in the field of curriculum and problems of human relations.

Q. Now, Mrs. Trager, have you had any actual and practical experience in determining the personality problems of Negro school children of public school age as caused by racial discrimination and racial segregation?

A. Yes, I have.

Q. Will you describe what that experience is?

A. It has been of two kinds, experience as a classroom teacher who has taught both Negro and white pupils, and as a teacher of teachers from the North and South, who teach Negro and white pupils; and the other kind of experience has been a much more intensive one where I was director of a study in the public schools, attended by Negro and white students. It was a study which I think bears directly on the problems we are discussing here. Would you like me to tell something about it?

Q. Will you describe it.

A. The study I directed was conducted in the Philadelphia Public Schools. I was invited as a curriculum consultant to help plan a program that would build good democratic human relations in the primary grade children's classroom behavior. In order to do that, we assembled a staff of people, including psychologists and assistants. [fol. 201] We recruited for the purposes of study the teachers of children in the classroom, and had those teachers and those psychologists study how these children feel about themselves and about other people, so that we could properly build a program of democratic human relations. In other words, we were attempting to discover where we were starting from. Do they have feelings which are anti-democratic? As a sample, there were 250 children, ages 5 to 8. The study was conducted for 3 years and it had various phases. I think that the study of the feelings of children about their own group membership, their attitudes

to other people, how their emotions about their group membership affected their behavior, was the important part of the study.

Q. Just what method briefly, what method did you use to determine this?

A. We used several methods. The teachers observed the children in the classrooms and kept very careful records of behavior, anecdotal, the children were interviewed by psychologists. The methods there used were the fairly familiar projective play techniques, purposely because it would be, I think, futile to ask children about their feelings directly, and what we always need to do is to observe them reveal their feelings. It would be futile to ask youngsters how they feel about being members of their own group or how they feel about other people because they would assume there is either a right answer or that they are expected to give certain kinds of answers. And I think that the projective play [fol. 202] technique has demonstrated that we were able to get behind or get at the feelings of Negro and white children.

Q. As a result of this study, did you reach any conclusions on the question of the personality problems such as being caused by racial discrimination and segregation.

A. I wonder if it is all right if I refer to my notes on that?

Judge Waring: Yes, you may do that.

Judge Parker: Yes. That will be all right.

Judge Waring: You may use your notes.

A. Thank you. In order to determine what kind of program would help these children to develope democratic behavior, get along with other children, have self-respect, we were interested in their feelings about themselves and other people, and our tests were directed to that end. I would like to point out where the Negro and white children evidenced the same feelings and where they evidenced different feelings because I think that is relevant. First, even at 5 years old, we found that all of the children were aware of group differences, that is racial differences. Our study was not merely of—in the area of race. It included the area of religion, but I am going to here refer to only our findings on race. As I say, at 5 both Negro and white children were aware of differences. The difference, however, between the reactions of Negro and white children, one difference was

that the white children talked freely about race and race [fol. 203] differences; whereas the Negro children showed obvious discomfort and avoidance. Both, in their interviews, saw being Negro as a disadvantage. The white children saw the white as being the preferred group and they wanted to be white and felt that other children preferred to be white. The white children expected that the Negro children also would prefer to be white. The Negro children on the other hand, on the issue of what they would like to be, whether they accept themselves in other words or not, at one and the same time said that Negro children liked to be Negro but that Negro children would like to be white, and this contradiction seemed to be terribly important and was a tendency throughout the sample. It appeared to us that under this was a conflict and inability to accept one's own group and yet the psychological need to accept what one is. Interestingly enough, both Negro and white children perceived the Negro group as meaning the same thing, and in 5-year olds, 6-year olds, and 7-year old terms, our groups from 5 to 8, they perceived Negro as meaning that you are not liked by people, that you won't be asked to play, that you won't be allowed to do things that other children can do. Both groups perceived that to be the meaning of Negro. Both groups had fears and misconceptions about each other, and they were frequently the same fears and misconceptions. They had misconceptions about what makes one white and what makes one Negro and they gave the weirdest and the [fol. 204] most frightening and inaccurate explanations of race. Some white children saw white as being the ultimate evolution in a kind of baking process, where you come out white finally, and that brown people are something not quite finished. And some of the Negro children had that kind of explanation for race. More important than the misconceptions, although they were a serious—suggested an area for serious study and curriculum building, the Negro children, unlike the white children, showed a tendency to expect rejection. This expectation of rejection increased sharply from 5 to 8 years old, so that in their growing up, they were learning to expect not to be accepted. Another shift from 5 to 8 on the part of the Negro children in their feelings, personal reaction, behavior, was evidence that they began to rationalize this rejection, their not being accepted,

with phoney explanations. Whereas at 5, a Negro child would indicate that he expected Negroes not to be accepted and would give as the reason "Because he isn't white" or "Because he is black," or using the vernacular "Because he is a nigger." At 8 the explanations were evasive, avoidant, again showing the kind of discomfort I mentioned earlier. There would be explanations of "Because he can't play the way they can," "Because he doesn't live near them," but not "Because he is colored." And so we discovered that basic needs on the part of all human beings, basic emotional need for self-respect, to be accepted by others, to feel that you belong, were frustrated in the Negro [fol. 205] children in our study.

Q. Do you feel that these conclusions that you have reached, do they cause actual injury to the personality of the individual?

A. I think unquestionably they do. In working with children, the problems they have in study, in getting along with each other, in accepting themselves, are related to their own image of themselves and their feelings about their group. A child who expects to be rejected, who sees his group held in low esteem, is not going to function well, he is not going to be a fully developed child, he will be withdrawn, or aggressive in order to win the acceptance he doesn't get.

Q. Does this interfere with his education, the learning process, the amount that can be gained?

A. I think that any psychologist and certainly any educator would agree that blocks to learning are frequently psychological blocks, and one of the great or common problems is self-doubt in human beings, and where there is self-doubt energy is wasted in that direction and learning is not very effective. We spend a tremendous amount of time, as I am sure your teachers do, in the State, trying to understand why children behave as they do and what emotional problems they have, and only as we understand their emotional problems can we help them to learn.

Q. Now, on that point, Mrs. Trager, can we remedy the [fol. 206] injuries that you have described?

A. I am sorry I can't hear you.

Q. Can you remedy the injuries to the child that you have described as caused by racial segregation and discrimination in a, say public segregated school?

A. I don't believe you can. I agree with Dr. Krech that segregation becomes the rationalization for prejudice, and it would appear when schools are legally segregated to the children who are segregated in them, that this separation, this defference of status, is inevitable, and I think that under those circumstances the children can't overcome the feeling of inadequacy they have by virtue of having been separated from other people.

Cross-examination.

By Mr. Figg:

Q. Where were you born?
A. New York City.
Q. And where is your home now?
A. Riverdale.
Q. In New York?
A. Yes.
Q. Have you ever lived in a State that has segregation in the schools by law?
A. Only during the War when my husband was at the Charleston Army Air Base.
[fol. 207] Q. Where?
A. During the last War when my husband was at the Charleston Army Air Base.
Q. Here?
A. Yes.
Q. How long were you here?
A. I was here only as a visitor but he was here quite some time.
Q. And I understand that this observation study that you have testified to was made in Philadelphia?
A. That is correct.
Q. Have you made a similar study anywhere else?
A. No. May I qualify that?
Q. Yes.
A. I have presently in the senior class at Vassar students who are from the South and who are planning to teach in the South. I have had in other years students who have worked with me from most of the Southern States who teach either in the Negro Segregated schools or the white schools,

and we have spent our time in the area of human relation problems such as we are discussing today.

Q. What I asked you was: Have you made a study similar to the one you have testified to anywhere else?

A. No.

Q. And does Pennsylvania have segregated schools?

A. They do not have legally segregated schools. There [fol. 208] are schools where only Negro children attend, and in that sense they are segregated in effect.

Q. Why is that?

A. There are some sections in any city in this country where Negro people live and the schools then become the schools of that district. If white people live there, they attend that school.

Q. So in the ordinary process of dividing school buildings even in a city like Philadelphia, you will find actually schools virtually for one race?

A. Yes, that is correct.

Q. Now, this school that you were testifying to in your survey, was that one school or children from various schools?

A. Children from six schools.

Q. Were they mixed schools or were they segregated schools?

A. There were some schools that were so-called homogeneous, although no school is, that is, they were white children but there was a difference of religion within them, and economic differences. There were schools with racial mixture other than Negro and white, but they included that, and there was one school where all of the children were Negroes.

Q. And you found that at as early an age as 5, when you first got hold of these children, there was consciousness of group and group differences at that age, white and colored.

A. Yes.

[fol. 209] Q. And of course that didn't come out of the schools, did it?

A. I think if anything our study demonstrated, that did not come out of schools.

Q. It came out of the homes, didn't it?

A. It came out of many things, not just the home.

Q. At the age of 5, the chances are that it came mostly out of the home, isn't that true?

A. Well, our side would quote in some instances the source of their information. Then it was not always the home, although we know the home is an important factor in the learning of children. It was playground. It was what they saw on the bus. It was what they knew about where father worked, or couldn't work. It was all of their learning in the total community in the society of their 5-year oldness, and they were aware of many things, and their sources included church and shop, and market place.

Q. But in States where there is no segregation, either by law or in practice, you frequently find all colored or all white schools, don't you?

A. Yes. I thought I had said that.

Q. I read in the paper the other day where the All-Negro Basket Ball Team representing the Christy High School somewhere in Indiana won the basket ball championship, and I gathered from that that what you say has occurred in various places where they do not have segregation. Now, [fol. 210] you haven't made such a study as that in any State that does have segregation by law, have you?

A. No, I have not.

Q. In the schools of Philadelphia, did you notice the proportion of the white and colored teachers in the school system there?

A. I can't give you the proportion, no, but I know that there are both in every level of administration, including the office of the superintendent.

Q. How about any other places that you have observed?

A. Oh, that varies as patterns of prejudice vary in this country.

Q. You do know that in the State of South Carolina, for instance, that the colored children are taught by colored teachers, do you not?

A. Yes, I do.

Q. And a great many of them have had very good training and have qualified themselves, and have equal salaries, of course, under the State law. You know that, don't you?

A. Yes.

Q. I want to ask you if you would agree with this statement that I read in the Myrdal book, American Dilemma, you are familiar with that book?

A. Yes.

Q. He said that "Some Negroes, however, prefer the [fol. 211] segregated school, even for the North when the mixed school involves humiliation for Negro students and discrimination against Negro teachers." Do you agree with that statement?

A. Yes, and I would go one step further, I think that minority groups frequently self-segregate themselves by choice because of the unequal status they have in society. However, that isn't a solution.

Q. Do you admit that the conception that I referred to yesterday of the universal consciousness of kind?

A. I think all of the data from the study that I was associated with would deny that there was universal consciousness of kind. So long as children have the emotional conflict of wanting to be what they are not, universal consciousness of kind is an invalid theory.

Q. Do you concede that emotional conflict between the races and frustrations and aggression etc., do arise between the white and colored races where they live together in the same area in great numbers?

A. Yes, they do.

Q. Now, let me ask you if you agree with this statement. In Mr. Myrdal's book, following the statement which I just read you, this occurs, and I want to see if you, in your experience, are inclined to agree with this: He said "DuBois has expressed this point of view succinctly, 'Theoretically the Negro needs neither segregated schools nor mixed schools'." [fol. 212] Do you agree with that?

A. No, I don't agree with that.

Q. "What he needs is education." Do you agree with that?

A. Yes.

Q. "What he must remember is that there is no magic either in mixed schools or in segregated schools." Do you agree with that?

A. I agree with that a hundred percent.

Q. "A mixed school with poor and unsympathetic teachers, with hostile opinion, and no teaching concerning black folk is bad." Do you agree with that?

A. Yes.

Q. "A segregated school with ignorant place-holders, in-

adequate equipment, poor salaries, and wretched housing, is equally bad." Do you agree with that?

A. No, I would say it is worse.

Q. It is worse. "Other things being equal, the mixed school is the broader, more natural basis for the education of all youth." Do you agree with that?

A. Yes.

Q. "But other things seldom are equal," he winds this quotation up, "And in that case, the sympathy, knowledge and truth outweigh all that the mixed school can offer." Do you agree with that?

A. No, I don't. May I explain that last point?

[fol. 213] Q. Yes.

A. From my experience as a teacher, it seems to me that the learning to live together, and the learning to accept one group by the other on the part of children, must be made possible for them in life situations. In schools, as presently understood, is a life situation. I think it essential that children have the experience of meeting with, working with others who are different from themselves. The reason I say that is that in one of our testing situations, where both Negro and white children were asked to play with dolls, which were also Negro and white, to dress them, to choose houses for them, to tell what kind of work they did and where they were going, and the clothes that they were wearing, the white children who tended to give the worst clothes to the Negro doll and the good clothes to the white doll, who also gave the worst house to the Negro doll because that is where that person would live or doll, who gave the lowest type of work to the Negro doll, were also the children who had the highest amount of hostility toward Negro people. It would seem to me that by keeping Negro children in segregated schools, separate from white, what automatically happens is that they have a low status because they are kept from this living in school together, and that the low status which was understood by our white children as being Negro status, increases hostility between [fol. 214] groups. And I think that increase of hostility, which was apparent in our children, when they associated low status with Negroes, is precisely what we want to avoid

if we are going to have any kind of peace and good human relations, and democratic human relations in our society.

Q. Did you say that in your study you found differences based upon religious reactions of children at those young ages?

A. I am not sure I get your question.

Q. I say, didn't you mention that you had also found differences in your study that were referable to religion as well as race?

A. We studied the beliefs, attitudes and behavior of children along religious lines too, yes.

Q. You would say that those differences certainly came out of the home, didn't they?

A. And all of the other life experiences of children, yes.

Q. Now, wouldn't a great deal of what you have said about separate schools here today, apply to church schools also?

A. As a matter of fact, they do, but to a lesser degree, and let me illustrate what I mean. Children in the public schools, when they referred to their schools, sometimes inadvertently called them Protestant schools. They also referred to, because in our testing situation we had an opportunity for them to react to parochial school children in [fol. 215] school. They also evidenced feelings of hostility toward parochial school children. However, there wasn't anything like the degree of hostility, because the parochial, the Catholic for instance, the Catholic people are not held in as low esteem in our society as are the Negro people, and that difference was reflected proportionately in our data.

Q. We have in some places religious prejudices, in places like Boston, as well as places in other parts of the country. Would you attribute that kind of prejudice to separate schools?

A. No.

Q. Partly?

A. I think anything which keeps groups apart, where there are no bridges to understanding and no effort made to understanding, there is as a result hostility and misunderstanding. In that sense, yes.

Redirect examination.

By Mr. Carter:

Q. You have had experience, have you not, in attempting to correct these injuries which you have described, haven't you, Mrs. Trager?

A. Yes.

Q. And what conclusion have you reached as to where they can be corrected in terms of public schools?

A. It seems to me that misconceptions children have, fears, what we call self-hate, feelings of inadequacy, can be [fol. 216] corrected only in situations which don't perpetuate those fears, misconceptions, and feelings of inadequacy. And I think, therefore, that mixed schools give us the base in which to function, give us the setting, if not the factors that are needed for the re-education of children. I think that when that mixture is absent, when opportunity for learning and working with people is absent, it is not possible to reeducate children along lines of feeling and behavior toward people.

Judge Timmerman: Do you eliminate the home from that consideration? You said a school base. You don't think the home is a base?

A. I think that the home can help a great deal in the re-education of children, but where we seek to help children resolve their emotional conflicts, frequently that is possible in the school, where it is not possible in the home. That is true, I think, whether it is emotional conflict because of sibling rivalry, a feeling of rejection on the part of a child from the mother, or feeling that one is inadequate because one is a Negro.

Judge Timmerman: Assuming all you say is a consequence, do you think those conditions rise first in the home or first in the school?

A. I think unquestionably they arise in the home first because the first years of a child's life are in the home. I [fol. 217] think the place, however, where education can take place, and must, if we are to diminish the amount of hostility and fear that children of all groups have toward each other, is in the school.

Q. Mrs. Trager, in your opinion, could these injuries under any circumstances ever be corrected in a segregated school?

A. I think not, for the same reasons that Dr. Krech gave. Segregation is a symbol of, a perpetuator of, prejudice. It also stigmatizes children who are forced to go there. The forced separation has an effect on personality and one's evaluation of one's self, which is inter-related to one's evaluation of one's group.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Marshall: May it please the Court, Mr. Figg has some other witnesses. The reason I asked him is because our witnesses won't be in until 3:14 this afternoon. We couldn't get them here last night.

Judge Parker: We are not going to wait the trial on them.

Mr. Marshall: If they don't get here in time, we understand that, sir.

Judge Parker: All right, go ahead with the defense then.

Mr. Figg: Your Honor, we have one or two witnesses [fol. 218] that we expect to call and they have just come in this morning from Columbia, and I have not had a chance to confer with them prior to putting them on the stand because I had expected to do that at the conclusion of the plaintiff's case.

Judge Parker: You want 15 minutes?

Mr. Figg: Yes, sir.

Judge Parker: All right, we will take a recess for 15 minutes.

(Recess.)

Mr. Figg: If your Honor please, I have talked with the witnesses who came in this morning from Columbia. The greater part of them, I find, are witnesses on the question of facilities, which we have already conceded on the record are not equal, and we have no witnesses to call at this time. We want to reserve the right to call witnesses after the plaintiffs' witnesses have testified, but at this time we have no witnesses to call.

Judge Parker: What do you say? What do you want to do? You say you have no witnesses to call.

Mr. Marshall: May it please the Court, this is the first [fol. 219] time I have been in this position, of not having witnesses, but as I explained yesterday——

Judge Parker: Who is it that you have got that is not here?

Mr. Marshall: We have Professor Robert Redfield from the University of Chicago, who is an anthropologist. We want his testimony on the question of the unreasonableness of segregation laws based on race. I could not get hold of him, he is enroute. And the other witness is Professor Newcomb from the University of Michigan, a socio-psychologist, and I say, sir, in all fairness, that they are vital to our case.

Judge Parker: I don't see why they are not here. You had notice yesterday and planes come from the University of Michigan to Charlotte in 3 hours.

Mr. Marshall: But, sir, there is no plane that gets in,—that he could catch after 5 o'clock yesterday afternoon that would get him in before today. The last one left out at 6, and Dr. Redfield is enroute. I realize the position I am in.

Judge Parker: Haven't you got a statement as to what they would say?

Mr. Marshall: I could give one.

Judge Parker: I say, have you got one? Haven't they given you a statement?

Mr. Marshall: No, sir.

[fol. 220] Judge Parker: I thought you might put that in evidence.

Mr. Marshall: I could get one together, sir. Dr. Redfield has testified before and I know almost exactly what he would say.

Judge Parker: In what case did he testify?

Mr. Marshall: In the Sweatt case and the Sipuel case.

Judge Parker: Haven't you got his testimony in those cases?

Mr. Marshall: I don't have the record, sir, but I could have it typed out in short order.

Judge Parker: Our Supreme Court once said that the best thing a man can do, when he has a case in court, is to attend to it. Both sides ought to have given this case more attention.

Mr. Marshall: If your Honor please, these witnesses are

—it is just almost impossible to get them. They are all coming on a volunteer basis, and they have commitments. For instance, we have two witnesses that we just can't get. They have gone overseas.

Judge Parker: You have a good deal of testimony along this line.

Mr. Marshall: Except the anthropologist. That is the only one. The anthropologist, sir, Dr. Redfield's primary [fol. 221] testimony is that the anthropologists have agreed that but for the extent of skin coloration, there is no difference between individual human beings; and two, that given a similar learning situation as between Negro and white children, the Negro child will do much the same as the white child and there will be no racial difference in their ability to learn or in their ability to attend school.

Judge Parker: That is the type of testimony you want to introduce, and did I understand you to say you introduced it in the Sweatt case?

Mr. Marshall: Yes, sir.

Judge Parker: By this same witness?

Mr. Marshall: Yes, sir.

Judge Parker: What do you gentlemen say about admitting the testimony in the Sweatt case to be introduced in the record of this case?

Mr. Figg: We are not familiar with the testimony in the Sweatt case, but we would have no objection, if they have that testimony, to their introducing it.

Judge Parker: Well, do you have it?

Mr. Marshall: No, sir, but I can get it right quick, because I know we have one of the records in Washington. We could have it put on a plane right away.

Unidentified Person in Courtroom: I have a copy in my room at the hotel.

[fol. 222] Mr. Marshall: With you? The Sweatt record?

Unidentified person: Of the Texas case.

Mr. Marshall: Good.

Judge Parker: All right, get that and read it. That will take care of that.

Mr. Marshall: Very well, sir, at that we will rest.

Judge Parker: Can you send for it and get it over here right away?

Unidentified Person: Yes, sir. I will get it.

Mr. Marshall: I submit, sir, I don't think we have to wait for it necessarily.

Judge Parker: All right. I think that is correct. Do you want to introduce any further testimony for the defense?

Mr. Figg: We want to introduce in evidence, if your Honor please, the Inaugural Address of Governor Byrnes, which is referred to in the addition to the answer which was filed yesterday.

Judge Parker: All right.

Mr. Figg: Also, his message to the General Assembly on the 1951 School Legislation, and for the convenience of the Court, we have a printed pamphlet of the portion of the appropriation act which is referred to as 1951 School Legislation, which we would file in the record because I don't [fol. 223] think it has come out officially in the Statutes yet.

Judge Parker: All right, put them in. Have you got 3 copies of the bill?

Mr. Figg: I think we will be able to get them.

Judge Parker: All right, we will be glad to have them. Is there any other evidence for the defense?

Judge Timmerman: Get 3 copies of each of those documents if you can.

Inaugural Address of Governor James F. Byrnes, Message of Governor Byrnes to Legislature on 1951 School Legislation, and Excerpts from General Appropriation Act 1951, marked in evidence as *Defendants' Exhibits A, B, and C*, respectively.

Mr. Figg: If your Honor please, we had intended at the cross examination of the anthropological-social psychological witnesses to refer to and question them in reference to some statements on this subject, an address by Dr. Howard W. Odom, in Atlanta, on April 27, 1951, entitled, "The Mid-Century South Looking Both Ways," and we wanted in connection with that testimony to be able to call the Court's attention to portions of this address.

Judge Parker: Well, what do you want to do?

Mr. Figg: I would be glad to file it in the record.

Judge Parker: Well, I don't think you can do that. If

you want to call Dr. Odom, you can call him, but I don't [fol. 224] think you can put his address in the record.

Mr. Figg: I don't think I could get him here.

Judge Parker: I think that is an entirely different basis from the Inaugural Address of the Governor, which is a State paper.

Mr. Figg: Yes, sir. The Court will take judicial notice of the things that I have offered. And as to this (indicating) of course I think portions of it would have been appropriate on the cross examination of the witnesses—of the witness whose statement is going to be put in the record. It is a matter of general learning. It has had wide circulation and is the kind of matter which the legislature may take into account, along with all the other general learning on the subject, in the matter of adopting legislation or constitutional provisions, and we think that it would be proper, it and other matters of general information and opinion by recognized experts and people in the educational world, they could also be taken into account in legislative action and could be referred to to sustain the Legislative action under the principle that when the legislature has passed legislation, it is valid if it is sustainable on any reasonable basis. And we had expected to make use of that material, as I say, in cross examination, and we thought perhaps that along with the statement that is to be received in evidence, we might indicate portions of this speech of what we had in mind, particularly for that [fol. 225] witness.

Judge Parker: I don't know of any principle of law that would justify your doing that.

Mr. Figg: I might suggest this: It could be used in arguing the case.

Judge Parker: Oh, of course. When counsel are arguing a case, they can make any real argument they want to and refer to anybody's opinion they want to, but that is not a thing to put in evidence.

Mr. Figg: I regret very much that I won't be able to get some comments on some of Dr. Odom's opinions on this subject.

Judge Parker: I imagine this man was cross examined in the Texas case. If you want to introduce his testimony

in the Texas case, I imagine he was cross examined out there. Of course, he wasn't cross examined about Dr. Odom's speech because Dr. Odom hadn't made the speech at that time. If you want to delay the case until this man comes here, if you want to cross examine him, we will think about that. I don't say we will do it. Are you suggesting that?

Mr. Figg: No, sir. I think we can cover the situation that we have in mind in the argument of the case. We have referred to what we had in mind and ask the Court as a matter of general learning on the subject to take it into account.

[fol. 226] Judge Parker: I think that this is true about this case: You have gone to considerable trouble on both sides to present the case, and we ought to hear it fully. I am not going to allow it to be dragged out and unnecessarily delay it, but I want the record fully made so that when it goes to the Supreme Court, the Supreme Court will have the advantage of anything that anybody wants to say about the case that is relevant. For that reason, I don't want counsel on either side to feel that we are cutting them off. We are disposed to let everything go in the record that is relevant to the issue here. I understand that so far as this Doctor from the University of Chicago is concerned, that his testimony is really available, and if the case might be improved, why I might for all practical purposes let it come in. What about the other man?

Mr. Marshall: We will just have to do without him, sir. He hasn't testified in any of these cases that I know of.

Judge Waring: When do you expect him here, today or tomorrow?

Mr. Marshall: 3:14 this afternoon, assuming the plane is on time.

Judge Parker: You don't know how he is coming, do you?

Mr. Marshall: Yes, sir, he is coming by Delta Air Lines, 3:14.

Judge Timmerman: If he arrives at the North Charleston [fol. 227] Airport, it will be 4 or 4:30 when he gets here.

Mr. Figg: It might be, if your Honor please, that counsel would have no objection to Dr. Odom's address being offered and received in evidence and we could agree on

what he believes his witness who is on the Delta Air Line would testify and add that to the record.

Mr. Marshall: Your Honor, I am familiar with that speech and I would certainly want to question Dr. Odom. I am also happy to say that I know Dr. Odom, but that is a speech and not a scientific study.

Judge Parker: I don't think Dr. Odom's speech would be competent, but the situation that confronts us now is: What are we going to do about this case? As I understand, you have no other testimony for the defense?

Mr. Figg: Not at this time, your Honor.

Judge Parker: Well, I am talking about this time. This is the time we are talking about. We are fixing to close the case right now.

Mr. Figg: As I stated a while ago, if other witnesses are to be called, we had reserved our right to call witnesses if the testimony was objectionable.

Judge Parker: I understand you to say that if these witnesses are allowed to testify that are on the way here, that you may want to offer testimony in answer to them, but otherwise you won't offer any testimony.

[fol. 228] Mr. Figg: That is right.

Judge Parker: And you don't want to offer any testimony in reference to the testimony given by this Doctor in the Sweatt case?

Mr. Figg: I haven't seen that testimony and I doubt,—as you say, your Honor, he was probably cross examined. It wouldn't take two minutes after we see the testimony to tell.

Judge Parker: They have gone for the testimony now. It is now 5 minutes past 11 o'clock and they ought to be here by quarter past 11 with it. He has been gone about 10 minutes. Well, I don't see anything to do except to recess the court for about—until half past 11 o'clock. We will come back then and see what we are going to do with respect to the progress of the case.

Judge Timmerman: Counsel can consult and see if they can't agree about some things.

Judge Parker: Yes, I think that is important. Counsel can confer and see what you want to do about it.

(Recess.)

[fol. 229] Judge Parker: All right. Have you agreed on a solution?

Mr. Marshall: We have here, sir, a transcript of the case of Herman Marion Sweatt versus Theophilis Shickel Painter, et al., the University of Texas case, which includes the testimony of Doctor Robert Redfield; the entire testimony, including direct examination, cross examination and re-direct. It runs between pages 189 and 208. We have discussed it with counsel for the defendant and I understand he is willing to have it in evidence on the one point that if here he would testify substantially that way.

Mr. Figg: We admit that if the witness were here he would testify as he testified in that case.

Judge Parker: All right. Let it be admitted, then. Put it in the record. I don't think it's necessary to read it now. You can refer to it in the arguments.

Judge Waring: That's direct and cross examinations?

Mr. Figg: Yes, sir. The whole of the testimony.

Judge Parker: All right.

Mr. Marshall: Doctor Robert Redfield.

Judge Timmerman: Redfield?

Mr. Marshall: Yes, sir.

Judge Parker: All right. Now, is there anything else that you want to offer in the record?

[fol. 230] Mr. Marshall: Nothing else, sir, except we did check on Professor Newcomb and he left at 8:15 this morning, but he will not be here. So, we are perfectly willing to rest.

Judge Parker: All right. We don't want to cut you off if you think that his testimony is vital. We would hear him when he comes. Do you want to offer anything further yourself?

Mr. Figg: No, sir, we have no further evidence, your Honor.

* * * * * * *

(Doctor Robert Redfield's testimony from the case of Sweatt vs. Painter, et al., was copied into the record as follows:)

Doctor Robert Redfield, a witness produced by the relator, having been by the Court first duly sworn as a witness, testified as follows:

Direct examination.

Questions by Mr. Marshall:

Q. Give the Court your full name, sir.

A. Robert Redfield.

Q. And your present occupation?

A. I am now Professor of Anthropology and Chairman of the Department of that name at the University of Chicago.

Q. Will you review briefly your past qualifications, and your training, and the positions you have held, and the general work you have been doing?

A. After taking a Bachelor's Degree, I went to the [fol. 231] University of Chicago Law School and took a degree of J. D. I was admitted to the Bar of the State of Illinois, and two years thereafter returned to academic life, where I received training in Anthropology and Sociology, and special work in, the problems between the racial and color groups. I received a Doctor's Degree in 1928.

Except for periods when I have been giving instruction at other universities in the United States, I have been employed at the University of Chicago as a teacher, and doing research work, and as an educational administrator.

I have also been in charge of the research program for Carnegie Institute at Washington, and at the present I am in that capacity. Last October I gave up the position of Dean of Social Sciences at Chicago University, a position I held for 12 years.

Q. How long have you been studying in the field of racial differences?

A. About 20 years.

Q. And in that period of time have you considered the question of alleged racial differences in school students?

A. I have considered many aspects of the problem of differences between national groups, including school students.

Q. And have those studies included the comparison of students of both races, studying under the same circumstances?

A. I have followed the literature in that field, as well [fol. 232] as, of course, making my common-sense observations as a teacher and administrator.

Q. Well, Dr. Redfield, as a result of your studies, are you in a position to give your opinions on the general subject? I will give you more specific ones later, but I wish on the general subject of, one: the inappropriateness of segregation to the purposes of education, the inappropriateness of segregation in education to the interests of public security end of it, and to the general welfare of the community.

Mr. Daniel: Your Honor, we object because this lawsuit involves only education in law and procedure. We object to any questions or opinion evidence that may be offered as to general surveys, not limited to law schools, which are composed of those who have completed certain preliminary work in other fields, and we object to the testimony that has been called for by this question, to the question, and to any other questions along that line.

Mr. Marshall: May it please the Court, this case has narrowed down to one issue. I think the pleadings did considerable toward the end of narrowing it down. In the first place, in our original petition we claimed that the refusal to admit the relator was in violation of the 14th Amendment, and in all of the pleadings filed by the State of Texas, no question has ever been raised as to the qualifications of relator other than his race or color, so that is out of consideration.

[fol. 233] The defense of respondents is summed up in their first supplemental answer, large paragraph 2, small (1) in parenthesis, in this statement.

I am quoting.

> "The Constitution and laws of the State of Texas require equal protection of law and equal educational opportunities for all qualified persons, but provide for

separate educational institutions for white and negro students."

And then follows the allegation that the refusal to admit the relator in this case was not arbitrary at all, and was not in violation of the 14th Amendment, but was in keeping with the segregation statutes of the State of Texas, and in that way joined issue; and in the second supplemental petition we alleged:

> "In so far as respondents claim to be acting under authority of the Constitution and laws of the State of Texas their continued refusal to admit the relator to the Law School of the University of Texas is nonetheless in direct violation of the 14th Amendment to the Constitution of the United States."

If there can be any doubt as to our position in the case, in the fourth paragraph in the same pleading in the supplemental petition, we state:

> "In so far as the Constitution and laws of Texas relied on by respondents prohibit relator from attending Law School of University of Texas because of his race and color such constitutional and statutory provisions of the State of Texas as apply to relator are in direct violation of the 14th Amendment to the Constitution of the United States."

So I think that the lines are drawn in this case, and the direct attack has been made that the statutes requiring segregation, the general statutes which prohibit this relator [fol. 234] from attend- the University of Texas, we claim are unconstitutional, and we have the right to show their unconstitutionality.

How do we propose to do so? Several ways. Before that, I would like to bring this out. As to whether there is any question as to the validity of segregation in this case, the Attorney General brought it out with the last witness. He deliberately brought it out, according to which, as I understand from his cross examination, the Attorney General believes the relator has changed his position from conforming to the statute to now insisting that segregation was invalid, and it was the Attorney General who asked

the last question which puts the validity of the segregation statutes flat in issue in this case.

There are several ways of going about proving the unconstitutionality of statutes. They haven't shown any line of reasoning for the statutes. I imagine they are relying on the presumption that the statutes are constitutional. If they are relying on that we have a right to put in evidence to show that segregation statutes in the State of Texas and in any other state, actually when examined, and they have never been examined in any lawsuit that I know of yet, have no line of reasonableness. There is no understandable factual basis for classification by race, and under a long line of decisions by the Supreme Court, not on the question of Negroes, but on the 14th Amendment, all courts agree that if there is no rational basis for the classification, it is flat in the tenth of the 14th Amendment. [fol. 235] The Court: I will let you offer your testimony. I will give you your bill, and I will allow it, at any rate.

Mr. Daniel: Do I understand they will be limited to surveys on law students, or education in general?

The Court: Of course, it is like throwing a rose into a group of flowers. The odor is there. We are presumed to act only upon what is admissible testimony, in the last analysis, anyhow, so I am going to hear it, and if in my opinion it is material and admissible testimony, I will consider it. If it isn't, I will not.

Mr. Marshall: Thank you, sir.

The Court: It will be in the record.

Mr. Daniel: We may have our full bill on it, without repeating our objection?

The Court: That is right, it will follow right through.

Mr. Daniel: Unless there is something else.

The Court: Yes.

By Mr. Marshall:

Q. Dr. Redfield, as to the question of the relationship of segregation to the purposes of education, will you first give us what are the overall acceptable purposes of education as construed by educators in the field? What is the main purpose of public education?

A. No two men, of course, will state this the same way, but I should say that the main purposes of education are to

[fol. 236] develop in every citizen in accordance with the natural capacities of those citizens, the fullest intellectual and moral qualities, and his most effective participation in the duties of the citizens.

Q. Dr. Redfield, are there any recognizable differences as between Negro and white students on the question of their intellectual capacity?

Mr. Daniel: Your Honor, we object to that. That would be a conclusion on the part of the witness. It covers all negro students and all white students. It isn't limited to any particular study or subject or even show what it is based on.

The Court: I suppose his qualifications he has testified to would qualify him to draw his conclusion.

Mr. Marshall: We will follow with what he bases it on.

A. If your Honor will allow me I will present the answer in that form.

The Court: Yes.

A. We got something of a lesson there. We who have been working in the field in which we began with a rather general presumption among our common educators that inherent differences in intellectual ability of capacity to learn existed between negroes and whites, and have slowly, but I think very convincingly, been compelled to come to the opposite conclusion, in the course of long history, special research in the field.

The general sort of situation, your Honor, which brings [fol. 237] about this opposite conclusion, the conclusion that I may state now, significant differences as to intellectual ability, or as to ability to learn, if any, are probably not present between the two groups. We have been brought to that conclusion, your Honor, by a series of studies which have this general character.

Samples from the two groups, negroes and whites, are placed in as nearly identical situations as possible, and given the limited tasks to perform, tasks which are understood to be relevant to the intellectual faculties, or the capacity to learn. Then these samples are measured against each other as to the degree and kind of success in performing these limited tasks. That is a general description of the material which leads to the conclusion I have stated. Perhaps at this point it is sufficient to say that

the general conclusion to which I come, and which I think is shared by a very large majority of specialists——

Mr. Daniel: We object to that as hearsay, your Honor.

The Court: I think so.

A. The conclusion, then, to which I come, is differences in intellectual capacity or inability to learn have not been shown to exist as between negroes and whites, and further, that the results make it very probable that if such differences are later shown to exist, they will not prove to be significant for any educational policy or practice.

By Mr. Marshall:

Q. As a result of your studies that you have made, the [fol. 238] training that you have had in your specialized field over some 20 years, given a similar learning situation, what, if any differences, is there between the accomplishment of a white and a negro student, given a similar learning situation?

A. I understand, if I may say so, a similar learning situation to include a similar degree of preparation?

Q. Yes.

A. Then I would say that my conclusion is that the one does as well as the other on the average.

Q. Well, in your experience, your studies in this particular field, what is your opinion as to the effect of segregated education; one, on the student—I will give them all to you, and then you can take them separately—two, on the school, and three, on the community in general. Will you give your opinion?

A. My opinion is that segregation has effects on the student which are unfavorable to the full realization of the objectives of education. First,—for a number of reasons, perhaps. I will try to distinguish.

Speaking first with regard to the student I would say that in the first place it prevents the student from the full, effective and economical coming to understand the nature and capacity of the group from which he is segregated. My comment, therefore, applies to both whites and negroes, and as one of the objectives of education is the full and sympathetic understanding of the principal groups in the [fol. 239] system in which the individual is to function as

a citizen, this result which I have just stated is unfortunate.

In the second place, I would say that the segregation has an unfortunate effect on the student, which I might now anticipate, since, to my opinion, has an unfortunate effect on the general community, in that it intensifies suspicion and distrust between negroes and the whites, and suspicion and distrust are not favorable conditions either for the acquisition and conduct of an education, or for the discharge of the duties of a citizen. You asked me, did you not, as to the class, and the community?

Q. The school was the second, and the community was the third.

A. I think I have perhaps indicated the difficulties with reference to the school. The school room situation is, provides less than the complete and natural representation of the full community. That is the general view of educators, or it is my view, I should say. It is my view that education goes forward more favorably if the community of student, scholar and teacher is fairly representative of the total community. Rather, the highly specialized and the development of the suspicion and distrust which the segregated situation brings about is correspondingly unfavorable in the school.

With respect to the general community, I suppose there isn't a great deal to add, but if I am still answering your question, I might say this. In my opinion, segregation acts [fol. 240] generally on the total community in an unfavorable way for the general welfare, in that it accentuates imagined differences between negroes and whites. These false assumptions with respect to the existence of those differences are given an appearance of reality by the formal act of physical separation. Furthermore, as the segregation, in my experience, is against the will of the segregated, it produces a very favorable situation for the increase of bad feeling, and even conflict, rather than the reverse.

Q. Dr. Redfield, what has been your personal experience concerning the admission of minority groups to educational facilities to which they had previously been denied admission?

A. Well, as I have indicated, my principal experience has been in connection, in the University of Chicago, and

in its related educational insitutions. The situation there generally is that no segregation is practiced in any of the educational facilities of the University, neither in the class room nor in the dormitory, or in eating facilities or anywhere else in the educational facilities. While the same city or community in which the University lies is one in which segregation or exclusion is practiced as a matter of custom, but not as a matter of law, in a very wide variety of situations, and facilities open to the general public.

In giving that background, I come to the question of what my experience has been with negroes theretofore denied some educational facilities, and I have had experience with one or two such situations in the Univer- [fol. 241] sity of Chicago and its affiliated institutions, and that in each of the cases that I can recall the result has been, in my opinion, highly beneficial to education and to the University community.

Q. Were there any ill effects at all?

A. I don't know of any.

Q. Do you know of any good effects?

A. Yes. Perhaps I should mention a case. The students were denied admission, negro students were discouraged from admittance is perhaps a more accurate statement, to the laboratory school of the University.

They were discouraged admission for a great many years. Then it was made apparent that they would be welcome, and they began to come, and there was an opposition from a minority of the academic community to the step. Many evil consequences were told. None of those consequences took place, but, on the other hand, there was an improvement in the community in that there was a representation of the national community which is favorable to education, and the relations between the white and the negro groups were improved in parent-teacher and endeavor.

Q. Thank you, Doctor.

Mr. Daniel: I want to be sure that my exceptions and objections have gone to the entire testimony.

The Court: Oh, yes.

Cross-Examination.

[fol. 242] Questions by Mr. Daniel:

Q. Dr. Redfield, how many of those surveys of the reaction of students have been limited to law school students?

A. Are you speaking of surveys which I made personally, or of which I have known?

Q. Which you made personally?

A. I have never made a survey of law school students.

Q. Is this testimony you have been giving based on surveys you have made, or you have read about?

A. In larger measure, the latter. I have participated.

Q. You have participated in some?

A. Yes.

Q. But the majority of the studies you have been testifying about and upon which your testimony is based, are studies made by other people, and which you have read?

A. That is the nature of science, sir.

Q. Yes. I just want to be sure that is in the record. Somebody may not know that is the nature of the science. Have you yourself made any study of the effect of separate education in law schools?

A. No, sir.

Q. As I understand it, it is your opinion that it is discrimination against the white students to require them to go to a white University here in Texas; is that right?

A. If I understand the meaning of what I said, that isn't what I was attempting to say. I was attempting to describe [fol. 243] the concensus in regard to educational objectives in the policy of segregation.

Q. And you applied that to separate white schools, with only white students. You said several times, I believe, in your testimony, I believe you said several times that the same applied to segregation of white students, making them go to the separate school.

A. I think it is to the advantage of any student to be in a community that is largely representative of the national community.

Q. To that extent, you believe that any state that requires the white students to go into a separate school from the negro students is to that extent a discrimination against the white students?

A. I am not sure the other description was used, but I think it worked both ways.

Q. It worked both ways. You have talked about a gradual change that you have observed. All of your testimony, I believe, indicated a gradual change in the situation you have talked about, and in the conclusion you have reached.

A. With reference to admission of negroes to facilities that had theretofore been denied them?

Q. Yes.

A. The case I had in mind was where there was a period when they were not admitted, and then a period when they were admitted. I don't know how you use the word "gradual."

[fol. 244] Q. As I understood, you thought there was some difference between ability to learn——

A. I beg your pardon. You are now asking me with respect to the quality of students, as to this matter of racial difference?

Q. Yes.

A. I said opinion on the subject has gradually changed.

Q. Isn't that generally due to the fact that the subject matter has gradually changed over a period of years?

A. We are wiser than we were, yes, sir.

Q. Don't you believe that in a community where segregation has been enforced as long as it has in some of our southern localities, that the only way that the ultimate goal that you think is the best can be properly obtained is by a gradual change, instead of forcing it upon the community?

A. If I can answer the question at all, your Honor, I would like——

The Court: You can explain.

A. I think that all change should not come on any more rapidly than it is consistent with the general welfare.

By Mr. Daniel:

Q. Yes, sir. In other words, you will agree with the other eminent educators in your field, the fields in which you are acquainted, that it is impossible to force the abolition of segregation upon a community that has had it for a long

number of years, in successfully obtaining the results that are best?

[fol. 245] A. No, I don't agree to that.

Q. Do you think the laws should be changed tomorrow?

A. I think that segregation is a matter of legal regulation. Such a law can be changed quickly.

Q. Do you think it has anything to do with the social standing in the community?

A. Segregation in itself is a matter of law, and that law can be changed at once, but if you mean the attitude of the people with respect to keeping away from people of another race, then perhaps I have another answer.

Q. I am speaking about desired results for the individual and the community, and for the state.

A. Will you ask your question over again?

Q. With respect to the individual, the state, the community and the schools, do you, in your opinion, believe that an immediate change in segregation will accomplish the results that you have testified as being best in a community where segregation has been enforced and recognized for many years?

A. I think in every community there is some segregation that can be changed at once, and the area of higher education is the most favorable for making the change.

Q. You admit there are areas in which the change can not be made at once?

A. You mean in 24 hours, with more harm than good resulting?

Q. Yes.

[fol. 246] A. Certainly.

Q. Or within a year?

A. May I state my opinion again?

Q. Instead of 24 hours, we will say within a year or two.

A. I will put it this way. I think this will satisfy you on that as covering my opinion. I think the steps by which, and the rapidity with which segregation in education can be removed with the benefits to the public welfare will vary with the circumstances.

Q. In other words, the circumstances of the community and how long there has been segregation will have a bearing on it?

A. Yes, sir.

Q. In other words, do you recognize or agree with the school of thought that, regardless of the ultimate objective concerning segregation, that if it is to be changed in southern communities where it has been in effect for many years, if it is to be changed successfully, it must be done over a long period of time, as the people in that community change their ideas on the matter?

A. That contention, I do not think, will be my opinion on the matter scientifically.

Q. Does that represent, scientifically, a school of thought on that, in your science, in the matter?

A. There are some that feel that way.

Q. Yes, sir. You are acquainted with the history of the carpet bagger days in the Civil War?

[fol. 247] A. I feel better acquainted with it today, sir, than anybody.

Q. Dr. Redfield, let me get you clearly on that. You are not talking about your own trip down here, are you, to Texas? You say you are acquainted with it today?

A. It just drifted into my mind.

Q. You recall the carpet baggers, where they packed up and came down here from out of the state. You didn't mean to be talking about your trip down here, did you? You are the only witness from out of the state that we have had on, so far. You didn't mean to be talking about the trip down here?

A. I am afraid the idea has come into my mind now.

Q. That wasn't what you referred to?

A. It is in my mind now.

Q. Are you acquainted with the history of the carpet bagger days in the south?

A. In a very general way.

Q. You know, do you know, from that history, that the attempt to force the abolition of segregation in the south just didn't work?

A. Yes, of course.

Q. Do you feel like the social attitudes and beliefs of the people in that day had some bearing on whether or not it would work?

A. Oh, yes.

Q. Of both races?

[fol. 248] A. Oh, yes.

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A. In a very general way.

Q. You know, do you know, from that history, that the attempt to force the abolition of segregation in the south just didn't work?

A. Yes, of course.

Q. Do you feel like the social attitudes and beliefs of the people in that day had some bearing on whether or not it would work?

A. Oh, yes.

Q. Of both races?

[fol. 248] A. Oh, yes.

Q. Are you acquainted with Howard University Law School in Washington?

A. No, sir, only by reputation.

Q. You know it is a negro law school?

A. Yes.

Q. Have you made any check on the separate Negro Law School as to the kind of educational facilities and equality of opportunities that are offered the students of that school?

A. No.

Q. Would you undertake to testify here, Dr. Redfield, that students attending that separate Law School for Negroes at Howard University do not receive equal educational opportunities in law with those attending a similar white school?

A. In my opinion, deprivation of opportunity to exchange professional and intellectual matters with members of the other major groups in their nation is one of the shortcomings of the school.

Q. You have never made any check, though, as to students who have come out of that school, and where that has been a handicap on them, have you?

A. No, I never have.

Q. It is just your idea it is a handicap, without having checked to see whether or not it is?

A. That is right.

[fol. 249] Q. Are you acquainted with Lincoln University by reputation, a separate law school for Negroes in Missouri?

A. I have heard of it.

Q. Have you made any survey of the students educated in that school?

A. I think I have indicated I made no survey of legal education.

Q. You are not prepared to say whether or not those students who received their legal education in that separate law school come out of there handicapped in any respect as far as their knowledge of the law is concerned, are you?

A. I have the opportunity of transforming a conclusion, and as far as there is validity in that, I can draw a conclusion as far as segregated education is concerned.

Q. I am talking about the individuals who have come out of the separate Negro Law School. Have you made any

check to see whether they have received equal educational opportunities with white students of Missouri in the white law school?

A. I have had no occasion to.

Q. Then, you don't know whether there are any disadvantages or not, actually, to those individuals, do you?

A. In the particular case of those individuals?

Q. Yes, sir.

A. By virtue of knowledge I might have of them in particular, no.

[fol. 250] Q. Do you recognize, Dr. Redfield, that there should be some limit to your theory of abolition of segregation?

A. I think I have indicated a limit.

Q. A limit?

A. Yes, a limit.

Q. What limit do you say there should be, and will still give what you think is necessary from the standpoint of public education?

A. The general welfare would be served by extending non-segregation, at the expense of segregation, and that general limit will be defined in my particular conclusion, as the particular circumstances.

Q. Is it necessary that there be social commingling?

A. I understand that by social commingling is meant communication of students and professor, and intellectual endeavor—yes.

Q. Is that as far as you think it is necessary to have such commingling to obtain the objectives you think are so necessary?

A. I think that whatever commingling is a natural and proper accessory to the educational endeavor will in the long run develop to the general welfare.

Q. Do you think it is necessary to have social commingling of the races in order to obtain the things you think are necessary to give, to attain the objective that you say is set for public education?

[fol. 251] A. The question is repetitious. I have answered it.

Mr. Durham: If your Honor please——

The Court: I really believe he has answered it. If you are

not quite satisfied, General, you may ask another question.

Mr. Daniel: I am not quite satisfied. I don't want to ask an embarrassing question, but yet—you have testified—I really want to know—you have testified that you believe certain segregation must be done away with in order to accomplish the best for the school and the community?

A. If you are thinking about intermarriage—if that is in your mind, I would be delighted to answer.

Q. My mind hadn't gotten quite that far on the subject.

A. I am sorry.

Q. I am simply trying to ask you, since you have testified that a certain amount of doing away with segregation is necessary, I want to know your explanation, or expert opinion, on how far it must be done away with in order to accomplish the best for the individual, the school and the community.

Mr. Marshall: This case is at least limited, and the direct examination is most certainly limited, to education.

The Court: I understood that is what he answered, that only in so far as it was necessary for students to have a mutual exchange of ideas along professional and educational lines.

Mr. Marshall: But this question isn't limited to that.

The Court: I understood he answered as I stated, a good [fol. 252] while ago, General.

Mr. Daniel: I have asked how far he thinks that is necessary.

A. In order to accomplish the educational objective?

Q. Yes.

A. Roughly speaking, in the class rooms and in the natural discussion of educational objectives we have common rooms in our University where the students meet to discuss common educational problems.

Q. What about fraternities? Is it necessary that there be commingling there?

A. In any particular situation, I should think probably not.

Q. You think it is not necessary that they belong to the same social groups?

A. This might not be your case, but I should say probably not.

Q. You feel like a Negro student at a separate school that doesn't have the same fraternities or scholarships as the other school——

A. I was thinking of social fraternities.

Q. Let's limit it to that.

A. That seems relatively unimportant. I could answer it either one way or the other, and I would like to see the particular case to see how I would answer it.

The Court: Are there other questions?

Mr. Daniel: Yes, sir; just a second, your Honor.

[fol. 253] Q. Doctor, are you acquainted with the Encyclopedia Britannica, the publication by that name?

A. I have a set. I don't look at it very often.

Q. You are from the University of Chicago?

A. Yes.

Q. Is that publication now published under the auspices of that University?

A. Yes, sir; and it badly needs rewriting.

Q. It is published under the auspices of your University?

A. Yes.

Q. Have you read the article therein on education, and segregation of the races in American Schools?

A. If I have, I don't remember it.

Q. You don't remember it. Have you written any articles for the Encyclopedia Britannica?

A. No, we are just beginning a revision of anthropological articles, and it seems there has to be a very drastic change.

Q. Do you know who wrote the articles in the Encyclopedia Britannica on the subject of higher education for Negroes, and segregation?

A. I don't remember such articles.

Q. Do you recognize the Enclopedia Britannica and the articles on such subjects as an authority in the field?

A. No, I do not.

Q. You do not?

[fol. 254] A. No, sir.

Q. Do you know of some scientists in your field who do recognize those articles?

Mr. Durham: We object to that as being irrelevant and immaterial, what somebody else recognizes.

The Court: That would be his—perhaps not what they recognize, but what they have said about it.

A. I think I could answer that question, and do more justice to the meaning than just with a yes or no answer.

By Mr. Daniel:

Q. Go right ahead.

A. All of the articles you have mentioned in that publication are of extremely uneven merit, so that the men with whom I have talked who have studied it—I haven't studied it—tell me that certain articles are extremely good and other articles are extremely bad. That is about the best I can answer.

Q. I understand you are going to leave, and we may want to know something about that, as an authority. Is that Encyclopedia Britannica, could we here in the Court—could the Court, in your opinion, consider that as one of the recognized authorities in the field, if they have an authority on the subject?

A. I don't think you could, for the reason that you might hit on one of the articles that was particularly out of date.

Q. You haven't read the articles on the subjects we are talking about?

[fol. 255] A. If I have, I have forgotten it—I probably have.

Q. But it is your opinion the Court couldn't accept that as an authority?

A. You might get a bad one. I couldn't say.

Q. Could you give us some of the authorities that you think we would be justified in taking as authorities on the subject you have testified to us about? Have you written any books on the subject?

A. Not with respect to the American Negro. I have written on the general subject with respect to other racial groups. Franz Boes, Ruth Benedict, Ashley Montague, Otto Kleinberg. Is that enough.

Q. Give us one more.

A. One more. I will make it a good one. Then, Dr. Leslie White.

Q. Do all of these scientists have the same, share your ideas as to segregation?

A. I don't know.

Q. Do you know any scientists who have written books or articles on the American Negro, on segregation, who do not share your ideas?

A. Many of the scientists that study this problem have not written or expressed themselves on the education results of segregation. They are agreed, all that I have mentioned, and a great many more on the conclusions which I gave in [fol. 256] direct testimony in the first of my remarks with regard to the probability, or the existence of inherent differences in educational capacity, but the application of the conclusion to the school situation concerns a very much smaller group of people, because the group of people concerned with that are educational administrators and the like and many of those people whose names I have given you are not educational administrators.

Q. But on your conclusion as to education, you told me there were authorities in the field who disagreed with your conclusion?

A. I think not.

Q. Maybe I am speaking about the gradual change.

A. I don't know who I could cite for that.

Q. That is all.

Redirect examination.

Questions by Mr. Marshall:

Q. Dr. Redfield, you testified on cross examination that your opinions were based on your own studies, but mostly on other studies that have been made. I want to ask you as to whether or not the studies you are speaking of made by other people were scientific studies or not?

A. They were.

Q. And I want to ask you as to whether or not they were mostly published scientific studies?

A. They were.

Q. Generally recognized in your field as authorities?

[fol. 257] A. Yes, they were.

Q. Do you know of any recognized scientific study that recognizes any inherent racial difference among the races, as to capacity to learn?

A. A man named Portees in Australia published some

papers which I have read, on the Australian aborigines, which reach the conclusion that there are inherent differences between the races. I am sure there are other papers that reach a similar conclusion. They are all specific studies, and the conclusions are drawn on differences in achievement in the races, and the case of Portees is one. John Ferguson is publishing one, but there are very, very few that would draw the opposite conclusion to the one that I have stated concerning the inherent difference.

Q. Isn't it true the Australian aborigine is on the bottom of the heap?

A. The important thing is there are different studies, and it has taken them a long period of time to reach the conclusion I have offered.

Q. Isn't it true the majority of scientists in your field are in agreement there is no inherent racial difference?

A. Yes.

Q. Isn't it true that such studies as the Kleinberg study in 1935, and others, are specific factual studies which show that a given fact situation, there is no difference?

Mr. Daniel: We object to that because it is leading.

[fol. 258] The Court: Of course, it is leading.

Mr. Marshall: Your witness.

Recross-examination.

Questions by Mr. Daniel:

Q. Dr. Redfield, in determining the question of changing the laws and regulations in a community concerning segregation, how far, in your opinion, should the community, should the State consider the community attitudes of both of the races concerning the matter?

A. It would depend upon the circumstances. I can make an observation, which I think is a partial answer. I think the effect of having a regulation—I guess I will have to make a speech to answer that.

Q. I don't believe——

A. I have got quite a long——

Q. I don't believe it calls for that. I will ask you this: Do you think the community attitude of both of the races should be considered when you go to see what is best in the way of the field of education for that community?

A. I think so. You understand that the attitudes of the community are complex. Attitudes in the State of Illinois and the State of Texas, I take it, are, one; some white people don't want to be near negroes under certain conditions, and those same white people want equality of education and other opportunities in America, and there are both kinds of [fol. 259] attitude in making the change.

Q. Would you consider the attitude of some Negroes that would rather have segregation themselves, in determining the educational situation?

A. Yes, and you have to consider that Texas, with other Americans, share the view that equality of opportunity is due every man in this country, and they are struggling, as are all of us, to reconcile those attitudes.

Q. You would take those two into consideration before you would arrive at what is best to be done for the individual and the community?

A. Always understanding both kinds of attitudes.

Q. I will ask you, Dr. Redfield, if you have made any check on the relative number, of where the Negroes of this country who hold college degrees, have obtained those degrees? Have you made any study as to the opportunities offered for the Negroes of this country to obtain college degrees?

A. I have read reports on it.

Q. Isn't it true that the figures of 85% of the Negroes of this country who have college degrees received them from southern, separate colleges?

A. I don't remember.

Q. Does that sound about right?

A. When you say it, sir, it does.

Q. Thank you. Are you a member of the National Asso- [fols. 260-309] ciation for the Advancement of Colored People?

A. No.

Q. That is all.

(Witness excused.)

* * * * * * *

[fols. 310-316] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 317] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

I concur:

(S.) Geo. Bell Timmerman, U. S. Dist. Judge.

I concur:

(S.) John J. Parker, Chief Judge 4th Circuit.

HARRY BRIGGS, JR., et al., Plaintiffs,

versus

R. W. ELLIOTT, Chairman, J. D. CARSON and GEORGE KENNEDY, Members of the Board of Trustees of School District No. 22, Clarendon County, S. C.; Summerton High School District, a body corporate; L. B. McCord, Superintendent of Education for Clarendon County, and Chairman A. J. Plowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. B. Betcham, Superintendent of School District No. 22, Defendants.

OPINION—Filed June 23, 1951

On application for Declaratory Judgment and Injunction.

Heard May 28, 1951. Decided ——

Before Parker, Circuit Judge, and Waring and Timmerman, District Judges.

Harold R. Boulware, Spottswood Robinson, III, Robert L. Carter, Thurgood Marshall, Arthur Shores and A. T. Walden, for Plaintiffs; T. C. Callison, Attorney General of South Carolina, S. E. Rogers and Robert McC. Figg, Jr., for Defendants.

[fol. 318] PARKER, Chief Judge:

This is a suit for a declaratory judgment and injunctive relief in which it is alleged that the schools and educational facilities provided for Negro children in School District No. 22 in Clarendon County, South Carolina, are inferior to those provided for white children in that district and that

this amounts to a denial of the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Federal Constitution, and further that the segregation of Negro and white children in the public schools, required by Article II section 7 of the Constitution of South Carolina and section 5377 of the Code of Laws of that state,* is of itself violative of the equal protection clause of the Fourteenth Amendment. Plaintiffs are Negro children of school age who are entitled to attend the public schools in District No. 22 in Clarendon County, their parents and guardian. Defendants are the school officials who, as officers of the state, have control of the schools in the district. A court of three judges has been convened pursuant to the pro- [fol. 319] visions of 28 USC 2281 and 2284, the evidence offered by the parties has been heard and the case has been submitted upon the briefs and arguments of counsel.

At the beginning of the hearing the defendants admitted upon the record that "the educational facilities, equipment, curricula and opportunities afforded in School District No. 22 for colored pupils * * * are not substantially equal to those afforded for white pupils." The evidence offered in the case fully sustains this admission. The defendants contend, however, that the district is one of the rural school districts which has not kept pace with urban districts in providing educational facilities for the children of either race, and that the inequalities have resulted from limited resources and from the disposition of the school officials to spend the limited funds available "for the most immediate demands rather than in the light of the overall picture." They state that under the leadership of Governor Byrnes the Legislature of South Carolina had made pro-

* Article II section 7 of the Constitution of South Carolina is as follows: "Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race."

Section 5377 of the Code of Laws of South Carolina of 1942 is as follows: "It shall be unlawful for pupils of one race to attend the schools provided by boards of trustees for persons of another race."

vision for a bond issue of $75,000,000 with a three per cent sales tax to support it for the purpose of equalizing educational opportunities and facilities throughout the state and of meeting the problem of providing equal educational opportunities for Negro children where this had not been done. They have offered evidence to show that this educational program is going forward and that under it the educational facilities in the district will be greatly improved [fol. 320] for both races and that Negro children will be afforded educational facilities and opportunities in all respects equal to those afforded white children.

There can be no question but that where separate schools are maintained for Negroes and whites, the educational facilities and opportunities afforded by them must be equal. The state may not deny to any person within its jurisdiction the equal protection of the laws, says the Fourteenth Amendment; and this means that, when the state undertakes public education, it may not discriminate against any individual on account of race but must offer equal opportunity to all. As said by Chief Justice Hughes in Missouri ex rel. Gaines v. Canada, 305 U. S. 337, 349, "The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State." See also Sweatt v. Painter, 339 U. S. 629; Corbin v. County School Board of Pulaski County 4 Cir. 177 F. 2d 924; Carter v. School Board of Arlington County, Va. 4 Cir. 182 F. 2d 531; McKissick v. Carmichael 4 Cir. 187 F. 2d 949. We think it clear, therefore, that plaintiffs are entitled to a declaration to the effect that the school facilities now afforded Negro children in District No. 22 are not equal to the facilities afforded white children in the district and to a mandatory injunction requiring that equal facilities be afforded them. How this [fol. 321] shall be done is a matter for the school authorities and not for the court, so long as it is done in good faith and equality of facilities is afforded; but it must be done promptly and the court in addition to issuing an injunction to that effect will retain the cause upon its docket for further orders and will require that defendants file within six months a report showing the action that has been taken by them to carry out the order.

Plaintiffs ask that, in addition to granting them relief on account of the inferiority of the educational facilities furnished them, we hold that segregation of the races in the public schools, as required by the Constitution and statutes of South Carolina, is of itself a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment, and that we enjoin the enforcement of the constitutional provision and statute requiring it and by our injunction require defendants to admit Negroes to schools to which white students are admitted within the district. We think, however, that segregation of the races in the public schools, so long as equality of rights is preserved, is a matter of legislative policy for the several states, with which the federal courts are powerless to interfere.

One of the great virtues of our constitutional system is that, while the Federal government protects the fundamental rights of the individual, it leaves to the several states the solution of local problems. In a country with a great expanse of territory with peoples of widely differing customs and ideas, local self government in local [fol. 322] matters is essential to the peace and happiness of the people in the several communities as well as to the strength and unity of the country as a whole. It is universally held, therefore, that each state shall determine for itself, subject to the observance of the fundamental rights and liberties guaranteed by the federal Constitution, how it shall exercise the police power, i.e. the power to legislate with respect to the safety, morals, health and general welfare. And in no field is this right of the several states more clearly recognized than in that of public education. As was well said by Mr. Justice Harlan, speaking for a unanimous court in Cumming v. Board of Education, 175 U. S. 528, 545, "while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective States, and any interference on the part of federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

It is equally well settled that there is no denial of the equal protection of the laws in segregating children in the schools for purposes of education, if the children of the different races are given equal facilities and opportunities. The leading case on the subject in the Supreme Court is Plessy v. Ferguson, 163 U. S. 537, which involved segrega- [fol. 323] tion in railroad trains, but in which the segregation there involved was referred to as being governed by the same principle as segregation in the schools. In that case the Court said:

> "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced."

Later in the opinion the Court said:

> "So far, then, as a conflict with Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this there must necessarily be a large discretion on the part of the legislature. *In determining the question of reasonableness it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order.*" (Italics supplied).

Directly in point and absolutely controlling upon us so long as it stands unreversed by the Supreme Court is Gong Lum v. Rice 275 U. S. 78, in which the complaint was that a child of Chinese parentage was excluded from a school maintained for white children under a segregation law and was permitted to enter only a school maintained for colored children. Although attempt is made to distinguish this case, it cannot be distinguished. The question as to the validity of segregation in the public schools on the ground of race was squarely raised, the Fourteenth [fol. 324] Amendment was relied upon as forbidding segregation and the issue was squarely met by the Court. What was said by Chief Justice Taft speaking for a unanimous court, is determinative of the question before us. Said he:

> "The case then reduces itself to the question whether a state can be said to afford to a child of Chinese ancestry born in this country, and a citizen of the United States, equal protection of the laws giving her the opportunity for a common school education in a school which receives only colored children of the brown, yellow or black races.
>
> "The right and power of the state to regulate the method of providing for the education of its youth at public expense is clear. * * *.
>
> "The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow or black. Were this a new question, it would call for very full argument and consideration, but we think that it is the same question which has been many times decided to be within the constitutional power of the state legislature to settle without intervention of the federal courts under the Federal Constitution. Roberts v. City of Boston 5 Cush. (Mass.) 198, 206, 208, 209; State ex rel. Garnes v. McCann 21 Oh. St. 198, 210, People ex rel. King v. Gallagher 93 N. Y. 438; People ex rel. Cisco v. School Board 161 N. Y. 598; Ward v. Flood 48 Cal. 36; Wysinger v. Crookshank 82 Cal. 588, 590; Reynolds v. Board of Education 66 Kans. 672; McMillan v. School

Committee 107 N. C. 609; Cory v. Carter 48 Ind. 327; Lehew v. Brummell 103 Mo. 546; Dameron v. Bayless 14 Ariz. 180; State ex rel. Stoutmeyer v. Duffy 7 Nev. 342, 348, 355; Bertonneau v. Board 3 Woods 177, s. c. 3 Fed. Cas. 294, Case No. 1,361; United States v. Buntin 10 F. 730, 735; Wong Him v. Callahan 119 F. 381.

"In Plessy v. Ferguson 163 U. S. 537, 544, 545, in upholding the validity under the Fourteenth Amendment of a statute of Louisiana requiring the separation of the white and colored races in railway coaches, *a more difficult question than this,* this Court, speaking of permitted race separation said:

" 'The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.'

"Most of the cases cited arose, it is true, over the establishment of separate schools as between white pupils and black pupils, but we cannot think that the question is any different or that any different result can be reached, assuming the cases above cited to be rightly decided, where the issue is as between white pupils and the pupils of the yellow races. *The decision is within the discretion of the state in regulating its public schools and does not conflict with the Fourteenth Amendment.*" (Italics supplied).

[fol. 325] Only a little over a year ago, the question was before the Court of Appeals of the District of Columbia in Carr v. Corning D. C. Cir. 182 F. 2d 14, a case involving the validity of segregation within the District, and the whole matter was exhaustively explored in the light of history and the pertinent decisions in an able opinion by Judge Prettyman, who said:

"It is urged that the separation of the races is itself, apart from equality or inequality of treatment, forbidden by the Constitution. The question thus posed is whether the Constitution lifted this problem out of

the hands of all legislatures and settled it. We do not think it did. Since the beginning of human history, no circumstance has given rise to more difficult and delicate problems than has the coexistence of different races in the same area. Centuries of bitter experience in all parts of the world have proved that the problem is insoluble by force of any sort. The same history shows that it is soluble by the patient processes of community experience. Such problems lie naturally in the field of legislation, a method susceptible of experimentation, of development, of adjustment to the current necessities in a variety of community circumstance. We do not believe that the makers of the first ten Amendments in 1789 or of the Fourteenth Amendment in 1866 meant to foreclose legislative treatment of the problem in this country.

"This is not to decry efforts to reach that state of common existence which is the obvious highest good in our concept of civilization. It is merely to say that the social and economic interrelationship of two races living together is a legislative problem, as yet not solved, and is not a problem solved fully, finally and unequivocally by a fiat enacted many years ago. We must remember that on this particular point we are interpreting a constitution and not enacting a statute.

"We are not unmindful of the debates which occurred in Congress relative to the Civil Rights Act of April 9, 1866, The Fourteenth Amendment, and the Civil [fol. 326] Rights Act of March 1, 1875. But the actions of Congress, the discussion in the Civil Rights cases, and the fact that in 1862, 1864 and 1874 Congress, as we shall point out in a moment, enacted legislation which specifically provided for separation of the races in the schools of the District of Columbia, conclusively support our view of the Amendment and its effect.

"The Supreme Court has consistently held that if there be an 'equality of the privileges which the laws give to the separated groups', the races may be separated. That is to say that constitutional invalidity does not arise from the mere fact of separation but may arise from an inequality of treatment. Other courts have long held to the same effect."

It should be borne in mind that in the above cases the courts have not been dealing with hypothetical situations or mere theory, but with situations which have actually developed in the relationship of the races throughout the country. Segregation of the races in the public schools has not been confined to South Carolina or even to the South but prevails in many other states where Negroes are present in large numbers. Even when not required by law, it is customary in many places. Congress has provided for it by federal statute in the District of Columbia; and seventeen of the states have statutes or constitutional provisions requiring it. They are Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.* And the [fol. 327] validity of legislatively requiring segregation in the schools has been upheld wherever the question has been raised. See Wong Him v. Callahan, 119 F. 381; United States v. Buntin, 10 F. 730; Bertonneau v. Board of Directors 3 Fed. Cas. 294, No. 1361; Dameron v. Bayless 14 Ariz. 180, 126 Pac. 273; Maddox v. Neal 45 Ark. 121, 55 Am Rep. 540; Ward v. Flood 48 Cal. 36, 17 Am. Rep. 405; Cory v. Carter 48 Ind. 327, 17 Am. Rep. 738; Graham v. Board of Education 153 Kan. 840, 114 P. 2d 313; Richardson v. Board of Education 72 Kan. 629, 84 Pac. 538; Reynolds v. Board of Education 66 Kan. 672, 72 Pac. 274; Chrisman v. Mayor 70 Miss. 477, 12 So. 458; Lehew v. Brummell 103 Mo. 546, 15 S. W. 765, 11 L. R. A. 828, 23 Am. St. Rep. 895; State v. Duffy 7 Nev. 342, 8 Am. Rep. 713; People v. School Board 161 N. Y. 598, 56 N. E. 81, 48 L. R. A. 113; People v. Gallagher, 93 N. Y. 438, 45 Am. Rep. 232; McMillan v. School Committee 107 N. C. 609, 12 S. E. 330, 10 L. R. A. 823; State v. McCann 21 Ohio St. 198; Board of Education v. Board of Com'rs 14 Okla. 322, 78 Pac. 455; Martin v. Board of Education 42 W. Va. 514, 26 S. E. 348.* No cases

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* Statistical Summary of Education, 1947-48, "Biennial Survey of Education in the United States, 1946-48", ch. 1 pp. 8, 40 (Federal Security Agency, Office of Education).

* See also Roberts v. City of Boston 5 Cush. (Mass.) 198, decided prior to the Fourteenth Amendment.

have been cited to us holding that such legislation is violative of the Fourteenth Amendment. We know of none, and diligent search of the authorities has failed to reveal any.

Plaintiffs reply upon expressions contained in opinions relating to professional education such as Sweatt v. Painter [fol. 328] 339 U. S. 629, McLaurin v. Oklahoma State Regents 339 U. S. 637 and McKissick v. Carmichael 4 Cir. 187 F. 2d 949, where equality of opportunity was not afforded. Sweatt v. Painter, however, instead of helping them, emphasizes that the separate but equal doctrine of Plessy v. Ferguson has not been overruled, since the Supreme Court, although urged to overrule it, expressly refused to do so and based its decision on the ground that the educational facilities offered Negro law students in that case were not equal to those offered white students. The decision in McKissick v. Carmichael was based upon the same ground. The case of McLaurin v. Oklahoma State Regents involved humiliating and embarrassing treatment of a Negro law student to which no one should have been required to submit. Nothing of the sort is involved here.

The problem of segregation as applied to graduate and professional education is essentially different from that involved in segregation in education at the lower levels. In the graduate and professional schools the problem is one of affording equal educational facilities to persons sui juris and of mature personality. Because of the great expense of such education and the importance of the professional contacts established while carrying on the educational process, it is difficult for the state to maintain segregated schools for Negroes in this field which will afford them [fol. 329] opportunities for education and professional advancement equal to those afforded by the graduate and professional schools maintained for white persons. What the courts have said, and all they have said in the cases upon which plaintiffs rely is that, notwithstanding these difficulties, the opportunity afforded the Negro student must be equal to that afforded the white student and that the schools established for furnishing this instruction to white persons must be opened to Negroes if this is necessary to give them the equal opportunity which the Constitution requires.

The problem of segregation at the common school level is

a very different one. At this level, as good education can be afforded in Negro schools as in white schools and the thought of establishing professional contacts does not enter into the picture. Moreover, education at this level is not a matter of voluntary choice on the part of the student but of compulsion by the state. The student is taken from the control of the family during school hours by compulsion of law and placed in control of the school, where he must associate with his fellow students. The law thus provides that the school shall supplement the work of the parent in the training of the child and in doing so it is entering a delicate field and one fraught with tensions and difficulties. In formulating educa-
[fol. 330] tional policy at the common school level, therefore, the law must take account, not merely of the matter of affording instruction to the student, but also of the wishes of the parent as to the upbringing of the child and his associates in the formative period of childhood and adolescence. If public education is to have the support of the people through their legislatures, it must not go contrary to what they deem for the best interests of their children.

There is testimony to the effect that mixed schools will give better education and a better understanding of the community in which the child is to live than segregated schools. There is testimony, on the other hand, that mixed schools will result in racial friction and tension and that the only practical way of conducting public education in South Carolina is with segregated schools. The questions thus presented are not questions of constitutional right but of legislative policy, which must be formulated, not in vacuo or with doctrinaire disregard of existing conditions, but in realistic approach to the situations to which it is to be applied. In some states, the legislatures may well decide that segregation in public schools should be abolished, in others that it should be maintained—all depending upon the relationships existing between the races and the tensions likely to be produced by an attempt to educate the children
[fol. 331] of the two races together in the same schools. The federal courts would be going far outside their constitutional function were they to attempt to prescribe educational policies for the states in such matters, however desirable such policies might be in the opinion of some sociologists or educators. For the federal courts to do so would result, not

only in interference with local affairs by an agency of the federal government, but also in the substitution of the judicial for the legislative process in what is essentially a legislative matter.

The public schools are facilities provided and paid for by the states. The state's regulation of the facilities which it furnishes is not to be interfered with unless constitutional rights are clearly infringed. There is nothing in the Constitution that requires that the state grant to all members of the public a common right to use every facility that it affords. Grants in aid of education or for the support of the indigent may properly be made upon an individual basis if no discrimination is practiced; and, if the family, which is the racial unit, may be considered in these, it may be considered also in providing public schools. The equal protection of the laws does not mean that the child must be treated [fol. 332] as the property of the state and the wishes of his family as to his upbringing be disregarded. The classification of children for the purpose of education in separate schools has a basis grounded in reason and experience; and, if equal facilities are afforded, it cannot be condemned as discriminatory for, as said by Mr. Justice Reed in New York Rapid Transit Corp. v. City of New York, 303 U. S. 573, 578: "It has long been the law under the Fourteenth Amendment that 'a distinction in legislation is not arbitrary, if any state of facts can be conceived that would sustain it'." *

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* See also, Rast v. Van Deman & Lewis Co., 240 U. S. 342, 357; Borden's Farm Products Co. v. Baldwin, 239 U. S. 194, 209; Metropolitan Casualty Ins. Co. v. Brownell, 294 U. S. 580, 584; State Board of Tax Com'rs v. Jackson, 283 U. S. 527, 537; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 78; Alabama State Federation of Labor v. McAdory, 325 U. S. 450, 465; Asbury Hospital v. Cass County, N. D. 326 U. S. 207, 215; Carmichael v. Southern Coal & Coke Co. 301 U. S. 495, 509; South Carolina Power Co. v. South Carolina Tax Com'n, 4 Cir. 52 F. 2d 515, 518; United States v. Carolene Products Co., 304 U. S. 144, 152; Bowles v. American Brewery, 4 Cir. 146 F. 2d 842, 847; White Packing Co. v. Robertson, 4 Cir. 89 F. 2d 775, 779.

We are cited to cases having relation to zoning ordinances, restrictive covenants in deeds and segregation in public conveyances. It is clear, however, that nothing said in these cases would justify our disregarding the great volume of authority relating directly to education in the public schools, which involves not transient contacts, but associations which affect the interests of the home and the wishes of the people with regard to the upbringing of their children. As Chief [fol. 333] Justice Taft pointed out in Gong Lum v. Rice, supra, "a more difficult" question is presented by segregation in public conveyances than by segregation in the schools.

We conclude, therefore, that if equal facilities are offered, segregation of the races in the public schools as prescribed by the Constitution and laws of South Carolina is not of itself violative of the Fourteenth Amendment. We think that this conclusion is supported by overwhelming authority which we are not at liberty to disregard on the basis of theories advanced by a few educators and sociologists. Even if we felt at liberty to disregard other authorities, we may not ignore the unreversed decisions of the Supreme Court of the United States which are squarely in point and conclusive of the question before us. As said by the Court of Appeals of the Fourth Circuit in Boyer v. Garrett, 183 F. 2d 582, a case involving segregation in a public playground, in which equality of treatment was admitted and segregation was attacked as being per se violative of the Fourteenth Amendment:

> "The contention of plaintiffs is that, notwithstanding this equality of treatment, the rule providing for segregation is violative of the provisions of the federal Constitution. The District Court dismissed the complaint on the authority of Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256; and the principal argument made on appeal is that the authority of Plessy v. Ferguson has been so weakened by subsequent decisions that we should no longer consider it as binding. We do [fol. 334] not think, however, that we are at liberty thus to disregard a decision of the Supreme Court which that court has not seen fit to overrule and which it expressly refrained from reexamining, although urged to do so, in the very recent case of Sweatt v. Painter, 70 S. Ct. 848.

It is for the Supreme Court, not us, to overrule its decisions or to hold them outmoded."

To this we may add that, when seventeen states and the Congress of the United States have for more than three quarters of a century required segregation of the races in the public schools, and when this has received the approval of the leading appellate courts of the country including the unanimous approval of the Supreme Court of the United States at a time when that court included Chief Justice Taft and Justices Stone, Holmes and Brandeis, it is a late day to say that such segregation is violative of fundamental constitutional rights. It is hardly reasonable to suppose that legislative bodies over so wide a territory, including the Congress of the United States, and great judges of high courts have knowingly defied the Constitution for so long a period or that they have acted in ignorance of the meaning of its provisions. The constitutional principle is the same now that it has been throughout this period; and if conditions have changed so that segregation is no longer wise, this is a matter for the legislatures and not for the courts. The members of the judiciary have no more right to read [fol. 335] their ideas of sociology into the Constitution than their ideas of economics.

It is argued that, because the school facilities furnished Negroes in District No. 22 are inferior to those furnished white persons, we should enjoin segregation rather than direct the equalizing of conditions. In as much as we think that the law requiring segregation is valid, however, and that the inequality suffered by plaintiffs results, not from the law, but from the way it has been administered, we think that our injunction should be directed to removing the inequalities resulting from administration within the framework of the law rather than to nullifying the law itself. As a court of equity, we should exercise our power to assure to plaintiffs the equality of treatment to which they are entitled with due regard to the legislative policy of the state. In directing that the school facilities afforded Negroes within the district be equalized promptly with those afforded white persons, we are giving plaintiffs all the relief that they can reasonably ask and the relief that is ordinarily granted in cases of this sort. See Corbin v.

County School Board of Arlington County, Virginia, 4 Cir. 182 F. 2d 531. The court should not use its power to abolish segregation in a state where it is required by law if the equality demanded by the Constitution can be attained [fol. 336] otherwise. This much is demanded by the spirit of comity which must prevail in the relationship between the agencies of the federal government and the states if our constitutional system is to endure.

Decree will be entered finding that the constitutional and statutory provisions requiring segregation in the public schools are not of themselves violative of the Fourteenth Amendment, but that defendants have denied to plaintiffs rights guaranteed by that amendment in failing to furnish for Negroes in School District 22 educational facilities and opportunities equal to those furnished white persons, and injunction will issue directing defendants promptly to furnish Negroes within the district educational facilities and opportunities equal to those furnished white persons and to report to the court within six months as to the action that has been taken by them to effectuate the court's decree.

Injunction to Abolish Segregation Denied.

Injunction to Equalize Educational Facilities Granted.

A true copy. Attest. Ernest L. Allen, Clerk of U. S. District Court, East. Dist. So. Carolina. [Seal.]

[fol. 337] DISSENTING OPINION

This case has been brought for the express and declared purpose of determining the right of the State of South Carolina, in its public schools, to practice segregation according to race.

The Plaintiffs are all residents of Clarendon County, South Carolina which is situated within the Eastern District of South Carolina and within the jurisdiction of this court. The Plaintiffs consist of minors and adults there being forty-six minors who are qualified to attend and are attending the public schools in School District 22 of Clarendon County; and twenty adults who are taxpayers and are either guardians or parents of the minor Plaintiffs. The Defendants are members of the Board of Trustees of School District 22 and other officials of the educational system of Clarendon County including the superintendent of educa-

tion. They are the parties in charge of the various schools which are situated within the aforesaid school district and which are affected by the matters set forth in this cause.

The Plaintiffs allege that they are discriminated against by the Defendants under color of the Constitution and laws of the State of South Carolina whereby they are denied equal educational facilities and opportunities and that this denial is based upon difference in race. And they show that the school system of this particular school district and county (following the general pattern that it is ad- [fol. 338] mitted obtains in the State of South Carolina) sets up two classes of schools; one for people said to belong to the white race and the other for people of other races but primarily for those said to belong to the Negro race or of mixed races and either wholly, partially, or faintly alleged to be of African or Negro descent. These Plaintiffs bring this action for the enforcement of the rights to which they claim they are entitled and on behalf of many others who are in like plight and condition and the suit is denominated a class suit for the purpose of abrogation of what is claimed to be the enforcement of unfair and discriminatory laws by the Defendants. Plaintiffs claim that they are entitled to bring this case and that this court has jurisdiction under the Fourteenth Amendment of the Constitution of the United States and of a number of statutes of the United States, commonly referred to as civil rights statutes.[1] The Plaintiffs demand relief under the above referred to sections of the laws of the United States by way of a Declaratory Judgment and Permanent Injunction.

It is alleged that the Defendants are acting under the authority granted them by the Constitution and laws of the State of South Carolina and that all of these are in contravention of the Constitution and laws of the United States. The particular portions of the laws of South Carolina are as follows:

> Article XI, Section 5 is as follows:
>
> "Free Public Schools—The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years . . ."

Article XI, Section 7 is as follows:

> "Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race."

Section 5377 of the Code of Laws of South Carolina is as follows:

> "It shall be unlawful for pupils of one race to attend the schools provided by boards of trustees for persons of another race."

It is further shown that the Defendants are acting under [fol. 339] the authority of the Constitution and laws of the State of South Carolina providing for the creation of various school districts,[2] and they have strictly separated and segregated the school facilities, both elementary and high school, according to race. There are, in said school district, three schools which are used exclusively by Negroes: to wit, Rambay Elementary School, Liberty Hill Elementary School, and Scotts Branch Union (a combination of elementary and high school). There are in the same school district, two schools maintained for whites, namely, Summerton Elementary School and Summerton High School. The last named serves some of the other school districts in Clarendon County as well as No. 22.

It appears that the Plaintiffs filed a petition with the Defendants requesting that the Defendants cease discrimination against the Negro children of public school age; and the situation complained of not having been remedied or changed, the Plaintiffs now ask this court to require the Defendants to grant them their rights guaranteed under the Fourteenth Amendment of the Constitution of the United States and they appear to the equitable power of this court for declaratory and injunctive relief alleging that they are suffering irreparable injuries and that they have no plain adequate or complete remedy to redress the wrongs and illegal acts complained of other than this suit. And they further point out that large numbers of people and persons are and will be affected by the decision of of this court in adjudicating and clarifying the rights of

Negroes to obtain education in the public school system of the State of South Carolina without discrimination and denial of equal facilities on account of their race.

The Defendants appear and by way of answer deny the allegations of the Complaint as to discrimination and inequality and allege that not only are they acting within the laws of the State in enforcing segregation but that all [fol. 340] facilities afforded the pupils of different races are adequate and equal and that there is no inequality or discrimination practiced against these Plaintiffs or any others by reason of race or color. And they allege that the facilities and opportunities furnished to the colored children are substantially the same as those provided for the white children. And they further base their defense upon the statement that the Constitutional and statutory provisions under attack in this case, that is to say, the provisions requiring separate schools because of race, are a reasonable exercise of the State's police power and that all of the same are valid under the powers possessed by the State of South Carolina and the Constitution of the United States and they deny that the same can be held to be unConstitutional by this Court.

The issues being so drawn and calling for a judgment by a United States Court which would require the issuance of an injunction against State and County officials, it became apparent that it would be necessary that the case be heard in accordance with the statute applicable to cases of this type requiring the calling of a three-judge court.[3] Such a court convened and the case was set for a hearing on May 28, 1951.

The case came on for a trial upon the issues as presented in the Complaint and Answer. But upon the call of the case, Defendants' counsel announced that they wished to make a statement on behalf of the Defendants making certain admissions and praying that the Court make a finding as to inequalities in respect to buildings, equipment, facilities, curricula and other aspects of the schools provided for children in School District 22 in Clarendon County and giving the public authorities time to formulate plans for ending such inequalities. In this statement Defendants claim that they never had intended to discriminate against

any of the pupils and although they had filed an answer to the Complaint, some five months ago, denying inequali-
[fol. 341] ties, they now admit that they had found some; but rely upon the fact that subsequent to the institution of this suit, James F. Byrnes, the Governor of South Carolina, had stated in his inaugural address that the State must take steps to provide money for improving educational facilities and that thereafter, the Legislature had adopted certain legislation. They stated that they hoped that in time they would obtain money as a result of the foregoing and improve the school situation.

This statement was allowed to be filed and considered as an amendment to the Answer.

By this maneuver, the Defendants endeavored to induce this Court to avoid the primary purpose of the suit. And if the Court should follow this suggestion and fail to meet the issues raised by merely considering this case in the light of another "separate but equal" case, the entire purpose and reason for the institution of the case and the convening of a three-judge court would be voided. The sixty-six (66) Plaintiffs in this cause have brought this suit at what must have cost much in effort and financial expenditures. They are here represented by six attorneys, all, save one, practicing lawyers from without the State of South Carolina and coming here from a considerable distance. The Plaintiffs have brought a large number of witnesses exclusive of themselves. As a matter of fact, they called and examined eleven witnesses. They said that they had a number more coming who did not arrive in time owing to the shortening of the proceedings and they also stated that they had on hand and had contemplated calling a large number of other witnesses but this became unnecessary by reason of the foregoing admissions by Defendants. It certainly appears that large expenses must have been caused by the institution of this case and great efforts expended in gathering data, making a study of the issues involved, interviewing and bringing numerous witnesses some of whom are foremost scientists in America. And in addition [fol. 342] to all of this, these sixty-six Plaintiffs have not merely expended their time and money in order to test this important Constitutional question, but they have shown unexampled courage in bringing and presenting this cause

at their own expense in the face of the long established and age-old pattern of the way of life which the State of South Carolina has adopted and practiced and lived in since and as a result of the institution of human slavery.

If a case of this magnitude can be turned aside and a court refuse to hear these basic issues by the mere device of an admission that some buildings, blackboards, lighting fixtures and toilet facilities are unequal but that they may be remedied by the spending of a few dollars, then, indeed people in the plight in which these Plaintiffs are, have no adequate remedy or forum in which to air their wrongs. If this method of judicial evasion be adopted, these very infant Plaintiffs now pupils in Clarendon County will probably be bringing suits for their children and grandchildren decades or rather generations hence in an effort to get for their descendants what are today denied to them. If they are entitled to any rights as American citizens, they are entitled to have these rights now and not in the future. And no excuse can be made to deny them these rights which are theirs under the Constitution and laws of America by the use of the false doctrine and patter called "separate but equal" and it is the duty of the Court to meet these issues simply and factually and without fear, sophistry and evasion. If this be the measure of justice to be meted out to them, then, indeed, hundreds, nay thousands, of cases will have to be brought and in each case thousands of dollars will have to be spent for the employment of legal talent and scientific testimony and then the cases will be turned aside, postponed or eliminated by devices such as this.

We should be unwilling to straddle or avoid this issue [fol. 343] and if the suggestion made by these Defendants is to be adopted as the type of justice to be meted out by this Court, then I want no part of it.

And so we must and do face, without evasion or equivocation, the question as to whether segregation in education in our schools is legal or whether it cannot exist under our American system as particularly enunciated in the Fourteenth Amendment to the Constitution of the United States.

Before the American Civil War, the institution of human slavery had been adopted and was approved in this country. Slavery was nothing new in the world. From the

dawn of history we see aggressors enslaving weak and less fortunate neighbors. Back through the days of early civilizations man practiced slavery. We read of it in Biblical days; we read of it in the Greek City States and in the great Roman Empire. Throughout medieval Europe, forms of slavery existed and it was widely practiced in Asia Minor and the Eastern countries and perhaps reached its worst form in Nazi Germany. Class and caste have, unfortunately, existed through the ages. But, in time, mankind, through evolution and progress, through ethical and religious concepts, through the study of the teachings of the great philosophers and the great religious teachers, including especially the founder of Christianity—mankind began to revolt against the enslavement of body, mind and soul of one human being by another. And so there came about a great awakening. The British, who indulged in the slave trade, awakened to the fact that it was immoral and against the right thinking ideology of the Christian world. And in this country, also, came about a moral awakening. Unfortunately, this had not been sufficiently advanced at the time of the adoption of the American Constitution for the institution of slavery to be prohibited. But there was a struggle and the better thinking leaders in our Constitutional Convention endeavored to prohibit slavery but unfortunately compromised the issue [fol. 344] on the insistent demands of those who were engaged in the slave trade and the purchase and use of slaves. And so as time went on, slavery was perpetuated and eventually became a part of the life and culture of certain of the States of this Union although the rest of the world looked on with shame and abhorrence.

As was so well said, this country could not continue to exist one-half slave and one-half free and long years of war were entered into before the nation was willing to eradicate this system which was, itself, a denial of the brave and fine statements of the Declaration of Independence and a denial of freedom as envisioned and advocated by our Founders.

The United States then adopted the 13th, 14th and 15th Amendments and it cannot be denied that the basic reason for all of these Amendments to the Constitution was to wipe out completely the institution of slavery and to

declare that all citizens in this country should be considered as free, equal and entitled to all of the provisions of citizenship.

The Fourteenth Amendment to the Constitution of the United States is as follows:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It seems to me that it is unnecessary to pore through voluminous arguments and opinions to ascertain what the foregoing means. And while it is true that we have had hundreds, perhaps thousands, of legal opinions outlining and defining the various effects and overtones on our laws and life brought about by the adoption of this Amendment, one of ordinary ability and understanding of the English language will have no trouble in knowing that when this Amendment was adopted, it was intended to do away with discrimination between our citizens.

[fol. 345] The Amendment refers to *all* persons. There is nothing in there that attempts to separate, segregate or discriminate against any persons because of their being of European, Asian or African ancestry. And the plain intendment is that all of these persons are citizens. And then it is provided that no State shall make or enforce any law which shall abridge the privileges of citizens nor shall any state deny "to *any person* within its jurisdiction the equal protection of the laws".

The Amendment was first proposed in 1866 just about a year after the end of the American Civil War and the surrender of the Confederate States government. Within two years, the Amendment was adopted and became part of the Constitution of the United States. It cannot be gainsaid that the Amendment was proposed and adopted wholly and entirely as a result of the great conflict between freedom and

slavery. This will be amply substantiated by an examination and appreciation of the proposal and discussion and Congressional debates (See Flack on Adoption of the 14th Amendment) and so it is undeniably true that the three great Amendments were adopted to eliminate not only slavery, itself, but all idea of discrimination and difference between American citizens.

Let us now come to consider whether the Constitution and Laws of the State of South Carolina which we have heretofore quoted are in conflict with the true meaning and intendment of this Fourteenth Amendment. The whole discussion of race and ancestry has been intermingled with sophistry and prejudice. What possible definition can be found for the so-called white race, Negro race or other races. Who is to decide and what is the test? For years, there was much talk of blood and taint of blood. Science tells us that there are but four kinds of blood: A, B, AB and O and these are found in Europeans, Asiatics, Africans, Americans and others. And so we need not further consider the irresponsible and baseless references to preservation [fol. 346] of "Caucasian blood". So then, what test are we going to use in opening our school doors and labeling them "white" and "Negro"? The law of South Carolina considers a person of one-eighth African ancestry to be a Negro. Why this proportion? Is it based upon any reason: anthropological, historical or ethical? And how are the trustees to know who are "whites" and who are "Negroes"? If it is dangerous and evil for a white child to be associated with another child, one of whose great-grandparents was of African descent, is it not equally dangerous for one with a one-sixteenth percentage? And if the State has decided that there is danger in contact between the whites and Negroes, isn't it requisite and proper that the State furnish a series of schools one for each of these percentages? If the idea is perfect racial equality in educational systems, why should children of pure African descent be brought in contact with children of one-half, one-fourth, or one-eighth such ancestry? To ask these questions is sufficient answer to them. The whole thing is unreasonable, unscientific and based upon unadulterated prejudice. We see the results of all of this warped thinking in the poor under-privileged and frightened attitude of so many of the Negroes in the south-

ern states; and in the sadistic insistence of the "white supremacists" in declaring that their will must be imposed irrespective of rights of other citizens. This claim of "white supremacy", while fantastic and without foundation, is really believed by them for we have had repeated declarations from leading politicians and governors of this state and other states declaring that "white supremacy" will be endangered by the abolition of segregation. There are present threats, including those of the present Governor of this state, going to the extent of saying that all public education may be abandoned if the courts should grant true equality in educational facilities.

Although some 73 years have passed since the adoption [fol. 347] of the Fourteenth Amendment and although it is clearly apparent that its chief purpose, (perhaps we may say its only real purpose) was to remove from Negroes the stigma and status of slavery and to confer upon them full rights as citizens, nevertheless, there has been a long and arduous course of litigation through the years. With some setbacks here and there, the courts have generally and progressively recognized the true meaning of the Fourteenth Amendment and have, from time to time, stricken down the attempts made by state governments (almost entirely those of the former Confederate states) to restrict the Amendment and to keep Negroes in a different classification so far as their rights and privileges as citizens are concerned. A number of cases have reached the Supreme Court of the United States wherein it became necessary for that tribunal to insist that Negroes be treated as citizens in the performance of jury duty. See Strauder v. West Virginia,[4] where the Court says at page 307:

. . . "What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legis-

lation against them distinctively as colored—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

Many subsequent cases have followed and confirmed the right of Negroes to be treated as equals in all jury and grand jury service in the states.

The Supreme Court has stricken down from time to time statutes providing for imprisonment for violation of contracts. These are known as peonage cases and were in regard to statutes primarily aimed at keeping the Negro "in his place".[5]

In the field of transportation the court has now, in effect declared that common carriers engaged in interstate travel must not and cannot segregate and discriminate against passengers by reason of their race or color.[6]

[fol. 348] Frequent and rep-ated instances of prejudice in criminal cases because of the brutal treatment of defendants because of their color have been passed upon in a large number of cases.[7]

Discrimination by segregation of housing facilities and attempts to control the same by covenants have also been outlawed.[8]

In the field of labor employment and particularly the relation of labor unions to the racial problem, discrimination has again been forbidden.[9]

Perhaps the most serious battle for equality of rights has been in the field of exercise of suffrage. For years, certain of the southern states have attempted to prevent the Negro from taking part in elections by various devices. It is unnecessary to enumerate the long list of cases, but from time to time, courts have stricken down all of these various devices classed as the "grandfather clause", educational tests and white private clubs.[10]

The foregoing are but a few brief references to some of the major landmarks in the fight by Negroes for equality. We now come to the more specific question, namely, the field of education. The question of the right of the state to practice segregation by race in certain educational facilities has

only recently been tested in the courts. The cases of Gaines v. Canada, 305 U. S. 337 and Sipuel v. Board of Regents, 332 U. S. 631 decided that Negroes were entitled to the same type of legal education that whites were given. It was further decided that the equal facilities must be furnished without delay or as was said in the Sipuel case, the state must provide for equality of education for Negroes "as soon as it does for applicants of any other group". But still we have not reached the exact question that is posed in the instant case.

We now come to the cases that, in my opinion, definitely and conclusively establish the doctrine that separation and [fol. 349] segregation according to race is a violation of the Fourteenth Amendment. I, of course, refer to the cases of Sweatt v. Painter, 339 U. S. 629 and McLaurin v. Oklahoma State Regents, 339 U. S. 637. These cases have been followed in a number of lower court decisions so that there is no longer any question as to the rights of Negroes to enjoy all the rights and facilities afforded by the law schools of the States of Virginia, Louisiana, Delaware, North Carolina and Kentucky. So there is no longer any basis for a state to claim the power to separate according to race in graduate schools, universities and colleges.

The real rock on which the Defendants base their case is a decision of the Supreme Court of the United States in the case of Plessy v. Ferguson, 163 U. S. 537. This case arose in Louisiana and was heard on appeal in 1895. The case related to the power of the State of Louisiana to require separate railroad cars for white and colored passengers and the Court sustained the State's action. Much discussion has followed this case and the reasoning and decision has been severely criticized for many years. And the famous dissenting opinion by Mr. Justice Harlan has been quoted throughout the years as a true declaration of the meaning of the Fourteenth Amendment and of the spirit of the American Constitution and the American Way of life. It has also been frequently pointed out that when that decision was made, practically all the persons of the colored or Negro race had either been born slaves or were the children of slaves and that as yet due to their circumstances and surroundings and the condition in which they had been kept by

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their former masters, they were hardly looked upon as equals or as American citizens. The reasoning of the prevailing opinion in the Plessy case stems almost completely from a decision by Chief Justice Shaw of Massachusetts,[11] which decision was made many years before the Civil War and when, of course, the Fourteenth Amendment had not even been dreamed of.

But these arguments are beside the point in the present [fol. 350] case. And we are not called upon to argue or discuss the validity of the Plessy case.

Let it be remembered that the Plessy case decided that separate railroad accom-odations might be required by a state in intra-state transportation. How similar attempts relating to inter-state transportation have fared have been shown in the foregoing discussion and notes.[12] It has been said and repeated here in argument that the Supreme Court has refused to review the Plessy case in the Sweatt, McLaurin and other cases and this has been pointed to as proof that the Supreme Court retains and approves the validity of Plessy. It is astonishing that such an argument should be presented or used in this or any other court. The Supreme Court in Sweatt and McLaurin was not considering railroad accomodations. It was considering education just as we are considering it here and the Supreme Court distinctly and unequivocally held that the attempt to separate the races in education was violative of the Fourteenth Amendment of the Constitution. Of course, the Supreme Court did not consider overruling Plessy. It was not considering railroad matters, had no arguments in regard to it, had no business or concern with railroad accom-odations and should not have even been asked to refer to that case since it had no application or business in the consideration of an educational problem before the court. It seems to me that we have already spent too much time and wasted efforts in attempting to show any similarity between traveling in a railroad coach in the confines of a state and furnishing education to the future citizens of this country.

The instant case which relates to lower school education, is based upon exactly the same reasoning followed in the Sweatt and McLaurin decisions. In the Sweatt case, it was clearly recognized that a law school for Negro students had been established and that the Texas courts had found that

the privileges, advantages and opportunities offered were substantially equivalent to those offered to white students at the University of Texas. Apparently, the Negro school [fol. 351] was adequately housed, staffed and offered full and complete legal education, but the Supreme Court clearly recognized that education does not alone consist of fine buildings, class room furniture and appliances but that included in education must be all the intangibles that come into play in preparing one for meeting life. As was so well said by the Court:

> . . . "Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned."

And the Court quotes with approval from its opinion in Shelley v. Kramer (supra):

> . . . "Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."

The Court further points out that this right to a proper and equal education is a personal one and that an individual is entitled to the equal protection of the laws. And in closing, the Court, referring to certain cases cited, says:

> "In accordance with these cases, petitioner may claim his full constitutional right: legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school as offered by the State."

In the companion case of McLaurin v. Oklahoma State Regents, McLaurin was a student who was allowed to attend the same classes, hear the same lectures, stand the same examinations and eat in the same cafeteria; but he sat in a marked off place and had a separate table assigned to him in the library and another one in the cafeteria. It was said with truth that these separations were merely nominal and that the seats and other facilities were just as good as those afforded to white students. But the Supreme Court says that even though this be so:

> "These restrictions were obviously imposed in order to comply, as nearly as could be, with the statutory re-

quirements of Oklahoma. But they signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.

[fol. 352] "Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained."

The recent case of McKissick v. Carmichael, 187 F. 2nd 949 wherein the question of admission to the law school of the University of North Carolina was decided follows and amplifies the reasoning of the Sweatt and McLaurin cases. In the McKissick case, officials of the State of North Carolina took the position that they had adopted a fixed and continued purpose to establish and build up separate schools for equality in education and pointed with pride to the large advances that they had made. They showed many actual physical accomplishments and the establishment of a school which they claimed was an equal in many respects and superior in some respects to the school maintained for white students. The Court of Appeals for the 4th Circuit in this case, speaking through Judge Soper, meets this issue without fear or evasion and says:

"These circumstances are worthy of consideration by any one who is responsible for the solution of a difficult racial problem; but they do not meet the complainants' case or overcome the deficiencies which it

discloses. Indeed the defense seeks in part to avoid the charge of inequality by the paternal suggestion that it would be beneficial to the colored race in North Carolina as a whole, and to the individual plaintiffs in particular, if they would cooperate in promoting the policy adopted by the State rather than seek the best legal education which the State provides. The duty of the federal courts, however, is clear. We must give first place to the rights of the individual citizen, and when and where he seeks only equality of treatment before the law, his suit must prevail. It is for him to decide in which direction his advantage lies."

In the instant case, the Plaintiffs produced a large number of witnesses. It is significant that the Defendants brought but two. These last two were not trained educators. One was an official of the Clarendon schools who said that the school system needed improvement and that the school officials were hopeful and expectant of obtaining money from State funds to improve all facilities. The other wit- [fol. 353] ness, significantly named Crow, has been recently employed by a commission just established which, it is proposed, will supervise educational facilities in the State and will handle monies if, as and when the same are received sometime in the future. Mr. Crow did not testify as an expert on education although he stated flatly that he believed in separation of the races and that he heard a number of other people say so, including some Negroes, but he was unable to mention any of their names. Mr. Crow explained what was likely and liable to happen under the 1951 State Educational Act to which frequent reference was made in argument on behalf of the Defense.

It appears that the Governor of this state called upon the legislature to take action in regard to the dearth of educational facilities in South Carolina pointing out the low depth to which the State had sunk. As a result, an act of the legislature was adopted (this is a part of the General Appropriations Act adopted at the recent session of the legislature and referred to as the 1951 School Act). This Act provides for the appointment of a commission which is to generally supervise educational facilities and imposes sales taxes in order to raise money for educational purposes

and authorizes the issuance of bonds not to exceed the sum of $75,000,000, for the purpose of making grants to various counties and school districts to defray the cost of capital improvement in schools. The Commission is granted wide power to accept applications for and approve such grants as loans. It is given wide power as to what schools and school districts are to receive monies and it is also provided, that from the taxes there are to be allocated funds to the various schools based upon the enrollment of pupils. Nowhere is it specifically provided that there shall be equality of treatment as between whites and Negroes in the school system. It is openly and frankly admitted by all parties that the present facilities are hopelessly disproportional and no one [fol. 354] knows how much money would be required to bring the colored school system up to a parity with the white school system. The estimates as to the cost merely of equalization of physical facilities run anywhere from forty to eighty million dollars. Thus, the position of the Defendants is that the rights applied for by the Plaintiffs are to be denied now because the State of South Carolina intends (as evidenced by a general appropriations bill enacted by the legislature and a speech made by its Governor) to issue bonds, impose taxes, raise money and do something about the inadequate schools in the future. There is no guarantee or assurance as to when the money will be available. As yet, no bonds have been printed or sold. No money is in the treasury. No plans have been drawn for school buildings or order issued for materials. No allocation has been made to the Clarendon school district or any other school districts and not even application blanks have, as yet, been printed. But according to Mr. Crow, the Clarendon authorities have requested him to send them blanks for this purpose if, as and when they come into being. Can we seriously consider this a bona-fide attempt to provide equal facilities for our school children?

On the other hand, the Plaintiffs brought many witnesses, some of them of national reputation in various educational fields. It is unnecessary for me to review or analyze their testimony. But they who had made studies of education and its effect upon children, starting with the lowest grades and studying them up through and into high school, unequivo-

cally testified that aside from inequality in housing appliances and equipment, the mere fact of segregation, itself, had a deleterious and warping effect upon the minds of children. These witnesses testified as to their study and researches and their actual tests with children of varying ages and they showed that the humiliation and disgrace of being set aside and segregated as unfit to associate with others of different color had an evil and ineradicable effect [fol. 355] upon the mental processes of our young which would remain with them and deform their view on life until and throughout their maturity. This applies to white as well as Negro children. These witnesses testified from actual study and tests in various parts of the country including tests in the actual Clarendon School district under consideration. They showed beyond a doubt that the evils of segregation and color prejudice come from early training. And from their testimony as well as from common experience and knowledge and from our own reasoning, we must unavoidably come to the conclusion that racial prejudice is something that is acquired and that that acquiring is in early childhood. When do we get our first ideas of religion, nationality and the other basic ideologies? The vast number of individuals follow religions and political groups because of their childhood training. And it is difficult and nearly impossible to change and eradicate these early prejudices, however strong may be the appeal to reason. There is absolutely no reasonable explanation for racial prejudice. It is all caused by unreasoning emotional reactions and these are gained in early childhood. Let the little child's mind be poisoned by prejudice of this kind and it is practically impossible to ever remove these impressions however many years he may have of teaching by philosophers, religious leaders or patriotic citizens. If segregation is wrong then the place to stop it is in the first grade and not in graduate colleges.

From their testimony, it was clearly apparent, as it should be to any thoughtful person, irrespective of having such expert testimony, that segregation in education can never produce equality and that it is an evil that must be eradicated. This case presents the matter clearly for adjudication and I am of the opinion that all of the legal guideposts, expert testimony, common sense and reason point unerringly

to the conclusion that the system of segregation in education adopted and practiced in the State of South Carolina must go and must go now.

Segregation is per se inequality.

[fol. 356] As heretofore shown, the courts of this land have stricken down discrimination in higher education and have declared unequivocally that segregation is not equality. But these decisions have pruned away only the noxious fruits. Here in this case, we are asked to strike its very root. Or rather, to change the metaphor, we are asked to strike at the cause of infection and not merely at the symptoms of disease. And if the courts of this land are to render justice under the laws without fear or favor, justice for all men and all kinds of men, the time to do it is now and the place is in the elementary schools where our future citizens learn their first lesson to respect the dignity of the individual in a democracy.

To me the situation is clear and important, particularly at this time when our national leaders are called upon to show to the world that our democracy means what it says and that it is a true democracy and there is no under-cover suppression of the rights of any of our citizens because of the pigmentation of their skins. And I had hoped that this Court would take this view of the situation and make a clear cut declaration that the State of South Carolina should follow the intendment and meaning of the Constitution of the United States and that it shall not abridge the privileges accorded to or deny equal protection of its laws to any of its citizens. But since the majority of this Court feel otherwise, and since I cannot concur with them or join in the proposed decree, this Opinion is filed as a Dissent.

(S.) J. Waties Waring, United States District Judge.

Charleston, South Carolina. Date: June 21, 1951.

[fol. 357] NOTES

1. Fourteenth Amendment of the Constitution of the United States, Section 1; Title 8, USCA, Section 41, Section 43; Title 28, USCA, Section 1343.

2. Constitution of South Carolina, Article XI, Section 5.

Code of Laws, 5301, 5316, 5328, 5404 and 5405. Code of Laws of South Carolina, Sections 5303, 5306, 5343, 5409.

3. Title 28, USCA, Sections 2281-84.

4. 100 U. S. 303.

5. Peonage: Bailey v. Alabama, 219 U. S. 219; U. S. v. Reynolds, 235 U. S. 133.

6. Transportation: Mitchell v. U. S., 313 U. S. 80; Morgan v. Virginia; 328 U. S. 373; Henderson v. U. S., 339 U. S. 816; Chance v. Lambeth, 186 F. 2nd 879; Certiorari denied May 28, 1951.

7. Criminals: Brown v. Mississippi, 297 U. S. 278; Chambers v. Florida, 309 U. S. 227; Shepherd v. Florida, 341 U. S. 50.

8. Housing: Buchanan v. Warley, 245 U. S. 60; Shelley v. Kraemer, 334 U. S. 1.

9. Labor: Steele v. L & N R. R. Co., 323 U. S. 192; Tunstall v. Brotherhood, 323 U. S. 210.

10. Suffrage: Guinn v. U. S. 238 U.S. 347; Nixon v. Herndon, 273 U. S. 536; Lane v. Wilson, 307 U. S. 268; Smith v. Allwright, 321 U. S. 649; Elmore v. Rice, 72 F. Supp. 516; 165 F. 2nd 387; Certiorari denied, 333 U. S. 875; Brown v. Baskin, 78 F. Supp. 933; Brown v. Baskin, 80 F. Supp. 1017; 174 F. 2nd 391.

11. Roberts v. City of Boston, 5 Cush. 198.

12. See cases cited in Note 6.

[fol. 358] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE—Filed June 23, 1951

In the above entitled case the Court finds the facts to be as set forth in its written opinion filed herewith and on the basis thereof it is adjudged by the Court:

(1) That neither Article II section 7 of the Constitution of South Carolina nor section 5377 of the Code are of themselves violative of the provisions of the Fourteenth Amend-

ment to the Constitution of the United States and plaintiffs are not entitled to an injunction forbidding segregation in the public schools of School District No. 22.

(2) That the educational facilities, equipment, curricula and opportunities afforded in School District No. 22 for colored pupils are not substantially equal to those afforded for white pupils; that this inequality is violative of the [fols. 359-437] equal protection clause of the Fourteenth Amendment; and that plaintiffs are entitled to an injunction requiring the defendants to make available to them and to other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those afforded white pupils.

And it is accordingly ordered, adjudged and decreed that the defendants proceed at once to furnish to plaintiffs and other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those furnished white pupils;

And it is further ordered that the defendants make report to this Court within six months of this date as to the action taken by them to carry out this order.

And this cause is retained for further orders.

This the 21 day of June 1951.

(S.) John J. Parker, Chief Judge, Fourth Circuit.
——— ———, U. S. District Judge, Eastern District of South Carolina. (S). George Bell Timmerman, U. S. District Judge, Eastern and Western Districts of South Carolina.

I do not join in this decree for the reasons set forth in a separate dissenting opinion.

(S.) J. Waties Waring, U. S. District Judge, Eastern District of South Carolina.

A true copy. Attest.

Ernest L. Allen, Clerk of U. S. District Court East. Dist. So. Carolina. (Seal.)

[fol. 438] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT OF DEFENDANTS PURSUANT TO DECREE DATED JUNE 21, 1951.—Filed December 20, 1951

[fol. 439] Come now the defendants above named, with the exception of George Kennedy who has departed this life, and respectfully show unto this Honorable Court as follows:

1. In the Decree entered by the Court in this cause dated June 21, 1951, it was ordered, adjudged and decreed that the defendants proceed at once to furnish to plaintiffs and other Negro pupils of School District No. 22 in Clarendon County, South Carolina, educational facilities, equipment, curricula and opportunities equal to those furnished white pupils in the said School District, and that "the defendants make report to this Court within six months of this date as to the action taken by them to carry out this order."

2. Inasmuch as the consolidation of Negro schools and the construction of new school facilities presented the major problem in complying with the Court's decree, it is appropriate to outline first the measures which were taken by the defendants to qualify for and obtain State aid for constructing school facilities, made available to school districts for the first time in Act No. 379 of the Acts of 1951, Articles II, III, IV and V, which levied a three per cent. general sales tax in the State and authorized the issuance of State School Bonds on the strength thereof of up to $75,000.00 to obtain immediate funds for extending such aid.

3. Under Article III, sections 6 and 7, of that Act, a new county board of education was appointed in Clarendon County, which was authorized and empowered "to consolidate schools and school districts, in whole or in part, whenever, in their judgment, the same will promote the best interests of the cause of education," in the county, and on June 29, 1951, the new County Board of Education of Clarendon County transmitted to the State Educational Finance Commission notice of an order consolidating School

Districts Nos. 1, 2, 3, 4, 7, 8, 22, 26, and 30 in the county into a single school district to be known as School District No. 1. Thereafter the other school districts of the county were by like orders consolidated into two additional new School Districts, so that the County's 34 school districts [fol. 440] were thus combined into 3 new districts.

4. In the meantime, litigation having arisen in the Supreme Court of South Carolina and in the United States District Court for the Eastern District of South Carolina in which the constitutionality of the sales tax and School Bond provisions of the said Act No. 379 of 1951 was assailed, the Supreme Court of South Carolina, on July 9, 1951, upheld the constitutionality of the legislation in *State ex rel. Roddey v. Byrnes*, (S. C.) 66 S. E. 2d 33, and shortly thereafter the constitutionality of the legislation was upheld by decree of a special court of three Judges in the United States District Court.

5. The State Educational Finance Commission, of which the Governor *ex officio* is Chairman, is charged with the administration of the educational provisions of Act No. 379, Section 3 of Article IV of which provides:

> "No grants accruing to any school district or operating unit shall be expended for any purpose unless such expenditure has been approved by the Commission. In order to guide the Commission in passing upon requests for the use of grants, the County Boards of Education of the respective counties are directed to prepare a survey of necessary capital improvements and/or a plan for tax relief on school indebtedness within the operating unit. Such surveys shall show existing facilities, desirable consolidations, the new construction and new facilities necessary and desirable for the efficient operation of the public schools of the county, and a plan of tax reduction in the school district or operating unit by use of such funds in retiring any outstanding indebtedness for school facilities. The Commission is authorized in its discretion to deny all applications for the use of funds of the said public school Building Fund from any county until such time as an acceptable and reasonably satisfactory plan, looking particularly to efficiency through consolidations

of school districts, has been submitted by the County Board of Education, and all applications from school districts or operating units shall conform to the plan of the County Board of Education."

6. On July 16, 1951, the State Educational Finance Commission promulgated the following Criteria for School District Reorganization:

"The State Educational Finance Commission has been charged with the responsibility of bringing about desirable consolidation of school districts in South Carolina. Section 3, Article III, of the General Appropriation Act for 1951 states, 'It (the Commission) shall effect desirable consolidations of school districts throughout the entire State.' The following statement of policy has been approved by the Commission as a guide to County Boards of Education and to school district trustees in carrying out the purpose of this Act.

"(1) Elementary schools shall be so planned as to have sufficient enrollment to provide a teacher for each grade taught, except in those cases where natural [fol. 441] barriers, sparseness of population, or other reasons, make the application of this requirement unwise. Separate elementary school districts must be consolidated with high school districts.

"In rural areas where long distances are involved, consideration should be given to the possibility of establishing community primary schools for the first three grades. This accomplishes two purposes. It keeps a school in the community and eliminates the necessity of transporting small children such great distances. A three teacher primary school for three grades is in accord with this principle.

"(2) Inefficiency of operation and inadequate educational opportunities are caused by small enrollments in many of our present high schools. Recent studies show that in high schools with enrollments of from 50-100 the per pupil cost is fifty-three per cent greater than in those with enrollment of 200. New High

schools should have a minimum potential enrollment of 250 in grades nine through twelve, with the same exceptions as listed above for elementary schools. In cases where the State Board of Education has recognized a high school as being accredited, or in the process of accreditation, the term 'new high school' will not apply.

"(3) Each school district (administrative unit) shall provide high school facilities *within* the district for both races. In some instances this will mean one high school for the minority race and two, or more, for the majority race. The essential requirement is that administration of school facilities for both races be under the control of the same board of trustees. Counties operating under the county unit system meet this requirement. Other counties must reorganize into administrative areas large enough to insure a sufficient number of educable students of each race to maintain a high school for each race. Consideration should also be given to the principle of equalizing taxable wealth in the school districts. An area with a small proportion of the children to educate should not be created in such a way as to possess an undue proportion of the taxable wealth of the county.

"(4) In many instances reorganization of administrative units (consolidation of school districts) can best be effected by disregarding county lines for school district purposes. Nearly every county will have small border areas where children have been attending schools in the adjoining county. School districts should conform as nearly as possible with the natural socio-economic boundaries of a community. County Boards of Education of adjoining counties should meet together and work out desirable consolidations where over-lapping occurs.

"Reorganization of administrative units (consolidation of school districts) is the first step to be taken by County Boards of Education since it is the reorganized district that will be eligible for school building aid. No individual district can apply for, and receive funds,

until the overall plan of reorganization for the county has been approved by the Commission. Counties which have undergone reorganization in recent years should re-examine their situation in the light of the preceding principles adopted by the Commission."

7. On July 16, 1951, the State Educational Finance Commission also informed the defendants that upon proper application new School District No. 1 would be allotted the maximum amount for which it could qualify for capital expenditures for school facilities.

8. In order to qualify therefor, the said School District requested that the State Educational Finance Commission [fol. 442] cause the required building survey to be made in the district, and by direction of the Commission such survey was made in the month of July, 1951, by the State Supervisor of Schoolhouse Planning.

9. On August 6, 1951, the State Educational Finance Commission adopted a resolution providing for the issuance and sale of $12,500,000.00 in State School Bonds, $7,500,000.00 thereof to be used for the purchase of school bus equipment under article V of said Act No. 379 (providing for the equipping, maintenance and operation of all school transportation by the State), and $5,000,000.00 to be used for school building purposes. The bonds were duly issued and sold, and on November 15, 1951, the proceeds thereof were received by the State Treasurer and placed to the credit of the State Educational Finance Commission.

10. During the month of September, 1951, the State Educational Finance Commission furnished to new School District No. 1 nine school buses for use in the district, and school transportation is now furnished to the white and Negro pupils of the district in accordance with the terms of Act No. 379.

11. The Building Survey of new School District No. 1 having shown the advisability of constructing a new schoolhouse for a Negro high school at Scott's Branch in Summerton, using the same campus as the existing Scott's Branch School, and the remodeling and enlargement of the latter (formerly used for both elementary and high school grades) to be used only as an elementary school, the defendants and

the other trustees of new School District No. 1 caused plans and specifications for such construction and remodeling to be prepared by architects, and such plans and specifications were approved by the State Educational Finance Commission on October 9, 1951. Copies of architect's drawing of the Scott's Branch High and Elementary Schools when completed, elevation plan, and floor plan of the new high school building are herewith filed as Appendix A of this Report.

12. Application was made on August 30, 1951, for the allocation of priority for the critical materials needed in the construction, and as late as October 15, 1951, the Super- [fol. 443] intendent of the district was informed by the Office of Education, Federal Security Agency, that the application would be held in the files and considered just as soon as the Office of Education received an adequate quantity of controlled materials. The defendants sought the aid of Governor Byrnes in an effort to expedite the granting of the application, so that they might advertise for bids on the construction, and under date of October 24, 1951, they received the necessary priority dated October 19, 1951.

13. On October 16, 1951, the State Educational Finance Commission approved the consolidation orders of the County Board of education referred to above, and authorized the expenditure by new School District No. 1 of the maximum amount for which it qualified under Act No. 379.

14. On November 14, 1951, bids were received by the school trustees of the district for the construction of the new Scott's Branch Negro high school and the remodelling of the existing Scott's Branch School, in response to due advertisement for such bids, and the construction contract was awarded to Harllee-Quattlebaum, the lowest bidder, for the contract price of $261,000.00. The construction is now in progress, and the facilities are expected to be completed and in use when the schools open in September, 1952, barring unforeseen delays.

15. On November 27, 1951, the State Educational Finance Commission approved formal application from School District No. 1 for an advance under the Act of $278,550.00, and on November 28, 1951, placed that amount in the treasury

of Clarendon County to the credit of the district to be expended as follows:

(1)	Construction of new high school on site of Scott's Branch school and remodelling of former high school on same site for elementary school		$261,000.00
(2)	Architect's fee		13,050.00
(c)	Sites acquired for Negro elementary schools:		
	Davis station	$1,500.00	
	St. Paul's	3,000.00	4,500.00
			$278,550.00

[fol. 444] 16. On October 15, 1951, an order of consolidation signed jointly by the County Board of Education of Clarendon County and the County Board of Education of Sumter County transferred former School Districts Nos. 1 and 2 in Clarendon County from new School District No. 1 of said county to Pinewood School District No. 23 of Sumter County. As a result of the change in area and school population thus made in new School District No. 1, the State Educational Finance Commission was requested to have the July building survey reviewed and amended by the Supervisor of Schoolhouse Planning, and a copy of the amended survey and report is herewith filed as Appendix B of this Report. The school population of the present new School District No. 1 according to enrollment is 2,568 Negro school children and 298 white school children.

17. The Court will observe from the amended Building Survey, Appendix B hereof, that the construction of the new Negro High School at Scott's Branch and the remodelling of the existing Scott's Branch School as an elementary school carries out the recommendation in this respect made in said Building Survey. When that construction and remodelling is completed, the Scott's Branch Negro High School building and the Scott's Branch Elementary School building will be at least the equal of any school building in the district. The pupils formerly attending the Rambay, Silver, Oak Grove, St. John, Zoar Hill and Scott's Branch Schools, representing an enrollment in 1951 or

949 and an average daily attendance of 616, will attend the Scott's Branch Elementary School.

All Negro high school pupils in the district, representing a 1951 enrollment of 197, will attend the new Scott's Branch Negro High School.

18. Land sites have been acquired at St. Paul's and at Davis Station for the new Negro elementary schools which are recommended to be constructed for the St. Paul's and the Rogers areas, respectively, the funds for such acquisition having been included in the $278,550.00 deposited in the county treasury for School District No. 1, as stated in paragraph 15, *supra*. The defendants and the other trustees of School District No. 1 have approved the rec- [fol. 445] ommendations in the amended Building Survey, and have already caused plans and specifications to be prepared for the construction of these two Negro elementary school buildings, which plans and specifications will be submitted for approval by the State Educational Finance Commission as soon as they are completed. Thereafter they will advertise for construction bids as soon as the requisite priority for obtaining controlled materials needed in the construction have been obtained from the Office of Education, Federal Security Agency. Applications for such priority have already been made.

The pupils formerly attending the St. Paul, Panola, St. Phillips, Rockland, Oaks, Butler, Santee and Liberty Hill Schools, and a part of those formerly attending the Maggie Nelson School, representing a 1951 enrollment of 849 and an average daily attendance of 639, will attend the new St. Paul's Elementary School.

The pupils formerly attending the Spring Hill, St. James, Felton Rosenwald, White Oak, and Pine Grove Schools, and a part of those formerly attending the Maggie Nelson School, representing a 1951 enrollment of 573 and an average daily attendance of 423, will attend the new Rogers School at Davis Station.

When these two new Negro elementary school buildings have been constructed and placed in operation, and it is hoped that this can be done by the next school year, 1952-1953, they will be at least the equal of any school buildings in the district, and all existing school buildings having

less than one teacher for each grade taught will have been abandoned.

19. The amended Building Survey recommends the construction of a gymnasium in connection with the Scott's Branch construction and remodelling, but as indicated in the Survey such construction can be done only when the materials needed are released from the critical list of the National Production Authority. The defendants are informed that priority for such materials cannot now be obtained for gymnasium construction, but such a project is included in the program which they have approved and are engaged in carrying out.

20. The school trustees of School District No. 1 also in- [fol. 446] tend when possible to carry out the recommendations in the amended Building Survey that a new white elementary school be constructed to replace the present Summerton elementary school, which is unsafe and unfit for school purposes, and that the Summerton White High School be reconditioned. They have had to defer these matters, however, because the earlier construction of the Negro school buildings will eliminate the schools in the district having less than one teacher for each grade taught, which is an important requirement in the Criteria for School District Reorganization promulgated by the State Educational Finance Commission, as shown in paragraph 6, *supra*.

A statistical synopsis of the immediate and ultimate results of the construction and remodelling program of School District No. 1 is herewith filed as Appendix C of this Report.

21. In addition to the provisions which have been made, as above shown, for schoolhouse construction, School District No. 1 has already equalized all teachers' salaries in the district by local supplements, has equalized all curricula in the White and Negro schools, and has expended school district funds in the sum of $21,522.81 for desks, tables and other equipment in the Negro schools and for improvements in existing Negro school buildings pending occupancy of those which are being and will be constructed. The result of such expenditures in the Scott's Branch School was noted in "The Eagle," the Scott's Branch School paper, a copy of which is herewith filed as Appendix D of this

Report, attention being particularly called to pages numbered 2 and 5 thereof.

22. That by Act No. 13 of the Acts of 1951, ratifying an Amendment to Article X, Section 5 of the Constitution of South Carolina, the school districts of Clarendon County are permitted to incur bonded indebtedness to an amount not exceeding 30 per cent. of the assessed value of all taxable property therein, without regard to the amount of bonded indebtedness now outstanding or hereafter created by any municipal corporation or political subdivision located wholly or partly within any of said school districts, as a result whereof School District No. 1 will have the fi- [fol. 447] nancial resources as shown in the amended Building Survey, to carry its recommendations out, and the defendants intend to ask the General Assembly at the 1952 Session to enact legislation under said Amendment to authorize the district to borrow the funds on its own bonds needed to do so.

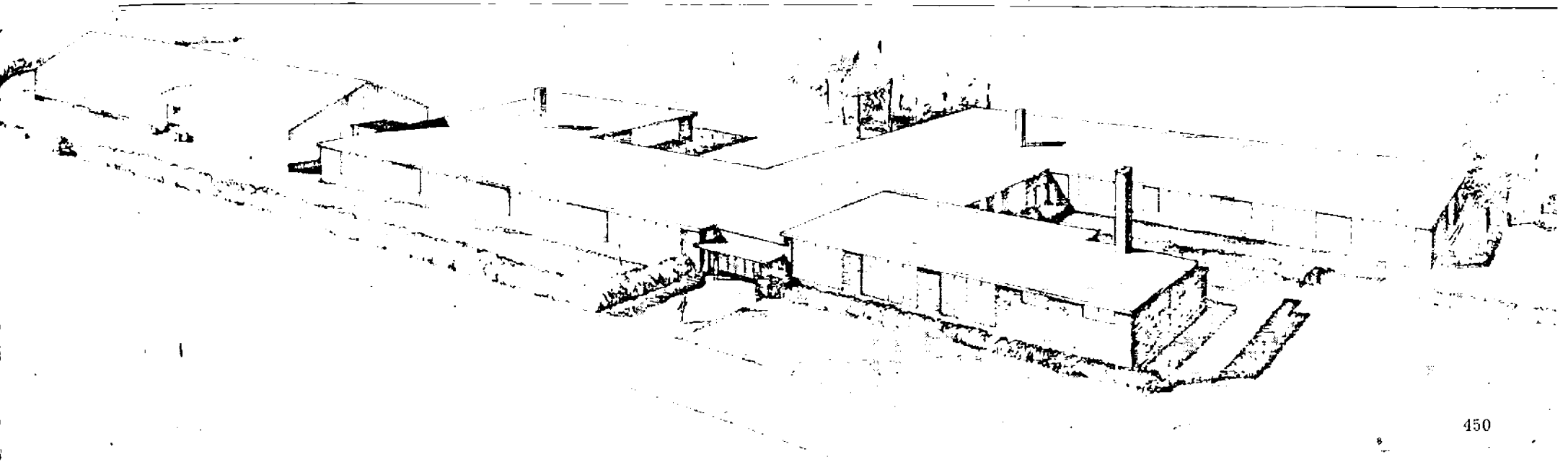
23. The defendants respectfully show unto the Court that, under the circumstances prevailing in the period since the Court's decree, they have made every effort to improve the educational facilities, equipment, curricula and opportunities afforded Negro pupils in School District No. 1 of Clarendon County, including the plaintiffs and the other Negro pupils attending the schools of former School District No. 22; that they have approved and adopted a plan and program which they are carrying out as expeditiously as possible to provide equal educational facilities, equipment, curricula and opportunities to the White and Negro school children of said District alike; that the consolidation of former School District No. 22 into new School District No. 1 was necessary to enable the district to qualify for and obtain the funds wherewith to carry out their program and accomplish said purposes; that they intend to continue to carry out the plan and program to a conclusion without any delay within their power to control; that they verily believe that the expeditious completion of such a plan and program will afford the equality directed to be furnished by them in the decree of June 21, 1951; and that they stand ready to file additional reports in the Court from time to time as the Court may direct showing the progress of their efforts in carrying out the said decree.

Wherefore, the defendants pray that the Court do receive this Report, and do make such further order as it may deem proper for the filing of an additional Report or Reports by them.

(S.) S. E. Rogers, Summerton, S. C.; (S.) Robert McC. Figg, Jr., Charleston, S. C., Attorneys for Defendants.

[fols. 448-449] *Duly sworn to by R. M. Elliott; jurat omitted in printing.*

(Here follow, 3 photolithographs, folios 450, 451, 452)



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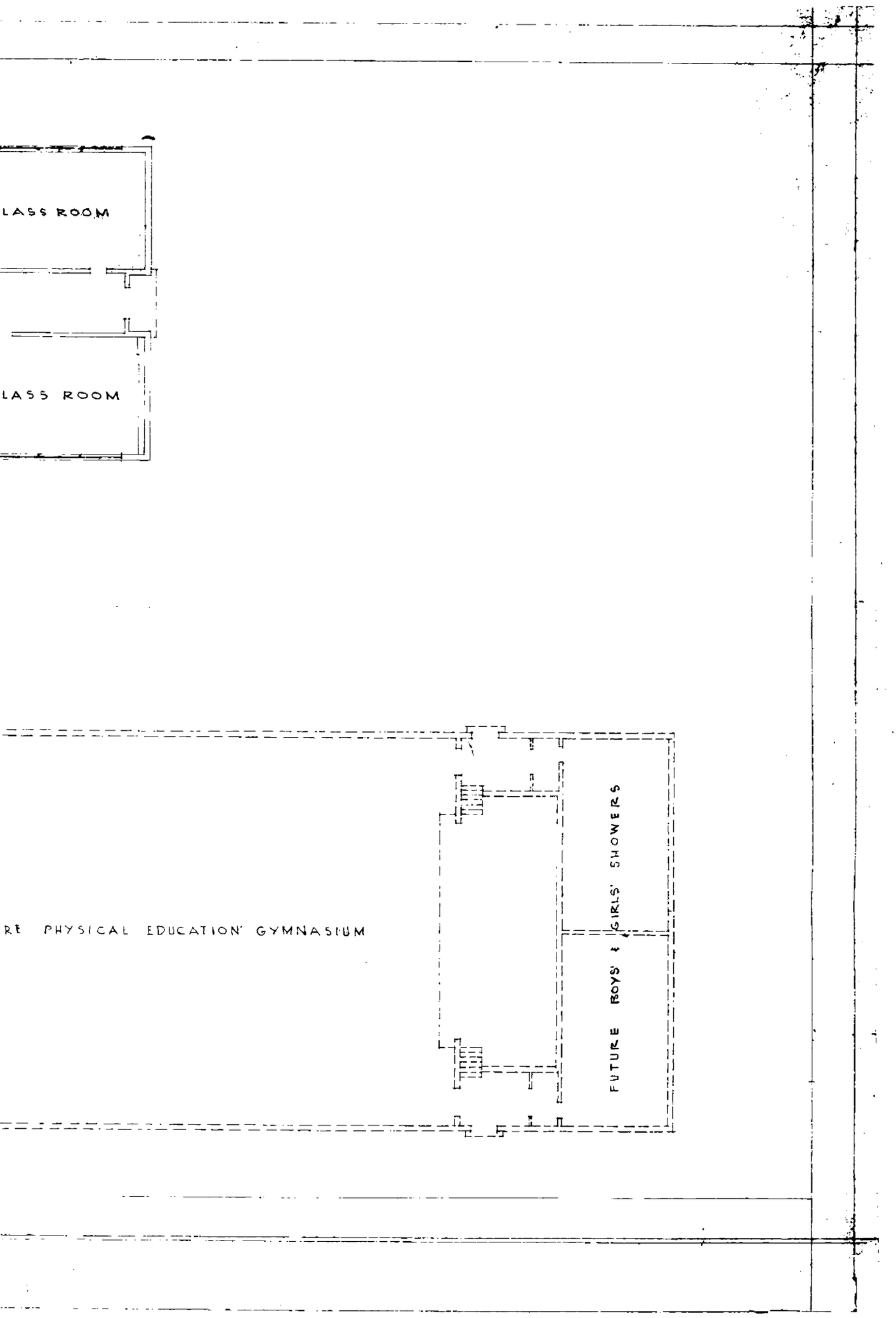
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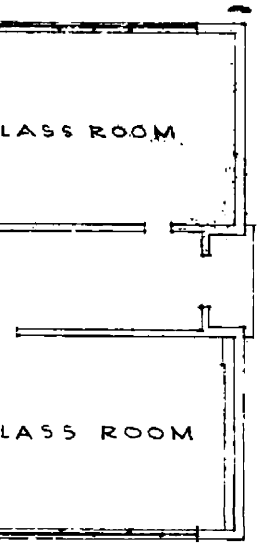
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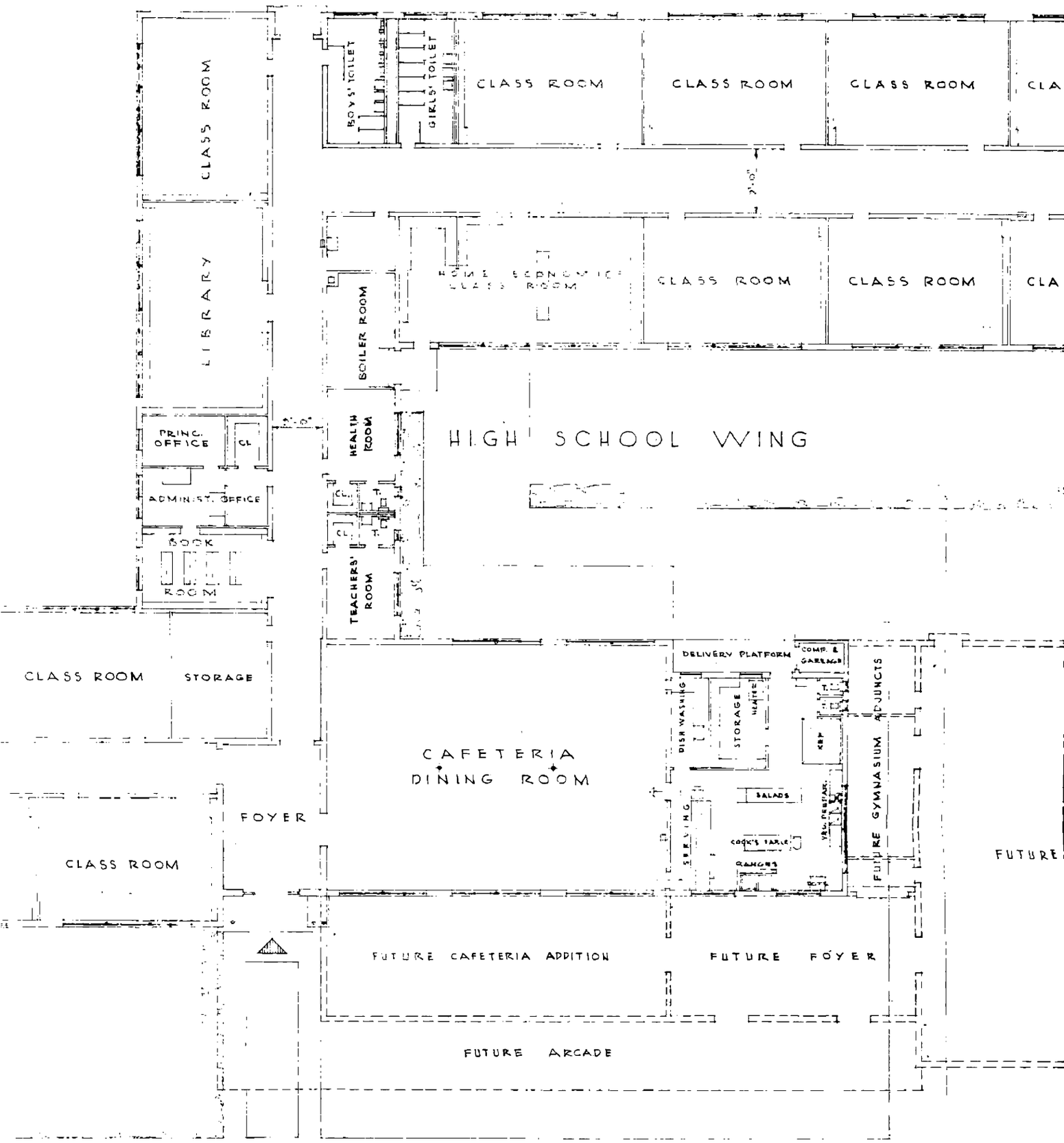
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BOY'S TOILET
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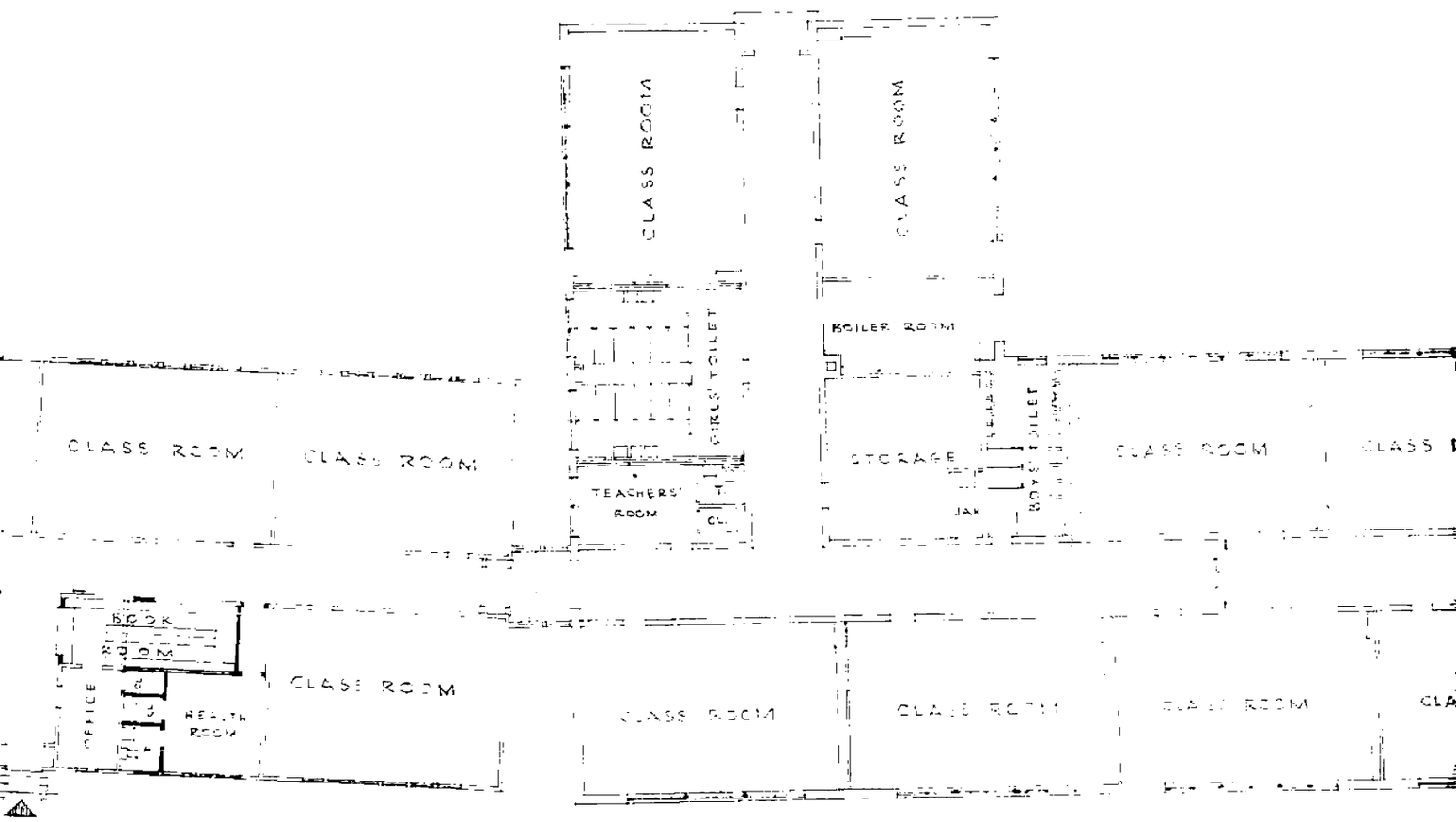
HIGH SCHOOL WING
ADMINIST. OFFICE
BOOK ROOM
TEACHERS' ROOM
CLASS ROOM
STORAGE
DELIVERY PLATFORM
COMP. & GARBAGE
DISH WASHING
STORAGE
HEATER
KEP
CAFETERIA DINING ROOM
SALADS
SERVING
COOK'S TABLE
RANGES
VEG. PREPARE
FUTURE GYMNASIUM ADJUNCTS
FUTURE
FOYER
CLASS ROOM
FUTURE CAFETERIA ADDITION
FUTURE FOYER
FUTURE ARCADE

THE SCOTTS BRANCH SCHOOL

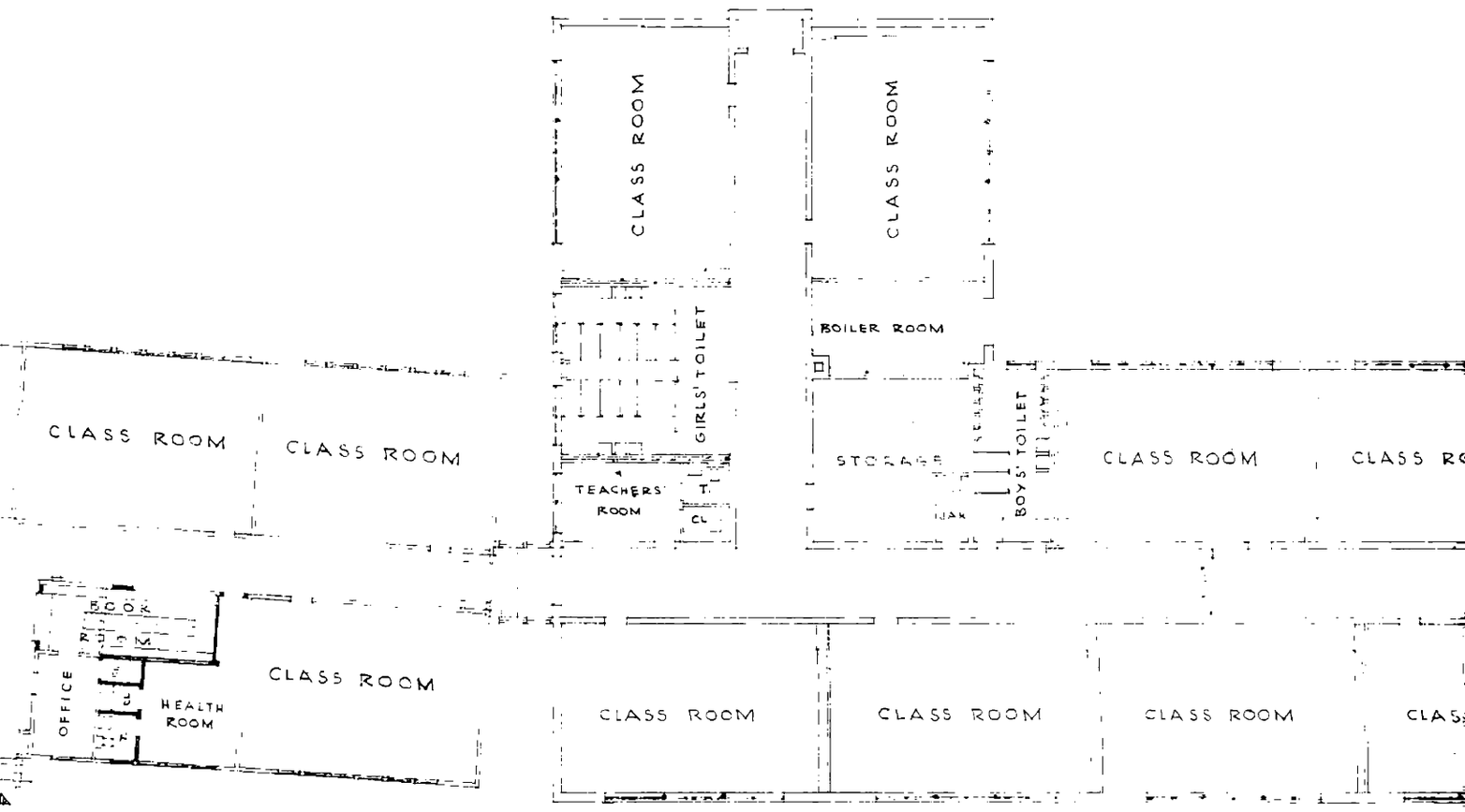
DC. - ARCHITECTS



ELEMENTARY WING

THE SCOTTS BRANCH SCHOOL

OC. - ARCHITECTS



ELEMENTARY WING

V.C APPENDIX A 9

PROPOSED ADDITION TO THE SCOTTS B

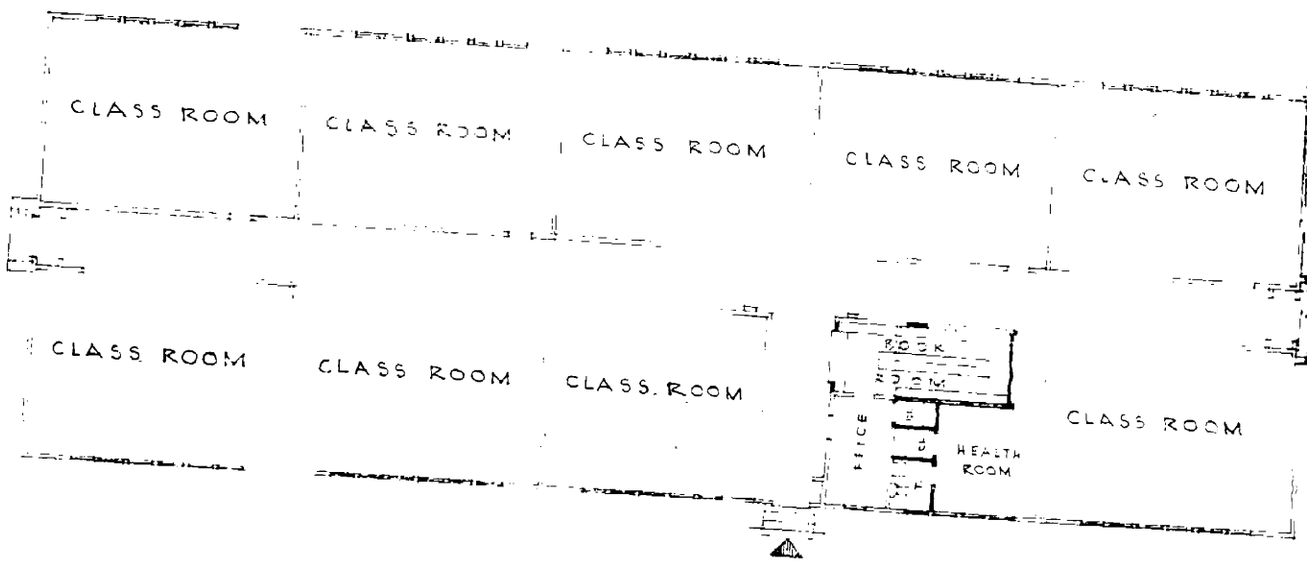
SUMMERTON, S. C.

JAMES & DURANT AIA - R S. JAMES AIA ASOC. - ARCHITECTS
SUMTER, S. C

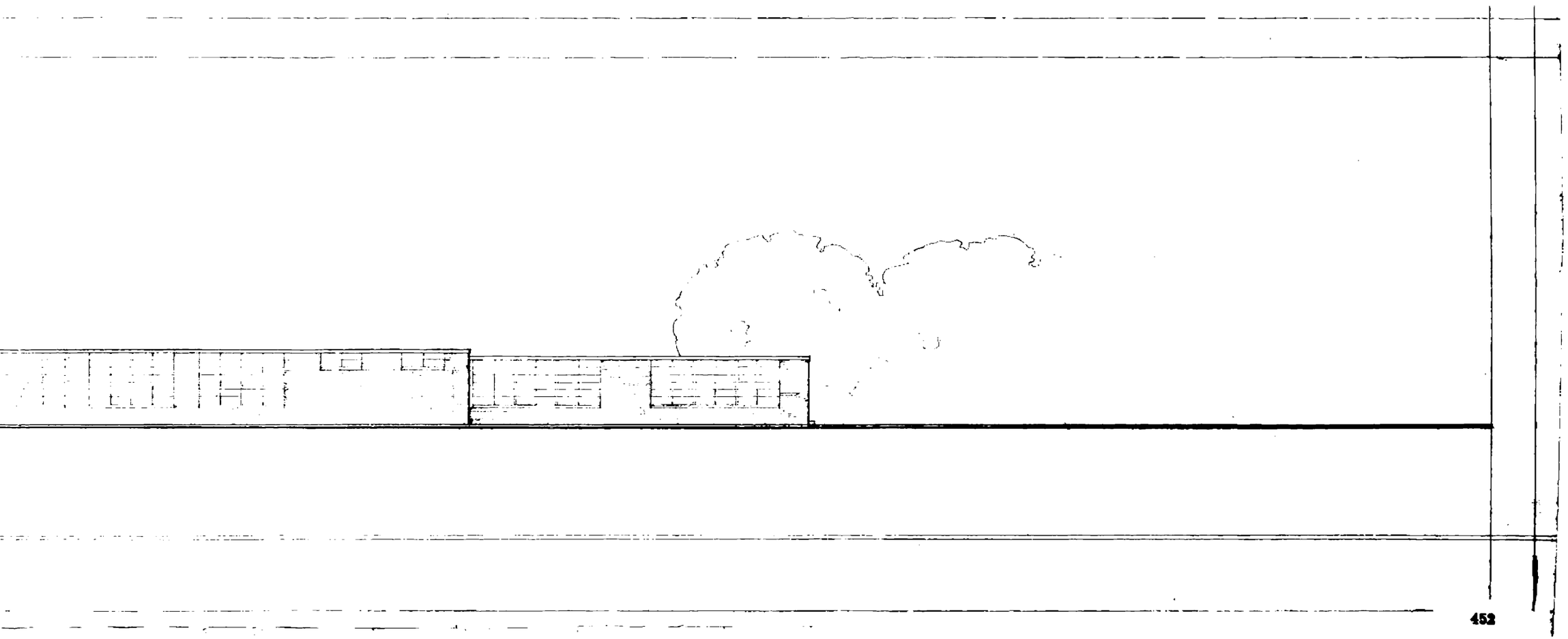
SHEET

1

OF 2 SHEETS



ELEMENT

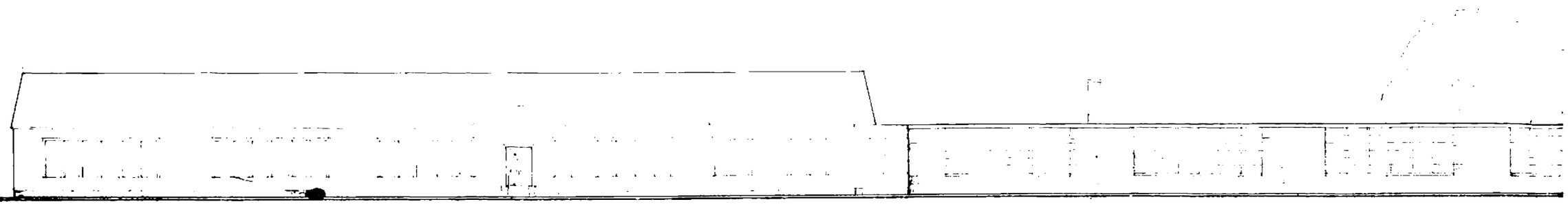

452

SCOTTS BRANCH SCHOOL

SHEET

2

OF 2 SHEETS



[fol. 453] APPENDIX B

SUMMERTON BUILDING SURVEY, DECEMBER, 1951

[fol. 454] STATE OF SOUTH CAROLINA

STATE EDUCATIONAL FINANCE COMMISSION

COLUMBIA, S. C.

December 17, 1951

Summerton School Board
Summerton
South Carolina

Gentlemen:

We are herewith transmitting our revised survey of the Summerton Area schools. We are grateful to Mr. H. B. Betchman for assistance in this work and to other officials of the school.

We urge that this survey be restudied as frequently as necessary to determine the wisdom of expenditures for buildings and operation of the schools. We cannot urge you enough to restudy this situation almost without ceasing.

Personnel of the State Educational Finance Commission is ready to offer any assistance in restudies that you find it necessary to make.

Very sincerely yours,

W. B. Southerlin, Supervisor, Schoolhouse Planning.

WBS/cf

[fol. 455] Revised Building Survey Report with Recommendations

Immediately following the division of Clarendon County into three districts, the Summerton School District #1 School Board, through its administrative superintendent, requested that the State Educational Finance Commission assist in making a careful survey of the school plants in the area comprising 23 elementary schools and one high school for the Negro children, and one elementary and one high school for the white children. The plants were studied

very carefully with the assistance of Mr. H. B. Betchman and a report in detail was written and presented on July 14, 1951.

Since the report was made a petition was circulated by the citizens of an area in the northwest section of the district setting forth a request that they be transferred to the Pinewood Area in Sumter County. This petition was granted by the Clarendon County Board of Education on October 15, 1951 and certified on October 19, 1951. This action necessitates a restudy of the Summerton School District and a revised report is herewith being written.

Following are the schools petitioned to Pinewood Area for the Negro children:

Schools Petitioned to Pinewood

Name of School	Enrollment 1951
Spring Grove	173
Wells	89
New Hope	124
Calvary	65
Total	451

[fol. 456] No effort was made to determine the number of white children affected in this move to Pinewood. However, the number of white children is so small that it would have no appreciable consequence to any area.

The schools for the Negro children who were left in the greatly reduced attendance area are, as originally planned:

Schools Retained in Summerton Area

Name of School	Enrollment 1951
Panola	118
Rockland	31
Silver	110
St. John	33
Total	292

The transfer of retained pupils to Scott's Branch and St. Paul would, in our opinion, be wise since the average

daily attendance is not large enough to meet minimum requirements for a grade per teacher. This would necessitate the adding of three additional rooms on each of the elementary school plants at Scott's Branch and St. Paul.

These pupils can be located in these attendance areas since the greatest number in an original area has been transferred to Sumter County. This move necessitates making changes in the total plan as outlined in the July report. It might be well to constantly study the entire district and be ready to make any changes in the total plan that will be of benefit to the children. It appears that enrollment has not been accurately reported in the past and it is possible that space recommended in July, or even in this report, would need to be changed because of change in enrollment. Mr. H. B. Betchman reports that enroll- [fol. 457] ment is down considerably so far this year. This is a problem that would indicate that the plans should be restudied and adjusted in accordance with needs often.

In order that one may have a guide in determining space needs, it is suggested in the next paragraph that areas be computed on a basis which can be clearly understood and can be used as a guide for future needs or adjustments in overall building plans.

Generally, one may set up minimum needs in a classroom as 660 square feet for the classroom proper, 135 square feet for corridor space, 30 square feet for storage space, and 50 square feet for toilet space. This means that each classroom must be computed on the basis of 875 square feet of floor space.

For a cafeteria one may set up a minimum of 10 square feet for each child to be served in the dining area at one time, and not less than 300 square feet should be provided for the kitchen. Usually this is figured at the rate of 1½ square feet per meal served just so long as the space does not fall below 300 square feet. Storage space varies but, as a rule, one should allow one-half square foot per meal served for storage.

The size of the site for elementary schools should be five acres plus one acre for each 100 pupils of ultimate enrollment. This is a minimum size and is not to be considered as ideal by any means. The location and size of

the sites are suggested under each area listed in the remainder of the report.

St. Paul Area

An attendance area for an elementary school should be in the St. Paul Area. It is strongly urged that a new site be secured for this plant. The present buildings at St. [fol. 458] Paul appear, on the exterior, to be in good condition but this is a false impression. The buildings will require extensive work to modernize and to make them moderately comfortable. The new site should contain at least 10 or 12 acres that is well drained. The following schools should be consolidated into this center:

Name of School	Enrollment 1951
St. Paul	265
Panola	118
St. Phillips	169
Rockland	31
Oaks	26
Butler	55
Santee	20
Liberty Hill	105
Maggie Nelson (part)	60
Total	849

The number of pupils in this school will require 21 classrooms and a cafeteria. Twenty-one classrooms on the basis explained earlier in this report will make a total of 18,375 square feet and a principal's office of 220 square feet.

Experience indicates that a school cafeteria that will seat over 225 pupils at one time for feeding purposes is not using economy. A pupil who is served first will finish his meal and leave his space vacant for the child being served some 10 minutes later. Children can hardly be served in one line over 12 per minute so it is clear to see that to provide space larger than to seat 200 is not wise. [fol. 459] Hence we are suggesting that the cafeteria dining area contain only 2,000 square feet. Kitchen area should contain, for this area, about 617 square feet and a

storage area of about 200 square feet. For this complete building a total of 21,192 square feet is needed. This does not include cost of site, furniture, and instructional aids. At seven dollars per square foot this plant would cost $148,344.00.

Recommendations for St. Paul Area

1. A site of at least 10 acres of well drained land.
2. Twenty-one classrooms. Suitable office space and some storage space.
3. Cafeteria to seat 200.
4. Plans so made that additions can be made economically and quickly.
5. Construction cost must be held low.
6. Furniture cost should not exceed $600.00 per room.
7. Cost of cafeteria equipment must be held at a minimum.

Rogers Area

The Rogers Center for elementary children seems logical to locate about two miles north of Rogers on State Highway #64. It is recommended that this site contain at least 10 acres of land. The pupils in this area may not have to travel over eight miles by bus to reach this school center. The schools that make up this center are:

Name of School	Enrollment 1951
Maggie Nelson (part)	123
[fol. 460] Spring Hill	64
St. James	90
Felton Rosenwald	146
White Oak	32
Pine Grove	118
Total	573

This center will require 15 classrooms making a floor area of 13,125 square feet with a cafeteria of 2,760 square feet. The principal's office should not exceed 220 square feet. The total space necessary would be 16,875 square feet and at seven dollars per square foot would cost $112,735.00.

The cost does not include land, furniture, or instructional aids.

Recommendations for Rogers Area

1. A site of 10 acres well drained should be secured.
2. Fifteen classrooms, a principal's office of not over 220 square feet, some storage space.
3. That a cafeteria be provided to seat not over 200.
4. Construction cost must be held low.
5. That plans be so made that additions can readily be made economically.
6. Furniture cost should not exceed $600.00 per room.
7. Cost of cafeteria equipment must be held at a minimum.

Scott's Branch Area

In the Scott's Branch Area the 10 room frame structure of the Scott's Branch School is good and can be made into an excellent structure by insulating the ceiling, receiling the interior, reflooring, replacing bad windows, rewir- [fol. 461] ing and installing concentric ring lighting, installing good chalkboards, installing central heat, and installing necessary sanitary facilities. We would suggest that this structure have underpinning to add to the beauty of the exterior. Underpinning will also add comfort to the floor area. The following schools should be consolidated into the Summerton Area:

Name of School	Enrollment 1951
Rambay	66
Silver	110
Oak Grove	114
St. John	33
Zoar Hill	81
Scott's Branch	545
Total	949

According to the average attendance, it will be necessary to construct eight additional rooms adjacent to the present plant to house the elementary children at this center.

Using the same cost basis this report has used on other centers it seems clear that these additional rooms will cost $49,000.00. To modernize and repair the present plant will cost nearly $25,000.00. The addition of three rooms over the July plan will cost $18,375.00. A total of $92,375.00 will be required for the elementary school.

Recommendations for Scott's Branch Area

1. Modernize the present plant by carrying out recommendations above.

2. Add eleven classrooms with health and safety features as needed. Suitable office space must be provided.

[fol. 462] 3. Add sufficient health and safety features to the modernized structure to meet requirements of health.

4. That plans be so made that additions to the elementary plant can be economically done.

5. That plans be so made that additions can readily be made economically.

6. Furniture cost should not exceed $600.00 per room.

7. Cost of cafeteria equipment must be held at a minimum.

Scott's Branch High School

The high school can economically be located on the same campus as the Scott's Branch Elementary School. In the survey report in July it was recommended that additional land be secured adjacent to the present site to make the total site contain 23 acres of land. Verbally, it was urged that this be done at once before the survey report became public property and the land owners might demand more than the land was worth. It was pointed out that to locate here would be a great advantage because of city water and sewage disposal that could be made available with the cooperation of the city. Septic tank and drain tile for such a large enrollment would be very expensive.

The high school had an enrollment of 149 and an average attendance of 123 last year. The monthly report for November, 1951, indicated an enrollment of 197. It was suggested in the July report that space might wisely be provided for 250 pupils at this time and, to date, evidence con-

firms the advice. The contract has been let for adding the space, not only for the elementary school, but for complete renovation of the present elementary plant and erection of the high school as well.

[fol. 463] In the earlier report it was strongly urged that the Division of Instruction, State Department of Education, be consulted in outlining space necessary for the high school program. The high school and the elementary building is already under construction and it seems evident that an excellent plant will be ready September, 1952, barring unfor-seen work stoppage or disasters.

In the earlier report it was strongly urged that building plans be so made that additions could be made readily and economically as needed. It is gratifying to note that suitable office, storage, and special classroom were provided in the plans now being used to construct the Scott's Branch High School.

In the July report it was pointed out that a gymnasium of standard size should be constructed as soon as steel is available for such construction. It was estimated that such a gymnasium should contain a floor space of 65 feet by 104 feet, or approximately 6,760 square feet. Such a structure should be constructed for not over $100,000.00 Some excellent gymnasiums have been constructed over the State for approximately $85,000.00 and it seems reasonable to assume that such can still be done with carefully planned materials for construction, and at such time as these materials are released from the critical list of the N.P.A. Shower facilities should be provided in order to permit a physical education program.

In July it was stated that provisions should be made for 10 classrooms, two all purpose home economics rooms, library, health suite, adequate storage space, gymnasium, and agriculture shop which it was believed would be adequate. It is entirely possible that the administrative superintendent of the school system might have been advised [fol. 464] to change this recommendation after following the earlier suggestion to consult the Division of Instruction of the State Department of Education. The total area of these spaces should be nearly 17,270 square feet without the gymnasium.

The cost of space without gymnasium was estimated in July to be reasonable at $120,890.00. If the gymnasium should be included then the total cost of the high school was placed at $220,890.00.

Recommendations for Scott's Branch High School

1. That acreage be added to present school site so as to total approximately 23 acres. This is the minimum recommended for the size elementary and high school combined that will exist in Summerton.
2. That at least 10 classrooms, two all purpose home economics rooms, library, health suite, adequate storage space, agriculture shop, and gymnasiums be provided. The gymnasium to be constructed when National Production Authority permits.
3. That a cafeteria be constructed to serve both the elementary and the high school pupils.
4. That plans be made so additions can readily and economically be made.
5. That construction cost be held low.
6. Furniture cost should not exceed $600.00 per room.
7. Cost of cafeteria equipment must be held at a minimum.

Summerton Elementary and High Schools

The present elementary school for white children is unsafe and unfit for school children and just as soon as possible provisions should be made to replace this structure. [fol. 465] In the July report it was strongly recommended that this plant, as it now stands, be razed and replaced by a modern one story plant.

Since the enrollment of the elementary school is 232 it will warrant the provision of only seven classrooms. It is suggested that a new structure be provided on the present high school site next to the present gymnasium. Enough land to make the site adequate for minimum size is not available at this time so it is recommended that minimum requirements as to size of site be suspended until such time as the property is available at a reasonable price.

Seven classrooms for the elementary school will necessitate approximately 6,135 square feet of floor area which,

at seven dollars per square foot, will cost about $42,945.00.

A cafeteria to serve both elementary and high school should be large enough to seat 150 pupils at one time. This will require approximately 2,100 square feet for dining area and kitchen and at seven dollars will cost about $14,700.00.

The present high school building should be modernized by painting, rewiring, installing concentric ring lighting fixtures, replacing decayed window frames and other exposed wood. Several other needs are necessary in the present building but it is thought all of this work might be done for about $8,000.00. In addition, the high school shop needs renovating and it is possible this will cost an additional $8,000.00.

For the Summerton Elementary and High Schools, it will be necessary to spend not less than a total of $73,000.00. This does not include cost of razing the old two story elementary building now in use.

[fol. 466] Summary of Work to be Done

The total cost of work estimated to be done is as follows:

St. Paul Elementary	$148,344.00
Rogers Elementary	112,735.00
Scott's Branch Elementary	92,375.00
Scott's Branch High (including gym)	220,890.00
Summerton White Elementary	57,645.00
Summerton White High	16,000.00
	647,989.00
Architectural fee (estimate)	38,873.94
	$686,862.94

Contract has been let for the Scott's Branch work for everything except the gymnasium. Since the change in area of district by petition, it was necessary to recommend in this report an addition of three classrooms to the Scott's Branch Elementary School. The contract for Scott's Branch, plus fees, will be about $276,978.00 without the gymnasium and the three additional rooms that must be added to care for pupils transferred in the recent shake-up.

In other words, the cost of work to be done with the contract as it now stands will amount to the following:

St. Paul	$148,344.00	
Rogers	112,735.00	
Summerton White Elementary	57,645.00	
Summerton White High	16,000.00	
Scott's Branch (3 additional rooms)	18,375.00	
Scott's Branch Elementary Scott's Branch High (less gym)	274,050.00	(Fees included for contract)
Scott's Branch gym (with arch. fee)	106,000.00	
Fees (approximately)	19,123.44	
	$752,272.44	

Income on average daily attendance according to last year would amount to $32,310.00. An advance of $484,650.00 on average daily attendance for a 20 year period is available. This gives a net total of $516,960.00 to apply on school plants.

[fol. 467] The total cost of projects as planned would be $752,272.44. With $516,960.00 contributed by the State, a balance of $235,312.44 would need to be secured from local program of taxation.

Mr. H. B. Betchman reported by telephone on December 7, 1951 that the valuation of the property within the district, since the annexation of an area to Sumter County, was now $807,320.00. It is understood that the Clarendon County may now bond itself for school purposes up to 30 per cent of valuation. At 30 per cent $242,196.00 can be raised. Bonds outstanding, according to Mr. Betchman, are for an amount of $14,925.58. A net amount of $227,270.42 would be provided with such a bond issue and this will almost care for the complete program as recommended for all the children. The district should have enough property to be sold that is not useable for schools to cover the difference when the smaller schools are vacated.

It is strongly recommended that the utmost care be

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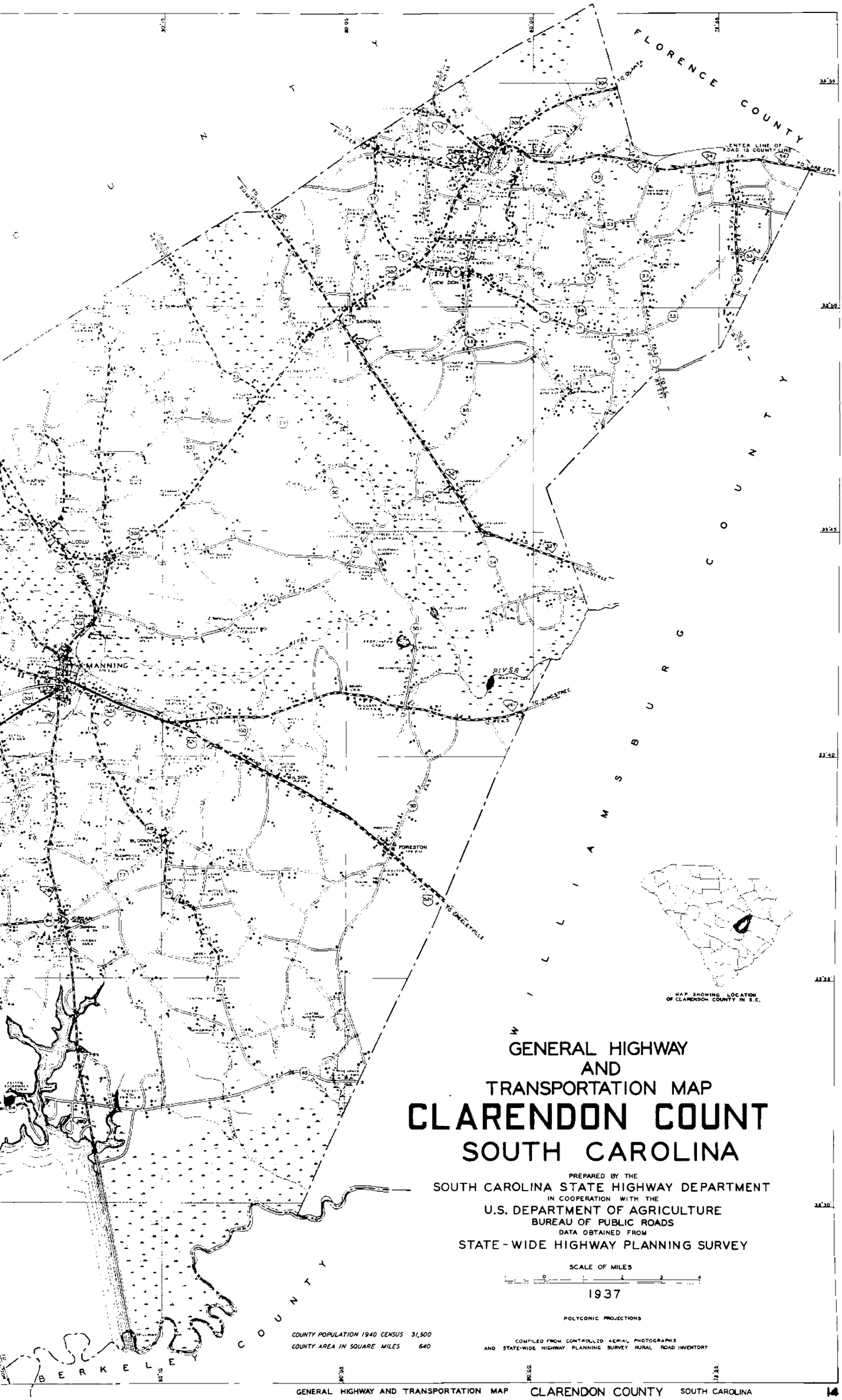
It is strongly recommended that the utmost care be

exercised in the building program. It cannot be too strongly urged that the building cost be held at such a level as will not make maintenance cost too great in the years ahead. Utmost care must be exercised to prevent overbuilding and using too expensive materials.

It is recommended that a complete spot map be made of every child within the district, one for elementary, and one for high school children. This should be done for both races. In addition, it is strongly recommended that a pre-school census be taken getting the name of the child, age, name of parent and race so that this can be used in planning for needs far enough ahead that rooms need not be over-crowded at any time.

[Here follows 1 photo, folio 468]



GENERAL HIGHWAY AND TRANSPORTATION MAP

CLARENDON COUNT

SOUTH CAROLINA

PREPARED BY THE
SOUTH CAROLINA STATE HIGHWAY DEPARTMENT
IN COOPERATION WITH THE
U.S. DEPARTMENT OF AGRICULTURE
BUREAU OF PUBLIC ROADS
DATA OBTAINED FROM
STATE-WIDE HIGHWAY PLANNING SURVEY

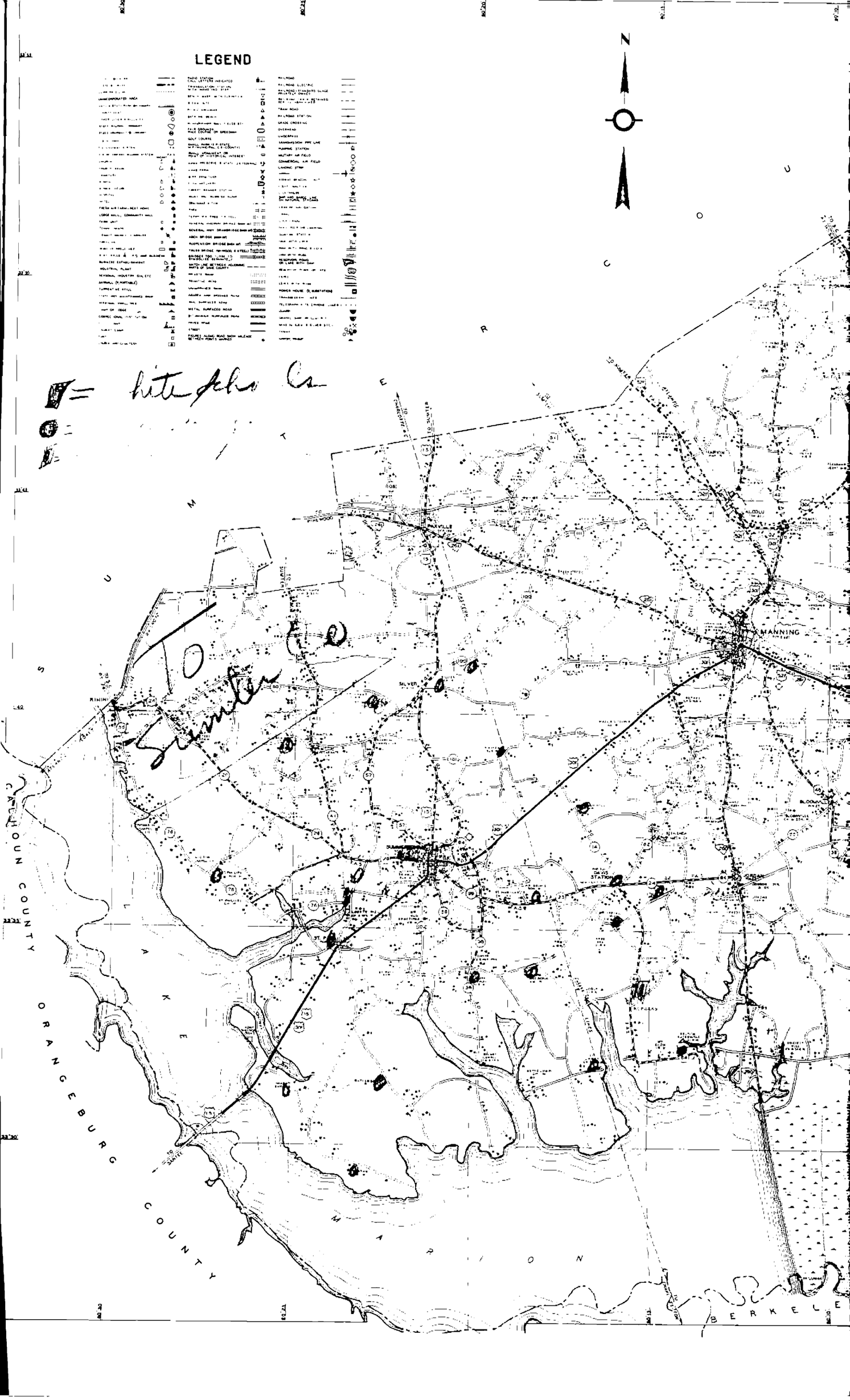
SCALE OF MILES

1937

POLYCONIC PROJECTIONS

COMPILED FROM CONTROLLED AERIAL PHOTOGRAPHS AND STATE-WIDE HIGHWAY PLANNING SURVEY RURAL ROAD INVENTORY

COUNTY POPULATION 1940 CENSUS 31,500
COUNTY AREA IN SQUARE MILES 640


LEGEND
N
MANNING
SUMTER
CLARENDON
ORANGEBURG COUNTY
BERKELEY

[fol. 469] APPENDIX C

I

Existing Negro Elementary Schools of School District No. 1 Being Consolidated By Remodelling and Construction Program.

Name of School	Enrollment 1951	A.D.A. 1951
St. Paul	265	211
Panola	118	87
St. Phillip's	169	121
Rockland	31	19
Oaks	26	22
Butler	55	33
Santee	20	17
Liberty Hill*	105	89
Maggie Nelson	183	124
Spring Hill	64	48
St. James	90	62
Felton Rosenwald	146	113
White Oak	32	29
Pine Grove	118	87
Rambay*	66	44
Silver	110	79
Oak Grove	114	72
St. John	33	19
Zoar Hill	81	66
Scott's Branch*	545	336
Scott's Branch High School*	197	158
Totals	2,568	1,836

*These are the schools of former School District No. 22. Practically all Negro high school pupils of the 7 districts consolidated into School District No. 1 attended the Scott's Branch School, 9-12 grades, when it was a school of former School District No. 22.

[fol. 470] II

Distribution of Negro Pupils in School District No. 1 after Completion of Remodelling and Construction Program

Name of School	Enrollment 1951	A. D. A. 1951
St. Paul Elementary *	849	639
Rogers Elementary	573	423
Scott's Branch Elementary **	949	616
Scott's Branch High School	197	158
Totals	2,568	1,836

* Includes Liberty Hill School from former School District No. 22.

** Includes Rambay School and Scott's Branch elementary pupils from former School District No. 22.

III

White Schools of School District No. 1 Affected by Remodelling and Construction Program

Name of School	Enrollment 1951	A. D. A. 1951
Summerton Elementary *	236	232
Summerton High School *	62	58
Totals	298	290

* All White pupils of the 7 districts consolidated into School District No. 1 attended the Summerton Elementary School when it was a school of former School District No. 22, and all White high school pupils of such 7 districts attended the Summerton High School when it was a centralized high school.

[fol. 471] IV

Estimated Cost of Immediate Negro School Remodelling and Construction, Including Land Site Cost and Architect's Fees.

St. Paul's Elementary	158,761.20
Rogers Elementary	119,871.75
Scott's Branch Elementary, Scott's Branch High	274,050.00
Total**	552,682.95

Representing an expenditure per Negro pupil of $301.02 on the basis of 1951 average daily attendance.

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* Actual contract price and architect's fees.

** Gymnasium (when materials situation permits construction) and three additional rooms for Scott's Branch Elementary School (if needed) will increase this total estimate to $677,976.70, representing an expenditure per Negro pupil of $369.27 on 1951 average daily attendance.

V

Estimated Cost of White School Remodelling and Construction Planned Under Program, Including Architect's Fees.

Summerton Elementary	60,527.20
Summerton High	16,800.00
	77,327.20

Representing an expenditure per White Pupil of $266.65 on the basis of 1951 average daily attendance.

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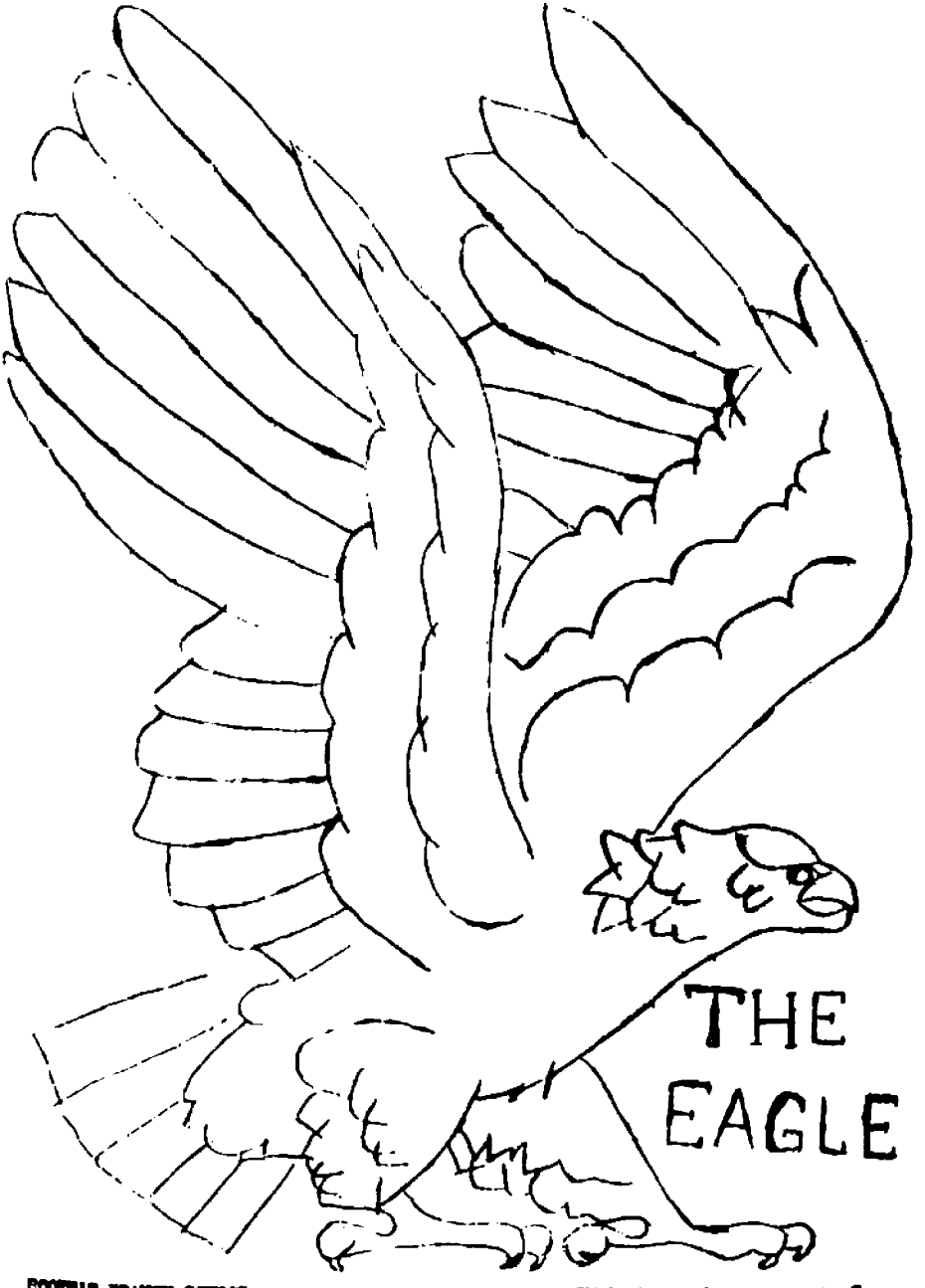
* This work is in deferred status until all negro schools having less than 1 teacher for each grade taught have been eliminated, and until funds are available from local school district borrowing.



SCOTT'S BRANCH SCHOOL SUMMERTON, SOUTH CAROLINA

240

THE EAGLE

Volume 2 November 1951 Number 1

EDITORIAL STAFF

Editor-in Chief..... ... Willie E, Magwood

Associate Editor.....Beatrice Brown

Business Manager..... Myrtle Richburg

Circulating Editor..... Louis Oliver

Advertising Manager..... Vera Brown

Sports Editor..... John Gaymon

Cartoonist..... Robert Mivens

Advising Committee:..... Mrs. B. B. Wells
..... Miss T. L. Grant
..... Mrs. R. Carter
..... Mrs. A. T. Ragin

PUBLISHED MONTHLY BY THE STUDENT BODY OF SCOTT'S BRANCH HIGH SCHOOL, SUMMERTON, SOUTH CAROLINA.

EDITORIALS

A MESSAGE FROM THE EDITOR

"THE WAR IN KOREA"

Korea is a place that was unknown to us a short while back, but now, it is the most talked about country on the map- Why? Because we have a war going on over there, and our boys are fighting. When I say "our Boys" I mean the sons and husbands of America. It looks now as if there will be a third world war, which means more of our boys will be killed or wounded. That means more of my friends, your friends and even I will be going into the Armed Services, which will bring sorrow to our mothers fathers, and loved ones. But that is a "must" and its got to be done, now or never.

The only information most of us get about the situation is by reading newspaper, magaines, and sometimes seeing newsreels in the theater. If we understand, and think seriously about what we read and see, we would realize how tough things are over there.

Some of us know what it means to recieve a letter or telegram stating that your son or husband has been killed or is missing in action. Yet, some of us do not realize the sorrow it has brought and will bring to our mothers, fathers, and loved ones. I'm praying, hoping, and longing for the end of this terrible "Death Trap" called war. May God be with our sons and husbands and bring them back to America, safe, and sane.

"God Bless America".

Willie E. Magwood (Junior),
Editor-In-Chief

AFTER GRADUATION

Facing the future on your own,is serious and difficult. The most important phase of a person's life, is when he or she takes the final step across the wall of paternal or maternal protection. Graduation day is the outlet for some of us, while others may still be dependent.

When an individual graduates from high school, there are many obstactles to cope with. Some so unusual, that we interrogate ourselves, such as (1) Do I have the qualifications for the profession or vocation of my choice? Will I have the chance to acquire a good position? Am I sure about what I want to do? Does this job express a promising future? To stop and think, makes things very vague, but only you can answer those questions. With a review of your high school academic and vocational activities, the answers to these questions will gradually become explicit.

In most high schools, elective and selective subjects are offered. These serve the purpose of developing and cultivating the individual's abilities. With this training, it makes one somewhat sure of his capabilities. If one is sure of what he or she wants to do, it gives him a peace of mind.

Entering a profession for future security depends on more than the person's ability, it also depends upon his attitude toward his work. When a person like the job he has, he does better work, and he puts his whole interest in that job. This makes for greater success.

After graduation, we will be confronted with these problems, and we shall find that it is best to face them with our heads up. "Shrinking from life, is no shelter"! It is best to face these matters with confidence, because with work, and faith, security and happiness are the next steps.

Vera Brown,
Advertising Manager

NEW TEACHERS ADDED TO OUR STAFF

Two more teachers have been added to our teaching staff this term, namely Mrs. B. W. Wells and Miss T. L. Grant. So far we've gotten along well in our school work.

Mrs. B.W. Wells has the music classes, with which she is doing a very commendable job. Miss T.L. Grant is the commercial instructor. A subject that is very useful and interesting. They are doing a good job of developing the students.

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NEW COURSES ADDED TO OUR CURRICULUM

MUSIC APPRECIATION

There are 15 members of the 12th grade taking Music Appreciation. We are working very hard with our advisor (Mrs.B.W. Wells) in order that we may appreciate all types of music, now, and in later years.

We have studied already the string choir, and the woodwind choir of the orchestra. Surprisingly enough, we discovered that the members of the string choir are; the violin, the viola, the cello, and the double bass. They represent the Soprano, alto, tenor, and bass respectively.

And then to learn that the wood wind choir was the most fascinating part of the orchestra, was really amaz ing. It's members are the flute, (the Colortura soprano), the oboe, (the lyric Soprano), the Clarinet (the dramatic Soprano) and the bassoon (the bass).

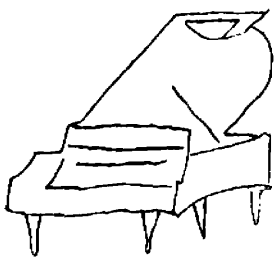
It isn't strange any more to know that the flute is related to the piccalo, the oboe to the English horn, the Clarinet to the Bass Clarinet, and the Saxaphone, and the Bassoon to the Double Bassoon. Our interest is now turned toward the Bass choir.

This is our first year of Music Appreciation and I do think our advisor can see us steadily improving.

All of us like music, and naturally we are trying to make excellent grades, with the help of our advisor.

Remember readers, we appreciate music by listening to music, more often.

Elizabeth Guess



THE TYPING CLASSES

For the first time, a course in typing is offered in the Scott's Branch School; for the term 1951-52.

We find the course very interesting, and I think we are making rapid progress. Miss Grant, our instructor, started us of by teaching us the parts of the typewriter. After she familiarized us with the parts, she then took us step by step into the fundamentals of typing.

To begin with it was like a first grader getting used to his book and pencil, but our instructor was patient and made us feel confident that we were making progress. Most of us can go along with the assignments which is proof that we are making progress.

We wish to thank the superintendent, principal, and all others who made it possible for this course to be added to our curriculum.

I hope the classes that follow us will appreciate this offer as much as we.

Willene Ragin
Twelfth Grade

ALMA MATER

Scott's Branch High School
(tune: " Auld Lang Syne")

1. Dear S. B. S. we pledge ourselves
To thy precepts and thy aims.
We love thy Glorious guiding
Light, and pledge anew our Love.

Refrain: For S. B. S. we give our
all, for S. B. S. we stand.
We'll always hold our honor high,
For dear ole S. B. S.

2. We'll fight for thee we'er we go
Thou glories ne'er forget
We'll keep thy standards flying high,
In all we do or say.

3. Thy flag of truth amd honesty
We'll wave o'er all the land
Tell all thy sons and daughters know
Thy precepts strong and true.

October 11, 1945
Summerton, South Carolina

S P O R T S

PALMETTO ATHLETIC ASSOCIATION

The first meeting for the Palmetto Athletic Association was held on Friday Nov. 16, 1951. Our coach Mr. J.B. Mays, talked about many things. To mention a few: (1) Don't stay out late at night; be home by 9:30. (2) Don't smoke when expecting to play a game. (3) Beware of your English. If you are caught once, remember you have only two more times. If again, you'll take a little vacation, and probably you'll hang up your suit for the year. So, boys and girls check up on your self.

The main point of this meeting was to elect officers. They are:

President.....Robert Gaymon
Vice president.....Willie Magwood
Secretary.....Nancy Johnson
Assistant secretary...Myrtle Richburg
Treasurer.....Dorothy Oliver
Business Manager.....Willie Boyd
Helpers.....John Gaymon
.....Roosevelt Postell

Nancy M. Johnson

Coaches.....Miss T. L. Grant
.....Mr. J. B. Mays

BASKETBALL SCHEDULE
1951 - 52

Home Games

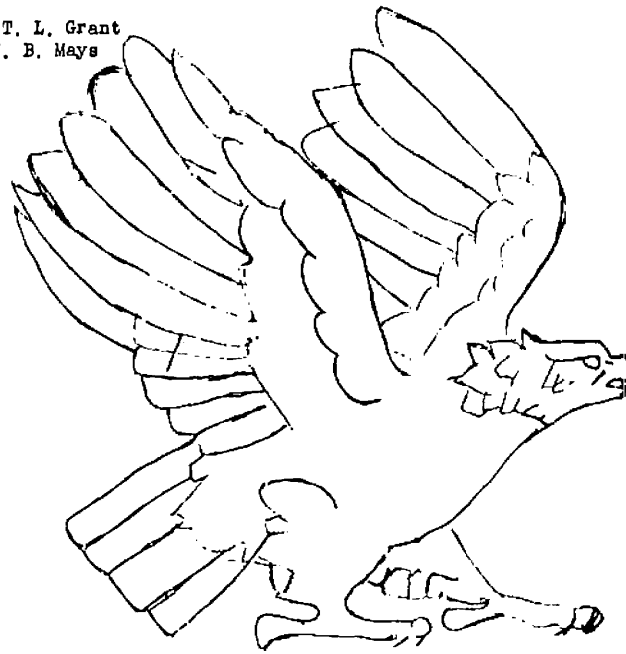
St. Paul	Dec. 7
Berkley	Dec. 14
Greeleyville	Jan. 11
Elloree	Jan. 16
St. Stephen	Feb. 1
St. George	Feb. 6
Manning	Feb. 14

(All home games will begin at 3:30)

Games Away

Elloree	Dec. 17
St. Paul	Dec. 20*
Greelyville	Jan. 18*
St. George	Jan. 25
Berkley	Jan. 30
Manning	Feb. 8
St. Stephen	Feb. 13

* Games will be played at night.



SCOTT'S BRANCH EAGLES

VERSUS

ST. PAUL

FRIDAY DECEMBER 7, 1951

AT

SCOTT'S BRANCH SCHOOL

SUMMERTON; SOUTH CAROLINA

TIME 3:30 P. M.

MARVELOUS IMPROVEMENTS ARE STILL BEING MADE AT SCOTT'S BRANCH

Remember last term we told you through our school paper about improvements at our school? Well, we were met with far greater improvements this school year. Mr. Botchman and other school officials saw to it that each class room was equipped with new, modern desks a sufficient number for each room. Every child in the school is comfortably seated.

The first and second grades have the latest in seating for those grades. They have tables to seat six with corresponding chair In front of each child is a drawer for his books. The chairs and tables vary in heights, because some of the children are taller than others. The third through the twelfth grades have the same type of desks, but different in sizes.

The Home Ecomomics room is also modernly equipped. In it has been placed an electric range, a refrigerator, four new Singer sewing machines with seat to accompany, tables, and a number of other items necessary for that department.

Walk into the Scott's Branch library room you find new, modern library tables with sturdy, well-built matching chairs. There are also magazine racks on which are kept the latest editions of some of the leading magazines. A new set of Britannica encyclopediae has been added to the shelves and a large number of novels for the high school students use in outside reading.

For the first time, typing has been added to the curriculum at Scott's Branch. This course is under the direction of Miss Grant a graduate of Allen University, Columbia. In her classroom has been placed fifteen typewriters on typing tables, each with a drawer for the pupils to keep their materials. The students in this class are doing nicely.

Along with all those improvements, the excavation has begun for a new school building of modern design will consist of eighteen or more class rooms. The estimated 261 thousand dollar structure is to be the "last word" in modernity. Thanks to the superintendent for his untiring efforts to get the construction of the building underway.

The faculty members are the same as last term with two others added. They are Miss Thelma Grant who has charge of the typing classes and Mrs. Bessie Wells, who teaches music. These two bring the faculty number to sixteen, including the principal, Mr. E.L. Wright, who is in his second year at Scott's Branch.

Summing up all this, there is a sure sign that Scott's Branch is soon to be one of the largest Rural schools in this section of the state.

We feel that the patrons of the community appreciate these improvements, and we know their children do.

(Mrs.) Amy Ragin, Reporting

THE VALUE OF A HIGH SCHOOL EDUCATION

Have you ever heard of a college graduate today who hasn't had a high school education? A high school education is the foundation for our future profession. No matter what profession you choose, you will find that your high school education is your first requirement. And as high school students, we should put every minute of our time in something worthwhile. If we should study more, and stop playing around, we would benefit ourselves more. If we could only talk with some of our great Negro leaders today, I believe they would tell us that a high school education is the foundation far anyone sucess.

So let us use our time wisely because today time is valuable and the world is calling for men and women who are skilled in their chosen professions. Fellow students let's get down to business.

Let's get our foundation while we are here in high school, so that when we get out in the world we won't have to work for little of nothing. With determination and faith, we will be able to accomplish our aims.

Joe Dallas Jr.
Senior

CLASS NEWS

First Grade A

First Grade A has an enrollment of 79 pupils. With a very large attendance. As a whole we are doing nicely.

We had stories and songs for Thanksgiving which the children enjoyed.

During our activity period the children like to draw, sing, and tell stories. The class is divided into three groups.
Reporter-------- Willie Scriggs
Teacher ---------- B.I. Wilson

[illegible] 1B

We the members of 1B are very proud to be in school. Now that we have gotten started we like school very much and are striving very hard to get our lessons. We have 76 students registered, with and enrollment of 65.

The first group of the class has finished book 1 and doing nicely with the second book.

Among our activities we like drawing the best. For Thanksgiving we drew many pictures, with the help of our teachers.

The class has been organized with Henry Solomen as president and Durant Richardson as reporter.

Raporter--------- Durant Richardson
Instructor ---------- Nancy U. June

SECOND GRADE

The second grade is progressing slowly, but steadily.
James Washington is president of the class. They enjoy the stories, and music that is produced on our record player. It is a part of our Friday's entertainment.

Our honor student for the second six weeks are
James Washington, Julia Hampton, Juinett Richardson, and Betty J. Witherspoon.
Julia Hampton, Sec. Reporting

THIRD GRADE

We are the third grade children of Scott's Branch High School, with the enrollment of 86.

We are trying hard to show improvement in our studies and on our art.

We are beginning to make pine straw mats. We are grouped in A, B, and C classes. The C class is making improvement, and the B class is doing much better.

We are now learning about Indians and people in far away countries.

Our reporters are:
Ethel Mae Brown
Phylis Henry
Mariah Coullette
Vivian Coullette
Instructor-Mrs. C.N. Gregory

FOURTH GRADE

We in the Fourth Grade are glad to get a chance to tell you some of the things going on in our classroom this year. First, we will tell you that we are a happy group of children. Happy for a number of reasons: We like each other we like our teacher, we like our books, and we like the various activities carried on in our room. Reading and writing, and arithmetic are fine, but we like our Geography best of all. Why? Because we're finding out what children in other parts of the world are doing. How they make a living, what they eat and how they eat. Some of the things that we have learned about children in other lands sound strange, but we suppose our way of life seems strange to them too.

Next time we'll tell you the names of those who are making high marks in the class.

So long until then.
The Fourth Grade Class

FIFTH GRADE

The majority of the Fifth Grade pupils are working hard to become one hundred percenters, in every respect during this school year.

Our slogan is:
Cooperation, with our teacher, class-mates, and all who are concerned about us.

Our Thanksgiving program was quite a success. Everyone seemed to have enjoyed it.

Teacher ---------- Mrs. M.D. Stokes
Reporter ---------- Gussie Mae Johnson

SIXTH GRADE

We the members of the Sixth Grade are making progress in our studies. In Science we are studying climate and weather conditions. On the walls of our class-room you will find drawings of thermometers, anemometers, barometers, maps showing the various clouds, also maps showing how the different air masses travel. Our art work is worth inspecting.

Now that we are entering the Christmas Season everyone's spirit is high, hoping to spend a happy season.

We hope to have a large honor roll for this six weeks. We would be happy to have you visit our class-room at any time.

Reporters:
Jennie Lee Lawson
Rose Lee Jones
Teacher M.C. King

EIGHTH GRADE

Our vacation ended with the opening of school. All hearts were not happy over the idea.

Upon entering, we found the same faces with a number of additions.

Class officers for school year's 51-52:

President-Rubye Lee Smith
Vice Pres.-Lou Nancy Graymon
Secretary-Celestine Parson
Asst. Sec.-Bernice McKnight
Treasurer-Frances Owens
Xmas Saving Treas.-Helen Brailsford

We are wishing each and everyone a most successful year.

Reporters:
Annie M. Oliver
James King

FRESHMAN CLASS

This is our first year of high school and we hope that it will be a happy and successful year. We are adjusting ourselves gradually to the new rules that govern us as high school pupils.

We are studying hard to get our lessons, and are trying still harder to please all of our teachers by good conduct, and by showing good scholastic ability.

Our officers are the following:
President-Elene Hagin
Vice Pres.-Beatrice Brown
Secretary-Jervine Georgia
Asst. Sec.-Margaree Washington
Treasurer-Anna L. Brailsford
Reporter:Rubye Johnson
Advisor:Miss G.J. Brown

SOPHOMORE NEWS

The Sophomore Class of Scott's High School are indeed proud of the officers that we have elected for the school year.

They are:
President-Louis Oliver
Vice Pres.-Ida M. Lawson
Asst. Sec.-Lucile Canty
Treasurer-Gussie L. Graymon
Chaplin-Allen Brailsford
Reporter-Effie M. Baxtor

Each of these officers are trying to carry out their duty to the best of their ability. We will co-operate with the Student Council to make our school the best. Because we know that the Student Council is the most effective means of leadership in our school. The Tenth Grade sponsor is Miss Regin. She is also the Home Economics sponsor.

We are wishing the entire student body and faculty a prosperous year.

Reporter-Effie M. Baxter

JUNIOR CLASS NEWS

The following officers we elected Sept. 18, 1951-52.
President-Willie Edward Magwood
Vice Pres.-Myrtle Richburg
Secretary--Lillie Eva Johnson
Asst. Sec.-Mamie Lue Singletary
Treasurer--Lulcatha Singleton
Business Manager-Daniel Charles
Helper----Osclose Doughty
Reporter--Roosevelt Postell

We the members of the JuniorClass are trying to raise some money to complete the many projects we have for the year. One of our projects so far in raising this money is selling candy. We still have some candy left, and we would like mery much for you to help us sell our it.

Roosevelt Postell
(A Junior)

SENIOR CLASS NEWS

We, the Seniors of 1951 and '52, along with our advisor, Mr.A.A. Fuller, are striving very hard to make our good, better and our better, best. At the beginning of school, we started out in a very high school spirit in both lesson and business and we still have that spirit.

We elected our class officers as following:
President-Willie J. Boyd
Vice Pres.-Joe Dallas
Secretary--Dorothy M. Oliver
Asst. Sec.-Willene A.Regin
Treasurer--Nancy Johnson
Business Manager-Vera Brown

On Wednesday, October 31, 1951, we gave a Hallowoen Dance featuring Ray Adams and his Band which was the first and last dance given at the school.

Now we are working very hard on our class song, motto and our class play which we have already order and received. We are doing all we can to make this a successful graduating class of 1951 and '52.

Dorothy M. Oliver

"A MESSAGE FROM YOUR N.H.A. ORGANIZATION"

Greetings To Everyone!
This year must be an outstanding one. We are putting forth an effort to make it so. Having paid our State dues in full, and plan to attend our district convention and our State convention, and by all means attend camp next year.

We have made progress in the past two years, having a New Homemakers State President, Myrtle Richburg, who is outstanding in all activities. It is an honor to have one so qualified for this position. We also have a District officer, who is Vera Brown, also an outstanding student

The number of chapters attending the N.H.A. and N.F.A. joint program at the State Fair is defined as a sign of interest in the association.

N.H.A. Reporters
Scott's B. School
Summerton, S.C.

The officers are: Treas.-Ida Lawson
President-Myrtle Richburg Cha.-O.B.
V. Pres.--Rachel Ragin Reporter-W.R.
Secretary-Vera Brown Advisor-Miss C.Rag

POET'S CORNER

COURTESY

Courtesy is valuable in many ways.
Almost everyone had it in the olden days
Courtesy means politeness on which we must rely-
It brings joy to us and others as the years go by.
Courtesy begins at home and not the world outside
If truly courteousat home, courtesy will always abide.
A greeting is such a little thing,
To say the following will always cling:
"Say goodbye" or "how- do- you- do"
What's the difference between the two?
All doors are open to courtesy
So why not learn it now
If you don't you'll soon be sorry:
Try to learn it possibly somehow
There is always time for courtesy
Even though life is short.
If you don't like remarks said about you,
Take it lightly- be a good sport.
A must is having manners in public places;
please don't try to turn down these aces.

Myrtle Richburg
(Junior)

A POEM I LIKE TO THINK ABOUT AND I QUOTE:

THE HOUSE BY THE SIDE OF THE ROAD

By- Walter Foss

There are hermit souls that live withdrawn,
In the plare of their self content,
There are souls like stars, that dwell apart in a fellowship firmament.
There are pioneer souls that blaze their paths, where highways never ran.
But let me live by the side of the road, and be a friend to man.

Let me live in a house by the side of the road, There the races of men go by
The men who are good and the men who are bad.
as good and as bad as I.
I would not sit in the scrooner's seat,
Or hurl the cynic's ban,
Let me live in the house by the side of road, And be a friend to man.

I see from my house by the side of the road,
By the side of the highway of life
The men who press with ardor of hope
The men who are faint with strife
But, I turn not away from the smiles, nor their tears.
Both parts of an infinite plan;
Let me live in my house by the side of the road,
And be a friend to man.

Juanita Huggins

Money

Workers earn it, spendthrifts burn it
Bankers lend it, women spend it
Forgers fake it, taxers take it
Dying leave it, heirs recieve it
Thriftysave it, misers crave it
Robber seize it, rich increase it
Gamblers lose it, Icould use it.

To thine own self be true.

Do not give to receive,
Give to help

When I came to school that morning, I knew that something was wrong,
The subjects were very tiresome, the Classes were very long.

At first I meet the principal, and he Wasn't so gay.
Something told me at that moment, this Was to be an unpleasant day.

My classmates seemed to bother me so,
There must have been some thing, they Wanted to know,
But I snubbed them all and asked Them to go.

I couldn't wait until 2:15, so that I could get away,
Impatient, I lingered around, there Was something, I wanted to say,
Soon it all in a rush, this Was my most unpleasant Day.

Vera Brown

LET'S LAUGH A WHILE

JOE--" What's the hurry? What are you running for?
HARRY--I'm trying to stop a fight.
JOE----Who's fighting?
HARRY--Me and another fellow.

*****

TONI---Mother, can you write your name with your eyes shut?
MOTHER-I think so, Toni.
TONI---All right, then mother let's see you shut them and sign this report card.

*****

CARL---Did you ever hear the story about the three eggs?
JIMMIE-No, what?
CARL---Too bad.

*****

VERA---What do you think of our little town?
TONI---It's the first cemetary I've ever seen with traffic lights.

*****

ELAINE-Beatrice, why do you walk so slow?
BEA----Because its winter.
ELAINE-That's no reason.
BEA----Yes it is too. I don't want to catch a cold.

*****

VERA---Toni, what does a cat walking on the beach remind you of?
TONI---Why it reminds me of Christmas.
VERA---Why?
TONI---He has sandy claws.

*****

NANCY--Since Christmas is almost here, I guess the boys will stop dating us, huh Dot?
DOT----Why John was at my house last night
NANCY--Well, you'll soon see the change. You must have forgotten, Christmas means gifts.

*****

WILLENE-Why do Egyptian women wear veils over their faces?
CORYNE-They want to get a husband.

*****

JOE----Willie I'm so sorry you missed the train but your friends made it.
WILLIE-It's them you should be sorry for. They were seeing me to the station I'm going away.

BUY CHRISTMAS SEALS

C.L.J. said don't let W.B. eat them up at Christmas time.
F.M.R. said she can get who she want, so don't worry about the boys.
O.D. is sad over her friend J.L.D. who has gone to N.Y.C.C
C.H. said don't let C.W. worry J.G. when he comes home for Christmas.
M.L.S. and L.S. are happy as ever.
L.M.R. and T.G. Jr are on the ball.
Wonder what is happening between I.W.L. D.H. and M.F.Jr. are getting along terrible.
I wonder what D.M.O.and J.G. will do when T.C. comes home.
F.R. and E.J. are getting along fine.
J.G. is cutting hard; I wonder what she will do when G.W.C. comes home.
R.C. and A.F. are really on the ball.
V.B. was cutting with R.R. but there will be some changes when L.W. comes from Korea.
N.J. was cutting hard with J.D. but it seems as if he disappeared.
I.L. and C.E.R. is really on the ball
L.M.R. is cutting out on C.L.W.
H.M.B. and F.L. are getting along fine, she is receiving mail from H.S.

So long until the next issue
"THE SNIPER"

READY TO WEAR

SHOES AND CLOTHING

N. LEVINE'S

FOR THE WHOLE FAMILY

PAY LESS

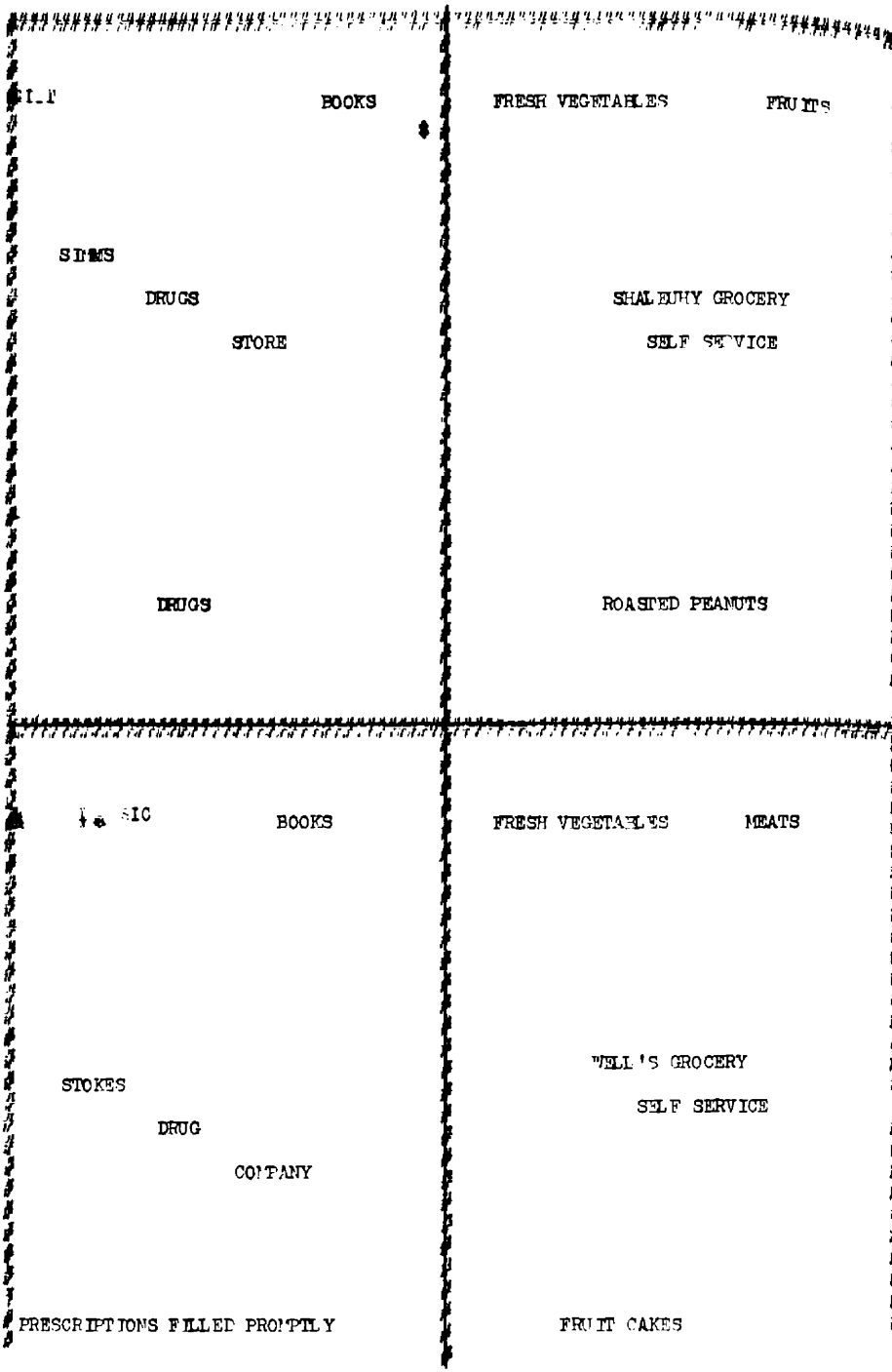
MEATS

GAS

SMITH'S GROCERY, CAFE & FILLING STATION

GROCERIES

QUICK RELIABLE SERVICE


I_F
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FRESH VEGETABLES MEATS

WELL'S GROCERY

SELF SERVICE

FRUITS CAKES

FRESH FRUITS VEGETABLES

COSKEY'S GROCERY

NUTS CAKES COOKES

MEATS FRUITS

BATEMAN'S GROCERY

FANCY GROCERIES VEGETABLES

FRUITS GROCERIES

CREIGHTON'S GROCERY

NUTS

[fol. 488] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TRANSMITTING REPORT TO UNITED STATES SUPREME COURT—Filed January 8, 1952

In the above entitled cause, the defendants having on December 20, 1951, filed a report as required by the decree of this Court of June 21, 1950, setting forth what has been done to carry out the mandate of said decree; and it appearing that the plaintiffs have appealed from said decree to the Supreme Court of the United States and that the cause is now pending in that court:

It is now ordered that the said report be received and filed by the Clerk of this Court and that the said Clerk transmit a certified copy thereof together with copy of this order to the said Supreme Court and that this Court withhold further action thereon until the Supreme Court has acted on the appeal and remanded the case.

This the 8th day of January 1952.

(S.) John J. Parker, Chief Judge, Fourth Circuit;
George Bell Timmerman, U. S. District Judge,
Eastern District of South Carolina.

In my opinion, the report and this decree have no place in this case and, therefore, I do not join herein.

January 8, 1952.

(S.) J. Waties Waring, United States District Judge.

A true copy. Attest. Ernest L. Allen, Clerk of U. S. District Court, East. Dist. So. Carolina.

[fol. 489] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 273

HARRY BRIGGS, JR., ET AL., Appellants,

v.

R. W. ELLIOTT, ET AL.

On Appeal from the United States District Court for the Eastern District of South Carolina

OPINION—Filed February 7, 1952

(January 28, 1952)

Per CURIAM:

Appellant Negro school children brought this action in the Federal District Court to enjoin appellee school officials from making any distinctions based upon race or color in providing educational facilities for School District 22, Clarendon County, South Carolina. As the basis for their complaint, appellants alleged that equal facilities are not provided for Negro pupils and that those constitutional and statutory provisions of South Carolina requiring separate schools "for children of the white and colored races" * are invalid under the Fourteenth Amendment. At the trial before a court of three judges, appellees conceded that the school facilities provided for Negro students "are not substantially equal to those afforded in the District for white pupils."

The District Court held, one judge dissenting, that the challenged constitutional and statutory provisions were not of themselves violative of the Fourteenth Amendment. The court below also found that the educational facilities afforded by appellees for Negro pupils are not equal to those provided for white children. The District Court did not issue an injunction abolishing racial distinctions as

* So. Car. Const., Art. XI, § 7; S. C. Code, 1942, § 5377.

[fol. 490] prayed by appellants, but did order appellees to proceed at once to furnish educational facilities for Negroes equal to those furnished white pupils. In its decree, entered June 21, 1951, the District Court ordered that appellees report to that court within six months as to action taken by them to carry out the court's order. 98 F. Supp. 529.

Dissatisfied with the relief granted by the District Court, appellants brought a timely appeal directly to this Court under 28 U. S. C. (Supp. IV) § 1253. After the appeal was docketed but before its consideration by this Court, appellees filed in the court below their report as ordered.

The District Court has not given its views on this report, having entered an order stating that it will withhold further action thereon while the cause is pending in this Court on appeal. Prior to our consideration of the questions raised on this appeal, we should have the benefit of the views of the District Court upon the additional facts brought to the attention of that court in the report which it ordered. The District Court should also be afforded the opportunity to take whatever action it may deem appropriate in light of that report. In order that this may be done, we vacate the judgment of the District Court and remand the case to that court for further proceedings. Another judgment, entered at the conclusion of those proceedings, may provide the basis for any further appeals to this Court.

It is so ordered.

Mr. Justice Black and Mr. Justice Douglas dissent to vacation of the judgment of the District Court on the grounds stated. They believe that the additional facts contained in the report to the District Court are wholly irrelevant to the constitutional questions presented by the appeal to this Court, and that we should note jurisdiction and set the case down for argument.

[fol. 491] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR JUDGMENT—Filed February 7, 1952

To the Honorable, the Judges of the United States District Court for the Eastern District of South Carolina:

Come now the plaintiffs, by their attorneys, and move the Court:

A. For an early hearing and final disposition of the issues of this case, and

B. For final judgment for the plaintiffs granting the relief as prayed for in the complaint.

As grounds therefore, movants represent:

1. At the trial on the merits, the defendants amended their answer by conceding that the school facilities provided for Negro pupils were "not substantially equal to those afforded in the District for white pupils."

2. The "Report of Defendants Pursuant to Decree Dated June 21, 1951" heretofore filed shows that the physical facilities for Negro pupils are still unequal to those for white pupils.

3. This Report by defendants prays that a further order be issued "for the filing of an additional Report or Reports by them."

[fol. 492] 4. During the final argument of counsel for the defendants in the original trial, Chief Judge Parker stated:

> "You have come into court here and admitted that facilities are not equal, and the evidence shows it beyond all peradventure. Now, it seems to me that it's not for the Court to wetnurse the schools. Assuming that segregation is not abolished by the decree, it would be proper for this Court to direct an equalization of educational facilities. And we wouldn't tell you how to do it. We wouldn't attempt to supervise the

administration of the schools; all we can do is to tell you to do what the constitution enjoins upon you."

5. The Defendant's Report concerns itself only with improvement with respect to physical facilities of schools set aside for Negroes. The Report shows absolutely no progress in removing the inequalities resulting from enforced segregation which the undisputed testimony of expert witnesses showed existed in the public schools of Clarendon County. Plaintiffs presented uncontroverted evidence at the trial which conclusively demonstrated that equal educational opportunities could not be obtained by plaintiffs and other Negro pupils, even assuming a situation of comparability in physical facilities, where Negro pupils are required to attend separate schools solely because of race and color. The undisputed testimony disclosed that the state's requirement that Negro children attend segregated schools caused injury to them in the form of permanent psychological damage, affected them with a feeling of inferiority and impaired their motivation to learn. It was further demonstrated that these injuries would continue as long as the schools remained segregated. This report filed by the defendants leaves this testimony undisputed.

6. It is, therefore, clear that plaintiffs' rights guaranteed by the Fourteenth Amendment are being violated and remain unprotected. The injury is irreparable. The only available relief is by injunction against the continued denial [fol. 493] of their right to equality which is brought about by compulsory racial segregation required by the Constitution and laws of South Carolina. (So. Car. Const. Art. XI, Sec. 7; S. C. Code, 1942, Sec. 5377.)

7. Plaintiffs can get no immediate relief except by the issuance of a final judgment of this Court enjoining the enforcement of the policy of racial segregation by defendants which excludes Negro pupils from the only schools where they can obtain an education equal to that offered white children.

8. Plaintiffs can get no permanent relief unless this Court declares that the provisions of the Constitution and laws of South Carolina requiring racial segregation in public schools are unconstitutional insofar as they are enforced by the defendant herein to exclude Negro pupils from the only

schools where they can obtain an education equal to that offered white children.

Respectfully submitted, Harold R. Boulware, 1109½ Washington Street, Columbia 20, South Carolina; Spottswood W. Robinson, III, 623 North Third Street, Richmond, Virginia; (S.) Robert L. Carter, Thurgood Marshall, 20 West 40th Street, New York 18, New York; Attorneys for Plaintiffs.

February 5, 1952.

[fol. 494] Certificate of service (omitted in printing).

[fol. 495] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING DATE OF SECOND HEARING—Filed February 14, 1952

In the above entitled cause it appearing that defendants have filed a report pursuant to the decree heretofore entered and that the Supreme Court has remanded the case in order that this Court may give consideration to the report and that plaintiffs have filed a motion for an early hearing of the case and for judgment; and it further appearing that it will be more convenient to all parties concerned that the hearing of the case be had at Columbia, S. C., instead of at Charleston, and counsel having consented to the hearings at Columbia:

Now, therefore, it is ordered that a hearing be had on the report of defendants, filed as aforesaid, and upon the motion of plaintiffs, at Columbia, S. C. on Friday, February 29, 1952, at 10:30 o'clock in the morning.

It is further ordered that the trustees and officials of new school district number 1 referred to in the report be given notice of the hearing and that they show cause at that time

why they should not be made parties to the suit and bound by all orders and decrees that may be entered therein.

Done at Charlotte, N. C., this February 13, 1952.

(S.) John J. Parker, Chief Judge, Fourth Circuit.

A true copy. Attest.

Ernest L. Allen, Clerk of U. S. District Court, East. Dist. So. Carolina.

[fol. 496] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONTINUING HEARING—Filed February 15, 1952

In the above entitled cause, upon application of plaintiffs, it is ordered that the hearing heretofore set for February 29, 1952, be continued to March 3, 1952, and be held at Columbia, S. C. on the latter date at 10:30 o'clock in the morning.

Done at Charlotte, N. C., this February 14, 1952.

(S.) John J. Parker, Chief Judge, Fourth Circuit.

A true copy. Attest.

Ernest L. Allen, Clerk of U. S. District Court East. Dist. So. Carolina.

[fols. 497-499] CLERK'S NOTE

Judge John P. Parker's letter of February 9, 1952 and reply of Judge J. Waties Waring of February 11, 1952 are included as a part of this record by direction of the Court.

Ernest L. Allen, Clerk.

[fol. 500] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION THAT R. W. ELLIOTT, ET AL., BE MADE PARTIES TO THE SUIT, ETC.—Filed March 3, 1952.

Come now the respondents R. W. Elliott, Chairman, and J. D. Carson, E. M. Touchberry, W. A. Brunson and A. E. Brock, Sr., constituting the Board of Trustees of School District No. 1, Clarendon County, S. C., and H. B. Betchman, Superintendent of School District No. 1, and as and for their return to the order of this Court dated February 13, 1952, respectfully show as follows:

1. That the defendants R. W. Elliott and J. C. Carson were designated in this action as members of the Board of Trustees of School District No. 22 of Clarendon County, S. C., the defendant Elliott also being designated as Chairman of said Board, and that the defendant H. B. Betchman was designated in this suit as Superintendent of School District No. 22.

2. That on October 16, 1951, the State Educational Finance Commission of South Carolina approved the order [fol. 501] of the County Board of Education of Clarendon County wherein and whereby former School District No. 22 of Clarendon County was consolidated with six other school districts of said County into a single school district known as School District No. 1, Clarendon County, S. C., such consolidation having been ordered by the said County Board of Education under Article III, Sections 6 and 7, of Act No. 379 of the Acts of the General Assembly of South Carolina of 1951.

3. That the defendants R. W. Elliott and J. D. Carson and also the respondents E. M. Touchberry, W. A. Brunson and A. E. Brock, Sr., were appointed School Trustees of the said School District No. 1 of Clarendon County in and by the said order, with R. W. Elliott as Chairman, and that the defendant H. B. Betchman is now the Superintendent of Schools of the said School District No. 1 of Clarendon County.

5. That the respondents hereby severally consent to an order making them parties to the suit in their respective capacities as trustees and officials of School District No. 1, Clarendon County, S. C., and providing that they be bound by all orders and decrees that have been or may hereafter be entered herein.

Wherefore, The respondents pray that the Court do enter an order making the said R. W. Elliott, Chairman, J. D. Carson, E. M. Touchberry, W. A. Brunson, and A. E. Brock, Sr., constituting the Board of Trustees of School District No. 1, Clarendon County, S. C., and H. B. Betchman, Superintendent of School District No. 1, parties to this suit in their respective capacities as such, and providing that they be bound by all orders and decrees that have been or may hereafter be entered herein.

R. W. Elliott, A. E. Brock, Sr., J. D. Carson, [fol. 502] W. A. Brunson, E. M. Touchberry, H. B. Betchman. S. E. Rogers, Summerton, S. C.; Robert McC. Figg, Jr., 18 Broad Street, Charleston, S. C., Attorneys for Respondents.

[fol. 503] IN UNITED STATES DISTRICT COURT

[Title omitted]

REPORT OF THE DEFENDANTS SUPPLEMENTARY TO THE REPORT FILED DECEMBER 20, 1951—Filed March 3, 1952

Come now the defendants and beg leave to file this Report which is supplementary to the Report filed herein on December 20, 1951, pursuant to Decree dated June 21, 1951, in which Supplementary Report they would respectfully show unto this Honorable Court as follows:

1. That on December 20, 1951, pursuant to decree dated June 21, 1951, the defendants made report to this Court as to the action taken by them to carry out the said decree in which they were ordered to proceed at once to furnish to plaintiffs and other Negro pupils of School District No. 22 in Clarendon County, South Carolina, educational facilities,

equipment, curricula and opportunities equal to those furnished white pupils in the said School District.

2. That in said Report it was shown that in compliance with the provisions of Act No. 379 of the Acts of the General Assembly of South Carolina of 1951 and with the criteria promulgated by the State Educational Finance Commission thereunder, and in order to qualify for State financial aid under said Act for the construction of school facilities, the aforesaid School District No. 22 was by order of the County [fol. 504] Board of Education of Clarendon County consolidated with six other school districts of the county into a single school district known as School District No. 1 of said county, which order of consolidation was duly approved by the State Educational Finance Commission on October 16, 1951; and that the school trustees and superintendent of said School District No. 1 have made return to the order of this Court dated February 13, 1952, consenting that they be made parties in such capacities to this suit and be bound by the orders and decrees herein.

3. That in said Report it was also shown that the school trustees of School District No. 1 had prepared, approved and adopted a school house construction program, based upon a comprehensive survey of the educational needs of the district; had already let the construction contract for the complete remodelling of the Scott's Branch Elementary School for Negro pupils and the construction of the Scott's Branch High School for Negro high school pupils; had caused plans to be prepared for the construction of the two other elementary schools for Negro pupils recommended in said survey and included in said plan and program; had made application for priority for the critical materials required in such construction; had instituted school bus transportation for all pupils in the district (no such transportation had theretofore been furnished to any pupils of either race in School District No. 22); had equalized all teachers' salaries in the district by local supplements; and had brought about complete equalization of curricula in the white and Negro schools in the district.

4. That in said Report it was also shown that, pending occupancy of the new and remodelled schoolhouses aforesaid, the school district had expended the sum of $21,522.81

for school furniture and equipment in the Negro schools and for improvements thereto, as a result of which efficient education is being afforded to the pupils in the construction interval, and the existing situation as to school facilities is no different from that which inevitably occurs whenever major schoolhouse construction and remodelling is engaged in by a school system.

5. That in said Report the enrolled school population of the consolidated district, School District No. 1, was given on [fol. 505] the basis of the then available enrollment figures as 2,568 Negro school children and 298 white school children, whereas the current figures as of February 25, 1952, are 2,799 enrolled Negro school children and 295 enrolled white school children, with average daily attendance of Negro school children of 2,003 and average daily attendance of white school children of 269. That the 1952 enrolled Negro high school pupils is 360, 200 of whom are enrolled in Scott's Branch School, 109 in St. Paul School, 30 in Maggie Nelson School, and 21 in Felton Rosenwald School. That the figure of 197 enrolled Negro high school pupils given in said Report referred only to those attending the Scott's Branch School.

6. That since the filing of said Report, the plans for the two new Negro elementary schools recommended in the survey and included in the district's plan and program, one in the St. Paul area to be known as the St. Paul elementary School and the other in the Rogers area to be known as the Spring Hill Elementary School, have been completed and approved by the State Educational Finance Commission; the district's application for priority in the allotment of critical materials required in the construction of these schools has been granted by the appropriate Federal agency; and the district has advertised in the press for bids on the construction contracts to build said schoolhouses.

7. That since the filing of said Report, the school trustees of School District No. 1 recommended in writing to the General Assembly the enactment of legislation empowering them and the Treasurer of Clarendon County to issue and sell bonds of the district in a sum not exceeding the district's debt limitation (which, as mentioned in said Report,

is now, as a result of a 1951 constitutional amendment, 30% of the district's assessed valuation instead of the 8% limitation generally applicable under the Constitutional provision in reference thereto in the State Constitution); that such enabling legislation was introduced in the form shown by House Bill No. 2065, a printed copy of which is hereto attached as a part hereof; and that such legislation was duly enacted in said form and was signed by His Excellency, the Honorable James F. Byrnes, Governor of South Carolina, on March 1, 1952, as shown by copy of "An Act to Provide for the Issuance of Bonds of School [fol. 506] District 1 in Clarendon County in a Sum not exceeding the Constitutional Limit for School Purposes and to Provide for the Payment of Same," duly certified by the Secretary of State of South Carolina, which certified copy is herewith filed.

8. That in the action which has been and is being taken by the defendants to carry out the order of this Court dated June 21, 1951, they have utilized to the maximum the financial resources available to them under said Act No. 379 of the Acts of 1951, which made available for the first time State aid for constructing school facilities; that under said Act School District No. 1 has had building projects for Negro schools approved in the total amount of $516,960.00, as shown by letter of E. R. Crow, Director of the State Educational Finance Commission, to Governor Byrnes, dated February 15, 1952, which is hereto attached as a part hereof, and which also shows the building projects approved under said Act in a number of other counties of the State in the comparatively short time since the organization of the State Educational Finance Commission and the court decisions upholding the validity of the legislation, there being projects for Negro school construction totalling $5,515,619.15 (73.4% of the total) and projects for white school construction totalling $1,992,-018.00 (26.6% of the total) approved and under way to date.

9. That the defendants respectfully show that with the State aid approved for School District No. 1, as aforesaid, and the district's authority to borrow on its faith and credit under the 1952 Act aforesaid, they are confident that they have the financial resources to carry through the

construction plan and program which they have adopted and which they are carrying out as expeditiously as possible; and that when the said plan and program has been fully carried out they verily believe that equal educational facilities, equipment, curricula, and opportunities will exist for all school children in the district alike; and that steps have been taken by them to see that equal education will be afforded to all school children in the district in existing physical facilities during the completion of the district's construction and remodelling program, so that conditions in said period will be no different from those [fol. 507] always existing in any school system during a period of substantial new construction and remodelling.

10. That the defendants are acting in good faith not only to afford the equality directed to be furnished by them in the decree of June 21, 1951, but also to build up the system of public schools in said School District No. 1 and develop and expand the educational opportunities and advantages enjoyed by the school children of both races therein on an equal basis; and as evidence of their good faith they stand ready to file such additional Reports in this cause as the Court may direct, showing the completion of their action in carrying out the said decree.

Respectfully submitted, S. E. Rogers, Summerton, S. C. Robert McC. Figg, Jr., 18 Broad Street, Charleston, S. C. Attorneys for Defendants.

Duly sworn to by R. M. Elliott. Jurat omitted in printing.

[fol. 507a] Calendar No. H. 2065

Introduced by Clarendon County Delegation
Printer's No. 444-H. Read the first time February 22, 1952.

A BILL

To Provide for the Issuance of Bonds of School District No. 1 in Clarendon County in a Sum Not Exceeding the Constitutional Limit for School Purposes and to Provide for the Payment of Same.

Be in enacted by the General Assembly of the State of South Carolina:

SECTION 1. The Board of Trustees of School District No. 1 and the Treasurer of Clarendon County are authorized and empowered to issue and sell serial coupon bonds of the school district in a sum not exceeding the constitutional limit. The proceeds of the bonds shall be used for constructing and equipping school buildings and facilities used in connection with schools, including the purchase of sites for such buildings or facilities. The bonds shall be in such denominations, and shall bear such interest, not exceeding four per cent per annum, as the board of trustees and the treasurer may prescribe. They shall be payable at the office of the Clarendon County Treasurer from time to time over a period not exceeding twenty years. The bonds may be redeemed on call after ten years from the date of same. The bonds shall be sold at public sale after an advertisement for bids shall have been published in a paper of general circulation within the county at least twice fifteen days prior to the date of the opening of bids.

SEC. 2. The bonds shall be signed by the treasurer and the Board of Trustees of School District No. 1 in Clarendon County. The coupons attached to the bonds need only be signed by the county treasurer and the chairman of the board of trustees, and their lithographed or engraved signatures thereon shall be a sufficient signing of same.

SEC. 3. The bonds shall be exempt from the payment of all county, state, school and municipal taxes.

SEC. 4. The full faith, credit, and taxing power of the school district are hereby irrevocably pledged for the payment of the bonds and all interest thereon, and the Auditor of Clarendon County shall levy an annual tax upon all the taxable property in the school district sufficient to pay the bonds and interest as they may mature, and the treasurer of the county shall collect the taxes so levied as other taxes are collected.

SEC. 5. All acts or parts of acts inconsistent herewith are hereby repealed.

SEC. 6. This act shall take effect upon its approval by the Governor.

[fol. 507B]

STATE OF SOUTH CAROLINA
STATE EDUCATIONAL FINANCE COMMISSION

Commission
Governor James F. Byrnes
Chairman
Jesse T. Anderson
L. P. Hollis
Dewey H. Johnson
J. C. Long
D. W. Robinson
Elliott White Springs

(State Seal)

COLUMBIA, S. C.

February 15, 1952

E. R. Crow
Director

P. C. Smith
Assistant
Director

Honorable James F. Byrnes
Governor of South Carolina
Columbia, S. C.

Dear Governor:

To date the State Educational Finance Commission has given its approval to building projects in the counties and school districts listed below:

Building Projects Approved

	Negro Schools	White Schools	Total
Clarendon County			
Summerton School District No. 1	$ 516,960.00	$	$ 516,960.00
Jasper County			
Hardeeville School District No. 4	75,914.00	.....	75,914.00
Richland County			
Columbia School District No. 1	340,000.00	227,135.00	567,135.00
Sumter County			
Sumter School District No. 17	732,802.00	161,646.00	894,448 00
Barnwell County			
Barnwell School District No. 1	136,705.15	77,040.00	213,745.15
Darlington County			
Darlington County School District	706,668.00	83,000.00	789,668.00
Charleston County			
St. James School District No. 1	270,240.00	.....	270,240.00
Moultrie School District No. 2	215,000.00	.....	215,000.00
James Island School District No. 3	108,280.00	185,000.00	293,280.00
Cooper River School District No. 4	449,000.00	.....	449,000.00
St. John's School District No. 9	296,800.00	20,000.00	316,800.00
St. Andrews School District No. 10	30,000.00	90,140.00	120,140.00
Charleston School District No. 20	800,000.00	650,000.00	1,450,000.00
St. Paul's School District No. 23	512,640.00	.....	512,640.00
[fol. 507C–508]			
Spartanburg County			
Fairforest District No. 6	324,610.00	.....	324,610.00
Aiken County			
Aiken County School District	.....	498,057.00	498,057.00
	$5,515,619.15	$1,992,018.00	$7,507,637.15
Percentage	73.4	26.6	100.00

From the above table it will be seen that approved projects for Negro schools represent 73.4 per cent of the total. The percentage allocated to Negro projects would be greater but for the item for Aiken County. Although the approval in this county was for white school projects, it is expected that additional enrollment, due to the Savannah River Project, will enable the county to repay the loan without affecting the normal use of money to improve Negro school facilities. If this item had not been included in the calculation the percentage of money allocated to Negro schools would be 78.7.

Respectfully and sincerely yours,
(signed) E. R. Crow
E. R. Crow, Director

ERC/kh

[fol. 509] IN UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF HEARING

At a special term of court, a hearing in the above cause was had at Columbia, South Carolina, in the United States Courtroom on March 3, 1952, at 10:30 o'clock a. m.

[fol. 510] Robert McC. Figg., Jr., Esq., and S. E. Rogers, Esq., for the Defendants.

Judge Parker: This is a Special United States District Court of Three Judges convened for the hearing of the case of Briggs and others against Elliott and others. As originally convened, the Court consisted of Judge Timmerman, Judge Waring, and myself. A decree was entered after a hearing in Charleston. An appeal was taken to the Supreme Court of the United States. The Supreme Court of the United States remanded the case in order that we might give consideration to a report made by the defendants after the entry of the decree. In the meantime, Judge Waring had reached retirement age and had taken retirement. Inasmuch as he had been a member of the original Court, I thought it appropriate that he be designated to sit in the further hearing of the case. On February 9, after I had received notice of the motion which is pending here and the Mandate from the Supreme Court had come down, I wrote Judge Waring, stating to him that I should designate him to sit in the further hearing of the case if he was willing to do so and asked that he advise me whether he was willing to accept the designation. Under date of February 11, I received from Judge Waring a letter stating that he was not willing to accept a designation to sit in [fol. 511] the further hearing of the case or take any part in it. It thereupon became necessary that I designate another Judge to sit in the hearing of the case instead of Judge Waring, and I have designated Judge Armistead M. Dobie, one of the Circuit Judges of the Circuit, who has had wide experience in cases of this sort, to sit in the further hearing of the case with Judge Timmerman and myself. I enter the Order designating Judge Dobie, and here

are copies which you may send to the other members of the Court and to the Clerk of the Circuit Court at Richmond. Mr. Clerk, here is a copy of the letter that I wrote to Judge Waring, and here is a copy of Judge Waring's letter to me. Let them be made a part of the record in the case, and let copies be furnished to the other Judges.

Are you ready to proceed with the further proceeding of the case for the plaintiffs?

Mr. Marshall: Plaintiffs are ready, sir.

Judge Parker: Are defendants ready?

Mr. Figg: Defendants are ready, your Honor, and I think at this point I should say that in your Honor's order convening the special court for this hearing, a rule to show cause was contained, addressed to the Trustees of School District No. 1 of Clarendon County, which by consolidation was created out of School District No. 22 and six other districts of that County under the legislation of 1951. And we have filed a return signed by the five Trustees of School [fol. 512] District No. 1, two of whom are party-defendants in their capacity as Trustees of School District No. 22, and the other three of whom were appointed under the 1951 Act to be Trustees of School District No. 1, along with the two members of School District No. 22, the surviving members. Mr. Kennedy has died since the hearing in Charleston. In that Return they state the facts of the consolidation and the fact that they are now the Trustees of the School District which contains the schools in question here and that they consent to be made parties to the suit in their respective capacities as Trustees. And Mr. Betchman is Superintendent of School District No. 1. They consent to an order making them parties and to be bound by all orders and decrees that have been or may hereafter be entered herein. That Return has been filed with the Clerk and I presume the Court has copies of it.

Judge Parker: The Clerk handed us copies just before we came on the Bench. What do you say for the plaintiffs?

Mr. Marshall: No objection, sir.

Judge Parker: All right. An order will be entered making them parties to the cause.

Mr. Figg: If your Honors please, under the decree of the Court dated June 21, 1951, the defendants filed a report

with the Clerk of the Court, which was directed to be made [fol. 513] by them within six months from the date of that decree. That report was filed on December 20 and gave information as to the action which had been taken by the defendants to carry out the Court's decree. I have here a report supplementary to that report which shows what action has been taken since December 20, 1951, which I would, on behalf of defendants, ask leave to file in the cause. We do not have any order requiring us to file it and for that reason I had not delivered it to the Clerk, but ask the Court for authority to file it.

Judge Parker: I think it appropriate to file it. Do you see any objection to that?

Mr. Marshall: We have no objection, sir.

Judge Parker: All right.

Mr. Figg: I have already given counsel copies of this return and of this Supplementary Report so that they have been able to consider it. If the Court desires, I will summarize the Supplementary Report. Your Honors, I know, are familiar with the December Report.

Judge Parker: We are familiar with the December Report, yes.

Mr. Figg: In the Supplementary Report there is a brief summary of the December Report, showing what had been done up to that time, which is in Paragraph 3 of this Supplementary Report.

[fol. 514] (Reading) "That in said Report it was also shown that the school trustees of School District No. 1 had prepared, approved and adopted a school house construction program, based upon a comprehensive survey of the educational needs of the district; had already let the construction contract for the complete remodelling of the Scott's Branch Elementary School for Negro pupils and the construction of the Scott's Branch High School for Negro high school pupils; had caused plans to be prepared for the construction of the two other elementary schools for Negro pupils recommended in said survey and included in said plan and program; had made application for priority for the critical materials required in such construction; had instituted school bus transportation for all pupils in the district (no such transportation had theretofore been furnished

to any pupils of either race in School District No. 22); had equalized all teachers' salaries in the district by local supplements; and had brought about complete equalization of curricula in the white and Negro schools in the district.

"That in said Report it was also shown that, pending occupancy of the new and remodelled schoolhouses aforesaid, the school district had expended the sum of $21,522.81 for school furniture and equipment in the Negro schools and for improvements thereto, as a result of which efficient education is being afforded to the pupils in the construction [fol. 515] interval, and the existing situation as to school facilities is no different from that which inevitably occurs whenever major schoolhouse construction and remodelling is engaged in by a school system.

"That in said Report the enrolled school population of the consolidated district, School District No. 1, was given on the basis of the then available enrollment figures as 2,568 Negro school children and 298 white school children, whereas the current figures as of February 25, 1952, are 2,799 enrolled Negro school children and 295 enrolled white school children, with average daily attentance of Negro school children of 2,003 and average daily attendance of white school children of 269. That the 1952 enrolled Negro high school pupils is 360, 200 of whom are enrolled in Scott's Branch School, 109 in St. Paul School, 30 in Maggie Nelson School, and 21 in Felton Rosenwald School. That the figure of 197 enrolled Negro high school pupils given in said Report referred only to those attending the Scott's Branch School.

"That since the filing of said Report, the plans for the two new Negro elementary schools recommended in the survey and included in the district's plan and program, one in the St. Paul area to be known as the St. Paul Elementary School and the other in the Rogers area to be known as the Spring Hill Elementary School, have been completed and [fol. 516] approved by the State Educational Finance Commission; the district's application for priority in the allotment of critical materials required in the construction of these schools has been granted by the appropriate Federal agency; and the district has advertised in the press for bids on the construction contracts to build said schoolhouses.

"That since the filing of said Report, the school trustees of School District No. 1 recommended in writing to the General Assembly the enactment of legislation empowering them and the Treasurer of Clarendon County to issue and sell bonds of the district in a sum not exceeding the district's debt limitation (which, as mentioned in said Report, is now, as a result of a 1951 constitutional amendment, 30% of the district's assessed valuation instead of the 8% limitation generally applicable under the Constitutional provision in reference thereto in the State Constitution); that such enabling legislation was introduced in the form shown by House Bill No. 2065, a printed copy of which is hereto attached as a part hereof; and that such legislation was duly enacted in said form and was signed by His Excellency, the Honorable James F. Byrnes, Governor of South Carolina, on March 1, 1952, as shown by copy of 'An Act to Provide for the Issuance of Bonds of School District 1 in Clarendon County in a Sum not Exceeding the Constitutional Limit for School Purposes and to Provide [fol. 517] for the Payment of Same,' duly certified by the Secretary of State of South Carolina, which certified copy is herewith filed.

"That in the action which has been and is being taken by the defendants to carry out the order of this Court dated June 21, 1951, they have utilized to the maximum the financial resources available to them under said Act No. 379 of the Acts of 1951, which made available for the first time State aid for constructing school facilities; that under said Act School District No. 1 has had building projects for Negro schools approved in the total amount of $516,960.00, as shown by letter of E. R. Crow, Director of the State Educational Finance Commission, to Governor Byrnes, dated February 15, 1952, which is hereto attached as a part hereof, and which also shows the building projects approved under said Act in a number of other counties of the State in the comparatively short time since the organization of the State Educational Finance Commission and the court decisions upholding the validity of the legislation, there being projects for Negro school construction totalling $5,515,619.15 (73.4% of the total) and projects for white school construction totalling $1,992,018.00 (26.6% of the total) approved and under way to date.

"That the defendants respectfully show that with the State aid approved for School District No. 1, as aforesaid, and the district's authority to borrow on its faith and credit [fol. 518] under the 1952 Act aforesaid, they are confident that they have the financial resources to carry through the construction plan and program which they have adopted and which they are carrying out as expeditiously as possible; and that when the said plan and program has been fully carried out they verily believe that equal educational facilities, equipment, curricula, and opportunities will exist for all school children in the district alike; and that steps have been taken by them to see that equal education will be afforded to all school children in the district in existing physical facilities during the completion of the district's construction and remodelling program, so that conditions in said period will be no different from those always existing in any school system during a period of substantial new construction and remodelling.

"That the defendants are acting in good faith not only to afford the equality directed to be furnished by them in the decree of June 21, 1951, but also to build up the system of public schools in said School District No. 1 and develop and expand the educational opportunities and advantages enjoyed by the school children of both races therein on an equal basis; and as evidence of their good faith they stand ready to file such additional Reports in this cause as the Court may direct, showing the completion of their action in carrying out the said decree."

[fol. 519] Judge Parker: The Report has been tendered and will be filed. Do you offer any further evidence in support of the Report? As I understand this hearing, we are here primarily to consider the Report. Do you have any evidence you want to offer in support of it?

Mr. Figg: We will offer such evidence as the Court might think it would care to hear, your Honor, but we have not come prepared to do that. We thought we were just reporting the facts. In other words, we have tendered that Supplementary Report because, since we are meeting in March, we did not want to come in here and stand on the December Report and have you ask us: "What have you been doing since December?" Now, what has happened since December is that the inchoate activities in the De-

cember Report, which we could only prophesy to some extent at that time, have now been made a reality. The other two Negro elementary schools, the bids of the contractors to build them have been duly advertised. I don't recall just when the bids will be let.

The legislation, which the December Report showed to be necessary to approve the financial ability of the District to carry through its adopted program, has now been enacted without qualification or condition or contingency, and these Trustees are empowered now to employ the financial resources to the full constitutional extent of the faith and credit of the district, so that today we stand in a [fol. 520] position of telling the Court that everything which is included in the program adopted by this district, which they showed in December they believed would produce compliance with the Court's decree, is now actually under way. It is not in the planning stage. It is not in the stage where the defendants have to tell the Court, for instance, that they will ask the General Assembly to pass enabling legislation.

So that today the whole program is actually a reality and underway in a practical sense. Now, that is what this Report does. It says there is no longer any prognostication about the future. If the program will produce equality of facilities, that equality is every day being provided. As far as curricula is concerned, that was equalized immediately, and the other things that were mentioned in the December Report. So that the only thing that today remains in anything but a completed status are the schools, both elementary and high schools. The contractors had 255 days to build the high school, but that contract was let last fall and that school will be in existence for the next school year. The two Negro elementary schools are presently being advertised for construction contracts. As we pointed out in the December Report, nothing has been done by the Trustees as yet toward providing for the new white elementary school, which was recommended in the survey in the place of the Summerton Elementary School, [fol. 521] which is practically in a state beyond repair. But the reason why the Trustees have gone into the construction, which they have reported to the Court, is that the State Educational Finance Commission, carrying out

the 1951 Act, laid down certain criteria. They required so much needed consolidation, and as a result, in Clarendon County, instead of 34 school districts, that County now has 3, one of which we are talking about today.

Another important condition that they attach to approval for State aid for capital construction is that no schoolhouse should be provided which has less than one teacher for each grade taught. And this plan therefore took up, first, the problem of getting all of the schoolhouses of this district on that basis, and the construction in this program will give modern schools, having ample schoolrooms and a teacher for each grade taught in all of the Negro schools in the seven districts, which have been consolidated into School District No. 1.

Now, we think the pupils in the remaining schools of School District No. 22, as soon as this Scott's Branch remodelling and new construction is through, will have at least equal schools. Actually, they probably will have the best schools, because the newest is always the best. And the pupils who resided in these other districts to the extent that they now have an enrollment of 2799, as compared [fol. 522] with the 295 white enrollment, will all have modern schools with ample schoolrooms, ample furniture, ample facilities, ample aids to education of every kind on a modern basis, approved by the State Educational Finance Commission and the State Department of Education, and there will not be a single pupil in the district, white or Negro, who will be attending a school where there is less than a teacher for each grade taught. There will be no more one, two, four, or other teacher schools, except that the younger, primary schools are permitted, under the State Educational Finance Commission criteria, to have a three-grade school for primary children, closer to where they live, with three teachers. They have got to meet the one teacher for each grade taught test. But that is the only exception under those criteria. And when we have measured up to that, and that is what the plan calls for, this will be a modern and complete public school system for all alike.

Judge Parker: Mr. Marshall, what do you say?

Mr. Marshall: May it please the Court, it is our position on the report, that we do not question anything in the

report. So far as we know, it is accurate. The points that we do not know about, we are perfectly willing to take the word of responsible officials of the State. So that insofar as the report is concerned, we are willing to face the report as being accurate and true, and we make no [fol. 523] objection, and we do not question anything in the report.

Judge Parker: Now, do I understand you to say that you admit that the defendants are acting in good faith and are proceeding to equalize conditions as required by the decree entered here on June 21?

Mr. Marshall: I take this position, sir: That they are proceeding towards eventual physical equalization, equalization of the physical facilities, with the realization that none of us can actually be certain of what will happen in the future but in saying that I do not question that they do intend to equalize the physical facilities, so far as the report is concerned, I do not agree that it meets the order of June, because the order itself said that they should proceed to furnish equal facilities, and they are not yet furnishing equal facilities. They are proceeding to lay the plans for the buildings which will eventually furnish equal facilities.

Judge Parker: Well, none of us can build a building overnight. The question is whether or not they are proceeding in good faith to do what they can to equalize conditions.

Mr. Marshall: To build equal facilities, but if I could just for a moment, sir——

Judge Parker: Well, I understand you do not admit that any conditions exist that require segregation. I [fol. 524] understand that.

Mr. Marshall: Yes, sir, that is right.

Judge Parker: But that has been ruled on by the Court. What we are considering now is the question: Whether the physical facilities, curricula, and the other things that can be made equal, without the segregation issue, are being made equal?

Mr. Marshall: I think, sir, that the order of the Supreme Court was to consider what had happened on this report, and I believe that the *Gaines* case, followed by the *Sipuel* case, together say that the facilities must be equal

at the time of the suit, at least. The *Sipuel* case, your Honors will remember——

Judge Parker: If the Supreme Court had taken that view, there wouldn't have been any sense in sending the case back to us, because we stated that the conditions were not equal at that time, and we directed that they be made equal. If the Supreme Court had taken your view, there wouldn't have been any use or sense in sending it back to us. The only thing necessary to do would be to reverse us.

Mr. Marshall: Yes, sir, but I also think it is significant that the Court did not just send it back. The Court also vacated the June judgment.

Judge Parker: Well, they vacated the June judgment so that we will have full power to enter any order that [fol. 525] was appropriate. I have learned what they were doing there. In *Duke Power Company vs. Greenwood County,* the case was remanded without the vacation of the order, and the Supreme Court said that that was not the proper procedure, that if you remanded a case for the lower Court to do anything, you must vacate the order.

Judge Dobie: What do you think we ought to do, Mr. Marshall? I mean, what this Court ought to do sitting here today?

Mr. Marshall: The minimum, I should say, sir, would be that the Court say that as of the present time the facilities are not equal, the physical facilities are not equal. At this stage I am not talking about the other testimony in the case. I am just talking about the physical facilities. Under the *Sipuel* case and the *Gaines* case, and, as a matter of fact, the two cases in the Fourth Circuit, both the *Corbin* case and the *Carter* case, they must furnish these equal facilities as of now, either in the building of schools and showing that they are completely equal, or destroy the segregation pattern, which were the grounds for it in the *Gaines* case, about the admissibility of the law segregating the races. And I think, sir, and I would urge the Court,—and we have a memorandum on it which I was going to submit if we had argument,—that if this Court lets the matter stand as it now stands, then the [fol. 526] Federal Court is in the position of policing,

or supervising, or whatever word is used, the school board, that is, the defendants in this case.

Judge Parker: No, we very frequently issue directions to the parties before us under the National Labor Relations Act. We are not policing collective bargaining. We are directing them to bargain, and if they do not bargain, we will put them in jail. Now, what we have directed these people to do is to equalize conditions. We understand that you can't build a schoolhouse between suns. It takes some time to do it. They have got to raise the money and they have got to do it, but we intended, when we entered that order, for them to proceed in good faith and to do it as quickly as possible. Now, the question is: Are they doing it as quickly as possible?

Mr. Marshall: I might say, sir, that every day they are not equal, these plaintiffs are losing rights, for which they cannot be adequately compensated.

Judge Dobie: Well, what can we do about that? It is fairly obvious,—I will take judicial notice of it, that you can't have teachers in schools before you have schools. Now, if these defendants in this case have done everything that they reasonably could do to carry out the decree of the Court, they can't do any more at this stage, can they?

[fol. 527] Mr. Marshall: No, sir, they cannot physically do more. It is impossible for them to build those schools overnight.

Judge Timmerman: Well, do you want us to put them in jail for not doing something that you know they can't do?

Mr. Marshall: It is something they can do, sir. They could break down the segregation.

Judge Dobie: Let that alone.

Judge Parker: That is the same question.

Mr. Marshall: Then, as I say, sir, at the present time there is no relief that we can get that would be adequate if that question is closed. We are not responsible for this. This is not a case where plaintiff through his own actions has put himself in a position. The defendants in this case knew about this and the requirement that equal facilities had to be furnished. They, at least, knew it as far back as the *Gaines* case in 1938, and they made no effort to equalize. They made no effort to do anything until this

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lawsuit was filed. Now, we end up with the clear understanding and agreement on all sides that we are being denied fundamental constitutional rights. We also recognize that every day that the Negroes are required to go to the unequal schools, their constitutional rights are being violated, and it is not a question of group rights, that eventually the school will be so assembled. Take, for example, [fol. 528] the seniors in those schools. I don't care what happens in the next year, their rights have been irrevocably harmed, and there is nothing they can do about it. The State of South Carolina and the defendants in this case are offering a certain number of years of education to the children in the County, and every year the Negro loses an equal education, he loses that much education, concrete education, and there is no way to get that back. Now, the question that they will eventually be equalized, if I might say, sir, is the question that came up all along. In the *Gaines* case, on the professional school level, the decision was, it seems to me, as I read it, that the State of Missouri could either set up on equal law school or admit Gaines into the existing law school.

Judge Timmerman: Let me asked you this: Do you contend that in the white schools in this district, the original District 22, that the buildings and the facilities and the teachers are sufficient to absorb all of the Negro pupils in the other schools?

Mr. Marshall: No, sir.

Judge Timmerman: Well now, if we ordered them to absorb them and it is a physical impossibility and we know they are not going to do it, then the only alternative we leave them is to close up and give neither white nor colored any educational advantages.

[fol. 529] Mr. Marshall: No, sir, that is not——

Judge Timmerman: How is that going to help those whom you represent?

Mr. Marshall: That is not my idea, sir. My idea is that they merely say, "We will not assign students to these schools on a racial basis. We will assign them on any other basis."

Judge Timmerman: If you do that, won't you inevitably have inequality?

Mr. Marshall: You will have inequality and there is nothing in the Constitution—

Judge Timmerman: Well, isn't that what you are complaining about?

Mr. Marshall: No, sir. We are complaining about inequality because of race or color. Inequality doesn't exist, inequality never existed in a democratic form of government, but the only inequality that we are arguing about, which the Supreme Court has repeatedly banned, is inequality on the basis of race. There are no two equal schools that I know of any place, unless they are both built simultaneously, and the children can be assigned to those schools on any logical basis, but the only thing we complain of is that you can't take a good school and a bad school and arbitrarily say that the Negro has to go to the bad school. The Negro might end up in the bad school, but [fol. 530] he can't end up in there because of race or color. That is our position. It would not mean that they will all have to go in the same school. They would take the good facilities and the bad facilities and send the children to them without assignment on the basis of race.

Judge Dobie: Now, in the light of what you said, may I ask my question: What do you think we should do?

Mr. Marshall: I think, sir, in my argument——

Judge Dobie: Yes, you made a long argument, but you haven't made the faintest suggestion as to what you think we should do.

Mr. Marshall: My suggestion, is, sir, that an order be entered that the facilities are not yet equal under the constitution and under the order of June, either one.

Judge Dobie: That was admitted in the original trial, wasn't it?

Judge Timmerman: How would that differ from what was entered in the original order?

Mr. Marshall: I was going further, sir. And therefore under the *Gaines* and *Sipuel* decisions, the rules of the defendants which prohibit the Negro children in that County from going to the only school where they can get equal facilities must be enjoined, and at the same time the policy of segregation must end.

Judge Dobie: In other words, you want us to strike down [fol. 531] segregation.

Mr. Marshall: Yes, sir. But at this stage, I am trying to stay within the framework of the June order. I am not saying to strike it down on the basis of segregation per se, but on the basis that the facilities that are being offered the Negroes are not equal as of today.

Judge Parker: Well now, on the framework of the June order, this is what was said in the Opinion of that case, and this is what the majority of the Court concurred in and what the Supreme Court had before it when it remanded the case: "It is argued that because the school facilities furnished Negroes in District No. 22 are inferior to those furnished white persons, we should enjoin segregation rather than direct the equalizing of conditions." That is precisely the argument that you are making now. "Inasmuch as we think that the law requiring segregation is valid, however, and that the inequality suffered by plaintiffs results not from the law but from the way it has been administered, we think that our injunction should be directed to removing the inequalities resulting from administration within the framework of the law rather than to nullifying the law itself. As a Court of Equity, we should exercise our power to assure to plaintiffs the equality of treatment, to which they are entitled, with due regard for the legislative policy of the State. In directing that [fol. 532] the school facilities afforded Negroes within the district be equalized promptly with those afforded white persons, we are giving plaintiffs all the relief that they can reasonably ask and the relief that is ordinarily granted in cases of this sort. See *Corbin vs. County School Board of Arlington County, Virginia,* 182 Fed. 2d, 531. The Court should not use its power to abolish segregation in a State where it is required by law if the equality demanded by the Constitution can be attained otherwise. This much is demanded by the spirit of comity which must prevail in the relationship between the agencies of the Federal Government and the States if our constitutional system is to endure." Now, it seems to me that we faced the very question that you are making right there and said what we thought about it. Don't you think so?

Mr. Marshall: Yes, sir. I think you did, sir.

Judge Parker: And that was before the Supreme Court, and if the Supreme Court had thought we were wrong about

that, the Supreme Court should have reversed us. But instead of doing that, they sent it back for us to consider this report which we had ordered to be made six months after the entry of the decree.

Mr. Marshall: Might I suggest, sir, it could have been that the Supreme Court might be interested in finding out whether or not the physical facilities were now equal, as of today.

[fol. 533] Judge Dobie: Mr. Marshall, the Supreme Court knew on that record that not even God, unless He performed a miracle, could equalize in six months. You couldn't build all of those schools in six months anywhere in the world, could you?

Mr. Marshall: No, sir, but——

Judge Dobie: All that is required is that these people take reasonable steps, in good faith, to do all that they can, so far as in their power may lie, to proceed towards this equalization. Isn't that true?

Mr. Marshall: Yes, sir. If I might draw an analogy. In the *Sipuel* case, the Supreme Court took the same position, that Oklahoma couldn't set up a law school overnight. Yet Oklahoma did try to do it. They tried to set up one within a week, but it didn't work. And I might say, sir, in the *Corbin* case and in the *Carter* case, both of those cases were brought back in court on a motion for further relief. And we are still being denied our rights under those decisions, and I don't know how long it will go on. I think that we are in the same position with the elementary school case that we were in with the law school case and the *Sweatt* case.

Judge Parker: Am I correct in thinking that the curriculum has been equalized? I understood your adversary to say that.

[fol. 534] Mr. Marshall: Yes, sir.

Judge Parker: The curriculum has been equalized. That is to say, the colored child can study the same subjects that the white child can study, but as of now, the buildings are not as good, and they are preparing to build new buildings for the colored children, which will give them better schools really than the white children have over there. Now, isn't that so?

Mr. Marshall: That they say, sir. I don't know whether they will be better or not.

Judge Parker: Well, new ones are generally better.

Mr. Marshall: But if your Honor pleases, it is still my position that the rights we are alleging here are personal and individual rights. They are not group rights. The question as to what Clarendon County and the defendants in this case are going to do for the Negro race in the future is not an issue in this case. The issue in this case is the rights of these plaintiffs, and these plaintiffs,—some of whom graduate this year, some of whom are in the upper brackets in the classes,—they are being denied these rights every single day, and they are not the type of rights which are usually the subject of discretion of an Equity Court. They are constitutional, protected rights, and whether we take *Plessy vs. Ferguson,* or whether we take *Sweatt* and [fol. 535] *McLaurin,* the rule is the same, that the facilities are either equal or they are being denied their constitutional rights. If we throw aside the segregation point for the moment, we are still faced with the point that the plaintiffs in this case, regardless of what the defendants will do in the future, regardless of what they have already done or put in words, that it will be a time before they will get their rights.

Judge Dobie: Well, what can we do, Mr. Marshall?

Mr. Marshall: Order them to stop depriving them of their rights now by the policy of segregation.

Judge Dobie: It all goes back to that.

Judge Parker: Do you imagine that right here—this is March. Do you imagine that the colored children, who have been going to the colored schools over there for four or five months now, would switch over and go to the white school right in the middle of the term?

Mr. Marshall: Some of them would still stay there, sir.

Judge Parker: Wouldn't all of them stay there? I went to high school once,—it was a long time ago, but the idea of switching high schools in the middle of the term never occurred to me as a practical thing.

Mr. Marshall: If the curricula of the two schools were identical, it wouldn't be any problem. They would probably [fol. 536] be on the exact same day's work.

Judge Timmerman: If they were already filled up,

wouldn't there be a problem of sitting somebody on somebody else's lap?

Mr. Marshall: No, sir, it would be a problem of shifting some of the white children by district lines, or what-have-you, and mixing them, or sharing the school equally. It might be that they wouldn't all go to the white school.

Judge Timmerman: Well, which ones would go there?

Mr. Marshall: That would be up to the school board to determine, and they could use any rule except race.

Judge Timmerman: That would be discrimination, wouldn't it?

Mr. Marshall: Not unless it is on race.

Judge Timmerman: According to your contention, that would be discrimination. If a part of them were discriminated against and a part of them not, do you think that would meet the law?

Mr. Marshall: Yes, sir, because in New York, for example, there are schools that are the finest schools in the world and there are other schools that are the most dilapidated buildings in the country, but there is no discrimination. That is barred by the constitution.

Judge Timmerman: But I thought you said this is an [fol. 537] individual right.

Mr. Marshall: Yes, sir.

Judge Timmerman: If it is an individual right and if A and B are both being discriminated against, if you stopped discriminating against B, would that satisfy the complaint of A?

Mr. Marshall: Not if it is on the basis of race.

Judge Timmerman: Well, it doesn't do it on any basis, does it?

Mr. Marshall: But the constitution has said that there must be a reasonable basis, and if the school board assigns a certain group of children to a dilapidated school on an unreasonable basis, then it is in violation of the 14th Amendment, but there has to be a showing that it is unreasonable.

Judge Parker: I would like to ask Mr. Figg, when do you anticipate that the Scotts Branch High School will be completed? What do the plans indicate?

Mr. Figg: The architects, I think, wrote the other day

that the contract calls for 255 days, and that will expire in August.

Judge Parker: August of this year?

Mr. Figg: Yes, sir.

Judge Parker: Does that mean that when the school opens in September, the Scotts Branch school will be ready [fol. 538] for occupancy?

Mr. Figg: Yes, sir, it will be in full operation. That is my understanding. The contractor will turn it over in August, and it will be equipped and ready to go in September.

Judge Parker: Can't you get that in the record? I think that is a very important fact, and it ought to be stated more than just by hearsay.

(Mr. Figg confers with associates)

Judge Dobie: You can't tell about the teachers and all of that, of course, until the schools are completed.

Mr. Marshall: I am sorry, sir, I did not hear you.

Judge Dobie: I say, you can't tell about the teachers assigned, and equality, and all of that until the schools are completed.

Mr. Marshall: Oh, no, sir, not until the schools are completed.

Judge Timmerman: You have made no attack on the teachers, have you?

Mr. Marshall: No, sir.

Judge Timmerman: It was my understanding that you had not.

Judge Dobie: As I observed in the Richmond case the other *way*, I am not an expert in Education. I only had 42 years' experience, and I never had a course in Practice [fol. 539] Teaching. It just seems to me that all through these cases there has been an undue stress on buildings and on facilities. For example, I went to a high school in Norfolk some years ago, and there wasn't a teacher in there that had ever taken a course in Education. There wasn't an Educator in any way connected with the school, and there wasn't any one of them who had studied these modern psychological courses, and of course you know what the net result was. I think it was the finest high school that they have ever had in the South! And why? Because every one

of them were magnificent teachers and they taught because they were born that way!

Mr. Marshall: Might I say, sir, that my high school mathematics teacher had one year above high school and she had the reputation of being the best mathematics teacher in that area, and she was without a doubt the best.

Judge Dobie: Yes. I am frank to say that all through this movement and all, I would like to see this teacher thing stressed much more than the buildings, not that I don't think that the buildings are important, but I think the teacher is the big thing. There is more caught than is caught against the log.

Mr. Marshall: I think, sir, that there are a lot of people in the world today who, you might say, taught themselves.

Judge Dobie: There is a whole lot in that. But that is [fol. 540] not practical now, Mr. Marshall. We all know that. But there is a good deal in it.

Mr. Marshall: I know quite a few who are good examples of it.

Judge Dobie: And some of them had magnificent teachers.

Judge Parker: All right, go ahead.

Mr. Figg: Your Honor, in the December Report, we stated that it would be ready for the next school year. We did not give the exact date, but I would like to ask the Court's leave to file a certificate in the record from the architects, who are supervising the construction, as to the terms of the contract and the completion date provided in there. I know it is 255 days from last fall.

Judge Parker: I think that we ought to have some assurance that the school is going to be completed and completed promptly. If it is going to be completed this fall, that is about as soon as could reasonably be expected.

Mr. Figg: We will file the information, the specific requirement of the contract is that it be completed in 255 days from the starting day, and the architects will give a progress report that will show when that will happen.

Judge Timmerman: Furnish the other side with a copy. [fol. 541] Mr. Figg: Yes, sir.

Judge Parker: You have no objection?

Mr. Marshall: No, sir.

Judge Parker: Mr. Marshall, do you have anything to say

as to that? Do you question that the school will be available this fall?

Mr. Marshall: Assuming everything goes along, certainly, sir, I have no question about it. I believe the responsible officials and what they say. I am perfectly willing to concede now that the point is correct, but I think for the sake of the record, it would be good to have the certificate.

Mr. Figg: My information is that it is over 40% completed now.

Judge Parker: The new building is 40% completed at this time?

Mr. Figg: Yes, sir.

Judge Parker: I think that ought to go in the record, because it will probably go back to the Supreme Court, and they will want to know exactly what is going on. All right, Mr. Marshall, do you want to say anything further about it?

Mr. Marshall: No, sir. The only other point that I wanted to make on this original point that I started on is: That assuming the building is built, and assuming that they build a white school next year, we might be right back in court [fol. 542] again. And the only point I make on that is: That if we stick to the physical equality point alone, I think we will be in the same position as we were with the law school case. In the *Corbin* case for example, and in the *Pulaski County* case in Virginia, in that particular case the opinion was perfectly clear. The lower Court issued its order that facilities should be equalized. They were not equalized and we are back in court for further relief. In our motion for further relief we are raising the point which we knew we would eventually have to raise, which is, that in these cases the physical equality is such a varying thing from day to day, and it does not meet the constitution—the 14th Amendment. And that is why I do, at least, urge the Court to go as far as the *Sipuel* and the *Gaines* cases, which is that the equality must be furnished now, and in the absence of equality, not because the segregation laws as such are invalid, but on the point that the facilities that are furnished are not equal. Then you cannot use them for the purpose of segregation. And that is the only point that we urge at this time. And that is about all on that, unless there are some more questions.

Judge Parker: Do you want to say anything else, Mr. Figg?

Mr. Figg: Just this, if your Honor pleases: I think that fundamentally counsel's argument gets back on every phase [fol. 543] of the matter to the main question which he said was present in this case, which is the constitutionality of the State Constitution and statute demanding separate schools for the school children in the State. As far as the suggestion that the right was personal and that it means now is concerned, it is obvious to the Court from the record in this case that that would not mean theoretically now, because it is impossible to find schools to order for the school children to be admitted to. We argued that in Charleston in June, and I think the Court understood from the record that you can't put 2800 colored children and 295 white children in schools built for 295 white children. It would be impossible. And when the petitioners in this case and the motion here ask that an order be made to admit petitioners to the only schools where they can get the same education as the white children, which is another way of saying, "to the white schools," there aren't any white schools that could accommodate them. Probably the worst school in the whole district is the white school, the Summerton Elementary School. It just happens to have a teacher for each grade. And for that reason, the Trustees have not gone into remodelling that school until they have eliminated the schools that do not have a teacher for each grade.

Now, as we see it, if your Honors please, this district is not going to furnish the difficulties to counsel that some of [fol. 544] the other cases have,—that he said they have faced in their other cases, because this is almost entirely a colored school district, as you can see from the figures, and the schools that are being built are colored schools, and there will always be a great number of schools, sizeable schools, in this district, and they will be for the colored children. I do not believe that a Court of Equity, under the State Constitution and statute, providing for separate schools, is called upon even to exercise the discretion of a Court of Equity to say that there is a lack of schools. It isn't that the children are assigned arbitrarily. You take the worst school and you take the best school, and you see what has happened. The schools have grown up where the people

live, and in this district almost everyone there, the great majority, ten to one in the school population, are colored. And there are a lot of schoolhouses all through the countryside there where these colored people live, and then in the center of the district perhaps you have a comparatively few of the white population. And where you have a white population, you have a white school to come up. Now, unfortunately back in the WPA days, they got ambitious and built a white high school that had brick veneer, because they had a lot of uneasiness among some of the other people. But these schools came into being under the operation of educa-
[fol. 545] tional supply and demand. As the demand began to increase, the schools began to increase.

And actually, when you talk about the time that this school district had to equalize, the people there also had the same time to complain, and this is the first time that a complaint was ever made that the facilities for the colored pupils were not satisfactory. And we think that the program, with the aid of the State of South Carolina, that these Trustees have gone into, which in effect, your Honor, is almost six times as broad—not quite that much in proportion, but certainly it covers now seven school districts instead of the one concerned in this case, is producing and building education, and educational facilities, and educational opportunities for the colored children in that district. Now, counsel says, "You have limited facilities." And I do not agree with him that one has been assigned to one and one to another. That happened to be the residence, and that happened to be the way the communities produced their school demands and school construction in the past. We all know that. But to talk about just sprinkling the children among all of the schools in the district, regardless of whether they are near their residence, or where they live, to take white children out of Summerton and send them out to the far reaches of the district, just to be sure that you have so many colored and so many white there——

[fol. 546] Judge Dobie: There is nothing in the record, is there, to show that a situation like this would arise: Here are two schools, one for the colored and one for the white, under the South Carolina Constitution, and we will say that the schools are of equal size and the population is about

equal. There is nothing in the record to show—well, we have got two school- here, and School A is a very much better school than School B, so of course we will give that to the whites and give the other to the colored. There is nothing to indicate that, is there?

Mr. Figg: No, sir. And learned counsel on the other side, I think, argued the restrictive covenant case of *Shelley vs. Cramer,* and he convinced the Court there that you did not achieve equal protection of the laws by the indiscriminate imposition of inequality, and that is what he is arguing before you here today. That is not the way to achieve equal protection of the laws under the Constitution of South Carolina and its statute. The way to do it is just what this Court ordered in June. This Court took a practical view of this thing in the light of history and of common knowledge as to how these conditions developed. There was no guile or evil design that caused the school system of this district to come into being. It came into being day by day and year by year as there began to be children who wanted to go to school.

[fol. 547] Judge Dobie: I guess a lot of it is like Topsy, it just grew.

Mr. Figg: That is right, sir. And now we have a situation where these Trustees could achieve equality tomorrow by shutting up all of the schools, or they could achieve equality by slicing off the assets that one school may have over another. But these Trustees and the State of South Carolina under the leadership of our Governor and the far-reaching legislation passed last year, with the sales tax, and the educational requirements that have been promulgated by the Finance Commission, set up under the educational financing law, is building education. It wants to build education. It is taxing the people to build it, and it is making provision here to show the good faith of the State. In its aid to the Counties, so far up to February 15, 1952, over three out of every four dollars spent out of the sales tax legislation have been spent for the construction of Negro schools in some County or another in South Carolina. And every dollar that this district has gotten out of the State and can get out of the State up to this writing is being devoted to the construction of Negro schools and to the improvement of their education. That is not only in this district. That will probably always be the case, that certainly nine out of ten

dollars that this district gets out of the State will have to go [fol. 548] for Negro school construction because nine out of ten pupils are Negroes. And if you ordered segregation to end tomorrow you would bring into existence in the schools of this district classrooms where the average would be, in a 30-pupil classro-m, 3 white and 27 colored children. Now, we heard a lot about personality development down in Charleston. But under that situation, whose personality would be developed? There has been a lot of effort in this case to take a theoretical view of these rights, but fundamentally when counsel says that the rights are derived from the Constitution of the United States, the primary right is derived from the Constitution of the State of South Carolina and its statutes alone, and that is the existence of a public school system. That is not provided for by——

Judge Parker: All that is true, but you must take account of this: That under the 14th Amendment, all persons within the jurisdiction are entitled to the equal protection of the laws.

Mr. Figg: That is right, sir.

Judge Parker: And the equal protection of the laws means equal opportunity under the law.

Mr. Figg: That is right, sir. And the Supreme Court, for the first time, hearing the argument that you ought to shut down a white school because there was no corresponding colored school in the *Cumming* case, refused to do it, and [fol. 549] said that is not progress in education. And this Court has taken the spirit of that decision and written it into its June decree.

Now, we, in the utmost good faith and with expeditiousness that was difficult to achieve under existing conditions, and probably at the waste of a little money, went ahead and ordered the construction of the Scotts Branch High School and the Scotts Branch Elementary School to be remodelled. Your Honors will recall the testimony was that it was a good schoolhouse if it were improved. Well, they have improved it. That contract was immediately let. The only thing that really held it up was the inability to get critical materials.

We showed in the December Report that we were denied on October 15 materials to build that schoolhouse, and the report then shows that the Trustees then communicated with the Governor, who communicated with other people, and on

October 19 priority was granted. But on October 15, these trustees were told, "You can't get the material to build that school." Yet in four days, they had gotten that reversed, with the aid of the Governor of the State and representatives of the State in Washington. Now, that is an evidence of high, good faith. They didn't sit down with that letter of October 15 and come to court and say, "Judge we can't build the school. They won't let us have the materials with which [fol. 550] to do it." In four days they got that ruling reversed and within a few days after that, the contract was signed, and, as I say, in August it will be completed. We will file a statement to that effect from the architects. And in September it will be in operation. Now, we think that that is circumstantial evidence that corroborates completely that these Trustees have set to work to carry out this decree, and they are going to continue to do it and bring it into reality as soon as possible.

You will remember that after the order of June 21, there was still pending a decision of the Supreme Court of South Carolina, which case was argued early in June, on the constitutionality of the legislation. Then later a case was brought before a Three-Judge Court in this district. It wasn't much of a case, I don't think, by the time it got to the Three-Judge Court, because the major question had already been settled by the Supreme Court of South Carolina. But those two decisions, one of which was in July or August, the latter one,—those two decisions cleared the way for the financing of this program.

And by the end of October, or certainly by the first part or early part of November, this contract was signed. There was no effort made even to achieve economy in carrying out the order of the Court. And I feel pretty certain that when [fol. 551] you rush into observing the Court's decree as they did, with the difficulties of getting critical material, with the difficulties of financing, and with the necessity of having a survey before getting any money at all,—because you can't get any money from the State Educational Finance Commission without a survey, and with the necessity of consolidation in the County,—you couldn't get any money unless a consolidation occurred, so that all of those things were done and the contract signed by November 1 under a decree dated June 21.

Now, we think that they have shown good faith, certainly up to December. And we filed this Supplementary Report to show that they didn't stop there. They have gone ahead now and brought into a concrete reality the things that they couldn't say were real then. And when the smoke and dust blows away, the Negro pupils of this district will have a fine school system. They will have a fine physical system. They will have a fine educational system, and the education will be better for white and colored there when they get through than it is now or than it was when this suit started. It will be a progressive thing, and it is almost a 100% Negro School District.

So we respectfully submit, if your Honors please, the test being the good faith and the expeditiousness and zeal of the defendants in this cause, they have established that. And [fol. 552] I think counsel is quite correct in not questioning it. The statement of responsible school officials of the district, and, as he says, of the State, is corroborated up to the hilt by the facts themselves. I don't believe anybody could have done any better than they did. And I think a significant piece of evidence is what they did about that ruling of October 15 that they couldn't have the material to build the schoolhouse. They got that reversed in four days. They didn't sit down and say, "This is a windfall. We don't have to do anything." They went to work, and four days later the Governor got the ruling reversed.

Judge Dobie: That is a right substantial achievement, when you get any department in Washington to change its decision in four days, particularly if the first decision was wrong. That is certainly an achievement.

Mr. Figg: We think that showed the good faith of the defendants. We think it showed the good faith of the State, because all the defendants could do was to turn to the Governor and say, "We have met with this." And the State went into operation. This district couldn't have done anything about it, but the State of South Carolina, through its Chief Executive, went into the picture, and I don't think that this district could have changed that decision in four days, but the resources of the State proved sufficient. But [fol. 553] from the standpoint of the defendants, they were not defendants who sat off in a country school district and

said, "Well, this is fine. This keeps us from having to build a schoolhouse."

So if your Honors please, we respectfully submit that these defendants have done what this Court ordered to the best of their ability up to this writing. They have done it faster than I would have guessed under existing conditions in the construction industry, with the war, with the economy comparatively dislocated, and so forth and so on. And as far as the pupils in this suit are concerned, those that do not graduate this year will enter the best school in that district in September, because that School District 22 will be in it, and the other colored pupils in the other six districts, and there are only colored pupils in the other districts.

Judge Dobie: I suppose you contend that those who are graduating, however regrettable the situation is, it is just not practical to do anything substantial about it.

Mr. Figg: That is right, sir.

Judge Parker: What do you suggest? I want to ask Mr. Marshall the same thing. What do you suggest is a proper decree for this Court to enter?

Mr. Figg: Well, I think that the decree could properly [fol. 554] state that the defendants have shown good faith in their actions to carry out the decree of June, and that while the end of their program has not yet been reached, they are well into it, and that they have shown to the Court not only the will and the intention of furnishing the equality directed by the Court, but on the face of the record they have shown the ability, the financial ability to do it.

Judge Dobie: Should the decree contain any clause such as the one requiring further reports? Would you object to incorporating in the decree that the Court retain jurisdiction to see that in the future these worthwhile and worthy efforts should be continued?

Mr. Figg: Well, as we said in both reports, we stand ready to file any additional reports that the Court may direct us to file. We did not want to be presumptuous and suggest that.

Judge Dobie: Well, you have been fine on that. You were directed to file one report and bless my soul you have filed two of them. The supplemental one brings it right down to date.

Mr. Figg: Yes, sir. These Trustees are willing to file such reports as the Court directs them to do, because they will have more to report. But they hope in not too long a time to report that the job has been done.

[fol. 555] Judge Parker: I am wondering if this isn't correct: There wasn't any doubt in my mind about the finality of the other decree. I don't think there is any doubt in the minds of most people, but some got an idea that it was not a final decree. These people are entitled to a review, and they are entitled to a review unequivocably. I am wondering if it wouldn't be wise, regardless of any requirement about any additional reports,—if you do not comply with the order of the Court duly entered, we don't have to retain jurisdiction to punish you for it.

Judge Dobie: As Mr. Robinson observed in the Richmond case that we heard last week, we went into it in great detail and it was very thoroughly explored, and I think it will probably present the most complete record,—and I think Mr. Robinson will agree with me, that has ever been up. Both sides consented that there be not incorporated in the decree a requirement that there be future reports; because as Judge Parker said, any time it is not complied with, the remedies are ample to deal with them in other ways.

Mr. Figg: We feel that what we are supposed to tell the Court is: That we are carrying out the decree in good faith, doing the best we can, as quickly as we can, and we think that success is well in sight. We think it might be a little presumptuous to come in and say: "Now, tell us to file some more reports." We feel that we are going to do the right [fol. 556] thing. We feel that we are entitled to suggest at this time that the Court may assume that too, unless counsel brings the matter back.

Judge Parker: This is true: The decree having been vacated, any decree should contain the mandate or the requirement that you proceed to equalize conditions. There is no question about that.

Mr. Figg: Yes, sir.

Judge Parker: What do you think ought to be in the decree, Mr. Marshall?

Mr. Marshall: May it please your Honor, Judge Parker, I think the Supreme Court opinion said something about—it sounded like a final order to me.

Judge Dobie: Well, the Supreme Court intimated, did it not, in that issue, that the Court's decree was appealable and you had very properly appealed it?

Mr. Marshall: Yes, sir.

Judge Parker: I think they considered it a final decree. I don't think there is any question about it. The Supreme Court regarded our decree as a final decree, because if they had regarded it as an interlocutory decree, there wouldn't have been any necessity to vacate it.

Mr. Marshall: Yes, sir. Another judgment entered at the conclusion of these proceedings may provide the basis for any further appeal.

[fol. 557] Judge Parker: Yes.

Mr. Marshall: May it please the Court, we of course at this stage have not waived our original position about asking for the injunction on specific grounds.

Judge Parker: I understand that.

Mr. Marshall: And on this particular point, the decree that we would suggest would be the one that I mentioned before, the one based on the inequality of the physical facilities as of now, and that they be enjoined from enforcing the rules and regulations requiring segregation.

Judge Parker: What do you say about whether we should require them to make an additional report here?

Mr. Marshall: Oh, I don't think so, sir.

Judge Parker: You don't think that is necessary.

Mr. Marshall: No, sir. I think that if, for example, we end up with no more than this order and they do not equalize, we can come back into court at any time. I understand an Equity Court keeps jurisdiction over its own order. On that point, if I might just for a moment, Judge Dobie, on the question about assigning students that you mentioned to Mr. Figg, that the defendants didn't deliberately assign the Negro children to the inferior school, the effect of it was just the same. They have a rule, which is under attack, which says that the Negroes must attend the Negro schools, and unequal schools are inferior schools. So it ends up, whether [fol. 558] they set the school up first or the pupil, it still ends up with them standing here and admitting that they are spending money and building like mad to equalize. So obviously they were unequal even without going into the record. If there are no further questions, sir, I think I have

completed. We do have a memorandum that we would like to hand up.

Judge Parker: All right. We would like to have that, yes.

Mr. Marshall: I say frankly, sir, it is nothing new. There is nothing new in it.

Judge Parker: All right. Do any of the other counsel desire to say anything? Do you desire to say anything over here?

Mr. Figg: I just want to say one more thing, your Honor, I don't think it is necessary, but counsel has in the record a motion for judgment today, and he has supporting grounds, and in ground five he uses the phrase "undisputed testimony" once or twice.

Judge Parker: Well, he is just making the same argument that he made before. That is all that means.

Mr. Figg: We don't want to concede that and let the statement go by unchallenged. We do dispute that.

Judge Parker: All right. Do you want to file any memorandum?

[fols. 559-561] Mr. Figg: No, sir.

Judge Parker: All right. You have got a printed copy of the act attached to the report, haven't you?

Mr. Figg: Yes, sir. I have a copy of the bill. Here are two other certified copies (handing).

Judge Parker: You attached a copy of the bill and this is a certified copy that shows that the bill became a law?

Mr. Figg: Yes, sir.

Judge Timmerman: Were there any amendments?

Mr. Figg: No, sir, there were no amendments at all.

Judge Parker: All right. Is there anything else?

(No response.)

Judge Parker: All right, we will adjourn the court sine die.

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 562] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

I concur:
A. M. Dobie, U. S. Circuit Judge.

I concur:
George Bell Timmerman, U. S. District Judge.

HARRY BRIGGS, JR., ET AL., Plaintiffs,

versus

R. W. ELLIOTT, Chairman, J. D. CARSON and GEORGE KENNEDY, Members of the Board of Trustees of School District No. 22, Clarendon County, S. C.; Summerton High School District, a body corporate; L. B. McCord, Superintendent of Education for Clarendon County, and Chairman A. J. Plowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. B. Betchman, Superintendent of School District No. 22, Defendants.

OPINION—Filed March 13, 1952

Heard March 3, 1952. Decided ——

Before Parker and Dobie, Circuit Judges, and Timmerman, District Judge

Harold R. Boulware, Spottswood Robinson, III, Robert L. Carter, Thurgood Marshall, Arthur Shores and A. T. Walden, for Plaintiffs; T. C. Callison, Attorney General of South Carolina, S. E. Rogers and Robert McC. Figgs, Jr., for Defendants.

[fol. 563] PARKER, Circuit Judge:

On June 23, 1951, this court entered its decree in this cause finding that the provisions of the Constitution and Statutes of South Carolina requiring segregation of the races in the public schools are not of themselves violative of the Fourteenth Amendment of the federal Constitution, but that defendants had denied to plaintiffs rights guaranteed by that amendment in failing to furnish for Negroes in

School District 22 educational facilities and opportunities equal to those furnished white persons. That decree denied the application for an injunction abolishing segregation in the schools but directed defendants promptly to furnish Negroes within the district educational facilities and opportunities equal to those furnished white persons and to report to the court within six months as to the action that had been taken to effectuate the court's decree. See Briggs v. Elliott, 98 F. Supp. 529. Plaintiffs appealed from so much of the decree as denied an injunction that would abolish segregation and this appeal was pending in the Supreme Court of the United States when the defendants, on December 21, 1951, filed with this court the report required by its decree, which report was forwarded to the Supreme Court. The Supreme Court thereupon remanded the case that we might give consideration to the report and vacated our decree in order that we might take whatever action we might deem appropriate in the light of the facts brought to our attention upon its consideration. Briggs v. Elliott, 342 U. S. 350. When the case was called for hearing on March 3, 1952, defendants filed a supplementary report showing what addi- [fol. 564] tional steps had been taken since the report of December 21, 1951, to comply with the requirements of the court's decree and equalize the educational facilities and opportunities of Negroes with those of white persons within the district.

The reports of December 21 and March 3 filed by defendants, which are admitted by plaintiffs to be true and correct and which are so found by the court, show beyond question that defendants have proceeded promptly and in good faith to comply with the court's decree.* As a part of a

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* The facts disclosed by the ordered and supplemental report are these: In order to qualify for state aid the old school district 22 has been combined with six other districts to become district 1, whose officials have requested and have by order been admitted as parties to this action. Teachers' salaries in the district have been equalized by local supplement, bus transportation has been instituted (none was furnished previously for either race), and $21,522.81 has been spent for furniture and equipment in Negro schools. En-

statewide educational program to equalize and improve educational facilities and opportunities throughout the State of South Carolina, a program of school consolidation has been carried through for Clarendon County, District No. 22 [fol. 565] has been consolidated with other districts so as to abolish inferior schools, public moneys have been appropriated to build modern school buildings, within the consolidated district, and contracts have been let which will insure the completion of the buildings before the next school year. The curricula of the Negro Schools within the district has already been made equal to the curricula of the white schools and building projects for Negro schools within the consolidated district have been approved which will involve the expenditure of $516,960 and will unquestionably make the school facilities afforded Negroes within the district equal to those afforded to white persons. The new district high school for Negroes is already 40% completed, and under the provisions of the construction contract will be ready for occupancy sometime in August of this year. That the State of South Carolina is earnestly and in good faith endeavoring to equalize educational opportunities for Negroes with those afforded white persons appears from

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abling legislation has been secured in the state legislature which permits the issuance of bonds of the school district up to 30% of the assessed valuation (The enabling legislation was made possible by an Amendment to the Constitution of South Carolina passed in 1951. The maximum had theretofore been 8%). Compliance with the requirements of the newly formed State Education Finance Commission has resulted in funds being made available to District 1 and a plan of school house construction based on a survey of education needs has been prepared, approved and adopted. Plans have been approved for the building of two Negro elementary schools at St. Paul and Spring Hill and advertisements for bids have been circulated in the press. The contract for remodeling the Scotts Branch Elementary School and for construction of the new Scotts Branch High School has already been let, construction has been commenced, and will, according to the record, be completed in time for the next school year.

the fact that, since the inauguration of the state-wide educational program, the projects approved and under way to date involve $5,515,619.15 for Negro school construction as against $1,992,018.00 for white school construction. The good faith of defendants in carrying out the decree of this court is attested by the fact that, when in October delay of construction of the Negro high school within the consolidated district was threatened on account of inability to obtain release of necessary materials, defendants made application to the Governor of the State and with his aid secured release of the materials so that construction could go forward.

[fol. 566] There can be no doubt that as a result of the program in which defendants are engaged the educational facilities and opportunities afforded Negroes within the district will, by the beginning of the next school year beginning in September 1952, be made equal to those afforded white persons. Plaintiffs contend that because they are not now equal we should enter a decree abolishing segregation and opening all the schools of the district at once to white persons and Negroes. A sufficient answer is that the defendants have complied with the decree of this court to equalize conditions as rapidly as was humanly possible, that conditions will be equalized by the beginning of the next school year and that no good would be accomplished for anyone by an order disrupting the organization of the schools so near the end of the scholastic year. At heretofore stated, the curricula of the white and Negro schools have already been equalized. By the beginning of the next scholastic year, physical conditions will be equalized also. This is accomplishing equalization as rapidly as any reasonable person could ask. We dealt with the question in our former opinion where we said (98 F. Supp. at 537):

> "It is argued that, because the school facilities furnished Negroes in District No. 22 are inferior to those furnished white persons, we should enjoin segregation rather than direct the equalizing of conditions. In as much as we think that the law requiring segregation is valid, however, and that the inequality suffered by plaintiffs results, not from the law, but from the way it has been administered, we think that our injunction

should be directed to removing the inequalities resulting from administration within the framework of the law rather than to nullifying the law itself. As a court of equity, we should exercise our power to assure to plaintiffs the equality of treatment to which they are entitled with due regard to the legislative policy of the state. In directing that the school facilities afforded [fol. 567] Negroes within the district be equalized promptly with those afforded white persons, we are giving plaintiffs all the relief that they can reasonably ask and the relief that is ordinarily granted in cases of this sort. See Carter v. County School Board of Arlington County, Virginia, 4 Cir. 182 F. 2d 531. The court should not use its power to abolish segregation in a state where it is required by law if the equality demanded by the Constitution can be attained otherwise. This much is demanded by the spirit of comity which must prevail in the relationship between the agencies of the federal government and the states if our constitutional system is to endure."

For the reasons set forth in our former opinion, we think that plaintiffs are not entitled to a decree enjoining segregation in the schools but that they are entitled to a decree directing defendants promptly to furnish to Negroes within the consolidated district educational facilities and opportunities equal to those furnished white persons. The officers and trustees of the consolidated district will be made parties to this suit and will be bound by the decree entered herein.

Injunction abolishing segregation denied.

Injunction directing the equalization of educational facilities and opportunities granted.

A true copy. Attest.

Ernest L. Allen, Clerk of U. S. District Court, East. Dist. of S. Carolina. (Seal.)

[fol. 568] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

HARRY BRIGGS, JR., et al., Plaintiffs,

versus

R. W. ELLIOTT, Chairman, J. D. CARSON and GEORGE KENNEDY, Members of the Board of Trustees of School District No. 22, Clarendon County, S. C.; Summerton High School District, a body corporate; L. B. McCord, Superintendent of Education for Clarendon County, and Chairman A. J. Plowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. B. Betchman, Superintendent of School District No. 22, Defendants

DECREE—Filed March 13, 1952

In the above entitled case the Court finds the facts to be as set forth in its written majority opinion filed June 23, 1951 and its written opinion filed herewith, and on the basis thereof it is adjudged by the Court:

(1) That R. W. Elliott, Chairman, J. D. Carson, E. M. Touchberry, W. A. Brunson and A. E. Brock, Sr., constituting the Board of Trustees of School District No. 1, Clarendon County, South Carolina, and H. B. Betchman, Superintendent of School District No. 1, be made parties to this suit in their respective capacities as such and be bound by all orders and decrees that have been or may hereafter be entered herein.

(2) That neither Article II section 7 of the Constitution of South Carolina nor section 5377 of the Code are of themselves violative of the provisions of the Fourteenth Amendment to the Constitution of the United States and plaintiffs are not entitled to an injunction forbidding segregation in the public schools of School District No. 1.

(3) That the educational facilities, equipment, and opportunities afforded in School District No. 1 for colored pupils [fol. 569] are not substantially equal to those afforded for white pupils; that this inequality is violative of the equal

protection clause of the Fourteenth Amendment; and that plaintiffs are entitled to an injunction requiring the defendants to make available to them and to other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those afforded white pupils.

And it is accordingly ordered, adjudged and decreed that the defendants proceed at once to furnish to plaintiffs and other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those furnished white pupils.

And it is further ordered that plaintiffs recover of defendants their costs in this action to be taxed by the Clerk of this Court.

This the 12th day of March 1952.

(S.)John J. Parker, Chief Judge, Fourth Circuit, (S.) Armistead A. Dobie, U. S. Circuit Judge, Fourth Circuit, (S.) George Bell Timmerman, U. S. District Judge, Eastern and Western Districts of South Carolina.

A true copy. Attest. Ernest L. Allen, Clerk of U. S. District Court, East. Dist. So. Carolina. (Seal.)

[fol. 570] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed May 9, 1952

Considering themselves aggrieved by the final decree and judgment of this court entered on March 12, 1952, Harry Briggs, Jr., Thomas Lee Briggs and Katherine Briggs, infants, by Harry Briggs, their father and next friend and Thomas Gamble, an infant by Harry Briggs, his guardian and next friend; William Gibson, Jr., Maxine Gibson, Harold Gibson and Julia Ann Gibson, infants, by Anne Gib-

son, their mother and next friend; Mitchel Oliver and Richard Allen Oliver, infants, by Mose Oliver, their father and next friend; Celestine Parson, an infant by Bennie Parson, her father and next friend; Shirley Ragin and Delores Ragin, infants, by Edward Ragin, their father and next friend; Glen Ragin, an infant, by William Ragin, his father and next friend; Elane Richardson and Emanuel Richardson, infants, by Luchrisher Richardson, their father and next friend; James Richardson, Charles Richardson, Dorothy Richardson and Jackson Richardson, infants, by Lee [fol. 571] Richardson, their father and next friend; Daniel Bennett, John Bennett and Clifton Bennett, infants, by James H. Bennett, their father and next friend; Louis Oliver, Jr., an infant, by Mary Oliver, his mother and next friend; Gardenela Stukes, Willie M. Stukes, Jr., and Louis W. Stukes, infants by Willie M. Stukes, their father and next friend; Joe Nathan Henry, Charles R. Henry, Eddie Lee Henry and Phyllis A. Henry, infants, by G. H. Henry, their father and next friend; Carrie Georgia and Jervine Georgia, infants, by Robert Georgia, their father and next friend; Rebecca I. Richburg, an infant, by Rebecca Richburg, her mother and next friend; Mary L. Bennett, Lillian Bennett and John McKenzie, infants, by Gabrial Tyndal, their father and next friend; Eddie Lee Lawson and Susan Ann Lawson, infants, by Susan Lawson, their mother and next friend; Willie Oliver and Mary Oliver, infants, by Frederick Oliver, their father and next friend; Hercules Bennett and Hilton Bennett, infants, by Onetha Bennett, their mother and next friend; Zelia Ragin and Sarah Ellen Ragin, infants, by Hazel Ragin, their mother and next friend; and Irene Scott, an infant, by Henry Scott, her father and next friend, plaintiffs herein, do hereby pray that an appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said plaintiffs, and that the amount of security be fixed by the order allowing the appeal, and that the material parts of the record, proceedings and papers upon which said final judgment and decree was based duly [fol. 572] authenticated be sent to the Supreme Court of the

United States in accordance with the rules in such case made provided.

Respectfully submitted, (S.) Harold R. Boulware, 1109½ Washington Street, Columbia, South Carolina; (S.) Spottswood W. Robinson, III, 623 North Third Street, Richmond, Virginia; (S.) Robert L. Carter, Thurgood Marshall, 20 West 40th Street, New York 18, New York, Counsel for Plaintiffs-Appellants.

George E. C. Hayes, James M. Nabrit, Arthur D. Shores, A. T. Walden, Of Counsel.

Dated May 9, 1952.

[fol. 573] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 9, 1952

Harry Briggs, Jr., Thomas Lee Briggs and Katherine Briggs, infants, by Harry Briggs, their father and next friend and Thomas Gamble, an infant by Harry Briggs, his guardian and next friend; William Gibson, Jr., Maxine Gibson, Harold Gibson and Julia Ann Gibson, infants, by Anne Gibson, their mother and next friend; Mitchel Oliver and Richard Allen Oliver, infants, by Mose Oliver, their father and next friend; Celestine Parson, an infant by Bennie Parson, her father and next friend; Shirley Ragin and Delores Ragin, infants, by Edward Ragin, their father and next friend; Glen Ragin, an infant, by William Ragin, his father and next friend; Elane Richardson and Emanuel Richardson, infants, by Luchrisher Richardson, their father and next friend; James Richardson, Charles Richardson, Dorothy Richardson, and Jackson Richardson, infants, by Lee Richardson, their father and next friend; Daniel Ben-
[fol. 574] nett, John Bennett and Clifton Bennett, infants, by James H. Bennett, their father and next friend; Louis

Oliver, Jr., an infant, by Mary Oliver, his mother and next friend; Gardeneia Stukes, Willie M. Stukes, Jr., and Louis W. Stukes, infants by Willie M. Stukes, their father and next friend; Joe Nathan Henry, Charles R. Henry, Eddie Lee Henry and Phyllis A. Henry, infants, by G. H. Henry, their father and next friend; Carrie Georgia and Jervine Georgia infants, by Robert Georgia, their father and next friend; Rebecca I. Richburg, an infant by Rebecca Richburg, her mother and next friend; Mary L. Bennett, Lillian Bennett and John McKenzie, infants, by Gabrial Tyndal, their father and next friend; Eddie Lee Lawson and Susan Ann Lawson, infants, by Susan Lawson, their mother and next friend; Willie Oliver and Mary Oliver, infants, by Frederick Oliver, their father and next friend; Hercules Bennett and Hilton Bennett, infants, by Onetha Bennett, their mother and next friend; Zelia Ragin and Sarah Ellen Ragin, infants, by Hazel Ragin, their mother and next friend; and Irene Scott, an infant, by Henry Scott, her father and next friend, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of this court in this cause entered on March 12, 1952, and from each and every part thereof, and having presented their assignments of errors and prayer for reversal and their statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

[fol. 575] It is further ordered that the appeal bond in the form of cash in the amount of $500, already on deposit in this Court, be continued for this appeal.

It is further ordered that citation shall issue in accordance with law.

George Bell Timmerman, Judge.

Dated: May 9, 1952.

[fols. 576-577] Citation in usual form showing service on S. E. Rogers and Robert McC. Figg, Jr., omitted in printing.

[fol. 578] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed May 9, 1952

Harry Briggs, Etc., and all the others who are plaintiffs in the above-entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following Assignment of Errors upon which they will rely in their prosecution of said appeal from the order and decree of the District Court entered on March 13, 1952:

1. The District Court erred in refusing to enjoin the enforcement of the laws of South Carolina requiring racial segregation in the public schools of Clarendon County on the ground that these laws violate rights secured under the [fol. 579] equal protection clause of the Fourteenth Amendment.

2. The District Court erred in refusing to grant to appellants immediate and effective relief against the unconstitutional practice of excluding appellants from an opportunity to share the public school facilities of Clarendon County on an equal basis with other students without regard to race or color.

3. The District Court erred in predicating its decision on the doctrine of *Plessy v. Ferguson* and in disregarding the rationale of *Sweatt v. Painter* and *McLaurin v. Board of Regents*.

Wherefore, plaintiffs Harry Briggs, etc. and all the *the* others who are plaintiffs in the above-entitled cause, pray that the order and decree of the District Court entered on March 13, 1952, be reversed and for such other relief as the Court may deem fit and proper.

Thurgood Marshall, 20 West 40th Street New York 18, New York.

Dated: May 9, 1952.

[fols. 580-581] Statement required by Rule 12 of the Rules of the Supreme Court (omitted in printing).

[fols. 582-659] Acknowledgment of Service (omitted in printing).

[fol. 660] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT—Filed May 14, 1952

To the Honorable Ernest L. Allen, Clerk of the Above-Named Court:

You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Complaint.
2. Answer with exhibits.
3. Transcript of record, including all of the testimony and opening statements for defendants and plaintiffs but excluding the closing remarks of counsel on both sides. (Excluding pages 225-274 of the Transcript of Testimony.)
4. Majority Opinion of Judges Parker and Timmerman and dissenting opinion of Judge Waring, dated June 21, 1951.
5. Final decree dated June 21, 1951.
6. Petition for appeal in first appeal.
7. Order allowing appeal in first appeal.
8. Citation on appeal in first appeal.
9. Assignment of errors in first appeal.

[fol. 661] 10. Statement of Jurisdiction to the Supreme Court in first appeal.

11. Statement of Plaintiffs-Appellants directing attention to Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States in first appeal.

12. Acknowledgment of Service of Notice of Appeal and other papers in first appeal.

13. Report of defendants pursuant to decree of June 21, 1951.

14. Order of court transmitting defendants' report to the United States Supreme Court.

15. Opinion of United States Supreme Court dated January 28, 1952.

16. Plaintiffs-appellants' motion for judgment.

17. Order setting date of second hearing for February 29, 1952.

18. Order continuing hearing until March 3, 1952.

19. Motion by defendants-appellees requesting that R. W. Elliott, Chairman, J. D. Carson, E. N. Touchberry, W. A. Brunson, and A. E. Brock, Sr., constituting the Board of Trustees of School District No. 1, and N. B. Betchman, Superintendent of School District No. 1, be made parties to this suit, and providing that they be bound by all orders and decrees that have been or may hereafter be entered herein.

20. Defendants-appellees' report supplementary to report listed as Item No. 13 herein.

21. Transcript of second hearing held March 3, 1952.

22. Opinion and decree of district court filed March 13, 1952.

23. Petition for appeal.

24. Order allowing appeal.

[fol. 662] 25. Citation on appeal.

26. Assignment of Errors and prayer for reversal.

27. Statement of Jurisdiction to the Supreme Court of the United States.

28. Statement of Plaintiffs-Appellants directing attention to Paragraph 3 of Rule 12 of the Revised Rules of the Supreme Court of the United States.

29. Acknowledgment of Service of these appeal papers.

30. This Praecipe.

Thurgood Marshall, Counsel for Plaintiffs-Appellants.

Dated: May 9, 1952.

[fols. 663-672] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD DESIRED TO BE INCLUDED IN TRANSCRIPT—Filed May 21, 1952

To the Honorable Ernest L. Allen, Clerk of the above named Court:

The Appellees do hereby designate the following additional portions of the record desired by them to be included in the Transcript of Record herein, to wit:

1. Amendment to Answer allowed by the Court at the first trial;

2. The entire Transcript of Record at the first trial, including all of the testimony, opening statement, colloquy between counsel and the Court on the closing of the testimony, and the oral arguments of counsel, pages 225 to 274 of the Transcript of Testimony and Proceedings;

3. This Designation as to the record.

S. E. Rogers, Summerton, S. C., Robert McC. Figg, Jr., 18 Broad Street, Charleston, S. C., Counsel for Appellees.

Dated May 20, 1952.

[fol. 673] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 674-675] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO PRINTING—Filed June 3, 1952

The parties to the above-entitled cause hereby stipulate that the following parts of the record should be printed by the Clerk of the Supreme Court of the United States:

All portions of the record designated in Plaintiffs-Appellants' Praecipe dated May 9, 1952, heretofore filed, with the exception of Items 6, 7, 8, 9, 10, 11 and 12, desig-

nated therein, which are Petition for Appeal, Order Allowing Appeal, Citation on Appeal, Assignment of Errors and Prayer for Reversal, Statement as to Jurisdiction, Statement Required by Rule 12, Paragraph 3 of the Rules of the Supreme Court of the United States and Acknowledgment of Service, all relating to the first appeal.

Thurgood Marshall, Of Counsel for Plaintiffs-Appellants.

Dated: May 20, 1952.

Robert McC. Figg, Jr., Of Counsel for Defendants-Appellees.

Dated May 19th, 1952.

[fols. 676-677] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 101

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed July 5, 1952

A. Appellants adopt for their statement of points upon which they intend to rely in their appeal to this Court the points contained in their Assignment of Errors heretofore filed.

B. Appellants designate for printing all those portions of the record as indicated in the Stipulation As To Printing, dated May 19th, 1952, heretofore filed in the above-entitled case.

Thurgood Marshall, Counsel for Appellants.

[fol. 678] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 816

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—June 9, 1952

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is assigned for argument immediately following No. 436, Brown et al. vs. Board of Education of Topeka, etc., et al.