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3917

Receipt for Registered Article No. \_\_\_\_\_

Postmaster per \_\_\_\_\_

Fee paid 25 cents. Class postage \_\_\_\_\_

POSTMARK

Declared value 0.00 Surcharge paid, \$ \_\_\_\_\_

Return Receipt fee \_\_\_\_\_ Spl. Del'y fee \_\_\_\_\_

Delivery restricted to addressee:

in person \_\_\_\_\_, or order \_\_\_\_\_ Fee paid \_\_\_\_\_  
 Accepting employee will place his initials in space  
 indicating restricted delivery.

c7-16-19433-4 GPO

NOTICE TO SENDER—Enter below name and address of addressee as an identification. Preserve and submit  
 this receipt in case of inquiry or application for indemnity.

Callison  
\_\_\_\_\_  
(Name of addressee)\_\_\_\_\_  
(P. O. and State of address)

3918

Receipt for Registered Article No. \_\_\_\_\_

Postmaster per \_\_\_\_\_

Fee paid 25 cents. Class postage \_\_\_\_\_

POSTMARK

Declared value 0.00 Surcharge paid, \$ \_\_\_\_\_

Return Receipt fee \_\_\_\_\_ Spl. Del'y fee \_\_\_\_\_

Delivery restricted to addressee:

in person \_\_\_\_\_, or order \_\_\_\_\_ Fee paid \_\_\_\_\_  
 Accepting employee will place his initials in space  
 indicating restricted delivery.

c7-16-19433-4 GPO

NOTICE TO SENDER—Enter below name and address of addressee as an identification. Preserve and submit  
 this receipt in case of inquiry or application for indemnity.

Byrnes  
\_\_\_\_\_  
(Name of addressee)\_\_\_\_\_  
(P. O. and State of address)

### Registered Mail—Fees for indemnity limited to:

\$5.....	25¢	\$200.....	60¢	\$700.....	\$1. 20
25.....	35¢	300.....	70¢	800.....	1. 30
50.....	40¢	400.....	85¢	900.....	1. 40
75.....	45¢	500.....	1. 00	1, 000.....	1. 50
100.....	50¢	600.....	1. 10		

The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 25 cents.

Domestic registered mail is subject to surcharges when the declared value exceeds the maximum indemnity covered by the registry fee paid. Fees on domestic registered C. O. D. mail range from 55 cents to \$1.55. Indemnity claims must be filed within 1 year (C. O. D., 6 months) from date of mailing.

Consult postmaster as to the registry fees chargeable on registered parcel post packages for foreign countries.

c7-16-19433-4

### Registered Mail—Fees for indemnity limited to:

\$5.....	25¢	\$200.....	60¢	\$700.....	\$1. 20
25.....	35¢	300.....	70¢	800.....	1. 30
50.....	40¢	400.....	85¢	900.....	1. 40
75.....	45¢	500.....	1. 00	1, 000.....	1. 50
100.....	50¢	600.....	1. 10		

The fee on domestic registered matter without intrinsic value and for which indemnity is not paid is 25 cents.

Domestic registered mail is subject to surcharges when the declared value exceeds the maximum indemnity covered by the registry fee paid. Fees on domestic registered C. O. D. mail range from 55 cents to \$1.55. Indemnity claims must be filed within 1 year (C. O. D., 6 months) from date of mailing.

Consult postmaster as to the registry fees chargeable on registered parcel post packages for foreign countries.

c7-16-19433-4

**SUPREME COURT OF THE UNITED STATES**

No. 273.—OCTOBER TERM, 1951.

Harry Briggs, Jr., et al., } On Appeal From the United  
Appellants, } States District Court for the  
v. } Eastern District of South  
R. W. Elliott, et al. } Carolina.

[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 No. 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 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

\*So. Car. Const., Art. XI, § 7; S. C. Code, 1942, § 5377.

**FILED**

FEB 7 1952

**ERNEST L. ALLEN**  
U. S. DISTRICT COURT

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.

Post Office Department  
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300



(GPO)

POSTMARK OF DELIVERING  
OFFICE

Return to

*Clerk's office*

(NAME OF SENDER)

Street and Number,  
or Post Office Box,

*U.S. District Court*

REGISTERED ARTICLE

No. *3918*

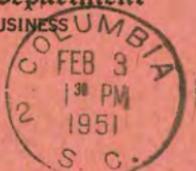
INSURED PARCEL

**CHARLESTON,**

**SOUTH CAROLINA.**

Post Office Department  
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300



(GPO)

POSTMARK OF DELIVERING  
OFFICE

Return to

*Clerk's office*

(NAME OF SENDER)

Street and Number,  
or Post Office Box,

*U.S. District Court*

REGISTERED ARTICLE

No. *3917*

INSURED PARCEL

**CHARLESTON,**

**SOUTH CAROLINA.**

# RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 James F. Burns  
(Signature or name of addressee)

2 James Frank  
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery FEB 3 1951, 1951

U. S. GOVERNMENT PRINTING OFFICE 16-12421-1

U. S. GOVERNMENT PRINTING OFFICE 16-12421-1

Date of delivery FEB 3 1951, 1951

(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

2 James F. Burns  
(Signature or name of addressee)

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

# RETURN RECEIPT

## 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 it 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

SEE  
RMH  
6

3 thereon, and the Auditor of Clarendon County shall levy an annual tax upon  
4 all the taxable property in the school district sufficient to pay the bonds and  
5 interest as they may mature, and the treasurer of the county shall collect the  
6 taxes so levied as other taxes are collected.

SEC. 5. All acts or parts of acts inconsistent herewith are hereby re-  
2 pealed.

SEC. 6. This act shall take effect upon its approval by the Governor,

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED

DEC 22 1950

ERNEST L. ALLEN  
CLERK

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 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,

Jay  
/

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,

IRENE SCOTT, an infant, by  
HENRY SCOTT, her father and  
next friend.

Plaintiffs

-vs-

*Jep*  
*2*  
R. W. ELLIOTT, Chairman, J. D. 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

## COMPLAINT

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 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.

*Jug*  
4

(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 secondary 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 of 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 educational 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, Delores Ragin, Glen Ragin, Elane Richardson, Emanuel 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 eligibility 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, Mary Oliver, Willie M. Stukes, G. H. Henry, Robert Georgia, Rebecca Richburg, Gabriel 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 administrative officer of the State, charged with overall supervision and government of the 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 accordance 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..."

*Jup*  
8

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 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 divisions 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 provisions 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 injury 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 respectfully 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 exclusively 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 those 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*

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. C.

*Robert L. Carter*

Robert L. Carter

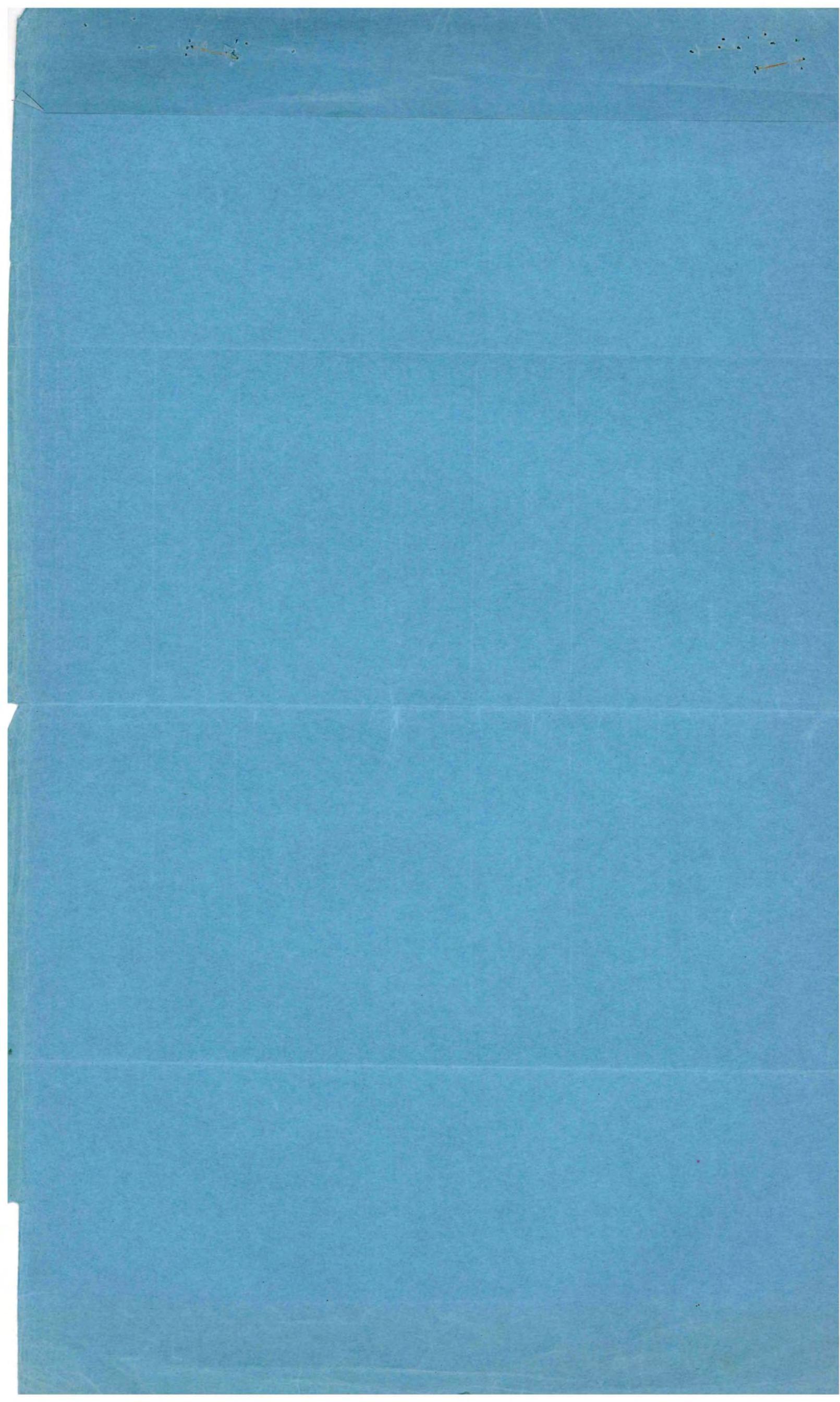
*Thurgood Marshall*

Thurgood Marshall  
20 West 40th Street  
New York 18, N.Y.

Attorneys for Plaintiffs.

DATED: December 19, 1950

*HJ*  
*14*



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED

DEC 22 1950

ERNEST L. ALLEN  
C. C. U. S. E. D. S. C.

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 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,

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 GABRIEL 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-

24  
R. W. ELLIOTT, Chairman, J. D. 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

COMPLAINT

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 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 secondary 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 of 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 educational 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, Delores Ragin, Glen Ragin, Elane Richardson, Emanuel 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 eligibility to attend the public schools of Clarendon County, South Carolina. They satisfy all

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, Mary Oliver, Willie M. Stukes, G. H. Henry, Robert Georgia, Rebecca Richburg, Gabriel 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 administrative officer of the State, charged with overall supervision and government of the 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 accordance 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 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 divisions 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 provisions 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 injury 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 respectfully 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 exclusively 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 those 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*  
Thurgood Marshall  
20 West 40th Street  
New York 18, N.Y.

Attorneys for Plaintiffs.

DATED: December 19, 1950

*JMP*  
14

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

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CIVIL ACTION NO. \_\_\_\_\_

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HARRY BRIGGS, Jr., et al

Plaintiffs

v.

THE BOARD OF TRUSTEES FOR  
SCHOOL DISTRICT NUMBER 22, et al

Defendants

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COMPLAINT

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Harold R. Boulware  
1109½ Washington St.  
Columbia, S.C.

Thurgood Marshall  
Robert L. Carter

20 West 40th Street  
New York 18, N.Y.

Attorneys for Plaintiffs

District Court of the United States

FOR THE

EASTERN DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

CIVIL ACTION FILE No. 2657

Harry Briggs, Jr., et al,

Plaintiffs

v.

R. W. Elliott, Chairman, J. D. 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

FILED

DEC 22 1950

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Harold R. Boulware, Esq.

plaintiff's attorney, whose address is 1109 1/2 Washington Street  
Columbia, South Carolina

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

ERNEST L. ALLEN

Clerk of Court.

By

*James W. Smith*

Deputy Clerk.

Date: Dec. 22, 1950

[Seal of Court]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the

day of

19

I received the within summons

DATE: DEC 23 1920

[Stamp]

MARSHAL'S FEES

Travel..... \$.....

United States Marshal.

Service.....

By..... Deputy United States Marshal.

Subscribed and sworn to before me, a

this

day of 19

[SEAL]

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

No. ....  
District Court of the United States  
DISTRICT OF .....

SUMMONS IN CIVIL ACTION.

Returnable not later than 1 days  
after service.

Attorney for Plaintiff.

FPI-LK-9-19-46-150M-4260-1a

RECEIVED  
DEC 23 1920  
FILED

District Court of the United States

The Court opened at Charleston, S. C., on May 28, 1951, according to adjournment

John V. Parker  
J. Waties Waring

Honorable George Bell Timmerman Presiding.

PRESENT

Ernest L. Allen, Clerk

Julian M. Paulnot Sr., Marshal

Bailiff

Doris C. Appleby  
Blaney D. Coole  
I. V. McKinney } Reporters

Harry Briggs, Jr. et al

Plaintiff.

vs.

R. W. Elliott, et al, etc

Case No. 9a 2657

Defendant.

APPEARANCES: Thurgood Marshall, Robt L. Carter, Harold Boulware  
A. T. Walden, Spatswood Robinsons, Arthur D. Shores (Pro Hac Vice) For Plaintiff.

Robt Mc C. F. 99, S. E. Rogers, T. C. Callison -

For Defendant.

Plaintiff

Motion by

Defendant

ARGUMENTS:

Pro Motion

Contra Motion

EXHIBITS:

Plaintiff

Defendant

Note: At opening of court, Defense counsel made opening statement which was read into the record and order filed as a memorandum to Answers

JURY

Tried by 3-Judge Court

WITNESSES:

Plaintiff

Defendant

L. B. M. Cord.

R. ~~M.~~ Elliott.

Matthew J. Whitehead

Harold J. Mc Nally-

Ellis O. Knox

Kenneth Clark

Recess at 1:15 to 2:30 P.M.

Kenneth Clark (Recalled)

James L. Hubb

Louis Kesselman

At this point, with the Court's permission, the defense suspended its testimony, with leave to

Continue later in the case. The Defense asked for a short recess and it was granted at 3:05 P.M. to 3:32 and defense then called

E. R. Crow

H. P. Detchman

ARGUMENT:

JUDGE'S CHARGE:

VERDICT:

The Court adjourned at 4:38 o'clock, P.M. until 9:30 A.M. May 29 1954.

The Court opened at Charleston, S. C., on May 29, 1951, according to adjournment

Jno. J. Parker  
J. Waties Waring

Honorable Geo. Bell Timmerman Presiding.

PRESENT

Ernest L. Allen, Clerk

J. M. Paulnot Dep. Marshal

Bailiff

Doris C. Appleby  
Blaney D. Cook  
I. V. McKinney } Referees

Harry Briggs, et al

Plaintiff.

vs.

R. M. Elliott, et al

Defendant.

Case No. 2657  
9a 2788

(continuation)

APPEARANCES:

See minutes of May 28 1951 For Plaintiff.

For Defendant.

Plaintiff

Motion by

Defendant

ARGUMENTS:

Pro Motion

Contra Motion

EXHIBITS:

Plaintiff

Defendant

- D-A: Inaugural Address of Gov Byrnes
- D-B: Message of Gov. Byrnes to the Legislature
- D-C: Excerpts from General Appropriation Act.

JURY

WITNESSES:

Plaintiff

Defendant

David Kreck

Mrs. Helen Trager

At this point, the ~~Defense~~ Plaintiff again interrupted its testimony due to delay in arrival of its witnesses. Prior to the resumption of Defense testimony, a recess was taken from 10:25 to 10:48. The Defense then advised the Court that it had no witnesses to call at this time. The Plaintiffs advised the Court that no witnesses were available but that the testimony of one Dr. Robt. Redfield of U. of Chicago was vital to the case, he being en route. It being found that his testimony in a previous case was available in the city, it was sent for and recess taken at 11:05 to 11:30 AM.

Upon resumption, Plaintiff's Counsel advised that the testimony of Dr. Redfield in the "Sweatt" case, Pages 189 to 208, would be offered, & Defense stipulated that if he were here, such testimony would be the same. The Plaintiff thereupon rested and the Defense offered no additional testimony, whereupon the testimony was concluded.

ARGUMENT: Mr. Marshall = 11:39 - 12:01; Mr. Figg = 12:01 - 1:05.

Recess taken until 2:30 P.M. = Mr. Marshall = 2:30 - 2:51 P.M.

JUDGE'S CHARGE:

VERDICT:

Briefs to be submitted by Plaintiff within one week - Defendant to have one week thereafter to file Reply Brief - Briefs to be exchanged -

To be taken under submission

The Court adjourned at 2:50 o'clock, P.M. until 10 AM May 30, 1951.

District Court of the United States

FOR THE

EASTERN DISTRICT OF NORTH CAROLINA

CHARLESTON DIVISION

CIVIL ACTION FILE No. 2657

Harry Briggs, Jr., et al,

Plaintiff,

v.

R. W. Elliott, Chairman, J. P. Carson and George Kennedy, Members of Board of Trustees of School District #22, Clarendon County, S. C.; Summerton High School District, a body corporate; A. B. McCord, Superintendent of Education for Clarendon County and Chairman A. J. Flouder, W. H. Baker, Members of the County Board of Education for Clarendon County; and H. B. Bettsman, Superintendent of School District #22,

Defendant

FILED

DEC 22 1950

ERNEST L. ALLEN  
CLERK OF COURT

SUMMONS

Attorney for Plaintiff

U.S. DISTRICT COURT - 1-13-48 - 190W - 2501-40

Note.—Affidavit required only if service is made by a person other than a party or his agent.

To the above named Defendant :

(REV)

You are hereby summoned and required to serve upon

Harold H. Boulware, Esq.

Subscribed and sworn to before me, a

this

plaintiff's attorney, whose address

is 1109 1/2 Washington Street  
Columbia, South Carolina

Service

1950

United States Marshal

MARSHAL'S FEES

an answer to the complaint which is herewith served upon you, within -20- days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

ERNEST L. ALLEN  
Clerk of Court.  
By *Samuel L. Smith*  
Deputy Clerk.

Date:

Dec. 22, 1950

[Seal of Court]

I hereby certify and return that on the

day of

19

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RETURN ON SERVICE OF MAIL

RETURN ON SERVICE OF WRIT

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

I hereby certify and return, that on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

I received the within summons  
Date: \_\_\_\_\_

[Seal of Court]

~~Deputy Clerk  
[Signature]~~

be taken against you for the relief demanded in the complaint  
of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will  
be entered against you for the relief demanded in the complaint which is hereby served upon you, within \_\_\_\_\_ days after service

MARSHAL'S FEES

Travel..... \$.....

United States Marshal.

Service.....

By \_\_\_\_\_

Deputy United States Marshal.

Subscribed and sworn to before me, a \_\_\_\_\_ this

day of \_\_\_\_\_ 19 \_\_\_\_\_

You are hereby summoned and required to serve upon \_\_\_\_\_

(SEAL)

To the above named Defendant:

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

No. \_\_\_\_\_  
District Court of the United States  
DISTRICT OF \_\_\_\_\_

SUMMONS IN CIVIL ACTION

Returnable not later than \_\_\_\_\_ days

after service.

SUMMONS

Attorney for Plaintiff.

RECORDED

DEC 22 1920

FILED

CIVIL ACTION FILE NO. \_\_\_\_\_

DIVISION

DISTRICT OF \_\_\_\_\_

FOR THE

District Court of the United States

JUDGES COPY

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

**FILED**

**FEB - 1 1951**

**ERNEST L. ALLEN  
CLERK U.S. DIST. CT.**

HARRY BRIGGS, JR., et al,

Civil Action No. 2657

Plaintiffs,

v.

ORDER

R. W. ELLIOTT, Chairman, et al

Defendants.

It appearing in the above entitled cause that Honorable J. Waties Waring, United States District Judge for the Eastern District of South Carolina, pursuant to Title 28, U. S. Code, Sections 2281-2284, has directed that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon to hear application for declaratory judgments and for temporary and permanent injunctions.

Now, therefore, it is ordered that Honorable George Bell Timmerman, United States District Judge for the Eastern and Western Districts of South Carolina, and the undersigned, Chief Judge of the Fourth Judicial Circuit, be and they are hereby designated to sit with the said Honorable J. Waties Waring in the hearing of said application.

This is the 31st. day of Jan., 1951.

/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

FILED

FEB - 1 1951

ERNEST L. ALLEN  
CLERK

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

HARRY BRIGGS, JR., et al,

Civil Action No. 2657

Plaintiffs,

v.

ORDER

R. W. ELLIOTT, Chairman, et al

Defendants.

It appearing in the above entitled cause that Honorable J. Waties Waring, United States District Judge for the Eastern District of South Carolina, pursuant to Title 28, U. S. Code, Sections 2281-2284, has directed that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon to hear application for declaratory judgments and for temporary and permanent injunctions.

Now, therefore, it is ordered that Honorable George Bell Timmerman, United States District Judge for the Eastern and Western Districts of South Carolina, and the undersigned, Chief Judge of the Fourth Judicial Circuit, be and they are hereby designated to sit with the said Honorable J. Waties Waring in the hearing of said application.

This is the 31st. day of Janv., 1951.

/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

Civil Action 2657

FILED

JAN 12 1951

Form No. 282

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN

Harry Briggs, ~~et al~~  
vs  
Board of Trustees, Clarendon #22

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named H. B. Betchman

by handing to and leaving a true and correct copy thereof with H. B. Betchman

personally

at Summerton, S. C. in said District on the 28th day of

December, 19 50

Marshal's No. 943

Fee 2.00

Total mileage all services 222 mi.

Alfred J. Plowden, Jr.

U.S. Marshal.

By Raymond A. Kiser  
Quist Deputy.

JUDGE'S COPY

FILED

Form No. 282

RETURN ON SERVICE OF WRIT

JAN 12 1951

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

Harry Briggs, Jr. et al. vs  
Board of Trustees, Clarendon #22  
ERNEST L. ALLEN  
C.C. GUSEY, JR.

I hereby certify and return that I served the annexed Summons & Complaint  
on the therein-named H. B. Betchman

by handing to and leaving a true and correct copy thereof with H. B. Betchman  
personally  
at Summerton, S. C. in said District on the 28th day of  
December, 1950

Marshal's No. 943  
Fee 2.00  
Total mileage all services 222 mi.

Alfred J. Flowden, Jr.

U.S. Marshal.

By Raymond A. Kissen  
Chief Deputy.

Civil Action

2657

FILED

Form No. 282

JAN 12 1951

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN

Harry Briggs, Jr., Clerk S.E.D.S.C.

vs

Board of Trustees, Clarendon #22

Civil Action 2657

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

I hereby certify and return that I served the annexed \_\_\_\_\_

Summons & Complaint on the therein-named W. E. Baker \_\_\_\_\_

by handing to and leaving a true and correct copy thereof with W. E. Baker \_\_\_\_\_

personally

at New Zion, S. C. in said District on the \_\_\_\_\_ day of

28th

December, 19 50

Marshal's No. 943

Fee 2.00

Total mileage all services 222 mi.

Alfred J. Plowden, Jr.

U.S. Marshal.

By *Raymond Askins*  
Clerk

Deputy.

JUDGE'S COPY

FILED

Form No. 282

JAN 12 1951

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

Harry Briggs, Jr.,  
vs  
Board of Trustees, Clarendon #22  
Civil Action 2657

I hereby certify and return that I served the annexed \_\_\_\_\_

Summons & Complaint on the therein-named W. E. Baker

by handing to and leaving a true and correct copy thereof with W. E. Baker

\_\_\_\_\_ personally

at New Zion, S. C. in said District on the 28th day of

December, 1950

Marshal's No. 943  
Fee 2.00  
Total mileage all services 232 mi.

Alfred J. Plowden, Jr. U.S. Marshal.

By Raymond A. Kessen Deputy.

FILED

JAN 12 1951

Form No. 282

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

Harry Briggs, Jr., et al  
vs

Board of Trustees, Clarendon #22

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

Civil Action 2657

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named J. D. Carson

by handing to and leaving a true and correct copy thereof with J. D. Carson

personally

at Summerton, S. C. in said District on the 29th day of

December, 1950

Alfred J. Plowden, Jr.

U.S. Marshal.

Marshal's No. 943

Fee 2.00

Total mileage all services 222 mi.

By Raymond A. Kiser  
Chris

Deputy.

JUDGE'S COPY

FILED

JAN 12 1951

Form No. 282

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN

Harry Briggs, Jr., et al vs Board of Trustees, Clarendon #22

Civil Action 2637

United States of America,

Eastern DISTRICT OF South Carolina ss:

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named J. D. Carson

by handing to and leaving a true and correct copy thereof with J. D. Carson

personally

at Summerton, S. C. in said District on the 20th day of

December, 1950

Alfred J. Plowden, Jr.

U.S. Marshal.

By Raymond A. [Signature] Deputy.

Marshal's No. 913 Fee 2.00 Total mileage and services 222 ml.

FILED

Form No. 282

JAN 12 1951

RETURN ON SERVICE OF WRIT

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

Harry Briggs, ERNEST L. ALLEN  
vs C. & C. U. S. E. D. S. C.  
Board of Trustees, Clarendon #22

Civil Action 2657

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named R. M. Elliott

by handing to and leaving a true and correct copy thereof with R. M. Elliott

personally

at Summerton, S. C. in said District on the 28th day of

December, 1950

Marshal's No. 943  
Fee 2.00  
Total mileage all services 222 mi.

Alfred J. Flowden, Jr. U.S. Marshal.

By *Raymond A. Kessen*  
*Chief* Deputy.

# JUDGE'S COPY

## FILED

JAN 12 1951

### RETURN ON SERVICE OF WRIT

United States of America, }  
Eastern DISTRICT OF South Carolina } ss.

Harry Briggs, Jr. vs ERNEST L. ALLEN  
Board of Trustees, Clarendon #22  
U.S. Marshal & G.

Civil Action 2657

I hereby certify and return that I served the annexed Summons & Complaint

..... on the therein-named R. M. Elliott

by handing to and leaving a true and correct copy thereof with R. M. Elliott

..... personally

at Summerton, S. C. in said District on the 28th day of

December, 1950

Marshal's No. 943  
Fee 2.00  
Total mileage all services 222 mi.

Alfred J. Flowden, Jr. U.S. Marshal.

By Raymond A. Kesser  
Chief Deputy.

FILED

JAN 12 1951

Form No. 282

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN  
CLERK U.S. DISTRICT COURT

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

Harry Briggs, Jr., et al  
vs  
Board of Trustees, Clarendon #22

Civil Action 2657

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named George Kennedy

by handing to and leaving a true and correct copy thereof with George Kennedy

personally

at Summerton, S. C. in said District on the 29th day of

December, 1950

Marshal's No. 943  
Fee 2.00  
Total mileage all services 222 mi.

Alfred J. Plowden, Jr.  
U.S. Marshal.

By Raymond A. Kessen  
Shurt Deputy.

# JUDGE'S COPY

**FILED**

**JAN 12 1951**

## RETURN ON SERVICE OF WRIT

**ERNEST L. ALLEN**  
C.D. 1124432

**Harry Briggs, Jr., et al**  
**vs**  
**Board of Trustees, Clarendon #22**  
**Civil Action 2657**  
**Summons & Complaint**

**United States of America,** }  
**Eastern DISTRICT OF South Carolina** } ss:

I hereby certify and return that I served the annexed \_\_\_\_\_

\_\_\_\_\_ on the therein-named **George Kennedy**

by handing to and leaving a true and correct copy thereof with **George Kennedy**

\_\_\_\_\_ personally

at **Summerton, S. C.** in said District on the \_\_\_\_\_ day of

**December**, 19**50**

Marshal's No. 963  
Fee 2.00  
Total mileage all services 222 mi.

**Alfred J. Flouien, Jr.**  
U.S. Marshal.

By *Raymond A. [Signature]*  
*Quig* Deputy.

Civil Action 2657

FILED

JAN 12 1951

Form No. 282

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN

Harry Briggs, Jr., et al. U.S.D.S.G.  
vs  
Board of Trustees, Clarendon #22  
C/A 2657

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named Summerton High School District

by handing to and leaving a true and correct copy thereof with Mr. R. W. Elliott, chairman

personally

at Summerton, S. C. in said District on the 28th day of

December, 1950

Marshal's No. 943

Fee 2.00

Total mileage all services 222 mi.

Alfred J. Plowden, Jr.

U.S. Marshal.

By

Raymond A. Kessen  
Clerk

Deputy.

# JUDGES COPY

FILED

Form No. 282

JAN 12 1951

## RETURN ON SERVICE OF WRIT

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

Harry Briggs, Jr., <sup>et al</sup> ERNEST L. ALLEN  
vs  
Board of Trustees, Clarendon #22  
C/A 2657

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named Summerton High School District

by handing to and leaving a true and correct copy thereof with Mr. R. W. Elliott, chairman

personally

at Summerton, S. C. in said District on the 28th day of  
December, 1950

Marshal's No. 943

Fee 2.00

Total mileage all services 222 mi.

Alfred J. Plenden, Jr.

U.S. Marshal.

By Raymond A. Kessen

Deputy.

FILED

JAN 12 1951

Form No. 282

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN

Harry Briggs, Jr., et al D.S.G.

VS

Board of Trustees, Clarendon #22

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named L. B. McCord

by handing to and leaving a true and correct copy thereof with L. B. McCord

personally

at Manning, S. C. in said District on the 26th day of

December, 1950

Marshal's No. 943  
Fee 2.00  
Total mileage all services 222 mi.

Alfred J. Flowden, Jr.  
U.S. Marshal.

By Raymond A. [Signature]  
Quit Deputy.

# JUDGE'S COPY

FILED

Form No. 282

JAN 12 1951

## RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN

Harry Briggs, Jr. ~~vs~~ vs  
Board of Trustees, Clarendon #22

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

I hereby certify and return that I served the annexed Summons & Complaint

on the therein-named L. B. McCord

by handing to and leaving a true and correct copy thereof with L. B. McCord

personally

at Manning, S. C. in said District on the 28th day of

December, 1950

Marshal's No. 943  
Fee 2.00  
Total mileage all services 222 mi.

Alfred J. Plowden, Jr.  
U.S. Marshal.

By Raymond A. Kiser  
Chief Deputy.

JAN 12 1951

Form No. 282

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN  
REGISTRAR

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

Harry Briggs, Jr., et al  
vs  
Board of Trustees, Clarendon #22

Civil Action 2657

I hereby certify and return that I served the annexed

Summons & Complaint on the therein-named A. J. Plowden

by handing to and leaving a true and correct copy thereof with A. J. Plowden

personally

at Summerton, S. C. in said District on the 28th day of

December, 19 50

Marshal's No. 943

Fee 2.00

Total mileage all services 222 mi.

Alfred J. Plowden, Jr.

U.S. Marshal.

By *Raymond A. Hesser*  
Chief Deputy.

JUDGE'S COPY

FILED

JAN 12 1951

Form No. 282

RETURN ON SERVICE OF WRIT

ERNEST L. ALLEN  
REGISTRAR

Harry Briggs, Jr., et al

vs

Board of Trustees, Clarendon #22

Civil Action 2657

United States of America, }  
Eastern DISTRICT OF South Carolina } ss:

I hereby certify and return that I served the annexed

Summons & Complaint on the therein-named A. J. Plowden

by handing to and leaving a true and correct copy thereof with A. J. Plowden

personally

at Summerton, S. C. in said District on the 26th day of

December, 19 50

Marshal's No. 943

Fee 2.00

Total mileage all services 222 mi.

Alfred J. Plowden, Jr. U.S. Marshal.

By Raymond A. Kiser  
Shirley  
Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

CIVIL ACTION FILE NO. 2657.

HARRY BRIGGS, et al.,

Plaintiffs,

versus

R. W. ELLIOTT, Chairman, J. D. CARSON  
and GEORGE KENNEDY, Members of the  
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.

**FILED**

JAN 18 1951.

ERNEST L. ALLEN  
CLERK

ANSWER.

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 2 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, has denied to plaintiffs schools and educational

52C  
Wm J. G.  
1

opportunities, 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 defendants 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.

S&R  
RMS  
2

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 school 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

SEK  
RMJ  
3

the 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.

58R  
RMP  
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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

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on the part of boards of trustees in cases where it may 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.

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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.

*A. E. Rogers*

S. E. Rogers, Summerton, S. C.

*Robert McC. Figg, Jr.*

Robert McC. Figg, Jr.,  
207 Peoples Office Building,  
Charleston, S. C.

Attorneys for the Defendants.

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C O P Y

"EXHIBIT A"

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

P E T I T I O N

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, Elene 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 Tindel, 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:

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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 teaching courses in General Science, Physics and Chemistry, Industrial Arts and Trades, and has no adequate library and no adequate accommodations for the

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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 same district and county.

13. That the Negro children of 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 District #22 and Clarendon County are under a duty to afford and make available to children of school age within their jurisdiction.

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

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(Signed) Eddie Lee Lawson  
 " Susan Ann Lawson  
 " Frederick Oliver  
 " Willie Oliver  
 " Mary Oliver  
 " R M Mose Oliver  
 " Leroy Oliver  
 " Mitchel Oliver  
 " Bennie Parson Jr.  
 " Plummie Parson  
 " Celestine Parson  
 " Edward Ragin  
 " Sarah Ragin  
 " Shirley Ragin  
 " Deloris Ragin  
 " Hazel Ragin  
 " Zelia Ragin  
 " Sarah Ellen Ragin  
 " Rebecca Ragin  
 " Mable Ragin  
 " William Ragin  
 " Ellen Ragin  
 " Luchrisher Richardson  
 " Elane Richardson  
 " Emanuel L Richardson  
 " Rebecca Richburg  
 " Rebecca I. Richburg  
 " E. E. Richburg  
 " Albert Richburg  
 " Lee Johnson  
 " Bessie Johnson  
 " Morgan Johnson  
 " Samuel Gary Johnson

Petitioners

Attorneys for Petitioners

(Signed) Harold R. Boulware  
 " Thurgood Marshall  
 " Robert L. Carter

(Signed) Lee Richardson  
 " James Richardson  
 " Charles Richardson  
 " Annie L. Richardson  
 " Dorothy I. Richardson  
 " Jackson Richardson  
 " Mary O. Lawson  
 " Francis Lawson  
 " Bennie Lee Lawson  
 " Mary J. Oliver  
 " Daisy D. Oliver  
 " Louis Oliver Jr.  
 " Esther F. Singleton  
 " Janie L. Fludde  
 " Henry Scott  
 " Mary Scott  
 " Irene Scott  
 " Willie M. Stukes  
 " Gardenia Stukes  
 " Willie Modd Stukes Jr.  
 " Gardenia E. Stukes  
 " Louis W. Stukes  
 " Gabriel Tindal  
 " Annie S. Tindal  
 " Mary L. Bennett  
 " Lillian Bennett

Petitioners

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"EXHIBIT B"

STATE OF SOUTH CAROLINA : BEFORE THE BOARD OF TRUSTEES  
COUNTY OF CLARENDON : OF  
SCHOOL DISTRICT  
NO. 22

IN RE: :

Harry Briggs, et al., : DECISION OF THE  
BOARD  
PETITIONERS :

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

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S.E. ROGERS  
Summerton, S. C.

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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 discretion 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 the 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;

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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 out 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

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approximately \$18,000.00 and 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

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which 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;

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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, erected 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 eliminated 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.

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FACILITIES are furnished in Scott's Franch 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 volumes 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;

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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 the needs

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of the school. Under that date he transmitted to the Board the following recommendations:

"Wood and Coal  
Twelve schttles 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.

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R. M. Elliott, Chairman

Summerton, S. C.  
February 20, 1950.

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C. D. Kennedy

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J. B. Garson, Clerk  
Trustees of School District No. 22, of Clarendon County, South Carolina.

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

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CIVIL ACTION FILE NO. 2657.

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HARRY BRIGGS, et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, Chairman,  
J. D. CARSON, et al., Members  
of Board of Trustees of  
SCHOOL DISTRICT #22,  
CLARENDON COUNTY, S. C., et al.,  
Defendants.

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ANSWER.

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S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
207 Peoples Office Bldg.,  
Charleston, S. C.

1 MR. KENNETH CLARK was duly sworn.

2 DIRECT EXAMINATION BY MR. CARTER:

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

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

7 Q Now long have you been Assistant Professor of Psychology  
8 at the New York City College?

9 A I have been associated with New York City College since  
10 1942, and I have been Assistant Professor since 1948, I think.

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

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

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

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

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

19 A Yes, I have. I was a reserve consultant for the American  
20 Youth Commission in their study of the effects of a minority  
21 status on the personalities of Negro youth. I was reserve  
22 associate with the Cornachie-Murdaugh study of the Negro in  
23 America. I was reserve associate with the Office of War Infor-  
24 mation during the war in their studies of morale problems in the  
25 American Negro. I worked rather recently with the mid-century

1 White House conference on Children In Youth, preparing for them  
2 a manuscript on the effects of prejudice and discrimination  
3 on the personalities of children - white and Negro children.  
4 This manuscript was used last December in Washington at the  
5 White House conference on Children and Youth.

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

8 A I have.

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

10 A Yes. Within the last ten years, I have published about  
11 twenty-five articles on the problem of social psychology with  
12 children and the effects of social situations on the person-  
13 alities of children. They have appeared in the Journal of  
14 Abnormal and Social Psychology, the Journal of Social Psychology,  
15 the International Bulletin on Social Sciences published by the  
16 United Nations Organization. Some of these articles or chap-  
17 ters have appeared in books, such as Civilian Morale by Goodwin  
18 Watson, Human Nature and Enduring Peace by Gardner Murphy, and  
19 Readings and Social Psychology by Newman Hartley.

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

22 A I am a Fellow in the Division of Personalities and Social  
23 Psychology of the American Psychological Association. I am a  
24 Fellow in the Society for the Sociological study of social  
25 issues, and I am a member of the Columbia University Chapter of

1 The Honorary Scientific Research Organization.

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

3 A Child and Social.

4 Q Now, Mr. Clark, are there any methods of scientifically  
5 determining a child's sensitivity to racial discrimination and  
6 its effects on its personality and development?

7 A Yes, there are.

8 Q Would you tell us what those methods are?

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

25 Q Well, just generally.

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1           A Well, we ask the child which one of these dolls does he  
2 like best, which one is a "Nice" doll, which one is "bad," and  
3 we're interested not only in the child's response to the  
4 specific question, but we're also interested in his spontaneous  
5 remarks as he attempts to justify it. Then, in order to find  
6 out whether that is predicated upon the child's knowledge of  
7 the racial factor, which these dolls are supposed to symbolize,  
8 we ask the child which one is like a white child, which one is  
9 like a colored child, and finally the last question that we  
10 ask the child, after the child has expressed his opinion about  
11 the dolls, we ask the child "Which one is like you?" Another  
12 method which we have is the coloring method. We present the  
13 child with some pictures - line drawings - of various objects  
14 like the leaf, an orange, a mouse and an apple in order to see  
15 whether the child has any stable concept of color-object  
16 relationship. And, if we find that that's true, we then give  
17 the child a drawing of a little boy if he is a little boy and  
18 say "This little boy is you," "Color him the color that you  
19 are." And, we get some picture of the child's concept of his  
20 own color, and we also get an indication of the child's  
21 anxieties and confusions about his color and his feelings. And,  
22 we present him with a picture of a little girl and we say to  
23 him "Color this little girl the color that you would like little  
24 girls to be." Here we get an indication of the child's prefer-  
25 ence or feelings about different shades of skin color. These

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1 are the methods which are generally used.

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

5 A You are correct, sir.

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

7 JUDGE PARKER: What's that question?

8 MR. CARTER: Sir, I have asked him about the methods  
9 in determining racial discrimination. Mr. Clark has taken all  
10 of the literature that has been written about the use of these  
11 methods by other psychologists and their results and their  
12 findings, and he has collated those in a book - a manuscript -  
13 which he has edited for the White House Conference. And, I  
14 merely wanted to get from him the general conclusions which  
15 were reached.  
16

17 JUDGE PARKER: Well, you have asked him about his  
18 opinion, but you can't ask him about conclusions reached from  
19 literature, can you? I have never heard of that being a compe-  
20 tent question.

21 MR. CARTER: Well, sir, I thought that I . . .

22 JUDGE PARKER: You can ask him what authorities he  
23 studied.

24 MR. CARTER: All right, sir.

25 JUDGE PARKER: You know, we'll never end this case if

1 we go into that sort of question.

2 MR. CARTER: I didn't want to drag it out.

3 JUDGE PARKER: All right.

4 Q (By Mr. Carter) Well, are the methods which you have  
5 described accepted by child psychologists as being accurate  
6 aids to determine what part racial discrimination plays in the  
7 development of the personality pattern?

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

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

15 A Yes, I have.

16 Q What is that conclusion?

17 A I have reached the conclusion from the examination of my  
18 own results and from an examination of the literature in the  
19 entire field that discrimination, prejudice and segregation  
20 have definitely detrimental effects on the personality develop-  
21 ment of the Negro child. The essence of this detrimental  
22 effect is a confusion in the child's concept of his own self  
23 esteem -- basic feelings of inferiority, conflict, confusion in  
24 his self image, resentment, hostility towards himself, hostility  
25 toward whites, intensification of sometimes a desire to resolve

1 his basic conflict by sometimes escaping or withdrawing. And,  
2 if you care to see some of the results, I'll be happy to show  
3 them. They attempt to withdraw from the situation which  
4 threatens so basically their self-esteem. This is not only my  
5 opinion, but in a study conducted by two social scientists,  
6 Doetcher and Schime, they studied opinions of representative  
7 samples of social psychology, anthropology and sociology by  
8 those who have worked in this field, and they found that ninety  
9 percent of these social psychologists and social scientists  
10 agree that segregation definitely has negative detrimental  
11 effects on the personalities of those individuals who are the  
12 victims of segregation. And, in these specific areas which I  
13 have just enumerated, that was true.

14 Q Now, Mr. Clark, have you had any occasion . . .

15 A May I continue because that is an answer only to one-half  
16 of your question because, actually, the problem is further  
17 explored by those of us who know the literature by showing  
18 that prejudice, discrimination and segregation have an effect  
19 upon the personality of the child who belongs to the discrimin-  
20 ating or segregating group - the white child in this particu-  
21 lar regard. The Doetcher and Schime research again showed  
22 that in this case eighty-two percent of the social scientists  
23 believed that the consequences of belonging to a segregating  
24 group also is detrimental. The pattern of the detriment is  
25 different in this case. Here it's the feeling of the social

1 scientists that the basic personality problem is guilty feelings.  
2 Another problem is confusion in the mind of the child - confusion  
3 concerning basic moral ideology - and a conflict which is set  
4 up in the child who belongs to the segregating group in terms  
5 of having the same people teach him Democracy, brotherhood,  
6 love of his fellow man, and teaching him also to segregate, and  
7 to discriminate. Most of these social scientists believe that  
8 this sets off in the personalities of these children a funda-  
9 mental confusion in the entire moral spheres of their lives.

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

14 A Yes, I did.

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

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

1 JUDGE WARING: You may refresh your recollection.

2 THE WITNESS: Thank you. I presented these dolls to  
3 them and I asked them the following questions in the following  
4 order: "Show me the doll that you like best or that you'd like  
5 to play with," "Show me the doll that is the 'nice' doll,"  
6 "Show me the doll that looks 'bad'," and then the following  
7 questions also: "Give me the doll that looks like a white  
8 child," "Give me the doll that looks like a colored child,"  
9 "Give me the doll that looks like a Negro child," and "Give me  
10 the doll that looks like you."

11 Q (By Mr. Carter) "Like you?"

12 A "Like you." That was the final question, and you can  
13 see why. I wanted to get the child's free expression of his  
14 opinions and feelings before I had him identified with one of  
15 these two dolls. I found that of the children between the  
16 ages of six and nine whom I tested, which were a total of  
17 sixteen in number, that ten of those children chose the white  
18 doll as their preference; the doll which they liked best. Ten  
19 of them also considered the white doll a "Nice" doll. And, I  
20 think you have to keep in mind that these two dolls are  
21 absolutely identical in every respect except skin color.  
22 Eleven of these sixteen children chose the brown doll as the  
23 doll which looked "bad." This is consistent with previous  
24 results which we have obtained testing over three hundred child-  
25 ren, and we interpret it to mean that the Negro child accepts

1 as early as six, seven or eight the negative stereotypes about  
2 his own group. And, this result was confirmed in Clarendon  
3 County where we found eleven out of sixteen children picking  
4 the brown doll as looking "bad," when we also must take into  
5 account that over half of these children, in spite of their  
6 own feelings, - negative feelings - about the brown doll, were  
7 eventually required on the last question to identify themselves  
8 with this doll which they considered as being undesirable or  
9 negative. It may also interest you to know that only one of  
10 these children, between six and nine, dared to choose the white  
11 doll as looking bad. The difference between eleven and sixteen  
12 was in terms of children who refused to make any choice at all  
13 and the children were always free not to make a choice. They  
14 were not forced to make a choice. These choices represent the  
15 children's spontaneous and free reactions to this experimental  
16 situation. Nine of these sixteen children considered the white  
17 doll as having the qualities of a nice doll. To show you that  
18 that was not due to some artificial or accidental set of circum-  
19 stances, the following results are important. Every single  
20 child, when asked to pick the doll that looked like the white  
21 child, made the correct choice. All sixteen of the sixteen  
22 picked that doll. Every single child, when asked to pick the  
23 doll that was like the colored child; every one of them picked  
24 the brown doll. My opinion is that a fundamental effect of  
25 segregation is basic confusion in the individuals and their

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concepts about themselves conflicting in 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?

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

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

10          A I think it is the kind of injury which would be as endur-  
11 ing or lasting as the situation endured, changing only in its  
12 form and in the way it manifests itself.

13                   MR. CARTER: Thank you. Your witness.

14                   CROSS EXAMINATION BY MR. FIGG:

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

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

20          Q How many?

21          A Ten.

22          Q Twenty-six, then, total?

23          A Twenty-six total, yes, sir.

24          Q And where did you talk with them?

25          A I talked with them in a room provided for me by the Prin-

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cipal in the Scott's Branch School.

Q Do you remember his name?

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

*Last*  
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 by attend-

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ing 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?

~~OK~~

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- 1 A No person is ever present.
- 2 Q Just you and the child?
- 3 A No person can be present under these circumstances.
- 4 Q Just you and the child?
- 5 A That's right.
- 6 Q And you refer to that as the interview method?
- 7 A The interview method.
- 8 Q That means you ask them questions?
- 9 A That's right.
- 10 Q And they give you answers?
- 11 A That's right.
- 12 Q And the other method, you say, you devised yourself also?
- 13 A It's a modification of methods which have been used by
- 14 others too.
- 15 Q Now, do you believe that there is such a conception as
- 16 the universal consciousness of kind?
- 17 A No, sir, I do not.
- 18 Q You don't subscribe to that?
- 19 A I don't believe that such a conception has any modern
- 20 psychological validity.
- 21 Q Do you believe that there is such a thing as recognizing
- 22 the visible difference between races?
- 23 A Oh, certainly, that is perceptible.
- 24 Q And these children recognized the visible differences
- 25 between those dolls that you showed them, didn't they?

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1           A They recognized the visible differences between these two  
2 dolls.

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

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

9           Q You don't recognize that?

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

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

15          A I have just given you results which indicate the conse-  
16 quences of that kind of emotional tension.

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

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

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

25          A I have no direct knowledge of that, sir, because I don't

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1 know that.

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

3 A May I ask for clarification of your question?

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

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

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

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

16 JUDGE PARKER: The time for recess has arrived. How  
17 long is it going to take you to finish this cross examination?

18 MR. FIGG: I would just as soon take it up when we  
19 come back, your Honor, and I won't lengthen it.

20 JUDGE PARKER: All right. We'll adjourn until half  
21 past two o'clock.

22 (Recess for lunch)

23 AFTERNOON SESSION, MONDAY MAY 28, 1951.

24 JUDGE PARKER: All right, Let the witness come back.  
25 Go ahead, Mr. Figg.

1 Cross examination by Mr. Figg - Continued.

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

4 A That's correct.

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

7 A That's correct, sir.

8 Q Now, how were those pupils chosen?

9 A A list of the children of the plaintiffs in this case  
10 was . . .

11 Q Who had the list when you got there?

12 A The person who accompanied me had the list.

13 Q The person accompanying you?

14 A The person who accompanied me had the list.

15 Q Who was that?

16 A A Mr. Montgomery.

17 Q And who is he?

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

20 Q All right. Does he live in Summerton?

21 A I do not think so.

22 Q But he had a list of the children?

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

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

25 A I asked the principal for all of those children between

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the first and the 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 it

1 at Clarendon?

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

4 Q Yes.

5 A About four hundred.

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

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

8 Q How many there?

9 A How many?

10 Q How many at Springfield?

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

13 Q About fifty?

14 A A hundred and fifty.

15 Q A hundred and fifty?

16 A I would say so.

17 Q And where else?

18 A In Arkansas.

19 Q How many there?

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

23 Q At any other places?

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

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1 Q So that this method that you and your wife devised had  
2 been used on about four hundred children before this occasion?

3 A Approximately, yes.

4 Q And, would you say that that was a satisfactory demon-  
5 stration of its accuracy and merit to base an opinion of its  
6 value on?

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

9 MR. FIGG: That's all.

10 RE-DIRECT EXAMINATION BY MR. CARTER:

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

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

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

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

22 MR. FIGG: May I ask him one more question, Your  
23 Honor?

24 JUDGE PARKER: All right.

25 RE-CROSS EXAMINATION BY MR. FIGG:

Q Has it been used by anybody else that you know of?

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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, from 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 there is no jury involved in this

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case, if the defendants would put on their testimony with us with the right to come 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 Degree; from

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

CIVIL ACTION FILE NO. 2657.

**FILED**

HARRY BRIGGS, et al.,

Plaintiffs,

versus

R. W. ELLIOTT, Chairman, J. D. CARSON  
and GEORGE KENNEDY, Members of the  
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.

JAN 18 1951

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

ACKNOWLEDGMENT OF SERVICE.

SERVICE of Answer of the defendants in the above entitled  
cause is hereby acknowledged, and copies thereof received, this

16<sup>th</sup>

day of January, 1951.

Harold R. Boulware  
Attorney for Plaintiffs.

OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

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CIVIL ACTION FILE NO. 2657.

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J. D. CARSON, et al.,  
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Trustees of SCHOOL DISTRICT  
#22, CLARENDON COUNTY, S. C.,  
et al.,

Defendants.

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ACKNOWLEDGMENT OF SERVICE.

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S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
207 Peoples Office Bldg.,  
Charleston, S. C.

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cause is hereby acknowledged, and copies thereof received, this

16th day of January, 1951.

(signed) Harold R. Boulware

Attorney for Plaintiffs.

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

---

CIVIL ACTION FILE NO. 2657.

---

HARRY BRIGGS, et al.,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman,  
J. D. CARSON, et al.,  
Members of the Board of  
Trustees of SCHOOL DISTRICT  
#22, CLARENDON COUNTY, S. C.,  
et al.,

Defendants.

---

ACKNOWLEDGMENT OF SERVICE.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
207 Peoples Office Bldg.,  
Charleston, S. C.

**FILED**

FEB 1 1951

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

**ERNEST L. ALLEN**  
C. D. C. U. S. E. D. S. C.

HARRY BRIGGS, JR., et al,

Civil Action No. 2657

Plaintiffs,

v.

O R D E R

R. W. ELLIOTT, Chairman, et al

Defendants.

It appearing in the above entitled cause that Honorable J. Waties Waring, United States District Judge for the Eastern District of South Carolina, pursuant to Title 28, U. S. Code, Sections 2281-2284, has directed that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon to hear application for declaratory judgments and for temporary and permanent injunctions.

Now, therefore, it is ordered that Honorable George Bell Timmerman, United States District Judge for the Eastern and Western Districts of South Carolina, and the undersigned, Chief Judge of the Fourth Judicial Circuit, be and they are hereby designated to sit with the said Honorable J. Waties Waring in the hearing of said application.

This is the 31<sup>st</sup> day of July, 1951.

John J. Parker  
CHIEF JUDGE, FOURTH CIRCUIT.

No. \_\_\_\_\_

IN THE \_\_\_\_\_ COURT  
OF THE UNITED STATES

FOR THE

of \_\_\_\_\_

vs.

Filed \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.

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

FILED

FEB -1 1951

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

HARRY BRIGGS, JR., et al,  
Plaintiffs,

Civil Action No. 2657

v.

O R D E R

R. W. ELLIOTT, Chairman, et al  
Defendants.

It appearing in the above entitled cause that Honorable J. Waties Waring, United States District Judge for the Eastern District of South Carolina, pursuant to Title 28, U. S. Code, Sections 2281-2284, has directed that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon to hear application for declaratory judgments and for temporary and permanent injunctions.

Now, therefore, it is ordered that Honorable George Bell Timmerman, United States District Judge for the Eastern and Western Districts of South Carolina, and the undersigned, Chief Judge of the Fourth Judicial Circuit, be and they are hereby designated to sit with the said Honorable J. Waties Waring in the hearing of said application.

This is the 31st. day of Jany., 1951.

/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

February 2, 1951

Honorable James F. Byrnes  
Governor  
State of South Carolina  
Columbia, South Carolina

In re: Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al  
Civil Action No. 2657

Dear Governor Byrnes:

Pursuant to Section 2284, Title 28, United States Code, I am enclosing herewith a certified copy of an Order of Honorable John J. Parker, Chief Judge, United States Court of Appeals, Fourth Circuit, dated January 31, 1951 and filed in this office February 1, 1951 directing that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon to hear application for declaratory judgments and for temporary and permanent injunctions in the above case.

This letter with the enclosure is being sent to you by registered mail as required by the above statute, and a copy of the Order is likewise being sent to Honorable T. C. Callison, Attorney General, State of South Carolina.

Very respectfully,

Ernest L. Allen,  
Clerk

ELA:vjs

Encl.  
Registered mail -  
Return receipt requested.

February 2, 1951

Honorable Alfred J. Plowden, Jr.  
United States Marshal  
Eastern District of South Carolina  
Charleston, South Carolina

Mrs. Doris C. Appleby  
Official Court Reporter  
United States District Court  
Charleston, South Carolina

In re: Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al  
Civil Action No. 2657

Dear Mr. Plowden and Mrs. Appleby:

This is to advise that Honorable John J. Parker, Chief Judge, United States Court of Appeals, Fourth Circuit, has signed an Order which has been filed in this office as of February 1, 1951 directing that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon in the above entitled case.

It is requested that you mark your calendars as to this three-judge court, and that Mr. Plowden and his deputies and also Mrs. Appleby be present.

Most sincerely yours,

Ernest L. Allen, Clerk

ELA:vjs

February 2, 1951

Honorable John J. Parker  
Chief Judge  
United States Court of Appeals  
Fourth Circuit  
Charlotte, North Carolina

In re: Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al  
Civil Action No. 2657

Dear Judge Parker:

I am pleased to enclose herewith a copy of the summons and complaint, answer and your order of January 31, 1951 calling a three-judge court in the above entitled case to be convened at Charleston on May 28, 1951.

If any additional papers are filed, I shall, of course, remember to forward you copies of the same.

With my kind personal regards, I am

Most sincerely,

Ernest L. Allen,  
Clerk

ELA:vjs

Encls.

February 2, 1951

Harold R. Boulware, Esq.  
Attorney at Law  
1109½ Washington Street  
Columbia, South Carolina

Robert L. Carter, Esq.  
Attorney at Law  
20 West 40th Street  
New York, New York

Thurgood Marshall, Esq.  
Attorney at Law  
20 West 40th Street  
New York, New York

Robert McC. Figg, Esq.  
Attorney at Law  
38 Broad Street  
Charleston, South Carolina

S. E. Rogers, Esq.  
Attorney at Law  
Summerton, South Carolina

In re: Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al  
Civil Action No. 2657

Dear Sirs:

I am enclosing to each of you a certified copy of an Order of Honorable John J. Parker, Chief Judge, Fourth Circuit, directing that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon to hear the application for declaratory judgments and for temporary and permanent injunctions in the above entitled case.

Certified copies of the Order are being furnished to Judge Parker, Judge Waring and Judge Timmerman.

Most sincerely yours,

Ernest L. Allen, Clerk

ELA:vjs  
Encl.

February 2, 1951

Honorable George Bell Timmerman  
United States District Judge  
Columbia, South Carolina

In re: Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al  
Civil Action No. 2657

Dear Judge Timmerman:

I am enclosing herewith a certified copy of an order of Judge Parker in the above case, dated January 31, 1951 and filed as of February 1, 1951 directing that a three-judge court be convened at Charleston on May 28, 1951 at ten o'clock in the forenoon for the purposes provided in the order. Also enclosed is a copy of the summons and complaint and a copy of the answer in the case.

If any additional papers are filed prior to the convening of the court, I shall, of course, forward you copies of the same.

I have furnished copies of the papers to Judge Parker and Judge Waring who is holding court in New York and is already familiar with the case file.

With my personal regards, I am

Most sincerely,

Ernest L. Allen,  
Clerk

ELA:vjs

Encls.

M E M O R A N D U M

In re: Briggs vs. R. W. Elliott, Chairman,  
et al, etc. - C/A No. 2657

The marshal's returns of service filed in  
the above case on January 12, 1951 show that the  
marshal served each of the following defendants on  
December 28, 1950:

R. M. Elliott  
J. D. Carson  
George Kennedy  
R. W. Elliott, Chairman  
L. B. McCord  
A. L. Plowden  
W. E. Baker  
H. B. Betchman

E. L. A.

February 2, 1951

Honorable T. C. Callison  
Attorney General  
State of South Carolina  
Columbia, South Carolina

In re: Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al  
Civil Action No. 2657

Dear Mr. Callison:

Pursuant to Section 2284, Title 28, United States Code, I am enclosing herewith a certified copy of an Order of Honorable John J. Parker, Chief Judge, United States Court of Appeals, Fourth Circuit, dated January 31, 1951 and filed in this office February 1, 1951 directing that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon to hear application for declaratory judgments and for temporary and permanent injunctions in the above case.

This letter with the enclosure is being sent to you by registered mail as required by the above statute, and a copy of the Order is likewise being sent to Honorable James F. Byrnes, Governor, State of South Carolina.

Very truly yours,

Ernest L. Allen,  
Clerk

ELA:vjs  
Encl.

Registered - Return  
Receipt Requested.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

CIVIL ACTION FILE NO. 2657.

**FILED**

MAY 8 1951

**ERNEST L. ALLEN**  
C.D.C.U.S.E.D.S.C.

HARRY BRIGGS, Jr., et al.,

Plaintiffs,

-versus-

R. W. ELLIOTT, Chairman, et al.,

Defendants.

INTERROGATORIES

BY DEFENDANTS.

TO MESSRS. HAROLD R. BOULWARE, ROBERT L. CARTER and THURGOOD  
MARSHALL, ATTORNEYS FOR THE PLAINTIFFS:-

The following interrogatories are propounded to the  
plaintiffs, to be answered in writing under oath by one or more  
of them within fifteen (15) days of the date of service hereof:

INTERROGATORY NO. 1: In what particulars, if any, are the plant  
facilities of the Scott's Branch School unequal and inferior to  
the plant facilities of the Summerton Elementary School?

INTERROGATORY NO. 2: In what particulars, if any, is the equip-  
ment of the Scott's Branch School unequal and inferior to the  
equipment in the Summerton Elementary School?

INTERROGATORY NO. 3: In what particulars, if any, are the  
curricula of the Scott's Branch School unequal and inferior to  
those of the corresponding grades in the Summerton Elementary  
School?

INTERROGATORY NO. 4: In what material respects other than plant,  
equipment and curricula, is the Scott's Branch School unequal and  
inferior to the Summerton Elementary School?

INTERROGATORY NO. 5: In what particulars, if any, are the educa-  
tional opportunities offered to the pupils attending the element-  
ary and grammar grades in the Scott's Branch School unequal and

TCC  
S&R  
RM

inferior to those offered to the pupils attending the same grades in the Summerton Elementary School?

INTERROGATORY NO. 6: In what particulars, if any, are the Rambay School and the Liberty Hill School unequal and inferior to the Summerton Elementary School?

INTERROGATORY NO. 7: If the answer to Interrogatory No. 6 lists particulars in response thereto, which of the particulars so listed, if any, are not also true with reference to the Scott's Branch School?

INTERROGATORY NO. 8: In what particulars, if any, is the interior of the Scott's Branch School building unequal and inferior to the interior of the Summerton High School building?

INTERROGATORY NO. 9: In what particulars, if any, is the equipment of the Scott's Branch School unequal and inferior to the equipment in the Summerton High School?

INTERROGATORY NO. 10: In what particulars, if any, are the curricula of the high school grades of the Scott's Branch School unequal and inferior to those of the corresponding grades in the Summerton High School?

INTERROGATORY NO. 11: In what particulars, if any, are the educational opportunities offered to the high school pupils attending the Scott's Branch School unequal and inferior to those offered to the pupils attending the same grades in the Summerton High School?

INTERROGATORY NO. 12: In what material respects, other than plant, equipment, curricula and educational opportunities, is the Scott's Branch High School unequal and inferior to the Summerton High School?

INTERROGATORY NO. 13: Is it admitted that the Rambay two-teacher school was discontinued by the Trustees of School District No. 22, and the children attending the same transferred to the Scott's Branch School, and that thereafter it was reinstated by the Trustees solely at the request and for the convenience of the patrons of the said Rambay School?

TCC  
SER  
Am  
2

INTERROGATORY NO. 14: What changes would have to be made in the schools in School District No. 22 to afford separate but substantially equal school facilities for the white and colored pupils in said district?

INTERROGATORY NO. 15: In what particulars, if any, is the instruction in the schools in School District No. 22 provided for the colored children unequal and inferior to that in the schools provided in said district for the white children?

INTERROGATORY NO. 16: In what respect is it contended that Article II, Section 7, of the Constitution of South Carolina, and Section 5377 of the Code of Laws of South Carolina of 1942, requiring that separate schools be provided for the children of the white and colored races, and providing that no child of either race shall ever be permitted to attend a school provided for children of the other race, deny to the plaintiffs equal protection of the laws as provided for in the Fourteenth Amendment to the Constitution of the United States?

INTERROGATORY NO. 17: In what particulars is it contended that the constitutional and statutory provisions referred to in Interrogatory No. 16 deny to the plaintiffs as individuals equal protection of the laws?

INTERROGATORY NO. 18: What general kinds of testimony will be offered at the trial of this case in support of the contention that the constitutional and statutory provisions referred to in Interrogatory No. 16 deny to the plaintiffs equal protection of the laws other than alleged lack of substantial equality of school facilities and educational opportunities in School District No. 22 of Clarendon County?

INTERROGATORY NO. 19: Is it admitted that the facts found or stated in the decision of the Board of Trustees dated February 20, 1950, a copy of which is attached to the Answer herein, are correct?

INTERROGATORY NO. 20: If the answer to Interrogatory No. 19 is

TCC  
SER  
RM  
3

in the negative, in what particulars are the facts found or stated in the decision of the Board of Trustees dated February 20, 1950, a copy of which is attached to the Answer herein, controverted?

*T.C. Callison*

T. C. Callison, Attorney General  
of South Carolina,  
Columbia, S. C.

*S.E. Rogers*

S. E. Rogers, Summerton, S. C.

*Robert McC. Figg, Jr.*

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

Attorneys for the Defendants.

TCC  
SER  
RMB  
4/2

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

---

CIVIL ACTION FILE NO. 2657.

---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,  
Defendants.

---

INTERROGATORIES BY DEFENDANTS.

---

T. C. Callison, Attorney General  
of South Carolina,  
Columbia, S. C.

S. E. Rogers, Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street, Charleston, S. C.

HAROLD R. BOULWARE  
ATTORNEY-AT-LAW  
1109 1-2 WASHINGTON STREET  
COLUMBIA 1, S. C.  
TELEPHONE 2-0344

May 9, 1951

Hon. Ernest L. Allen, Clerk  
U. S. District Court  
Post Office Building  
Charleston, South Carolina

RE : Briggs et al vs. Elliott etc, et al c/a No. 2657.

Dear Sir:

We respectfully request that you have the following persons subpoenaed to appear as witnesses in the above styled action beggng May 28, 1951:

- ✓ Mr. R. M. Elliott, Summerton, South Carolina. ✓
- ✓ Mr. J. D. Carson, Summerton, South Carolina.
- ✓ Mr. George Kennedy, Summerton, South Carolina.
- ✓ Mr. H. B. Betchman, Summerton, South Carolina
- ✓ Mr. L. B. McCord, Manning, South Carolina ✓
- ✓ Mr. A. J. Flowden, Summerton, South Carolina.
- ✓ Mr. W. E. Baker, New Zion
- ✓ Mrs. Lenora Broughton, Summerton High School, Summerton. S.C.
- ✓ Mrs. Minnie Bell Hamilton, Ramby Elementary School, Route 3, Summerton, South Carolina
- ✓ Ernest Wright, Scotts Branch High School, Summerton, S.C.
- ✓ Miss Naomi Adger, Liberty Hill School, Box 465, Summerton, South Carolina.

Respectfully yours,

*Harold Boulware*

Harold R. Boulware

HRB:dr

United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al
vs.
R. W. Elliott, et al

To Ernest Wright
Scotts Branch High School
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the
District of South Carolina
at U. S. Courthouse Eastern in the city of Charleston, S. C.
on the 28th day of May, 1951, at 10:00 o'clock A. M. to testify on
behalf of plaintiffs.
in the above entitled action.

Date
May 10, 1951

ERNEST L. ALLEN
Clerk.
By [Signature] Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_ I
served it on the within named \_\_\_\_\_
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-
age allowed by law.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

By \_\_\_\_\_

Service Fees
Travel .....\$
Services .....\$
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al  
vs.  
R. W. Elliott, et al

To Mrs. Minnie Bell Hamilton,  
Ramby Elementary School, Route 3  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
Eastern District of South Carolina  
at U. S. Courthouse in the city of Charleston, S. C.,  
on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on  
behalf of plaintiff.  
in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN

By *[Signature]* Clerk.  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

By \_\_\_\_\_

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al  
vs.  
R. W. Elliott, et al

To Mrs. Lenora Broughton,  
Summerton High School  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
District of Eastern South Carolina,  
at U. S. Courthouse in the city of Charleston, S. C.,  
on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on  
behalf of plaintiffs.  
in the above entitled action.

Date

May 10, 1951

ERNEST L. ALLEN

By [Signature] Clerk.  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated \_\_\_\_\_, 19\_\_\_\_\_

By \_\_\_\_\_

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry B riggs, et al

vs.

R. W. Elliott, et al

To Miss Naomi Adger
Liberty Hill School
Box 465
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the
Eastern District of South Carolina
at U. S. Courthouse in the city of Charleston, S. C.
on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on
behalf of plaintiffs.
in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN

By James W. Smith
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at on
and on at I
served it on the within named
by delivering a copy to h and tendering to h the fee for one day's attendance and the mile-
age allowed by law.

Dated....., 19.....

By.....

Service Fees

Travel .....\$
Services .....
Total .....\$

Subscribed and sworn to before me, a this
day of , 19 .

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al

vs.

R. W. Elliott, et al

To Mr. W. E. Baker,  
New Zion,

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
Eastern District of South Carolina  
at U. S. Courthouse in the city of Charleston, S. C.,  
on the 28th day of May, 1951, at 10:00 o'clock A. M. to testify on  
behalf of plaintiffs.  
in the above entitled action.

Date

May 10, 1951.

ERNEST L. ALLEN

Clerk.

By

Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ I  
and on \_\_\_\_\_ served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated \_\_\_\_\_, 19\_\_\_\_\_

By \_\_\_\_\_

#### Service Fees

Travel	.....\$
Services	.....
Total	.....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al  
vs.  
R. W. Elliott, et al

To Mr. A. J. Plowden  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
at **Eastern** District of **South Carolina**,  
on the **U. S. Courthouse** in the city of **Charleston, S. C.**  
behalf of **plaintiffs.** on the **28th** day of **May**, 19 **51**, at **10:00** o'clock **A.** M. to testify on  
in the above entitled action.

Date

..... **May 10**, 19 **51** .....

ERNEST L. ALLEN  
Clerk.  
By *[Signature]*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated....., 19.....

By.....

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_.

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al  
vs.  
R. W. Elliott, et al

To Mr. L. B. McCord  
Manning, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
at U. S. Courthouse Eastern District of South Carolina  
on the 28th day of May, 1951, at 10:00 o'clock A. M. to testify on  
behalf of plaintiffs.  
in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN

By *[Signature]*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

By \_\_\_\_\_

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al

vs.

R. W. Elliott, et al

To Mr. H. B. Betchman  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
at **U. S. Courthouse** **Eastern** District of **South Carolina**  
on the **28th** day of **May**, 19 **51**, at **10:00** o'clock **A. M.** to testify on  
behalf of **plaintiffs.**  
in the above entitled action.

Date

..... **May 10** ....., 19 **51** .....

**ERNEST L. ALLEN**

By *[Signature]* Clerk.  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ I  
and on \_\_\_\_\_ served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated....., 19.....

By.....

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al

vs.

R. W. Elliott, et al

To Mr. George Kennedy  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
at U. S. Courthouse Eastern District of South Carolina  
on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on  
behalf of Plaintiffs in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN

By *Ernest L. Allen*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

By \_\_\_\_\_

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al

vs.

R. W. Elliott, et al

To Mr. J. D. Carson,  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
at Eastern District of South Carolina  
at U. S. Courthouse in the city of Charleston, S. C.  
on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on  
behalf of Plaintiffs  
in the above entitled action.

Date

May 10....., 19 51.....

ERNEST L. ALLEN

By [Signature] Clerk.  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated....., 19.....

By.....

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al

R. W. Elliott, <sup>vs.</sup> et al

To Mr. R. M. Elliott  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
at Eastern District of South Carolina  
on the 28th day of May, 19 51, at 10:00 o'clock A.M. to testify on  
behalf of plaintiffs  
in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN

By [Signature] Clerk.  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

By \_\_\_\_\_

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

CIVIL ACTION FILE NO. 2657.

**FILED**

MAY 10 1951

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

HARRY BRIGGS, Jr., et al.,  
Plaintiffs,

-versus-

R. W. ELLIOTT, Chairman, et al.,  
Defendants.

ACKNOWLEDGMENT OF SERVICE.

SERVICE Of Interrogatories By Defendants in the above  
entitled cause is hereby acknowledged, and a copy thereof received  
this 8<sup>th</sup> day of May, 1951.

*Harold H. Boulware*

Attorney for Plaintiffs.

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

---

CIVIL ACTION FILE NO. 2657.

---

HARRY BRIGGS, Jr., et al.,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,

Defendants.

---

ACKNOWLEDGMENT OF SERVICE.

---

T. C. Callison, Attorney General  
of South Carolina,  
Columbia, S. C.

S. E. Rogers, Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street, Charleston, S.C.

May 10, 1951

Harold R. Boulware, Esq.  
Attorney at Law  
1109½ Washington Street  
Columbia, South Carolina

In re: Civil Action No. 2657  
Briggs, et al vs. Elliott, etc., et al

Dear Sir:

I have your letter of May 9, 1951 requesting that certain witnesses be subpoenaed on behalf of the plaintiffs for appearance before this court at Charleston on May 28, 1951, and I am pleased to advise that the requested subpoenas have been issued and today delivered to the Marshal for service. I presume that you will be billed by the Marshal's office for the costs of this.

Very truly yours,

Ernest L. Allen, Clerk

TAG:vj

United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry B riggs, et al

vs.

R. W. Elliott, et al

To Miss Naomi Adger  
Liberty Hill School  
Box 465  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Eastern District of South Carolina, in the city of Charleston, S. C., at U. S. Courthouse on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on behalf of plaintiffs. in the above entitled action.

Date

May 10, 1951

ERNEST L. ALLEN

By *James W. Smith* Clerk.  
Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Charleston S.C. on 5/23/51 and on 5/23/51 at Summerton S.C. I served it on the within named Naomi Adger by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.

Dated 5/24, 1951

*Alfred Blunden Jr*  
By

Service Fees

Travel .....\$  
Services .....\$  
Total .....\$

FILED

MAY 24 1951

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

this

Subscribed and sworn to before me, a  
day of , 19 .

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

1743

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al  
vs.  
R. W. Elliott, et al

To Ernest Wright  
Scotts Branch High School  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
District of Eastern South Carolina,  
at U. S. Courthouse in the city of Charleston, S. C.,  
on the 28th day of May, 1951, at 10:00 o'clock A. M. to testify on  
behalf of plaintiffs.  
in the above entitled action.

Date

May 10, 1951

ERNEST L. ALLEN

By *James W. Smith*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at Charleston S.C. on 5/22/51  
and on 3/23/51 at Summerton S.C. I  
served it on the within named Ernest Wright  
by delivering a copy to h and tendering to h the fee for one day's attendance and the mile-  
age allowed by law.

Dated 5/24, 1951

By *Alfred Houben*

### Service Fees

Travel .....\$  
Services .....\$  
Total .....\$

**FILED**

MAY 24 1951

ERNEST L. ALLEN  
C.D.C. U.S.D.S.C.

Subscribed and sworn to before me, a

this

day of \_\_\_\_\_, 19 \_\_\_\_\_.

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

17943

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al  
vs.  
R. W. Elliott, et al

To Mrs. Minnie Bell Hamilton,  
Ramby Elementary School, Route 3  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Eastern District of South Carolina at U. S. Courthouse in the city of Charleston, S. C. on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on behalf of plaintiff. in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN  
Clerk.  
By *James W. Smith*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at *Charleston S.C.* on *5/22/51* and on *5/23/51* at *Summerton S.C.* I served it on the within named by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.

Dated *5/24*, 19 *51*

By *Alfred J. Blount Jr.*

Service Fees

Travel .....\$  
Services .....  
Total .....\$

FILED

MAY 24 1951

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

Subscribed and sworn to before me, a

this

day of , 19 .

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

17943

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al

R. W. Elliott, <sup>vs.</sup> et al

To Mr. R. M. Elliott  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
Eastern District of South Carolina  
at U. S. Courthouse in the city of Charleston, S. C.,  
on the 28th day of May, 19 51, at 10:00 o'clock A.M. to testify on  
behalf of plaintiffs  
in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN

By *Gaines W. Smith*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at *Charleston S.C.* on *5/22/51*  
and on *5/23/51* at *Summerton S.C.* I  
served it on the within named *R. M. Elliott*  
by delivering a copy to h and tendering to h the fee for one day's attendance and the mile-  
age allowed by law.

Dated *5/24*, 19 *51* FILED

Service Fees	
Travel	.....\$
Services	..... <u>ERNEST L. ALLEN</u>
Total	.....\$ <u>S. D. C. U. S. E. D. &amp; C.</u>

Subscribed and sworn to before me, a \_\_\_\_\_ this  
day of \_\_\_\_\_, 19 \_\_\_\_\_.

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

17943

United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al

vs. R. W. Elliott, et al

To Mr. J. D. Carson, Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Eastern District of South Carolina at U. S. Courthouse in the city of Charleston, S. C. on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on behalf of Plaintiffs in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN

By [Signature] Clerk Deputy Clerk

RETURN ON SERVICE

Received this subpoena at Charleston, S. C. on 5/22/51 and on 5/23 served it on the within named Mrs. J. D. Carson at Summerton, S. C. by delivering a copy to her and tendering to her the fee for one day's attendance and the mileage allowed by law.

Dated 5/24, 19 51 FILED

[Signature] By

Table with 2 columns: Service Fees, Amount. Rows: Travel, Services, Total. Includes stamp: MAY 24 1951 ERNEST L. ALLEN C. D. C. U. S. E. D. S. C.

Subscribed and sworn to before me, a \_\_\_\_\_ this day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

17943

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al

vs.

R. W. Elliott, et al

To Mr. H. B. Betchman  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Eastern District of South Carolina, at U. S. Courthouse on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on behalf of plaintiffs, in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN

Clerk

By

Deputy Clerk

### RETURN ON SERVICE

Received this subpoena at Charleston S.C. on May 22/1951 and on 5/22/51 at Summerton S.C. served it on the within named H. B. Betchman by delivering a copy to h<sup>23</sup> and tendering to h the fee for one day's attendance and the mileage allowed by law.

Dated 5/24-57, 1951

FILED

By

Service Fees

Travel .....\$ MAY 24 1951  
Services .....

Total .....\$ ERNEST L. ALLEN  
C. O. C. U. S. E. D. & S. C.

Subscribed and sworn to before me, a

this

day of , 19 .

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

11943

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al

vs.

R. W. Elliott, et al

To Mr. L. B. McCord  
Manning, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Eastern District of South Carolina, at U. S. Courthouse in the city of Charleston, S. C., on the 28th day of May, 1951, at 10:00 o'clock A. M. to testify on behalf of plaintiffs in the above entitled action.

Date

May 10, 1951

ERNEST L. ALLEN

Clerk.  
By *Ernest L. Allen*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at Charleston S.C. on 5/22/51 and on 5/23/51 at Manning S.C. I served it on the within named S. B. McCord by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.

Dated 5/24, 1951 FILED

By *Alfred J. Houdy Jr*

#### Service Fees

Travel .....\$  
Services .....\$ ERNEST L. ALLEN  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

17943

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al  
vs.  
R. W. Elliott, et al

To Mr. A. J. Plowden  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
Eastern District of South Carolina  
at U. S. Courthouse in the city of Charleston, S. C.,  
on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on  
behalf of plaintiffs.  
in the above entitled action.

Date

..... May 10, 19 51 .....

ERNEST L. ALLEN

By *Ernest L. Allen* Clerk  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at *Charleston S.C.* on *5/22/51*  
and on *5/22/51* at *Summerton S.C.*  
served it on the within named *A. J. Plowden*  
by delivering a copy to h and tendering to h the fee for one day's attendance and the mile-  
age allowed by law.

Dated *5/24*, 19 *51*

**FILED**

By *Alfred Plowden*

Service Fees

Travel ..... \$  
Services ..... **ERNEST L. ALLEN**  
Total ..... \$ *C.D.C.U.S.E.D.S.C.*

**MAY 24 1951**

Subscribed and sworn to before me, a

this

day of , 19 .

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al  
*vs.*  
R. W. Elliott, et al

To Mr. W. E. Baker,  
New Zion,

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Eastern District of South Carolina, at U. S. Courthouse in the city of Charleston, S. C., on the 28th day of May, 1951, at 10:00 o'clock A. M. to testify on behalf of plaintiffss. in the above entitled action.

Date

May 10, 19 51.

ERNEST L. ALLEN  
Clerk.  
By *James W. Smith*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at Charleston S.C. on 5/22/51  
and on 5/23/51 at New Zion I  
served it on the within named Mrs. W. E. Baker  
by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.

Dated 5/24, 19 51 FILED  
MAY 24 1951

*Alfred J. Lawrence*  
By \_\_\_\_\_

#### Service Fees

Travel \_\_\_\_\_ ERNEST L. ALLEN  
Services \_\_\_\_\_ C.D.C.U.S.E.D.S.C.  
Total \_\_\_\_\_ \$

Subscribed and sworn to before me, a \_\_\_\_\_ this  
day of \_\_\_\_\_, 19 \_\_\_\_.

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

17943

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al  
*vs.*  
R. W. Elliott, et al

To Mrs. Lenora Broughton,  
Summerton High School  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
Eastern District of South Carolina,  
at U. S. Courthouse in the city of Charleston, S. C.,  
on the 28th day of May, 1951, at 10:00 o'clock A. M. to testify on  
behalf of plaintiffs.  
in the above entitled action.

Date

May 10, 1951

ERNEST L. ALLEN  
Clerk.  
By *James W. Smith*  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at *Charleston S.C.* on *5/22/51*  
and on *5/23/51* at *Summerton S.C.* I  
served it on the within named *Miss Lenora Broughton*  
by delivering a copy to her and tendering to her the fee for one day's attendance and the mile-  
age allowed by law.

Dated *5/24*, 19 *51*

*Alfred J. Lawrence*  
By \_\_\_\_\_

### Service Fees

Travel .....\$  
Services .....\$  
Total .....\$  
MAY 24 1951  
ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

Subscribed and sworn to before me, a \_\_\_\_\_ this  
day of \_\_\_\_\_, 19 \_\_\_\_.

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

17943

# United States District Court

FOR THE

CIVIL ACTION FILE NO. 2657

Harry Briggs, et al

vs.

R. W. Elliott, et al

To Mr. George Kennedy  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
at U. S. Courthouse Eastern District of South Carolina  
on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on  
behalf of Plaintiffs  
in the above entitled action.

Date

May 10, 19 51.

ERNEST L. ALLEN

By *[Signature]* Clerk.  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

By \_\_\_\_\_

#### Service Fees

Travel	.....\$
Services	.....
Total	.....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

17943

# United States District Court

FOR THE

CIVIL ACTION FILE No. 2657

Harry Briggs, et al

vs.  
R. W. Elliott, et al

To Mr. George Kennedy  
Summerton, S. C.

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the  
at U. S. Courthouse Eastern District of South Carolina,  
on the 28th day of May, 19 51, at 10:00 o'clock A. M. to testify on  
behalf of Plaintiffs  
in the above entitled action.

Date

May 10, 19 51

ERNEST L. ALLEN  
Clerk.  
By [Signature]  
Deputy Clerk.

### RETURN ON SERVICE

Received this subpoena at \_\_\_\_\_ on \_\_\_\_\_  
and on \_\_\_\_\_ at \_\_\_\_\_ I  
served it on the within named \_\_\_\_\_  
by delivering a copy to h \_\_\_\_\_ and tendering to h \_\_\_\_\_ the fee for one day's attendance and the mile-  
age allowed by law.

Dated \_\_\_\_\_, 19 \_\_\_\_\_

By \_\_\_\_\_

#### Service Fees

Travel .....\$  
Services .....  
Total .....\$

Subscribed and sworn to before me, a \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

CIVIL ACTION FILE NO. 2657.

**FILED**

MAY 10 1951

ERNEST L. ALLEN  
C. D. U. S. D. S. C.

HARRY BRIGGS, Jr., et al.,  
Plaintiffs,

-versus-

R. W. ELLIOTT, Chairman, et al.,  
Defendants.

ACKNOWLEDGMENT OF SERVICE.

SERVICE Of Interrogatories By Defendants in the above  
entitled cause is hereby acknowledged, and a copy thereof received  
this 8<sup>th</sup> day of May, 1951.

Harold R. Boulware

Attorney for Plaintiffs.

Eastern District of South Carolina, ss.

I hereby certify and return, that on the 22nd day of May, 1951

I received the within Subpoena and that after diligent search, I am unable to find the within-named defendants George Kennedy

FILED

within my district.

Defendant deceased

MAY 24 1951

Alfred J. Plouffe

United States Marshal.

ERNEST L. ALLEN  
G. D. C. U. S. E. D. & C.

By

Deputy United States Marshal.

CASE FILE

May 12, 1951

Honorable John J. Parker  
Chief Judge  
United States Court of Appeals  
Charlotte, North Carolina

Honorable George Bell Timmerman  
United States District Judge  
Columbia, South Carolina

In re: Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al  
Civil Action No. 2657

Dear Judge Parker and Judge Timmerman:

Counsel for the defendants in the above case, which is to be heard in Charleston May 28, have this week filed interrogatories directed to plaintiffs' counsel, and I am pleased to enclose to each of you for your file a copy of the interrogatories.

With my kindest regards, I am

Most sincerely,

Ernest L. Allen, Clerk

ELA:hb

Enclosure

CASE FILE

May 12, 1951

Harold R. Boulware, Esq.  
Attorney at Law  
1109½ Washington Street  
Columbia, South Carolina

Thurgood Marshall, Esq.  
Attorney at Law  
20 West 40th Street  
New York 18, N. Y.

In re: Harry Briggs, et al vs.  
R. W. Elliott, Chairman, et al  
Civil Action No. 2657

Dear Sirs:

You have been served with copies of interrogatories propounded by counsel for the defendants in the above case, and I am writing this letter to request that when answers to the interrogatories or any other papers are filed that you forward to me the original and three copies, the copies to be made available for each of the three judges scheduled to hear the case.

I will appreciate your cooperation in this matter.

Most sincerely yours,

Ernest L. Allen, Clerk

ELA:hb

TRANSCRIPT OF RECORD

CAPTION

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF SOUTH CAROLINA  
CIVIL ACTION

At a United States District Court for the  
Eastern District of South Carolina,  
begun and held at the Courthouse in  
the City of Charleston, S. C. on the  
28th day of May, 1951.

Present: Honorable John J. Parker,  
United States Circuit Judge, Fourth Circuit; Honorable  
J. Waties Waring, United States District Judge for  
the Eastern District of South Carolina; and  
Honorable George Bell Timmerman, United States  
District Judge for the Eastern and Western Districts  
of South Carolina.

Proceedings were as follows.

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

CHARLESTON DIVISION

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.

-----

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.

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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 provisions 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

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\* Article I<sup>4</sup> 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."

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 provision 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 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 Fulaski 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. 167 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 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 provisions 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 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 segregation 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 the 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 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 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. 196, 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. Crookshand 82 Cal. 588, 590; Reynolds v. Board of Education 66 Kans. 672; McMillan v. School Committee 107 N. S. 609- Cor v. Carter 46 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. Euntin 10 F. 730, 735; Wong Him v. Callahan 119 F. 381.

"In Fleshy 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).

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 1860 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 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 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; *Eertonneau 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.*

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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).

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 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 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 edu-

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\*See also Roberts v. City of Boston 5 Cush. (Mass.) 198, decided prior to the Fourteenth Amendment.

cational process, it is difficult for the state to maintain segregated schools for Negroes in this field which will afford them 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 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 educational 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 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 as the property of the state and the wishes of his family as to his unbringing 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* 293 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. 147 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 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* 163 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 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 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 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.

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,

/s/ Ernest L. Allen  
Clerk of U.S. District Court  
East. Dist. So. Carolina

MAY 28 1951

STATEMENT OF DEFENDANTS' COUNSEL TO COURT. ERNEST L. ALLEN  
C. C. S. E. S. S. C.

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 guardians, 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 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 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 then, 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 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 provision 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 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 spent 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 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.

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 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.

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

I concur:  
/s/ Geo. Bell Timmerman  
U. S. Dist. Judge

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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. Flowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. B. Betcham, Superintendent of School District No. 22, Defendants.

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On Application for Declaratory Judgment and Injunction.

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Heard May 28, 1951.

Decided

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Before Parker, Circuit Judge, and Waring and Timmerman, District Judges.

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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.

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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 provisions of 28 USC 2281 and 2264, 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

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\* Article I<sup>1</sup> 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."

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 provision 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 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 Fulaski 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. 167 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 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 provisions 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 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 segregation 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 the 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 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 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. 196, 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. S. 609- Cor. v. Carter 46 Ind. 327; Lehev 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. Luntin 10 F. 730, 735; Wong Him v. Callahan 119 F. 381.

"In Flessy 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).

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 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 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; *Lertonneau 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.*

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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).

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. 436, 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 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 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 edu-

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\*See also Roberts v. City of Boston 5 Cush. (Mass.) 198, decided prior to the Fourteenth Amendment.

cational process, it is difficult for the state to maintain segregated schools for Negroes in this field which will afford them 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 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 educational 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 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 as the property of the state and the wishes of his family as to his unbringing 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* 293 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. 147 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 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* 163 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 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 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 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.

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,

/s/ Ernest L. Allen  
Clerk of U.S. District Court  
East. Dist. So. Carolina

May 30, 1951

Honorable Robert McC. Figg, Jr.  
Attorney at Law  
Peoples Building  
Charleston, South Carolina

In re: Harry Briggs, Jr., et al vs.  
R. W. Elliott, etc., et al  
Civil Action No. 2657

Dear Mr. Figg:

Will you please furnish me immediately with at least three or four additional copies of the -

Inaugural Address of Governor Brynes, Defendants' Exhibit "A";

The Address of Governor Brynes to the General Assembly, Wednesday, January 24, 1951, Defendants' Exhibit "B"; and

Excerpts from General Appropriation Act, Defendants' Exhibit "C",

as I wish to supply the Judges hearing this case with copies of the same.

It is requested that you let me have these immediately.

Most sincerely,

Ernest L. Allen,  
Clerk

ELA:vj

Per Curiam:

This Court in its prior decisions in this case followed what it conceived to be the law as laid down in prior decisions of the Supreme Court that nothing in the Fourteenth Amendment to the Constitution of the United States forbids segregation of the races in the public schools provided equal facilities are accorded the children of all races. Our decision has been reversed by the Supreme Court, which has remanded the case to us with direction "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases".

Whatever may have been the views of this court as to the law when the case was originally before us, it is our duty now to accept the law as declared by the Supreme Court.

Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but, if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs

as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals.

The Supreme Court has pointed out that the solution of the problem in accord with its decisions is the primary responsibility of school authorities and that the function of the courts is to determine whether action of the school authorities constitute "good faith implementation of the governing constitutional principles". With respect to the action to be taken under its decision the Supreme Court said:

"Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

" While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis,

and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

"The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. "

The Court is convened to hear any concrete suggestions you may have to make as to the decree that it should enter.

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

HARRY BRIGGS, JR., et al,

Civil Action No. 2657

Plaintiffs,

vs.

DISSENTING OPINION

R. W. ELLIOTT, Chairman, et al,

Defendants.

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 education. 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 admitted 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<sup>1</sup>. 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 the authority of the Constitution and laws of the State of South Carolina providing for the creation of various school districts<sup>2</sup>, 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 appeal 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 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 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<sup>3</sup>. 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 inequalities, 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 have 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 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 and if the suggestions 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 had 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 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 over-

tones 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.

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 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 underprivileged and frightened attitude of so many of the Negroes in the southern 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 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 legislation 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 stops 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."<sup>5</sup>

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.<sup>6</sup>

Frequent and repeated 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.<sup>7</sup>

Discrimination by segregation of housing facilities and attempts to control the same by covenants have also been outlawed.<sup>8</sup>

In the field of labor employment and particularly the relation of labor unions to the racial problem, discrimination has again been forbidden.<sup>9</sup>

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.<sup>10</sup>

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 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 has 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 their former masters, they were hardly looked upon as equals or as American citizens. The reasoning of the prevailing opinion<sup>in</sup> the *Plessy* case stems almost completely from a decision by Chief Justice Shaw of Massachusetts,<sup>11</sup> 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 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 accommodations might be required by a state in intra-state transportation. Now similar attempts relating to inter-state transportation have fared have been shown in the foregoing discussion and notes.<sup>12</sup> 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 accommodations. 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 accommodations 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 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 requirements 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.

"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. Charmichael, 187 F. 2d 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 instance 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 witness, 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 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, unequivocally 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 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 religious 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.

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. WATLES WARING  
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina

Date: June 21 1951

A TRUE COPY, ATTEST

/s/ Ernest L. Allen  
Clerk of U. S. District Court  
East. Dist. So. Carolina

N O T E S

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. Feonage: 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, 326 U. S. 373; Henderson v. U. S., 330 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; Shephard 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. 675; Brown v. Baskin, 76 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.

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

HARRY BRIGGS, JR., et al,

Civil Action No. 2657

Plaintiffs,

vs.

DISSENTING OPINION

R. W. ELLIOTT, Chairman, et al,

Defendants.

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 education. 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 admitted 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<sup>1</sup>. 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 the authority of the Constitution and laws of the State of South Carolina providing for the creation of various school districts<sup>2</sup>, 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 appeal 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 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 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<sup>3</sup>. 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 inequalities, 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 have 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 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 and if the suggestions 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 had 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 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 over-

tones 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.

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 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 underprivileged and frightened attitude of so many of the Negroes in the southern 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 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 legislation 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 stops 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."<sup>5</sup>

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.<sup>6</sup>

Frequent and repeated 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.<sup>7</sup>

Discrimination by segregation of housing facilities and attempts to control the same by covenants have also been outlawed.<sup>8</sup>

In the field of labor employment and particularly the relation of labor unions to the racial problem, discrimination has again been forbidden.<sup>9</sup>

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.<sup>10</sup>

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 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 has 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 their former masters, they were hardly looked upon as equals or as American citizens. The reasoning of the prevailing opinion<sup>in</sup> the *Plessy* case stems almost completely from a decision by Chief Justice Shaw of Massachusetts,<sup>11</sup> 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 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 accommodations might be required by a state in intra-state transportation. Now similar attempts relating to inter-state transportation have fared have been shown in the foregoing discussion and notes.<sup>12</sup> 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 accommodations. 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 accommodations 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 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. Kraemer* (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 requirements 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.

"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. Charnichael*, 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 instance 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 witness, 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 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, unequivocally 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 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 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 religious 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.

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 intentment 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. WATLES WARING  
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina

Date: June 21 1951

A TRUE COPY, ATTEST

/s/ Ernest L. Allen  
Clerk of U. S. District Court  
East. Dist. So. Carolina

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. Feonage: 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., 330 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. 675; Brown v. Easkin, 76 F. Supp. 933; Brown v. Easkin, 80 F. Supp. 1017; 174 F. 2nd 391.
11. Roberts v. City of Boston, 5 Cush. 198.
12. See cases cited in Note 6.

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 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.

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  
S. E. Rogers, Summerton, S. C.

/s/ Robert McC. Figg, Jr.  
Robert McC. Figg, Jr.  
207 Peoples Office Building  
Charleston, S. C.

Attorneys for the Defendants.

C O P Y

"EXHIBIT A"

STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

P E T I T I O N

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; Lychrisser, 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:

C O P Y

Page 2

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 teaching courses in

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General Science, Physics and Chemistry, Industrial Arts and Trades, and has no adequate library and no adequate accommodations 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 same district and county.

13. That the Negro children of 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

Page 4

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) Maxine Gibson
" Eliza Briggs	" Harold Gibson
" Harry Briggs, Jr.	
" Thomas Lee Briggs	" Robert Georgia
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Attorneys for Petitioners

(Signed) Harold R. Boulware

" Thurgood Marshall

" Robert L. Carter

C O P Y

"EXHIBIT A"

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                                  )  
COUNTY OF CLARENDON      )

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STATE OF SOUTH CAROLINA )  
COUNTY OF CLARENDON )

P E T I T I O N

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; Lychriser, 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:

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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 teaching courses in

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General Science, Physics and Chemistry, Industrial Arts and Trades, and has no adequate library and no adequate accommodations 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 same district and county.

13. That the Negro children of 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

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

(Signed) Hilton C. Bennett	(Signed) Bobby M. Johnson
" William Gibson	" Preston Johnson, Jr.
" Annie Gibson	" Susan Lawson
" William Gibson, Jr.	" Raymon Lawson
" Eddie Lee Lawson	
" Susan Ann Lawson	
" Frederick Oliver	
" Willie Oliver	
" Mary Oliver	
" R M Mose Oliver	(Signed) Lee Richardson
" Leroy Oliver	" James Richardson
" Mitchel Oliver	" Charles Richardson
" Bennie Parson, Jr.	" Annie L. Richardson
" Plummie Parson	" Dorothy I. Richardson
" Celestine Parson	" Jackson Richardson
" Edward Ragin	" Mary O. Lawson
" Sarah Ragin	" Francis Lawson
" Shirley Ragin	2 Bennie Lee Lawson
" Deloris Ragin	" Mary J. Oliver
" Hazel Ragin	" Daisy D. Oliver
" Zelia Ragin	" Louis Oliver, Jr.
" Sarah Ellen Ragin	
" Rebecca Ragin	
" Mable Ragin	" Esther F. Singleton
" William Ragin	" Janie L. Fludde
" Ellen Ragin	" Henry Scott
" Luchriser Richardson	" Mary Scott
" Elane Richardson	" Irene Scott
" Emanuel L Richardson	" Willie M. Stukes
" Rebecca Richburg	" Gardenia Stukes
" Rebecca I. Richburg	" Willie Modd Stukes Jr.
" E. E. Richburg	" Gardenia E. Stukes
" Albert Richburg	" Louis W. Stukes
" Lee Johnson	" Gabriel Tindal
" Bessie Johnson	" Annie S. Tindal
" Morgan Johnson	" Mary L. Bennett
" Samuel Gary Johnson	" Lillian Bennett
Petitioners	Petitioners

Attorneys for Petitioners

(Signed) Harold R. Boulware

" Thurgood Marshall

" Robert L. Carter

94 pages at 40¢ per page and 595 pages at 10¢ per page

\$97.10

STATE OF SOUTH CAROLINA : BEFORE THE BOARD OF TRUSTEES  
COUNTY OF CLARENDON : OF  
: SCHOOL DISTRICT  
: NO. 22

IN RE: :  
Harry Briggs, et al., : DECISION OF THE  
PETITIONERS : 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

Law offices  
S. E. ROGERS  
Summerton, S. C.

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 discretion 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;

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 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 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;

C O P Y

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, erected 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 eliminated 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.

FACILITIES are furnished in Scott's Franch 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 volumes 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 the needs

C O P Y

of the school. Under that date he transmitted to the Board the following recommendations:

"Wood and Coal  
Twelve schttles 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.

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R. M. Elliott, Chairman

Summerton, S. C.  
February 20, 1950.

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C. D. Kennedy

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J. B. Carson, Clerk  
Trustees of School District No. 22, of Clarendon County, South Carolina.

STATE OF SOUTH CAROLINA : BEFORE THE BOARD OF TRUSTEES  
COUNTY OF CLARENDON : OF  
: SCHOOL DISTRICT  
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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

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3. THE allegations of paragraph 4 are true;

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

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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;

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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.

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C O P Y

of the school. Under that date he transmitted to the Board the following recommendations:

"Wood and Coal  
Twelve schttles and shovels  
Six Boxes of crayon and 12 erasers  
11 doors and windown 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.

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R. M. Elliott, Chairman

Summerton, S. C.  
February 20, 1950.

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C. D. Kennedy

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J. B. Carson, Clerk  
Trustees of School District No. 22, of Clarendon County, South Carolina.

C O P Y

"EXHIBIT B"

STATE OF SOUTH CAROLINA : BEFORE THE BOARD OF TRUSTEES  
COUNTY OF CLARENDON : OF  
: SCHOOL DISTRICT  
: NO. 22

IN RE: :  
Harry Briggs, et al., : DECISION OF THE  
PETITIONERS : 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

Law offices  
S. E. ROGERS  
Summerton, S. C.

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 discretion 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;

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 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 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;

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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, erected 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 eliminated 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.

FACILITIES are furnished in Scott's Franch 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 volumes 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 the needs

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of the school. Under that date he transmitted to the Board the following recommendations:

"Wood and Coal  
Twelve schttles 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.

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R. M. Elliott, Chairman

Summerton, S. C.  
February 20, 1950.

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C. D. Kennedy

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J. B. Carson, Clerk  
Trustees of School District No. 22, of Clarendon County, South Carolina.

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 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.

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  
S. E. Rogers, Summerton, S. C.

/s/ Robert McC. Figg, Jr.  
Robert McC. Figg, Jr.  
207 Peoples Office Building  
Charleston, S. C.

Attorneys for the Defendants.

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 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.

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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.

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  
S. E. Rogers, Summerton, S. C.

/s/ Robert McC. Figg, Jr.  
Robert McC. Figg, Jr.  
207 Peoples Office Building  
Charleston, S. C.

Attorneys for the Defendants.

APPENDIX C.

I.

Existing Negro Elementary Schools of School  
District No. 1 Being Consolidated By  
Remodelling and Construction Program.

<u>Name of School</u>	<u>Enrollment 1951</u>	<u>A. D. A. 1951</u>
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*	<u>197</u>	<u>158</u>
Totals	2,568	1,836

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\*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.

II.

Distribution of Negro Pupils in School District  
No. 1 After Completion of Remodelling and  
Construction Program.

<u>Name of School</u>	<u>Enrollment 1951</u>	<u>A. D. A. 1951</u>
St. Paul Elementary*	849	639
Rogers Elementary	573	423
Scott's Branch Elementary**	949	616
Scott's Branch High School	<u>197</u>	<u>158</u>
Totals	2,568	1,836

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\*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.

<u>Name of School</u>	<u>Enrollment 1951</u>	<u>A. D. A. 1951</u>
Summerton Elementary*	236	232
Summerton High School*	<u>62</u>	<u>58</u>
Totals	298	290

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\*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.

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 }	<u>274,050.00</u>
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	<u>16,800.00</u>
	77,327.20

Representing an expenditure per White pupil of \$266.65 on the basis of 1951 average daily attendance.

---

\*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.

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White Oak	32	29
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Rambay*	66	44
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Affected by Remodelling and Construction  
Program.

<u>Name of School</u>	<u>Enrollment 1951</u>	<u>A. D. A. 1951</u>
Summerton Elementary*	236	232
Summerton High School*	<u>62</u>	<u>58</u>
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.

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 )	<u>274,050.00</u>
Scott's Branch High )	
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	<u>16,800.00</u>
	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.

February 25, 1969

Messrs. Jenkins, Perry & Pride  
Attorneys at Law  
P. O. Box #838  
Columbia, South Carolina 29202

Re: ~~Harry~~ Briggs, Jr., et al, vs.  
R.W. Elliott, et al  
Civil Action No. 2657

Jamelle Rackley, a minor, etc., et al, vs.  
Board of Trustees of the Orangeburg Regional  
Hospital, a body public, et al, etc.,  
Civil Action No. AC-887

Gentlemen:

Pursuant to the Orders signed by Judge Martin  
and Judge Hemphill, (a certified copy attached) I have  
prepared and enclose herewith my official check No. 1,443,  
drawn on the Treasurer of the United States, in the sum  
of Seven Hundred Fifty and No/100 (\$750.00) Dollars,  
representing refund of the cash appeal bonds in the above  
entitled cases.

Very truly yours,

MILLER C. FOSTER, JR.,  
Clerk

By: Deputy Clerk

rdp/s

Enclosures (3)

cc: D. W. Robinson, Esquire

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

CIVIL ACTION NO. C/A-2657

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

v.

R. W. ELLIOTT, et al.,  
Defendants.

---

O R D E R

---

FRC: 412 271

CK # 1,463

Issued:

6/27/69

k



LAW OFFICES  
**JENKINS, PERRY & PRIDE**  
P. O. BOX 838  
COLUMBIA, SOUTH CAROLINA 29202

*Miss-filmed*

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

FILED

FEB 21 1969

MILLER C. FOSTER, JR., CLERK *E*

HARRY BRIGGS, JR., et al., )  
Plaintiffs, )  
-vs- )  
R. W. ELLIOTT, et al., )  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION NO. C/A-2657

O R D E R

The appeals in the above case from Orders of this Court have been concluded favorable to the plaintiffs and it appears that the sum of Five Hundred and No/100 (\$500.00) Dollars, deposited with the Clerk of this Court by plaintiffs' counsel pursuant to the Rule, as security for defendants' costs in the event the appeal had been favorable to them, should now be released. Now, therefore,

IT IS ORDERED that the Clerk of this Court release and pay over to plaintiffs' counsel the cash appeal bond in the sum of Five Hundred and No/100 (\$500.00) Dollars heretofore deposited in this cause.

*J. Roy ...*  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

February 20, 1969.

I CONSENT:  
*D. W. Robinson*  
\_\_\_\_\_  
D. W. ROBINSON  
P. O. Box 1942  
Columbia, South Carolina

Attorney for Defendants.

///////

June 6, 1966

Hon. Robert Mc C Figg, Jr.  
University of South Carolina Law School  
Columbia, South Carolina

Mr. D. W. Robinson  
Attorney at Law  
1213 Lady St.  
Columbia, South Carolina

Messrs. Jenkins, Perry & Pride  
Attorneys at Law  
1107½ Washington St.  
Columbia, South Carolina

Re: Harry Briggs, et al. v. Elliott, et al.  
Civil action no. 2657

Gentlemen:

I am enclosing a certified copy of Order ending the above  
case,

Yours truly,

Miller C. Foster, Jr., Clerk  
By:

John C. Rogers  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

CIVIL ACTION NO. 2657

**FILED**

DEC 22 1950

ERNEST L. ALLEN  
CLERK

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 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,

July  
1

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,

IRENE SCOTT, an infant, by  
HENRY SCOTT, her father and  
next friend.

Plaintiffs

-vs-

24  
2  
R. W. ELLIOTT, Chairman, J. D. 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

## COMPLAINT

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 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.

July  
4

(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 secondary 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 of 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 educational 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, Delores Ragin, Glen Ragin, Elane Richardson, Emanuel 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 eligibility 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, Mary Oliver, Willie M. Stukes, G. H. Henry, Robert Georgia, Rebecca Richburg, Gabriel 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 hereaftermore 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 administrative officer of the State, charged with overall supervision and government of the 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 accordance 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..."

*Jup*  
*8*

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 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 divisions 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 provisions 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 injury 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 respectfully 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 exclusively 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 those 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*

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. C.

*Robert L. Carter*

Robert L. Carter

*Thurgood Marshall*

Thurgood Marshall  
20 West 40th Street  
New York 18, N.Y.

Attorneys for Plaintiffs.

DATED: December 19, 1950

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

FILED

FEB - 1 1951

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

HARRY BRIGGS, JR., et al,  
Plaintiffs,

Civil Action No. 2657

v.

ORDER

R. W. ELLIOTT, Chairman, et al  
Defendants.

It appearing in the above entitled cause that Honorable J. Waties Waring, United States District Judge for the Eastern District of South Carolina, pursuant to Title 28, U. S. Code, Sections 2281-2284, has directed that a three-judge court be convened at Charleston, South Carolina, on May 28, 1951 at ten o'clock in the forenoon to hear application for declaratory judgments and for temporary and permanent injunctions.

Now, therefore, it is ordered that Honorable George Bell Timmerman, United States District Judge for the Eastern and Western Districts of South Carolina, and the undersigned, Chief Judge of the Fourth Judicial Circuit, be and they are hereby designated to sit with the said Honorable J. Waties Waring in the hearing of said application.

This is the 31st. day of Jany., 1951.

/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

FILED

FEB - 1 1951

ERNEST L. ALLEN  
2222222222

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

HARRY BRIGGS, JR., et al,

Civil Action No. 2657

Plaintiffs,

v.

ORDER

R. W. ELLIOTT, Chairman, et al

Defendants.

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Now, therefore, it is ordered that Honorable George Bell Timmerman, United States District Judge for the Eastern and Western Districts of South Carolina, and the undersigned, Chief Judge of the Fourth Judicial Circuit, be and they are hereby designated to sit with the said Honorable J. Waties Waring in the hearing of said application.

This is the 31st. day of Janv., 1951.

~~/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

CIVIL ACTION

2657

FILED

MAR 3 - 1952

ERNEST L. ALLEN  
S.A.C.U.S.E.A.&C.

February 9, 1952.

Hon. J. Waties Waring,  
United States District Judge,  
Charleston, S. C.

Hon. George Bell Timmerman,  
United States District Judge,  
Columbia, S. C.

Gentlemen:

I have received copy of motion filed by plaintiffs in Briggs v. Elliott asking that plaintiff be accorded an early hearing on the motion. I do not know whether mandate has been received by the Clerk from the Supreme Court of not; but, if not, it will doubtless be received at an early date and I think we should proceed to arrange for the hearing of the motion.

I suggest that the motion be set down for hearing on Friday February 29, and that the hearing be had in Columbia, which will be much more convenient for Judge Timmerman and me than Charleston and equally convenient for Judge Waring, who, I understand, will not be in Charleston at the time. It will also be much more convenient for counsel.

I understand that Judge Waring enters upon his retirement next Friday, February 15; but he will be eligible to sit in this case upon my designation, and I shall designate him to sit in it if he is willing to do so.

I shall appreciate it if you will advise me at once whether you approve of setting the motion for hearing at Columbia on Friday February 29 and, if not, what date you suggest, bearing in mind that it will not be possible for me to hold the hearing between February 20 and February 27 because of prior commitments, and that I must be in Richmond at the March term of the Court of Appeals beginning March 5. I ask, also, that Judge Waring indicate whether he is willing to accept a designation to sit in the hearing of the motion.

With highest regards and best wishes to you both, I am

Sincerely yours,

*John J. Parker*

JJP/B

Civil Action

2657

FILED

CHAMBERS OF  
J. WATIES WARING  
DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON, S. C.

MAR 3 - 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

February 11, 1952

Honorable John J. Parker  
United States Circuit Judge  
Charlotte 2, North Carolina

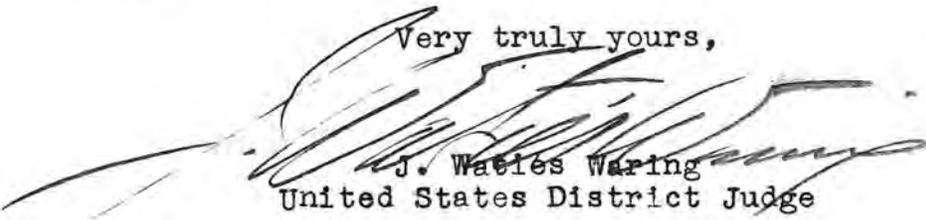
In re: C/A 2657  
Briggs v. Elliott

My dear Judge Parker:

I am today in receipt of your letter of the 9th instant informing me of your decision to have a hearing tentatively set for February 29th in the above case and also you wish to change the venue from the Charleston to the Columbia Division for personal convenience. Since my term of active service will have expired by that time, I make no comment as to the propriety of either the place or date.

As the matters to be submitted to this proposed hearing are entirely under the separate but equal theory and seem to be entirely irrelevant to the basis of the case which is the matter of whether Racial Segregation is Constitutional, I would not be willing to accept a designation to sit with you in the case or take any part in it.

Very truly yours,

  
J. Waties Waring  
United States District Judge

cc: Honorable George Bell Timmerman  
United States District Judge  
Columbia 3, South Carolina

Columbia, South Carolina  
March 3, 1952.

Honorable Armistead M. Dobie,  
Circuit Judge,  
Fourth Judicial Circuit,  
Richmond, Virginia.

Honorable George Bell Timmerman,  
District Judge,  
Eastern District of South Carolina,  
Columbia, South Carolina.

RE: Civil Action 2657  
Briggs, et al  
v  
Elliott, etc. et al.

My Dear Judges Dobie and Timmerman:-

As directed by Judge Parker earlier today, I am enclosing to each of you a certified copy of copy of his letter to Judge Waring under date of February 9, 1952, and Judge Waring's reply under date of February 11, 1952, together with Order filed this date designating Judge Dobie to sit as a member of the Court in the above matter.

With my personal regards to each of you, I  
am,

Most sincerely,

Ernest L. Allen,  
Clerk.

TAC/c  
encl.

CC: Judge John J. Parker.

CLAUDE M. DEAN  
CLERK

Clerk's Office  
United States Court of Appeals  
For the Fourth Circuit

Richmond, Virginia  
March 4, 1952

Ernest L. Allen, Esq.,  
Clerk, U. S. District Court,  
Columbia, South Carolina

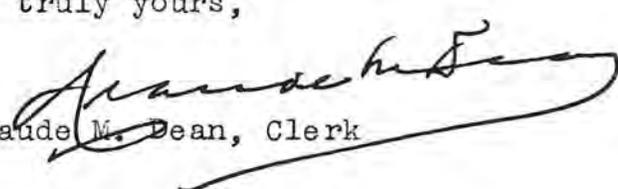
Re: Civil Action 2657,  
Briggs, et al., v. Elliott, etc., et al.

Dear Mr. Allen:

I beg to acknowledge receipt of your letter of March 3rd, enclosing two certified copies of Judge Waring's letter of February 11, 1952, to Judge Parker, together with certified copy of Judge Parker's order designating Judge Dobie as a member of the Court in the above entitled matter. The certified copy of copy of Judge Parker's letter to Judge Waring, dated February 9, 1952, as mentioned in your letter, was not enclosed.

With kind regards, I am,

Very truly yours,

  
Claude M. Dean, Clerk

D to D

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

Charleston Division  
Civil Action No. 2657.

**FILED**

MAR 13 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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; I. B. McCord, Superintendent  
of Education for Clarendon County, and Chairman A. J.  
Flowden, 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

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

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.

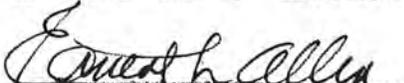
This the 12th day of March 1952.

/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.

  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

*Appendix B*

SUMMERTON  
BUILDING SURVEY  
DECEMBER, 1951

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

E. R. CROW  
DIRECTOR  
P. C. SMITH  
ASSISTANT DIRECTOR

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*

W. B. Southerlin, Supervisor  
Schoolhouse Planning

WBS/cf

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:

<u>Schools Petitioned to Pinewood</u>	
<u>Name of School</u>	<u>Enrollment 1951</u>
Spring Grove	173
Wells	89
New Hope	124
Calvary	<u>65</u>
Total	451

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

<u>Name of School</u>	<u>Enrollment 1951</u>
Panola	118
Rockland	31
Silver	110
St. John	<u>33</u>
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 enrollment 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  $1\frac{1}{2}$  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. 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:

<u>Name of School</u>	<u>Enrollment 1951</u>
St. Paul	265
Panola	118
St. Phillips	169
Rockland	31
Oaks	26
Butler	55
Santee	20
Liberty Hill	105
Maggie Nelson (part)	<u>60</u>
Total	849

The number of pupils in this school will require 21 classrooms and a cafeteria. Twentyone 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. 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:

<u>Name of School</u>	<u>Enrollment 1951</u>
Maggie Nelson (part)	123

Spring Hill	64
St. James	90
Felton Rosenwald	146
White Oak	32
Pine Grove	<u>118</u>
Total	573

This center will require 15 classrooms making a floor area of 13,125 square feet with a cafeteria of 2,750 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, receilin; the interior, reflooring, replacing bad windows,

rewiring 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:

<u>Name of School</u>	<u>Enrollment 1951</u>
Rambay	66
Silver	110
Oak Grove	114
St. John	33
Zoar Hill	81
Scott's Branch	<u>515</u>
Total	919

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.

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 confirms 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.

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 unforeseen 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 classrooms 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 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. 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, re-wiring, 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.

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	<u>16,000.00</u>
	647,989.00
Architectural fee (estimate)	<u>38,873.94</u>
	\$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
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REPORT BY...

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In other words, the cost of work to be done with the contract as it now stands will amount to the following:

St. Paul	1148,344.00	
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	} 274,050.00 (Fees included for contract)	
Scott's Branch High (less gym)		
Scott's Branch gym (with arch. fee)		106,000.00
Fees (approximately)	<u>19,123.44</u>	
	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.

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 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 overcrowded at any time.

Again it must be pointed out that constant study must be made of the housing problem for the children so that changes may be made without seriously slowing the regular school work from year to year.

~~Appendix~~ B

SUMMERTON  
BUILDING SURVEY  
DECEMBER, 1951

IN EVIDENCE  
Exhibit No.

D-A

ERNEST L. ALLEN  
G.D.C.U.S., E.D.S.C.

**INAUGURAL ADDRESS**  
**OF**  
**THE HONORABLE**  
**JAMES F. BYRNES**  
**AS GOVERNOR**  
**OF**  
**SOUTH CAROLINA**



**COLUMBIA**  
**JANUARY 16, 1951**

INAUGURAL ADDRESS OF THE HONORABLE JAMES  
F. BYRNES AS GOVERNOR OF SOUTH CAROLINA  
IN COLUMBIA, SOUTH CAROLINA,  
JANUARY 16, 1951

The large percentage of votes received by me in the Democratic Primary last summer, together with the many evidences of good will received since then, have made me very grateful, very humble and somewhat embarrassed. I am embarrassed because I realize fully my inability to accomplish in the administration of state affairs what is expected of me. Even so it is my purpose and my determination to give to this State and its people the best there is in me.

Within the next few days I shall send to the Legislature specific recommendations on a number of subjects. At this time I refer generally to a few.

I recommend that the Legislature submit to the people at the next General Election a proposal for a Constitutional Convention to draft a new Constitution.

I recommend that the Legislature ratify the three Amendments to the Constitution approved at the recent election, including the amendment repealing the provision requiring payment of a poll tax as a requisite for suffrage.

My investigation of the State government confirms an opinion I have long held, based on knowledge of the Federal Government, that the nearest approach to immortality on earth is a government bureau.

A beginning has been made to effect the purposes of our Reorganization Act but we still have in the Executive Department more than 50 independent agencies and commissions. I urge that many of these be consolidated, and some abolished.

The people of South Carolina are a law abiding people. Criminal statistics show that in proportion to our population, we have fewer violators of the law than most states of the Union. However, we do have a few people who want to take the law into their own hands and regulate the morals and habits of others.

If a man violates the law he should be arrested by local officers. If they fail to act and complaint is made to the State Law Enforcement Division, the offender will be arrested. If a man does not violate the law, no group of men has the right to assault him or to threaten and intimidate him.

I recommend that the Legislature enact a law similar to the Alabama statute prohibiting persons over 16 years of age parading on the streets or highways while masked, and also to prohibit such persons entering upon the premises of a citizen to threaten or intimidate him.

In this State there can be but one government, that must be a government of the people under law. There can be but one Governor, elected by the people, whose duty it is to see that the law is enforced. I am going to be that Governor. I do not need the assistance of the Ku Klux Klan nor do I want interference by the National Association for the Advancement of Colored People.

If we demand respect for state rights, we must discharge state responsibilities. 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 grant an increase in the pay for school teachers, and we must improve our school transportation system.

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 spent 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. I shall submit a special message to the General Assembly as to this program.

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.

If any person wants an additional reason, I say it is wise. Our Constitution provides there shall be separate schools for white and colored children. More than half a century ago the U. S. Supreme Court held that such a provision was not in conflict

with the United States Constitution provided the facilities for the races were equal.

Last Spring the Democratic Administration in Washington caused the United States Attorney General to intervene in several cases and urge that the Court declare unconstitutional any law requiring separation of the races. The Supreme Court did not pass upon the question.

Cases are now pending in this and in other States which will go to the Supreme Court, in which the complainants follow the lead of the President and ask the Court to abolish segregation in all schools. We must assume the Administration will again urge the Court to repudiate what is now the law of the land.

I am hopeful that the Supreme Court will deny this appeal. The Court appreciates the necessity for continuity of law and the evil results that flow from uncertainty as to the law. I am hopeful, too, that if in a given case there is shown an honest effort to provide substantially equal facilities, it will favorably influence the opinion of the Court.

This is not a local problem. The races are separated in the schools of at least seventeen States of the Union, as well as the District of Columbia, under the jurisdiction of the Congress.

What the leaders of the Administration do not realize is that if they succeed in abolishing segregation they will thereby endanger the public school system in many States.

The overwhelming majority of colored people in this State do not want to force their children into white schools. Just as the negro preachers do not want their congregations to leave them and attend the churches of white people, the negro teachers do not want their pupils to leave them and attend schools for white children.

Except for the professional agitators, what the colored people want, and what they are entitled to, is equal facilities in their schools. We must see that they get them.

It is unfortunate that in this perilous period the President in his budget message of yesterday should advocate an increase in non-defense expenditures and urge political proposals and socialistic programs which are certain to divide our people. We will continue to oppose such proposals. But let there be no misunderstanding. The Governor of South Carolina and the

people of South Carolina will loyally support the foreign policy of the Government of the United States.

In these days when the free world is threatened by a fanatical ideology, bent on world conquest, our duty to this Republic and to the world must be met with a display of unity. This is not only our duty, it is our great opportunity.

The last vestige of isolationism left the shores of America on the wings of the plane that carried the first atomic bomb to Hiroshima.

That bomb brought an end to the war with Japan. The ending of that war brought to us the leadership of the free peoples of the world. We in America must give to them the leadership expected of us because we love peace and because we have power.

In the defense of our common liberty, there is no place for political partisanship. At the water's edge, we must all stand together. A united America is civilization's last clear chance for survival. A divided America is the greatest temptation to Soviet conquest.

We cannot meet the perils of this day with a Republican policy or a Democratic policy. We must have an American policy.

The President of the United States is responsible for the conduct of our foreign affairs. He cannot abdicate his responsibility. But in the exercise of that difficult task he needs and should have the cooperation of all loyal Americans, regardless of our differences on domestic questions.

If we are to have a bi-partisan policy, the President should consult the leaders of the minority political party before and not after basic decisions of policy are made. Once decisions are made, consultation is only a sham.

A non-partisan or bi-partisan policy does not call for the suppression of honest debate and discussion. Neither the Executive or the Legislative branch of government has a monopoly of wisdom and virtue.

Responsible leaders can and should be assisted by constructive discussion of our foreign policies but these are not ordinary times and we should weigh our words.

In the United Nations Charter we pledged ourselves to resist aggression. When the Communists in North Korea invaded the South Korean Republic we redeemed that pledge.

We have borne the brunt of that fight. We were disappointed that the Nations which voted with us to condemn the aggression did not contribute more troops to fight the invaders. But we discharged our duty. The North Korean aggressors were driven back and rendered powerless.

Then when the people of America were made happy by the hope that our boys would be on their way home by Christmas, we were confronted with another and totally different war of aggression. Communist China attacked the forces of the United Nations.

They have now invaded South Korea. The greatly outnumbered soldiers of the United Nations, fighting as valiantly as have any soldiers in the history of the world, are forced to retreat.

No army has ever fought with such crippling limitations. Our air force controls the sky but cannot attack the supply bases of the enemy in Manchuria. In effect, our right arm is tied as the enemy advances.

The United States has called on the United Nations to declare Communist China guilty of aggression. The governments that did not hesitate promptly to brand North Korea as an aggressor hesitate now to declare Communist China an aggressor.

As Chinese Communists daily kill the soldiers of the United Nations, the governments for which they die are fearful of offending China and the Soviets.

If the United Nations is unwilling promptly to declare China an aggressor, authorize our Air Force to attack the supply bases of the enemy, and join in blockading China, then our forces should be withdrawn from Korea.

I am aware that some of our allies fear if China is declared an aggressor and the air force authorized to bomb supply bases in Manchuria, it may provoke Russia to war. That is the counsel of fear which I reject. If Russia is ready and willing to make war on the United Nations, she will want no such excuse.

But if the time is approaching when Russia will be ready to go to war, then it is not wise to have our army divided between Korea and Europe. To my mind western Europe is an indispensable first line in the defense of civilization. We should concentrate our forces in Europe.

It is said that western European governments have not raised armies for their own defense. In view of our record, we should not complain. In March 1948, after Czechoslovakia had fallen, I made a speech at the South Carolina Military Academy urging that it was so clear the Soviets planned domination of the world, we should cease all non-defense expenditures and immediately draft men to increase our military forces. Many others made similar pleas. Little was done.

On the home front similar delay in freezing prices and wages will hamper the government and punish the people. In the last war when I was appointed Director of Economic Stabilization I found that the failure to freeze prices and wages at the outset threatened the economy. Upon my recommendation President Roosevelt issued the Hold-the-Line Order. That line was held. Every day we delay freezing prices and wages across the board, will cause more inequities, higher prices and additional costs to the taxpayer.

It took Korea to waken us from our slumbers. Now we must rouse our friends in Europe. We must impress upon them that the time has come to stop talking and begin action.

Since last September we have been discussing with France and Britain what limitations should be placed on military forces recruited in Western Germany.

The German Republic that we sponsored should be treated on terms of equality. Only in this way can we expect men to have their hearts in a cause. More than a million of the German war prisoners taken to Russia have never been returned. They constitute a million reasons why the people of Western Germany, if treated fairly, will fight with us. And they know how to fight.

Since 1945, France has used its influence to prevent Britain and the United States from sending an Ambassador to Spain. We should send Spain more than an Ambassador. We should send military supplies as rapidly as possible. Spain has more divisions of trained soldiers than any of the Western European governments.

We should seek the friendship of Tito and furnish military supplies to Yugoslavia. Tito has trained soldiers. They are brave soldiers.

We should impress upon Britain, France and all of Western Europe, that we want the American soldiers who fight in Europe to have the help of the soldiers of every nation willing to oppose aggression by the atheistic Communists of Russia.

The argument that additional troops should not be sent to Europe cannot be ignored. It cannot be answered by the statement that we must comply with our obligations. The Atlantic Treaty and the United Nations do not require us to act except in case of aggression. But there is a requirement more urgent than these,—the requirement of self-defense. Self-preservation demands that we act before the Soviets strike.

If we wait until the Soviet troops invade Western Europe, it will be too late for us to send an army to Europe to be integrated with an army of Western Europe under the command of General Eisenhower.

The people of America have confidence in the intelligence and the integrity of General Eisenhower. If after investigation he is satisfied that the governments of Western Europe are ready and willing to make sacrifices and put armies into the field to defend their own freedom, the American people will accept his recommendation.

I hope Congress will then adopt an affirmative proposal that the United States should furnish its proportion of that army of freedom. Congressional approval will restore unity. It will put an end to debate at home. It will put at rest one of the greatest fears in the minds and hearts of the people of Western Europe,—the fear of a divided America.

I have no fear of what Congress will do. The people of America do not want to sit on the side lines and permit Stalin to take control of all Europe.

They know that when the Soviets reach the shores of the Atlantic, their atomic bombs will be 2,000 miles nearer our shores. They know, too, that if we abandon Europe to the Soviets, we will abandon the air bases now available to us, from which, in case of aggression, we can send planes to drop bombs on Russia.

No man knows what the Kremlin will do. But I know that the Soviet leaders understand only the language of force.

A firm stand by a united people may deter them from war. A timid course by a divided people certainly will encourage them to make war.

Such a war would threaten the destruction of every vestige of our freedom,—religious, economic and political. I pray that it will never come. But should it come, the nation may rely upon it that the people of South Carolina will do their full part, fighting for God and for Country.

Appendix D



THE  
EAGLE

SCOTT'S BRANCH SCHOOL

SUMMERTON, SOUTH CAROLINA

# 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 mean 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, magazines, and sometimes seeing newsreels in the theater. If we understand, and think seriously about what we read and see, we should realize how tough things are over there.

Some of us know what it means to receive 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 makes 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 obstacles to cope with. Some so unusual, that we interro-

gate 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.

## 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 amazing. It's members are the flute, (the Colortura soprano), the oboe, (the lyric Soprano), the Clarinet (the dramatic Soprano) and the bassoon (the bass).

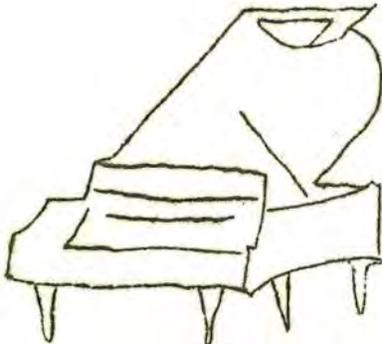
It isn't strange any more to know that the flute is related to the piccolo, the oboe to the English horn, the Clarinet to the Bass Clarinet, and the Saxophone, and the Bassoon to the Double Bassoon. Our interest is now turned toward the Bass choir.

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 off 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 and 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

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

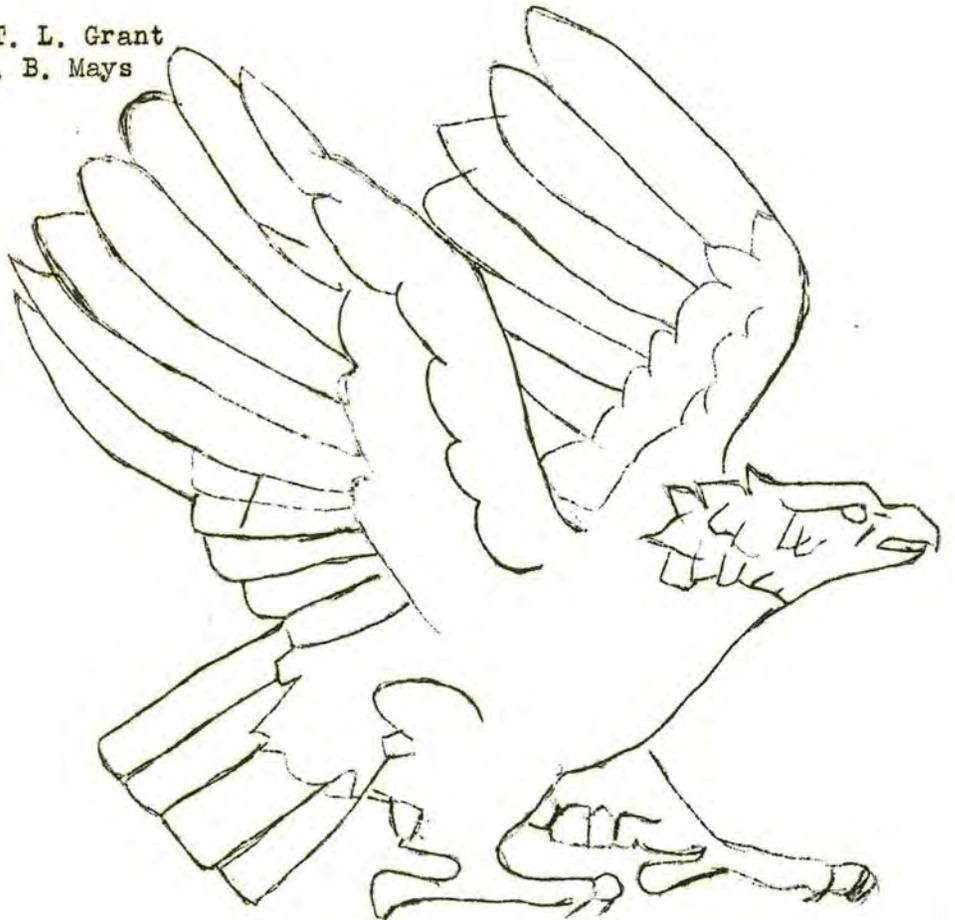
FRIDAY DECEMBER 7, 1951

AT

SCOTT'S BRANCH SCHOOL

SUMMERTON; SOUTH CAROLINA

TIME 3:30 P. M.



MAEVELOUS 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. Betchman 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 Economics 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 these 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 success.

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 C. Briggs  
Teacher ----- E.L. Wilson

## FIRST GRADE B

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 an 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 Molomen as president and Durant Richardson as reporter.

Reporter----- 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,  
Juineta 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  
Phyllis Henry  
Mariah Coulette  
Vivian Coulette  
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, classmates, 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, anemometer, 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:

Mamie Ree Lawson  
Rosa 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.-Bernie 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-Elane Regan  
Vice Pres.-Beatrice Brown  
Secretary-Jervine Georgia  
Asst. Sec.-Margaree Washington  
Treasurer-Anna L. Brailsford  
Reporter:Rubye Johnson  
Advisor:Miss G.J. Brown

## SOPHOMORE CLASS

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 W. Lawson  
Asst. Sec.-Lucile Canty  
Treasurer-Cassie L. Gaymon  
Chaplin-Allen Brailsford  
Reporter-Effie M. Baxter

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 Ragin. 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.--Mamin Lue Singletary  
 Treasurer--Lulcatha Singleton  
 Business Manager--Daniel Charles  
 Helper----Osalose Doughty  
 Reporter--Roosevelt Postell

We the members of the Junior Class 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 very 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 L. Boyd  
 Vice Pres.--Joe Dallas  
 Secretary--Dorothy M. Oliver  
 Asst. Sec.--Willene A. Ragin  
 Treasurer--Nancy Johnson  
 Business Manager--Vera Brown

On Wednesday, October 31, 1951, we gave a Halloween 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.F.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. Ragin

## 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 courteous at 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 eyes.

Myrtle Richburg  
(Junior)

THE HOUSE BY THE SIDE OF THE ROAD

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

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 with-  
drawn,

In the glare 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, Where 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 receive it

Thrifty save it, misers crave it

Robber seize it, rich increase it

Gamblers lose it, I could use it.

To thine own self be true.

Do not give to receive,

Give to help



DRESS YOUR FAMILY HERE

GORDON'S CLOTHING

THE BEST FOR LESS

MEN - WOMEN - CHILDREN

KEELS' 5 & 10

Shop For Christmas  
Lots of Toys  
For Girls and Boys

IDEAL CLEANERS

IF WE SATISFY YOU,  
TELL OTHERS,  
IF NOT TELL US

W. M. RAGIN, PROP.

INE

BEER

COURTEOUS

OLIVER'S CAFE

SERVICE

ALE

FINE FOODS

FRESH VEGETABLES

MEATS

FRESH FRUITS

VEGETABLES

WELL'S GROCERY

SELF SERVICE

COSKEY'S GROCERY

FRUITS

CAKES

NUTS

CAKES COOKIES

MEATS

FRUITS

FRUITS

GROCERIES

BATEMAN'S GROCERY

CREIGHTON'S GROCERY

FANCY GROCERIES

VEGETABLES

NUTS

FILE

BOOKS

FRESH VEGETABLES

FRUITS

SIMS

DRUGS

SHALBUHY GROCERY

STORE

SELF SERVICE

DRUGS

ROASTED PEANUTS

SIC

BOOKS

FRESH VEGETABLES

MEATS

STOKES

DRUG

WELL'S GROCERY

SELF SERVICE

COMPANY

PRESCRIPTIONS FILLED PROMPTLY

FRUIT CAKES

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

APPENDIX C.

I.

Existing Negro Elementary Schools of School  
District No. 1 Being Consolidated By  
Remodelling and Construction Program.

<u>Name of School</u>	<u>Enrollment 1951</u>	<u>A. D. A. 1951</u>
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*	<u>197</u>	<u>158</u>
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.

II.

Distribution of Negro Pupils in School District  
No. 1 After Completion of Remodelling and  
Construction Program.

<u>Name of School</u>	<u>Enrollment 1951</u>	<u>A. D. A. 1951</u>
St. Paul Elementary*	849	639
Rogers Elementary	573	423
Scott's Branch Elementary**	949	616
Scott's Branch High School	<u>197</u>	<u>158</u>
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.

<u>Name of School</u>	<u>Enrollment 1951</u>	<u>A. D. A. 1951</u>
Summerton Elementary*	236	232
Summerton High School*	<u>62</u>	<u>58</u>
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.

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 )*	<u>274,050.00</u>
Total**	552,682.95

Representing an expenditure per Negro pupil of \$301.02 on the basis of 1951 average daily attendance.

---

\*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	<u>16,800.00</u>
Total*	77,327.20

Representing an expenditure per White pupil of \$266.65 on the basis of 1951 average daily attendance.

---

\*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.

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

---

Civil Action No. 2657.

---

HARRY BRIGGS, JR., et al.,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,

Defendants.

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STATEMENT OPPOSING JURISDICTION  
AND MOTION TO DISMISS OR AFFIRM.

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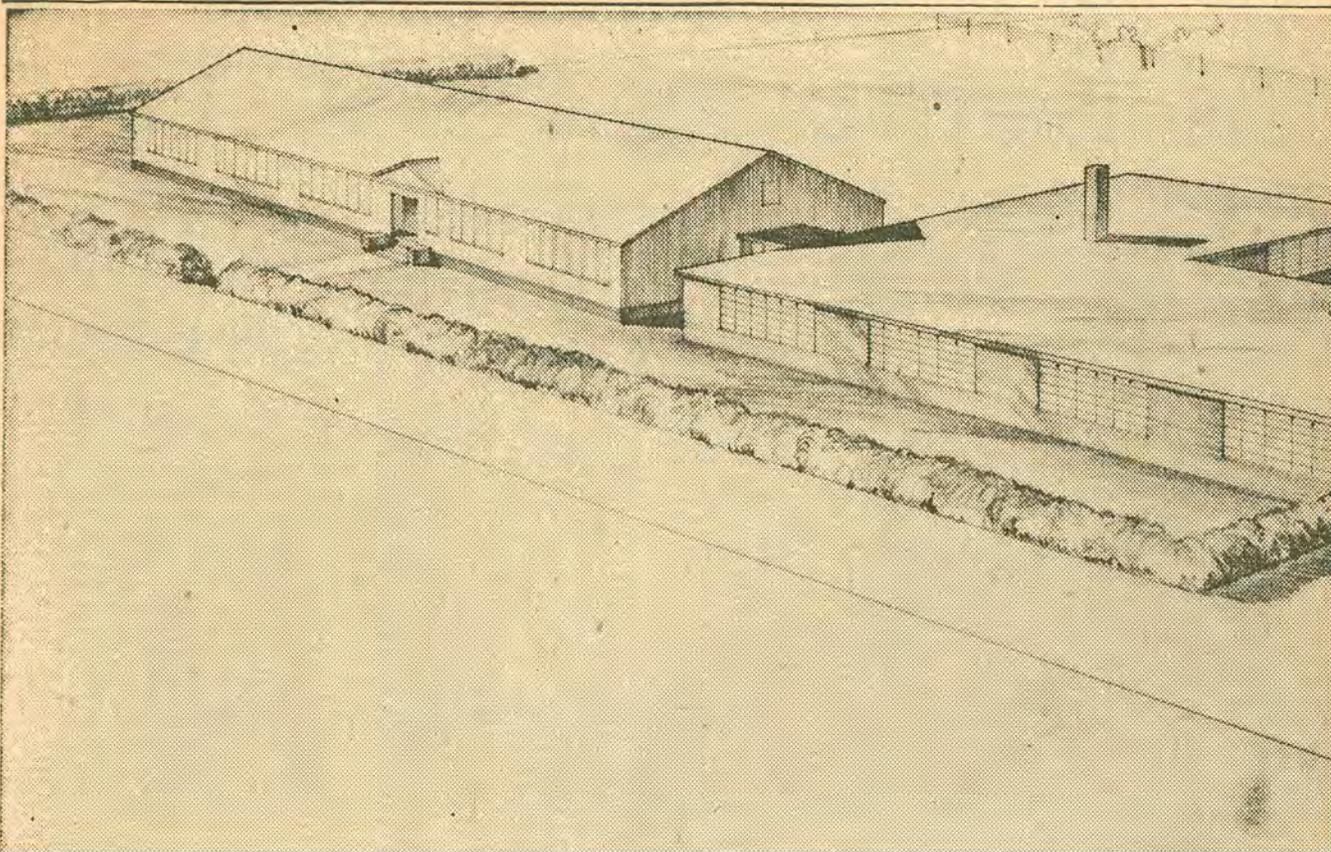
S. E. Rogers,  
Summerton, S. C.,

Robert McC. Figg, Jr.,  
Charleston, S. C.

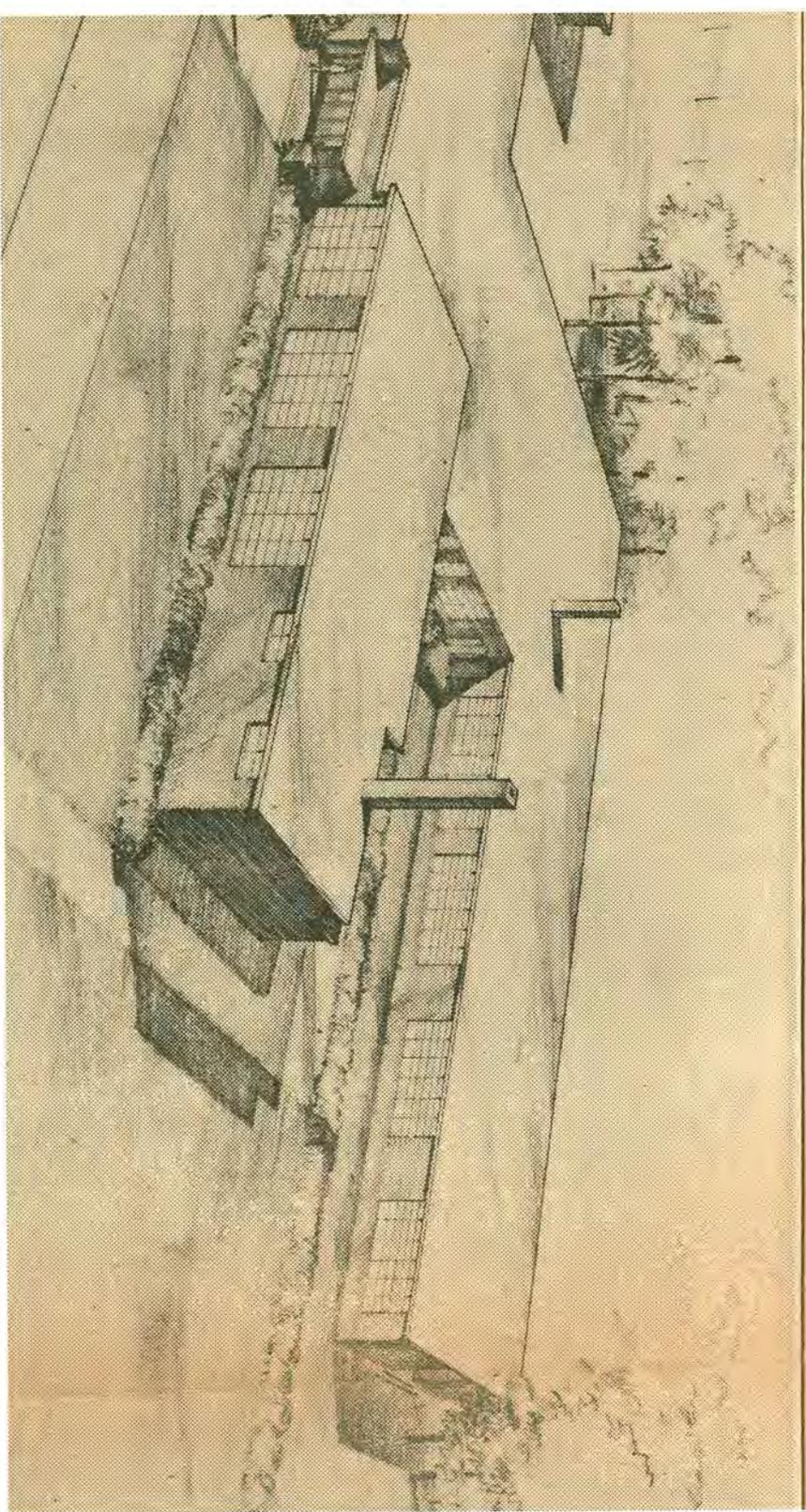
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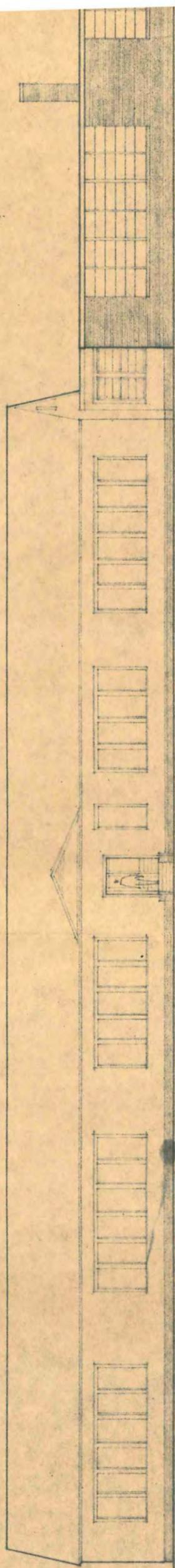
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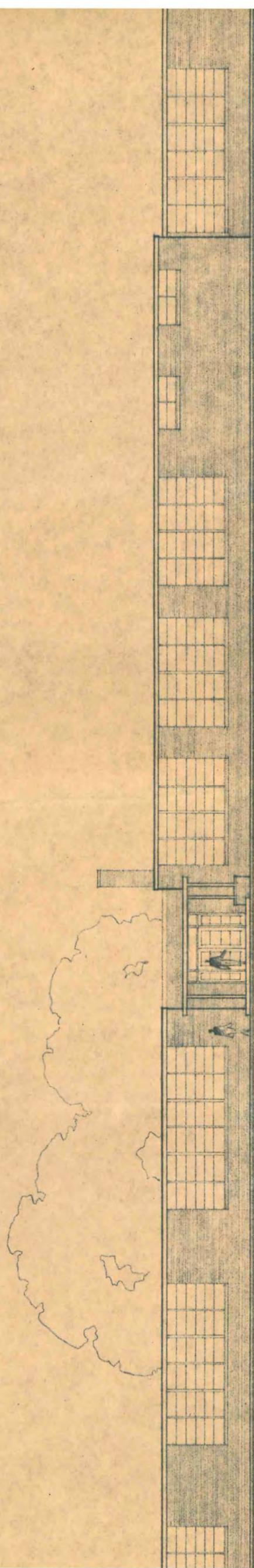
COTT'S BRANCH SCHOOL

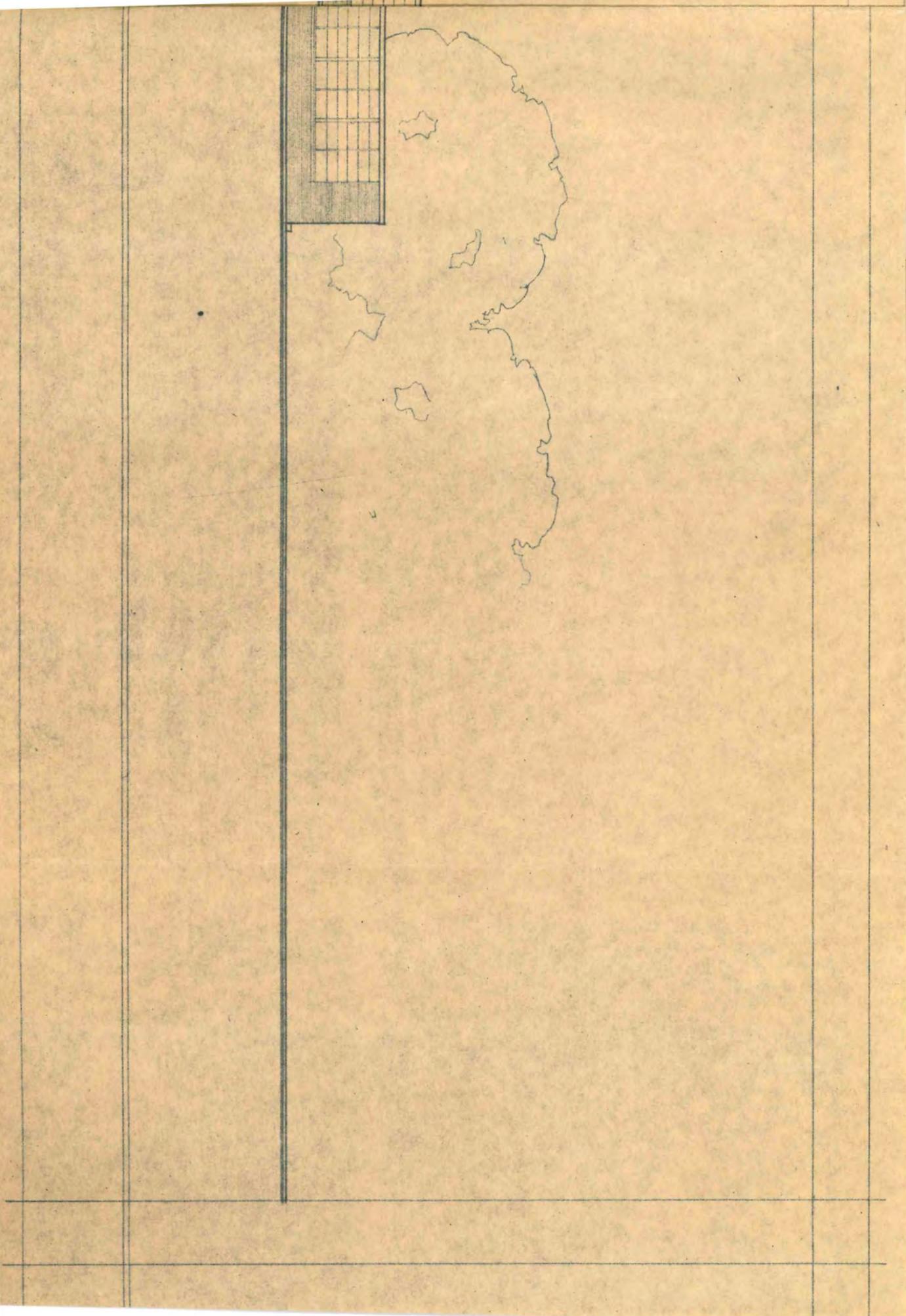
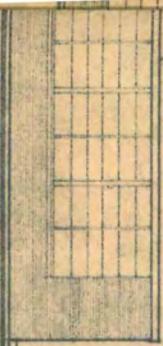
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392 at 10¢ per page

53 at 40¢ per page

\$39.20

21.20

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\$60.40

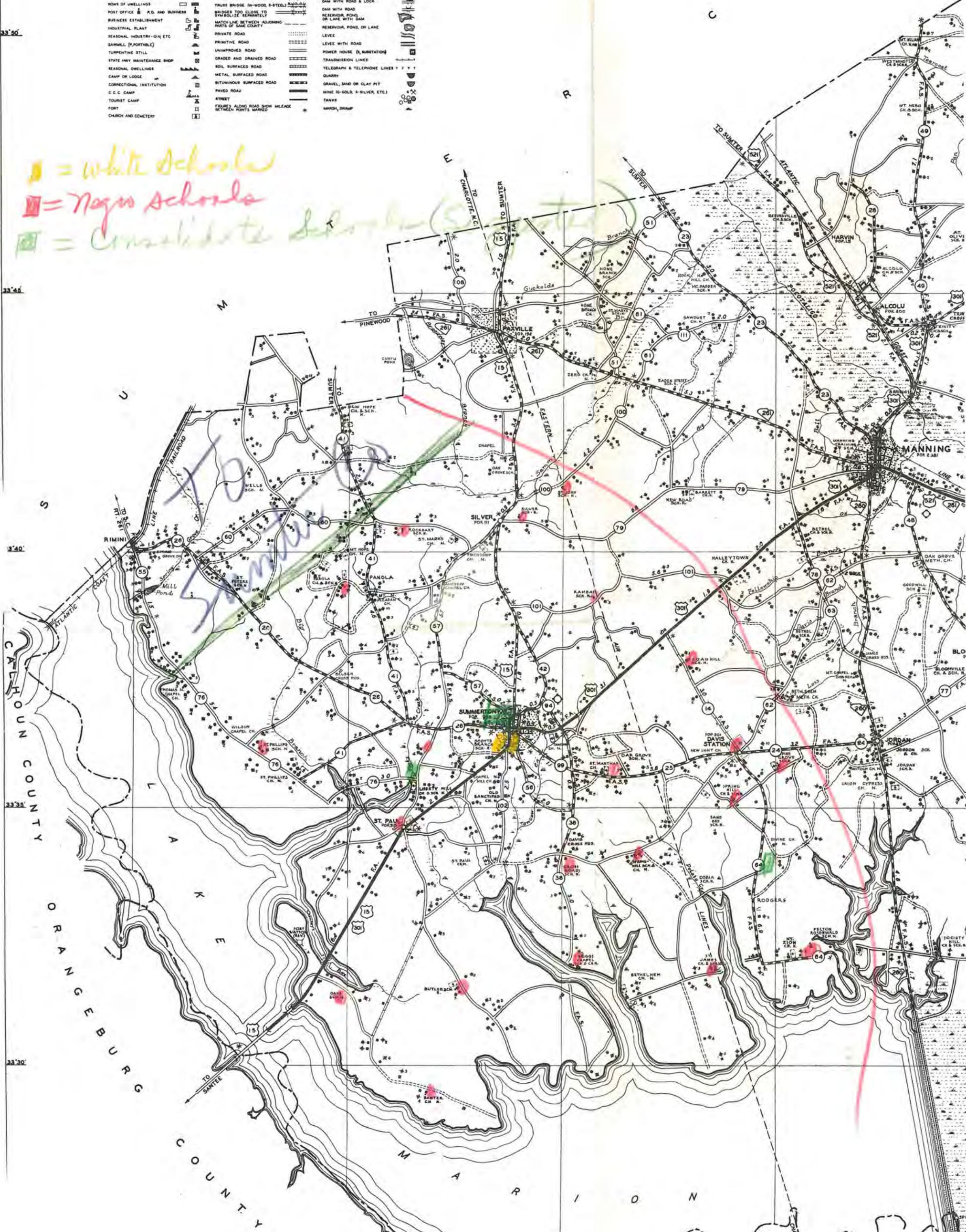
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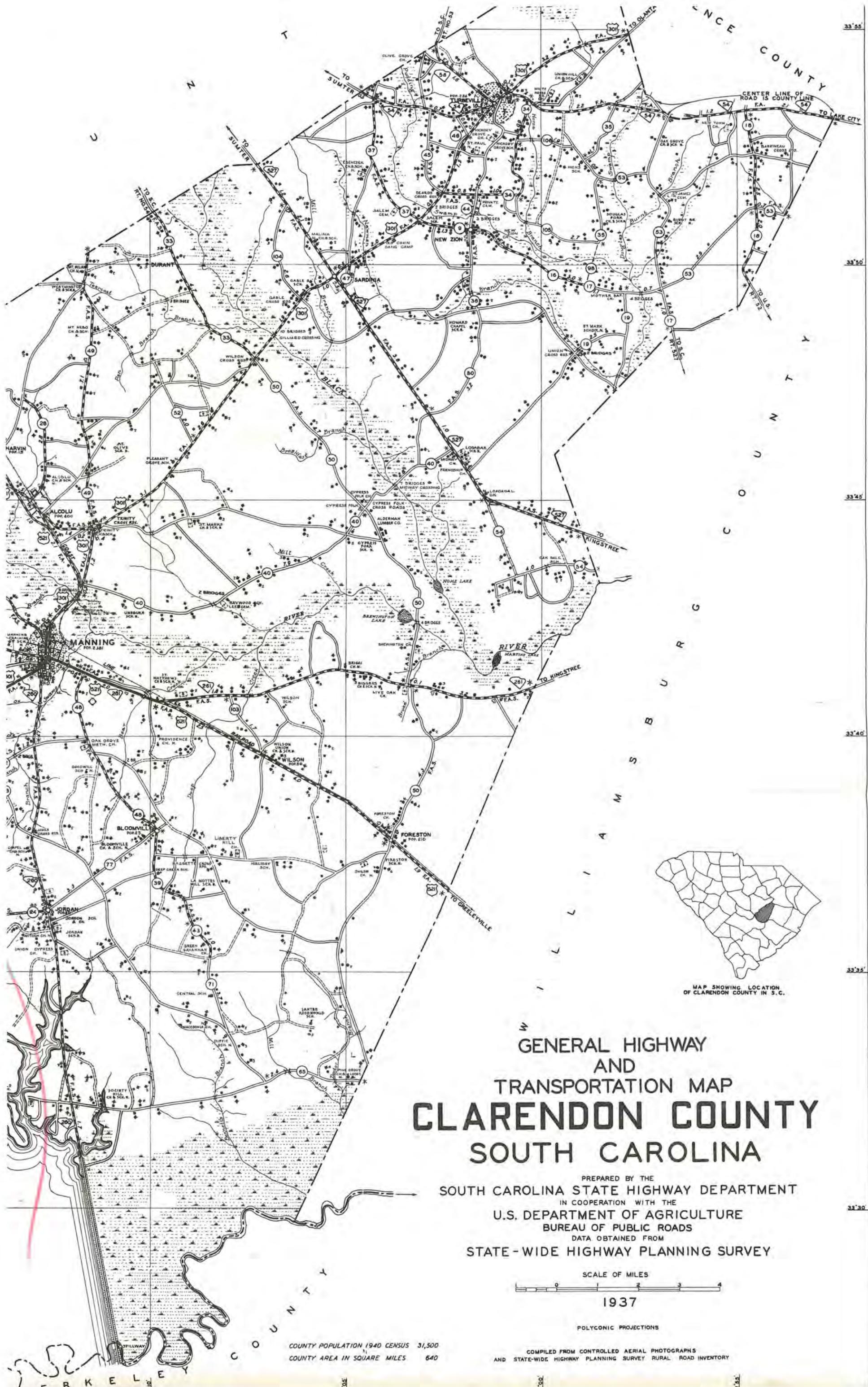
# LEGEND

- |                                |   |  |
|--------------------------------|---|--|
| COUNTY BOUNDARY                | RADIO STATION   | RAILROAD                                     |
| STATE BOUNDARY                 | CALL LETTERS INDICATED                                | RAILROAD, ELECTRIC                           |
| CORPORATE LIMIT                | TRIANGULATION STATION                                 | RAILROAD STRAIGHTENED GUAGE, PRIVATELY OWNED |
| UNINCORPORATED AREA            | WITH NAME INDICATED                                   | RAILROAD, TRACK RETAINED, SERVICE ABANDONED  |
| NAT'L & STATE PARK BOUNDARY    | BENCH MARK, WITH ELEVATION                            | TRAM ROAD                                    |
| COUNTY SEAT                    | PICNIC SITE   | RAILROAD STATION                             |
| OTHER CITIES & VILLAGES        | BATHING BEACH   | GRADE CROSSING                               |
| STATE HIGHWAY - PRIMARY        | PLAYGROUND, BALL FIELDS, ETC.                         | OVERHEAD                                     |
| STATE HIGHWAY - SECONDARY      | FAIR GROUNDS  | UNDERPASS                                    |
| U.S. HIGHWAY                   | RACE COURSE, OR SPEEDWAY                              | TRANSMISSION PIPE LINE                       |
| F.A. HIGHWAY SYSTEM            | GOLF COURSE   | PUMPING STATION                              |
| F.A. SECONDARY HIGHWAY SYSTEM  | SMALL PARK OR P-STATE                                 | MILITARY AIR FIELD                           |
| CHURCH                         | OR P-TRANGULAR, C.P. COUNTY                           | COMMERCIAL AIR FIELD                         |
| CHURCH, NEGRO                  | SMALL MONUMENT OR POINT OF HISTORICAL INTEREST        | LANDING STRIP                                |
| CEMETERY                       | GAME PRESERVE (BY STATE, U.S. FEDERAL)                | AIRWAY                                       |
| SCHOOL                         | GAME FARM   | AIRWAY BEACON LIGHT                          |
| SCHOOL, NEGRO                  | BIRD SANCTUARY  | LIGHT, NAUTICAL                              |
| HOSPITAL                       | FISH HATCHERY   | LIGHTHOUSE                                   |
| HOTEL                          | FOREST RANGER STATION                                 | DAMP AND RANGE LINE OR NATIONAL STREAMS      |
| FRESH AIR FARM - REST HOME     | MUNICIPAL RUBBISH DUMP                                | HEAD OF NAVIGATION                           |
| LODGE HALL, COMMUNITY HALL     | DRAINAGE DITCH  | CANAL  |
| FARM UNIT                      | FORD  | LOCK CANAL                                   |
| TENANT HOUSE                   | FERRY (F.F. - FREE, T.F. - TOLL)                      | DOCK, PIER, OR LANDING                       |
| TENANT HOUSES IN GROUPS        | GENERAL HIGHWAY BRIDGE (SHEAR JOINT)                  | QUAYSIDE STATION                             |
| DWELLING                       | GENERAL HWY. DRAWBRIDGE (SHEAR JOINT)                 | DAM WITH LOCK                                |
| HOME OF DWELLINGS              | ARCH BRIDGE (SHEAR JOINT)                             | DAM WITH ROAD & LOCK                         |
| POST OFFICE, P.O. AND BUSINESS | SUSPENSION BRIDGE (SHEAR JOINT)                       | DAM WITH ROAD                                |
| BUSINESS ESTABLISHMENT         | TRUSS BRIDGE (W-WOOD, S-STEEL)                        | RESERVOIR, POND, OR LAKE WITH DAM            |
| INDUSTRIAL PLANT               | BRIDGES TOO CLOSE TO SYMBOLIZE SEPARATELY             | RESERVOIR, POND, OR LAKE                     |
| SEASONAL INDUSTRY - GIN, ETC.  | MATCH LINE BETWEEN ADJOINING PARTS OF SAME COUNTY     | LEVEE  |
| SAWMILL (PORTABLE)             | PRIVATE ROAD  | LEVEE WITH ROAD                              |
| TURPENTINE STILL               | UNIMPROVED ROAD                                       | POWER HOUSE (D, SUBSTATION)                  |
| STATE HWY. MAINTENANCE SHOP    | GRADED AND DRAINED ROAD                               | TRANSMISSION LINES                           |
| SEASONAL DWELLINGS             | SOIL SURFACED ROAD                                    | TELEGRAPH & TELEPHONE LINES T-Y-T            |
| CAMP OR LODGE                  | METAL SURFACED ROAD                                   | QUARRY                                       |
| CORRECTIONAL INSTITUTION       | BITUMINOUS SURFACED ROAD                              | GRAVEL, SAND OR CLAY PIT                     |
| C.C.C. CAMP                    | PAVED ROAD  | MINE (S-GOLD, S-SILVER, ETC.)                |
| TOURIST CAMP                   | STREET  | TANKS  |
| FORT                           | FIGURES ALONG ROAD SHOW MILEAGE BETWEEN POINTS MARKED | MARSH, SWAMP                                 |
| CHURCH AND CEMETERY            |   |  |



*Yellow square = white schools*  
*Red square = Negro schools*  
*Green square = Consolidated Schools (Spartan)*

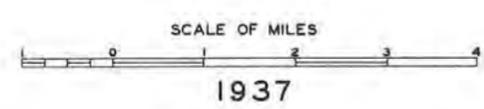




MAP SHOWING LOCATION OF CLARENDON COUNTY IN S.C.

# GENERAL HIGHWAY AND TRANSPORTATION MAP CLARENDON COUNTY 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



POLYGONIC PROJECTIONS

COUNTY POPULATION 1940 CENSUS 31,500  
COUNTY AREA IN SQUARE MILES 640

COMPILED FROM CONTROLLED AERIAL PHOTOGRAPHS  
AND STATE-WIDE HIGHWAY PLANNING SURVEY RURAL ROAD INVENTORY

# ADDRESS

*of*

THE HONORABLE

**JAMES F. BYRNES**

Governor of South Carolina

*to the*

**GENERAL ASSEMBLY**

COLUMBIA, S. C.

Wednesday, January 24, 1951

# ADDRESS

*of*

THE HONORABLE

**JAMES F. BYRNES**

Governor of South Carolina

*to the*

**GENERAL ASSEMBLY**

COLUMBIA, S. C.

Wednesday, January 24, 1951

*Mr. President and Gentlemen of the Senate:*

*Mr. Speaker and Gentlemen of the House of Representatives:*

South Carolina is faced with serious educational problems—problems of increasing teachers' salaries, revising the school transportation system, and building new schools.

During the Primary campaign last summer and again in my inaugural address, I urged action upon these features of our public school system. Yesterday a Committee appointed by the House of Representatives presented you its report containing specific proposals to accomplish these objectives.

I am advised that in the preparation of the report, the House Committee has had the cooperation and advice of a group of Senators. They have done me the honor of consulting me on several occasions.

I believe the detailed proposals of this group present the best plan for an educational program.

I agree with the Committee that a retail sales tax is the only source from which we can hope to secure the revenue necessary to give the children of South Carolina the educational opportunities to which they are entitled. This tax will also provide the increased funds I think you will find it necessary to appropriate for the State government because of the decreased purchasing power of the dollar.

These are controversial subjects. I do not approve of every detail of the bills attached to this Committee report and I do not expect you to do so. But the Committee has rendered a splendid service and I hope you will give to the report careful study and sympathetic consideration.

In recent years steps have been taken to improve our schools but we must do more. We must give to the children of South Carolina opportunities equal to those given to children in other states. We cannot do this if our best qualified teachers go to other states.

Teachers in the public schools of South Carolina must have higher salaries. They should be paid in proportion to their training and ability on a basis more nearly commensurate with the salaries paid for the same qualifications in other states. During recent years neighboring states have taken many of our best teachers away from the children of this state by offering them higher salaries. Many young men and young women trained in our State institutions to teach would prefer to remain in South Carolina but upon graduation they are offered superior opportunities elsewhere.

Budget proposals in the General Assemblies of Georgia and North Carolina indicate that teaching in those two states will be even more financially attractive next year. It does not make sense for us to appropriate money to State supported colleges to educate teachers and then offer them such low salaries they feel that in justice to themselves they must go to other states. We cannot blame the young teachers. As a result of sacrifices by their parents or their own unusual efforts they graduate from college. Then they are offered a salary to teach which is little more than half the compensation paid to young men working as carpenters, bricklayers, plasterers and to men in other trades.

We cannot hope now to correct this entirely, but a revision of the salary schedule such as is proposed by this House committee will go far toward improving the morale of the teachers of the State and thus help the children of the State.

There must be a revision of our school transportation system. From surveys made by State school officials and from inquiries I have made of the transportation system in other states, I am convinced that assumption by the state of transportation facilities would reduce the cost per pupil and would be more efficient. Inquiries as to the state system in North Carolina disclose that the transportation cost per pupil is \$14.12, whereas in South Carolina it is \$29.55 per pupil. Our two states are not so unlike as to justify such a great difference.

School buses should be purchased by a central agency as a result of competitive bidding. Wherever this is done the cost is less than it is in South Carolina.

In North Carolina gasoline is purchased by a central agency as a result of competitive bidding. As a result, the schools of North Carolina pay 15.8 cents per gallon of gasoline to operate their buses, while in this State we are paying the retail price of 28 cents per gallon.

There are a few districts which own their pumps and get the wholesale price, which is not much lower. Of course, either price includes the 7 cent state tax. But even when this tax is deducted, we are still paying more per gallon than North Carolina schools. Paying the State tax results in the transfer of funds from the transportation of school children to the maintenance of highways. Under the present system, the majority of districts fail to apply for refunds of federal gasoline taxes which are one and one-half cents per gallon.

We are also paying higher prices for the maintenance of buses. Because of central purchasing, North Carolina gets 40% off the list price of replacement parts.

Under state administration school bus routes could be designed to serve children who need the transportation most because of the distance they live from their schools. Definite regulations should be established on this point. Duplication of travel over the same routes also could be eliminated.

There should be provided a formula for allotment which would be fair and just to all counties and not be open to the charge made against the existing formula that it punishes the frugal and rewards the extravagant.

As I stated in my Inaugural Address, a statewide school building program should be one of South Carolina's first objectives.

Obviously the cost of a building program cannot be met out of current revenues. It must be met by the issuance of bonds. Our splendid highway system would not have been built had not forward-looking men recognized that such permanent improvements should be financed by a bond issue. School buildings have a longer life and certainly are no less important than highways.

The program should cover a period of 20 years during which the amount of bonds outstanding should at no time exceed \$75,000,000.00. The cost of such a long term program makes it essential that the entire state share the expense. In many instances the school districts which need buildings most are the least able to construct them. Some districts never could provide adequate buildings without state assistance.

This is a small state. We are one people. The education of every boy and girl in the rural districts is important to every man and woman in our cities.

Many of the inadequacies of our educational system have contributed to our economic and political ills. Raising the educational level of the State will lift our people economically as well.

Since 1940 we have constructed relatively few school buildings. Consequently, the problem presented us at this time is a serious one.

If the national emergency should make it impractical to proceed with the building program next July, then the revenue earmarked for construction should be placed in the sinking fund until the availability of materials and labor justifies proceeding with the construction.

I realize the argument will be made by some who are opposed to any building program, that there should be no new construction of buildings in view of the pending suit which seeks to abolish the segregation of races in the schools. This argument is not sound.

We need have no fear. Our school buildings will not be wasted. We will find a lawful way of educating all of South Carolina's children and at the same time providing separate schools for the races.

The overwhelming majority of colored people in this State do not want to force their children into white schools. Just as the Negro preachers do not want their congregations to leave them and attend the churches of white people, the Negro teachers do not want their pupils to leave them and attend schools for white children.

In the days of reconstruction a carpetbag government attempted by law to force a mixing of the races in the schools of this State. Then we were poor and we had in our midst a hostile army of occupation, but the races were never mixed in our schools. The politicians in Washington and the Negro agitators in South Carolina who today seek to abolish segregation in all schools will learn that what a carpetbag government could not do in the reconstruction period, cannot be done in this period.

And the white people of South Carolina will see to it that innocent colored children will not be denied an education because of selfish politicians and misguided agitators.

Of course, the improvement of our school program will necessitate additional revenue. I can think of good arguments against every tax. The question is what tax will provide the necessary funds for essential government purposes and impose the least burden on the taxpayers.

A sales tax is not revolutionary in South Carolina. Nearly 50 percent of the State's revenue is now raised by selective sales taxes on specific items. Already 28 other states have a general sales tax. However, if a general sales tax is approved, some relief should be granted to taxpayers with lower incomes.

It must not be overlooked that State assistance in the construction of school buildings will to the extent granted lessen the burden of taxes by local governments upon real property.

I realize that the extent of the tax relief to be granted cannot be determined until you have acted upon the budget. I did not participate in the drafting of the budget but I did attend some of the hearings.

Every thoughtful man knows from his own experience that because of the decreased purchasing power of the dollar, it will cost a great deal more during the next fiscal year to continue the same activities of the state government.

The funds for this building program should be administered by a board composed of men of wide business experience who are willing to serve without salary. Men whose training would qualify them for this important task will want no compensation other than the opportunity to serve the children of South Carolina.

I hope the legislature will carefully examine the budget estimates and refuse to make appropriations for any but essential government needs. This is no time to embark upon new activities no matter how meritorious they may seem.

The power to levy taxes upon real and personal property should be reserved to local governments. Today there is great inequity in the assessment of real property for taxation. Every effort now made to secure equalization by assessing property at either its market value or any percentage thereof fails because of the fear that the State may levy taxes upon real property. That fear should be removed by constitutional amendment providing that the State cannot levy taxes upon real property. Then we may be able to enact legislation providing for equalization of assessments which would remove a source of constant irritation to the people.

I recommend the establishment of a merit system for the employees of the state government. The subject has been discussed for some years. We should put an end to the employment of persons purely for political reasons. We should give to efficient employees the feeling of security in their jobs.

I believe that some of the departments and agencies of the government have too many employees. The Budget and Control Board has power to investigate this subject. I propose to ask that Board to authorize its secretary to make a survey of the various departments to ascertain what reduction in employees can be effected without impairing the efficiency of the service. My hope is that this work can be started in time to be of service to you in your consideration of the Appropriation Bill.

I now wish to repeat my recommendation that the Legislature enact a law similar to the Alabama statute prohibiting persons over 16 years of age parading on the streets or highways while masked, and also to prohibit such persons entering upon the premises of a citizen to threaten or intimidate him.

The Democratic Party of South Carolina at its convention last May adopted a resolution urging ratification of a proposed amendment to the United States Constitution providing that no person

shall be elected to the office of President of the United States more than twice and no person who has held the office for more than two years of a term to which some other person was elected President shall be elected to that office more than once. The House of Representatives has passed a Resolution of ratification.

I urge that the Senate likewise ratify the proposed amendment.

# EXCERPTS FROM GENERAL APPROPRIATION ACT

An Act \* \* \* "to provide a more efficient public school system by increasing teachers' salaries, by providing additional funds for supervision and overhead expenses, and by inaugurating a state-operated school transportation system; to create a State Educational Finance Commission and to prescribe its duties and powers; to abolish certain county boards of education and to create new boards in their stead, and to devolve new powers and duties on county boards of education; to provide for a program of construction of school building and other school facilities in the State, and to provide for financing this program by authorizing the issuance of general obligation bonds of the State not to exceed, at any one time, the sum of \$75,000,000.00, and the further sum of not exceeding \$7,500,000.00 for the acquisition of school buses; to enact a general retail sales tax, and to pledge sufficient revenue therefrom to retire the bonds authorized in this act." \* \* \*

## ARTICLE II

### DECLARATION OF POLICY

The General Assembly recognizes that in order to discharge the Constitutional mandate, set forth in Section 5 of Article XI, that, "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", and to insure equality of educational opportunity for all such children in respect to said schools and school system, adequate school buildings, properly equipped, must be maintained throughout the State; that this burden can no longer be borne in its entirety by the respective local taxing units; and, that a system of State aid for school buildings should be instituted. The General Assembly, therefore, determines and declares that the responsibility for the maintenance of adequate physical facilities in the public school system of the State is a responsibility both local and State-wide in nature.

### ARTICLE III

#### STATE EDUCATIONAL FINANCE COMMISSION POWERS AND DUTIES

**SECTION 1:** There is hereby created and established a State Educational Finance Commission, and for the purposes of this Act the term "Commission" shall mean "State Educational Finance Commission". The Commission shall be composed of seven members, five of whom shall be appointed by the Governor by and with the advice and consent of the Senate, no two of whom shall come from the same Congressional District. One shall be appointed for one year, one shall be appointed for two years, one shall be appointed for three years, one shall be appointed for four years, one shall be appointed for five years, and their successors for a period of five years. No person employed in the public school system shall be a member of the Commission. Any vacancy occurring before the expiration of a term shall be filled only for the remaining portion of that particular term. The Governor and the State Superintendent of Education shall be members of the Commission ex officio, and shall have all the powers and privileges of any other member. The members of the Commission, other than the Governor and the State Superintendent of Education, shall receive a salary of One Hundred (\$100.00) Dollars per annum, an allowance of seven cents per mile for each mile traveled, and actual necessary expenses while in the discharge of their duties. The Governor shall be ex-officio Chairman of the Commission.

**SECTION 2.** The Governor shall designate the time and place of the first meeting of the Commission. Subsequent meetings shall be held on his call as Chairman, or on the call of a majority of the members. At its first meeting, the Commission shall organize. As soon as

practicable after organizing, the Commission shall adopt rules and regulations to govern its proceedings. Five members shall constitute a quorum for the purpose of doing business.

**SECTION 3.** The Commission shall prescribe and promulgate, in the manner provided by law, reasonable rules and regulations to carry out the provisions of this Act, and such rules and regulations shall have the full force and effect of law. It shall disburse such funds as are provided by the General Assembly and shall have such further powers as are committed to it by this Act and further enactments. It shall promote the improvement of the school system and the physical facilities of the same. It shall make plans for the construction of necessary public school buildings. It shall make surveys incident to the acquisition of sites for public schools. It shall seek the more efficient operation of the pupil transportation system. It shall effect desirable consolidations of school districts throughout the entire State. And, it shall make provision for the acquisition of such further facilities as may be necessary to operate the public school system in an efficient manner.

**SECTION 4.** As soon as practicable, the Commission shall make a survey of the entire school system, which shall set forth the needs for new construction, new equipment, new transportation facilities, and such other improvements as are necessary to enable all children of South Carolina to have adequate and equal educational advantages.

**SECTION 5.** There is hereby appropriated the sum of One Hundred Thousand (\$100,000.00) Dollars, if so much be necessary, to defray the expenses of administration and operation of the State Educational Finance Commission.

**SECTION 6.** Effective May 1, 1951, all County Boards of Education as now established are hereby abolished except where County Boards of Education are now composed of seven (7) or more members. As of that date, there are hereby created and established in all counties in the State, where such Boards are abolished, County Boards of Education to be composed of seven (7) members, six (6) of whom shall be appointed by the Governor upon the recommendation of the Senator and at least one-half of the members of the House of Representatives from each county, and shall serve terms of four (4) years each. Any vacancies on the County Boards of Education shall be filled in the same manner for the unexpired terms. The County Superintendents of Education shall be *ex officio* members of

the County Boards of Education in those counties where the County Superintendent of Education is elected by the people, and in counties where the County Superintendent of Education is not elected by the people the seventh member shall be appointed in the same manner, and for the same term, as the other six members. In counties where County Boards of Education are now composed of seven (7) or more members, local laws relating to the election or appointment of County Boards shall continue in full force and effect. Any county by appropriate legislation may fix the number of members of the Board of Education at a number greater or less than seven (7). A majority of the members of the County Board of Education shall constitute a quorum for the transaction of the business of the County Board.

**SECTION 7.** All of the powers and duties of existing County Boards of Education shall either be continued, or are hereby devolved upon the County Boards as constituted in this Act. In addition thereto County Boards of Education are hereby 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 respective counties. When school districts are consolidated the County Board of Education shall appoint, from within the consolidated district, five (5) trustees to serve as trustees of the new district, two (2) for a term of one (1) year, two (2) for a term of two (2) years, and one (1) for a term of three (3) years. Thereafter the successors of all trustees shall be elected for a term of three (3) years, or be appointed as now provided by law.

Upon consolidation of any two (2) or more school districts, all property, real and personal, and all assets of the districts forming the consolidated school district, shall become the property of the same, and all liabilities of the districts shall become the obligations of such consolidated district. Each such consolidated district shall be a body politic and corporate, and whose board of trustees shall have such powers as permitted and provided by law.

When two or more districts are consolidated under the provisions of this Act, the County Board of Education shall file a copy of the Order of Consolidation in the office of the Clerk of Court and with the State Educational Finance Commission, which filing shall complete the consolidation of such districts for all intents and purposes.

**SECTION 8.** All school districts not maintaining schools within the boundaries thereof are hereby abolished and the County Boards of

Education are hereby directed to consolidate such school districts with adjoining districts.

**SECTION 9.** The provisions of this Article shall constitute a part of the permanent laws of the State of South Carolina.

#### **ARTICLE IV**

##### STATE AID FOR SCHOOL FACILITIES

**SECTION 1.** It is found and determined that the State should make an annual contribution or grant of fifteen (15) dollars for each child in daily average attendance during each school year, and that such moneys should be applied for the purpose of establishing and maintaining adequate physical facilities for the public school system, and/or the payment of existing debt therefor, and for no other purpose. From the proceeds of the retail sales tax levied pursuant to this Act, such sum shall be annually allocated by the Commission to the school unit so entitled. If the public school, on account of whose operation this grant is made, shall constitute a part of a County unit system, then the grant or contribution shall be credited to the County. If the public school, on account of whose operation the grant is made, is operated as a part of a school district system, then the grant shall be credited to such school district. If any change be made in the operation of such school, equitable re-allocations shall be made by the Commission of all balances to the credit, and all debits charged against the units affected by the change in the system of operation. The obligation of the State to make remittance of the sums appropriated under this Section shall be subordinate to the pledge made to secure the State School Bonds authorized under this Act and the sinking fund created for their retirement. The grants shall be computed annually as soon as practicable after the end of the school year, and shall be based on the average daily attendance in all of the public schools operated by each separate school district or operating unit of the state as determined by the State Department of Education.

**SECTION 2.** Purposes for which Grants may be used.

The sums becoming due to any operating unit (school district or County, as the case may be) shall be disposed of in the following order of priority and for the following purposes and for no others:

(1) To discharge the principal and interest due the Commission by reason of any advance or loan made to any operating unit by the Commission from the proceeds of State School Bonds.

(2) To be applied by the operating unit, subject to the approval of the Commission, to defray the cost of any capital improvement. For the purpose of this Act, the term, "capital improvement", shall mean the cost of constructing, improving, equipping, renovating and repairing school buildings, or other school facilities, or the cost of the acquisition of land whereon to construct or establish school facilities.

(3) To pay principal and interest of school district indebtedness represented by bonds or notes issued before July 1, 1951, for any capital improvements, or for bonds or notes issued on or after July 1, 1951, for capital improvements which have been approved by the Commission as provided hereinbelow.

Sums becoming due to any operating unit and not disposed of for any of the purposes listed above shall be placed by the Commission to the credit of the operating unit in the State Treasury until availed of for purposes authorized in this Act.

**SECTION 3.** 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.

**SECTION 4.** To expend said State School Building Grants accruing to the credit of any school district or operating unit with the State Public School Building Fund, applications for the expenditure shall

originate with the school district or operating unit, except as hereinafter provided. To expend funds for capital improvements or the retirement of outstanding bonded indebtedness of the district or unit, the trustees of any school district, or the governing body of any operating unit, shall prepare a statement with their application, which shall set forth enrollment and average daily attendance in the schools of the district or unit, showing division as to schools, grades, number of teachers employed, facilities in use, facilities to be provided with funds to be expended, and outstanding indebtedness. The application, together with said statement, shall be submitted to the County Board of Education and shall be considered by the Commission only after it has received the recommendation of the County Board. *Provided, However,* that, if such request is disapproved by the County Board, reasons therefor must be stated in writing with such disapproval and recommendation to the Commission. When the request is so forwarded to the Commission, a copy of the disapproval, with the remarks thereon, shall be forwarded to the school district concerned. Such district shall have the right to appeal to the Commission against such disapproval and recommendation. The method of appeal to the Commission shall be controlled by the rules and regulations promulgated and adopted by the Commission. The decision of the Commission shall be final. If the school is a part of a county unit, then the application and statement shall be submitted directly to the Commission, and the decision of the Commission shall be final. *Provided, However,* that, if any school district shall fail to make an approved application to the Commission for the present or future expenditure of funds for capital improvements, or for the retirement of outstanding school district bonded indebtedness, by July 1, 1953, then the County Board of Education wherein the said district is located is hereby empowered and authorized, within the discretion of said County Board, to make application, together with the proper statement, to the Commission for the expenditure of funds for capital improvements, or retirement of outstanding bonded indebtedness within the said District which, in the said County Board's judgment, will promote the best interests of the cause of education for the pupils within the respective school district or operating unit, but, in no event, shall the funds be expended for a purpose other than for the benefit of the pupils within the said district or operating unit, which pupils have been the basis for the accrual of funds to the said district's or operating unit's credit. In the event that such application on the part of the County Board is approved by the Commission for capital im-

provements, then the contract, if such be necessary for the construction of the capital improvements, shall be let by the County Board of Education, in the same manner as is hereinafter provided for, by the trustees of the school district or operating unit.

Where the expenditure of any funds to which any school district may be entitled has been authorized as provided in this section, such funds shall be deposited immediately to the credit of the treasurer of the county of which the school district is a part. The county treasurer shall place the sum so received in a special fund to be known as "Public School Building Fund for School District No. —," and shall pay out the money of such fund only on school warrants properly drawn by the authorities of the school district or operating unit or County Board of Education concerned, and such money shall be expended in the same manner as now provided by law for the expenditure of other school funds.

**SECTION 5.** The powers, duties and responsibilities of the School House Planning Section of the State Department of Education are hereby transferred to the Commission. The Commission is authorized to employ architects, consultants, and sufficient personnel to assist the County Boards of Education in the preparation of the county plans required under *Section 3* of this Article. The Commission shall prescribe reasonable rules and regulations in order to insure that funds derived from the State Public School Building Fund will not be used improvidently or unwisely and that the efficiency of the public school system will be increased by the expenditure of the funds.

**SECTION 6.** Whenever the Commission shall determine that any operating unit needs capital improvements to an extent in excess of any credit due such operating unit by the Commission, the Commission shall be empowered to advance or lend said operating unit such sums as in the opinion of the Commission are necessary to be expended for capital improvements by said operating unit. Such loans or advances shall bear interest at the rate of two and one-half per centum ( $2\frac{1}{2}\%$ ) per annum, (provided, that if the state shall pay an average rate of interest of more than two and one-half ( $2\frac{1}{2}\%$ ) per centum, then the rate of interest charged on such advances or loans shall be increased accordingly), shall be evidenced by appropriate agreements, and shall be repayable, both principal and interest, by the operating unit solely from the annual grants to which the operating unit shall become entitled. Such loans shall not constitute a debt of the operating unit within the meaning of any provision or limita-

tion of the Constitution or Statutes of the State of South Carolina: *Provided, always*, that the Commission shall not advance or lend to any operating unit any sum in excess of seventy-five per centum (75%) of the estimated sum which will accrue to the said operating unit on account of grants to be made to the said operating unit within the twenty (20) years next following the date of the advance, or on or before July 1, 1976, whichever shall first occur. In estimating such grants, the Commission shall assume that the average daily attendance in the schools of the operating unit for the past preceding fiscal year will continue for the period during which the loan is to be repaid.

**SECTION 7.** Any construction to be financed from funds received from the State Public School Building Fund, pursuant to the approval of the Commission, shall be on public contract, such contract to be **let by the trustees of the school district**, and the awarding of the necessary contracts shall be in the sole province of the school district concerned except as hereinbefore provided. Contracts shall be let on public advertisement thereof, and on such conditions and within such limitations as the Commission may approve.

**SECTION 8.** State School Bonds. For the purpose of enabling the Commission to raise the funds necessary to make the advances which are authorized by this Article to be made to the operating units of the several counties, and for the purpose of enabling the Commission to raise funds necessary to acquire the school bus equipment authorized by the provisions of Article V, the Governor and the State Treasurer shall be empowered, and are hereby authorized to issue State School Bonds under the conditions prescribed by this Article.

**SECTION 9.** The aggregate principal indebtedness on account of bonds issued to obtain funds to make advances to the school districts or operating units of the several counties, after deducting that part of any sinking fund applicable to the retirement of bonds issued for such purpose, shall never exceed Seventy-five Million (\$75,000,000) Dollars.

The aggregate principal indebtedness on account of bonds issued to acquire the school bus equipment authorized by the provisions of Article V, after deducting that part of any sinking fund applicable to the retirement of bonds issued for such purpose, shall never exceed Seven Million Five Hundred Thousand (\$7,500,000) Dollars.

Within such limits, State School Bonds may be issued from time to time under the conditions prescribed by this Article, but in no event to mature later than July 1, 1976.

**SECTION 10.** The proceeds derived from the sale of State School Bonds shall be applied by the Commission only to the purposes for which the same are issued, and if it shall be provided that a part of the proceeds of an issue of bonds be applied to advances to the operating units of the several counties, and another part be applied to defray the cost of school bus equipment, then the State Treasurer shall, upon the receipt of the proceeds of the State School Bonds, segregate the same, in accordance with the provisions of the request made to the Governor and the State Treasurer pursuant to the provisions of Section 11 of this Article.

**SECTION 11.** Before any State School Bonds are issued, the Commission shall transmit to the Governor and to the State Treasurer a request for the issuance thereof, and shall embody in such request:

(1) A schedule showing the aggregate of bonds issued pursuant to previous requests, the purposes for which the same were issued, the annual payments required to retire such bonds and the interest thereon, and the amount of sinking fund applicable to the retirement of such outstanding bonds, apportioned in accordance with the requirements of Section 21 of this Article.

(2) The amount of bonds sought to be issued, the purpose or purposes for which such bonds are to be issued, and the amount intended for each purpose.

(3) A schedule showing future annual principal requirements and estimated annual interest requirements on the bonds requested to be issued.

(4) The estimated amount of the advances which the Commission intends to make within the then current fiscal year, and the estimated cost of school bus equipment which the Commission intends to purchase within the then current fiscal year.

(5) The aggregate amount for which advances have been approved, but which await completion because the funds necessary to make the same are not available.

**SECTION 12.** If the following shall appear to the satisfaction of the Governor and the State Treasurer from the foregoing request:

(1) That the amount of revenues derived from the retail sales tax received during the next preceding fiscal year, or until information with respect to the same becomes available, that the Commission's estimate of the amount of revenue to be derived from the retail sales tax during the current fiscal year will, if received annually thereafter, be sufficient to pay as they fall due,

the principal and interest of said proposed State School Bonds, and all other State School Bonds theretofore issued; and, if it shall also appear:

(2) That the amount of revenues estimated by the Commission to be received during the term for which said proposed State School Bonds will be outstanding will be sufficient to pay, as the same respectively mature, the principal and interest of said State School Bonds and of all other State School bonds theretofore issued;

(3) That the estimate of its needs for the then current fiscal year as shown pursuant to the requirements of paragraph (4), Section 11 of this Article, requires bonds to be issued in the amount requested;

(4) That the amount requested for use in making advances to the school districts or operating units of the State for the then current fiscal year is not more than Five Million (\$5,000,000) Dollars in excess of the amount of advances which the Commission has then approved and intends to make with the proceeds of the particular issue; and, that the amount requested to defray the cost of school bus equipment does not exceed the Commission's estimates of its needs for the then current fiscal year; and,

(5) That the issue will be within the limitations prescribed by Section 9,

it shall be the duty of the Governor and the State Treasurer to issue State School Bonds in accordance with said request.

**SECTION 13.** For the payment of the principal and interest on all State School Bonds, whose issuance is authorized pursuant to the provisions of this Article, there shall be pledged the full faith, credit and taxing power of the State of South Carolina, and in addition thereto, but subject to the provisions of this Section, the entire amount of revenue derived from the retail sales tax levied by this Act. The revenues derived from the retail sales tax during each fiscal year shall be discharged from the foregoing pledge when payment or provision for payment has been made for the principal and interest of all State School Bonds maturing in such fiscal year and when the requirements of Section 21 as to payments in the sinking fund have been met. The pledge of such revenue derived from such retail sales tax shall not preclude the revision of such retail sales tax as to rate or as to the item taxed, either or both, if the State Auditor shall

certify that his estimate of the revenue to be derived annually from he tax as thus revised will not be less than one hundred and fifty per centum (150%) of that sum which is equal to the maximum annual principal and interest requirements on all State School Bonds outstanding, or then requested to be issued on the date such certificate bears. Such certificate shall be appended to the Enrolled Act and be presented to the Joint Assembly of the General Assembly on the occasion such Act is presented for ratification.

**SECTION 14.** All State School Bonds issued under this Act shall be signed by the Governor and the State Treasurer. The great seal of the State shall be affixed to or impressed upon each of them, and each shall be attested by the Secretary of State. The coupons attached to the State School Bonds shall be authenticated by a facsimile signature of the State Treasurer who is in office on the date of such State School Bonds. The delivery of the State School Bonds so executed and authenticated shall be valid notwithstanding any changes in officers or seal occurring after such execution or authentication. The State School Bonds shall be issued in such form and denomination and with such provisions as to time, place or places and medium of payment, as may be determined by the Governor and the State Treasurer, subject to the provisions of this Act.

**SECTION 15.** State School Bonds issued under this Act shall be in the form of negotiable coupon bonds, payable to bearer, with the privilege to the holder of having them registered in his name on the books of the State Treasurer as to principal only, or as to both principal and interest, and such principal or both principal and interest, as the case may be, thus made payable to the registered holder, subject to such conditions as the State Treasurer may prescribe, State School Bonds so registered as to principal in the name of the holder may thereafter be registered as payable to bearer and made payable accordingly.

**SECTION 16.** The said State School Bonds shall be in denomination of One Thousand (\$1,000) Dollars each. They shall bear interest, payable semi-annually, at such rate or rates not exceeding the maximum interest rate specified in the Commission's request for the issuance of said State School Bonds. Each issue of said State School Bonds shall mature in annual series or instalments, the first of which annual series or instalments shall mature not more than ten years after the date of the bonds, and the last not more than twenty-four

years after said date. The said instalments or series may be equal or unequal in amount. The said State School Bonds may, in the discretion of the Commission, be made subject to redemption at par and accrued interest, plus such redemption premium as it shall approve, and on such occasions as it may specify in its request for the issuance of said State School Bonds. The said State School Bonds shall not be redeemable before maturity unless they contain a statement to that effect.

**SECTION 17.** The said State School Bonds shall be sold by the Governor and the State Treasurer upon sealed proposals, after publication of notice of such sale, one or more times at least fifteen days before such sale, in a newspaper of general circulation in the State of South Carolina, and also in a financial paper published in New York City, which regularly publishes notices of sale of state or municipal bonds. The said State School Bonds shall be awarded to the highest bidder at a price not less than par and accrued interest to the date of delivery, but the right shall be reserved to reject all bids and to readvertise for sale the State School Bonds. For the purpose of bringing about a successful sale of such bonds, the Commission shall have the power to do all things ordinarily and customarily done in connection with the sale of state or municipal bonds. All expenses incident to the sale of such bonds shall be paid from the proceeds of the bonds.

**SECTION 18.** All State School Bonds issued under this Act shall be exempt from all state, county municipal, school district and all other taxes or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

**SECTION 19.** It shall be lawful for all executors, administrators, guardians and fiduciaries, and all sinking fund commissions to invest any moneys in their hands in said State School Bonds.

**SECTION 20.** The proceeds of the sale of said State School Bonds shall be received by the State Treasurer and placed by him in a fund to the credit of the Commission, except that the premium, if any, shall be placed in the sinking fund established by Section 21 of this Article, and the accrued interest, if any, shall be used to discharge in part the first interest to become due on such bonds. On the occasion that he receives the proceeds of the State School Bonds from the purchasers, the State Treasurer shall segregate that part of the proceeds which

are intended for advances to the school districts or operating units of the several counties from that portion of the proceeds intended to defray the cost of school bus equipment, but the purchasers of said State School Bonds shall in no wise be liable for the proper application of the proceeds of said bonds to the purposes for which the same are intended.

**SECTION 21.** If the annual principal payment on account of outstanding bonds be less than five per centum (5%) of the aggregate of all bonds outstanding, then, in such event, there shall be placed in the sinking fund, hereby established for the retirement of said State School Bonds, such sum which is the difference between five per centum (5%) of the outstanding State School Bonds and the amount retired by way of principal of said outstanding bonds during such year. The sinking fund shall be duly apportioned between debt existing by reason of borrowings for advances to the school districts or operating units of the several counties, and to the debt existing by reason of borrowings to defray the cost of acquiring school bus equipment, in the proportion that each bears to the total of State School Bonds outstanding.

**SECTION 22.** The provisions of this act levying the retail sales tax and pledging the proceeds thereof to the payment of the principal and interest of State School Bonds, and to the sinking fund to be established for the retirement of the outstanding principal of the bonds, shall be deemed to partake of the obligations of the contract between the State and the holders of the State School Bonds.

**SECTION 23.** There is hereby appropriated, for the fiscal year 1951-52, a sufficient sum of money to carry out the provisions of this Article.

**SECTION 24.** The provisions of this Article shall constitute a part of the permanent laws of the State of South Carolina.

## ARTICLE V

### TRANSPORTATION

**SECTION 1.** On and after July 1, 1951, the control and management of all school bus transportation in the State of South Carolina shall be vested in the Commission hereinbefore created and established. It is hereby declared to be the policy of the state, acting through the Commission, to assume no obligation to transport any child to or from school who lives within one and one-

to the state and shall, under no circumstances, consider the purchase of any equipment the remaining usefulness of which is appraised at less than one year. So far as is practicable, the State Purchasing Department is further directed to complete such negotiations prior to the opening of the 1951-52 school session.

In any instance where a local school agency offers equipment for sale to the state and such equipment is rejected, the state shall be obligated to provide equipment if the local school agency requests the continuation of the route in 1951-52. *Provided*, That when such equipment meets the requirements herein provided, the Commission is directed to buy same in the name of the State.

**SECTION 4.** On and after July 1, 1951, the Commission shall be responsible for all expenses of operation of state-owned buses and for the replacement of obsolete equipment. The Commission shall adopt a purchasing system for new buses similar to that now used by the State Highway Department for the purchase of its equipment. The state shall assume no obligation whatever for the expenses of operating buses owned by local or county school agencies, except as hereafter provided.

**SECTION 5.** Within the limitations imposed in this Article, on July 1, 1951, the Commission shall assume liability for the carrying out of any contracts existing between local school districts or county school authorities with private contractors for the furnishing of transportation services, which contracts extend beyond July 1, 1951, and were in existence prior to January 10, 1951.

Any county board of education shall have the right at any time to contract for any part or all of its transportation services with private individuals or contractors for the furnishing of such services. In any such instance the county board of education shall execute the contracts. The county board shall be responsible for the payment of all contracts entered into and shall receive aid from the state for pupils thus transported only on the basis of the average per pupil operating cost of state-owned equipment for the current year as determined by the State Educational Finance Commission.

**SECTION 6.** The county board of education of each county shall be responsible for the selection of prospective school bus drivers of state-owned equipment, under such rules of procedure as the Commission shall direct. No person under sixteen years of age shall be eligible for consideration as a bus driver. Before being employed all

prospective drivers shall be examined by the State Highway Department to determine their competency. The Highway Department is further directed to provide a rigid school bus driver training course and to issue special "School Bus Driver's Certificates" to successful candidates. No person shall be authorized to drive a school bus in South Carolina in the process of transporting children, whether the bus be owned by the state, by a local school agency, or by a private contractor, who has not been certified by the State Highway Department. Local school superintendents shall have authority to supervise the conduct of pupils being transported, and of school bus drivers.

**SECTION 7.** School bus drivers shall be paid not exceeding Twenty-Five (\$25.00) Dollars per school month when high school drivers are used. When other than high school drivers are used, at salaries of more than Twenty-Five (\$25.00) Dollars per month, the excess of such salaries over Twenty-Five (\$25.00) Dollars per month shall be borne by the school district or operating unit.

**SECTION 8.** County Boards of Education may permit the use of school bus equipment for transportation in connection with athletic events, boys' and girls' clubs, special events in connection with the schools, and for such other educational purposes as may appear proper to the County Boards of Education.

**SECTION 9.** The State Highway Department shall be responsible for providing all supplies required for the operation of state-owned buses and for maintaining them in efficient and safe mechanical condition. The department shall be reimbursed periodically by the Commission for expenditures incidental to operating and maintaining buses. The State Educational Finance Commission and the State Highway Commission shall jointly adopt such rules and regulations as may be necessary to carry out the intent and purposes of this Act.

**SECTION 10.** The powers, duties and responsibilities of the Transportation Section of the State Department of Education are transferred to the Commission.

**SECTION 11.** For the operation and maintenance of school bus equipment, there is hereby appropriated the sum of Four Million (\$4,000,000.00) Dollars, if so much be necessary, for the fiscal year 1951-1952.

**SECTION 12.** The provisions of this Article shall constitute a part of the permanent laws of the State of South Carolina.

**ARTICLE VI****STATE AID FOR TEACHERS' SALARIES, SUPERVISION  
AND OVERHEAD**

**SECTION 1.** Act 215 of the Acts of 1947, entitled "An Act To Repeal Section 5425, Code of Laws of South Carolina, 1942, Providing for a Schedule of Salaries for Teachers, to Prescribe a Schedule of State Aid for the Payment of Teachers' Salaries in the Public Schools of This State, and to provide for the Payment of Monies to the Various Schools in This State for Supervision and Incidentals," is hereby repealed.

**SECTION 2.** State aid for the payment of teachers' salaries shall be disbursed monthly to the various counties and school districts for payment only to teachers who hold certificates issued by the State Board of Education, under rules and regulations formally adopted by the Board, for the purpose of certifying public school teachers. This aid shall be paid for a maximum of nine school months a year and shall be disbursed to teachers in accordance with the following monthly salary schedule (figures under columns A, B, C, and D represent dollars):

	Prior Yrs. Exp.	Adv. Class I (Earned Doctor's Degree)				Class I (Master's Degree)				Class II (Bach. Degree) Plus 18 Sem. Hrs. Graduate Work)				Class III (Bach. Degree)				Class IV								Class V (Less Than Two Years College)			
		A	B	C	D	A	B	C	D	A	B	C	D	A	B	C	D	Advanced—(Three Years College)				Regular—(Two Years College)				A	B	C	D
1. Probationary	0	.....	.....	.....	.....	210	200	170	112	.....	.....	.....	.....	200	190	160	106	180	170	130	82	160	150	120	82	120	110	90	.....
	1	.....	.....	.....	.....	216	206	176	119	.....	.....	.....	.....	206	196	166	112	186	176	136	89	166	156	126	89	120	110	90	.....
2. Intermediate and Intermediate Professional	2	.....	.....	.....	.....	222	212	182	152	217	207	177	147	212	202	172	142	192	182	142	122	172	162	132	112	145	120	95	75
	3	.....	.....	.....	.....	228	218	188	158	223	213	183	153	218	208	178	148	198	188	148	128	178	168	138	118	151	126	101	81
	4	.....	.....	.....	.....	234	224	194	164	229	219	189	159	224	214	184	154	204	194	154	134	184	174	144	124	157	132	107	87
	5	.....	.....	.....	.....	240	230	200	164	235	225	195	159	230	220	190	154	210	200	160	134	190	180	150	124	163	138	112	87
	6	.....	.....	.....	.....	246	236	206	164	241	231	195	159	236	226	190	154	216	206	160	134	196	186	150	124	169	144	113	87
3. Advanced Professional	7	262	.....	.....	.....	252	242	212	.....	247	237	201	.....	242	232	196	160	216	206	160	134	.....	.....	.....	.....	.....	.....	.....	.....
	8	268	.....	.....	.....	258	248	218	.....	253	243	201	.....	248	238	196	160	216	206	160	134	.....	.....	.....	.....	.....	.....	.....	.....
	9	274	.....	.....	.....	264	254	224	.....	259	249	207	.....	254	244	202	166	216	206	160	134	.....	.....	.....	.....	.....	.....	.....	.....
	10	280	.....	.....	.....	270	260	230	.....	265	255	207	.....	260	250	202	166	216	206	160	134	.....	.....	.....	.....	.....	.....	.....	.....
	11	286	.....	.....	.....	276	266	236	.....	271	261	213	.....	266	256	202	166	216	206	160	134	.....	.....	.....	.....	.....	.....	.....	.....
	12	292	.....	.....	.....	282	272	242	.....	277	267	213	.....	272	262	202	166	216	206	160	134	.....	.....	.....	.....	.....	.....	.....	.....
	13	298	.....	.....	.....	288	278	248	.....	283	273	213	.....	278	268	202	166	216	206	160	134	.....	.....	.....	.....	.....	.....	.....	.....
4. Permanent Professional	14	304	.....	.....	.....	294	284	.....	.....	289	279	219	.....	284	274	208	.....	222	212	166	140	.....	.....	.....	.....	.....	.....	.....	.....

**SECTION 3.** In computing the years of experience of teachers under the schedule in Section 2 hereof, each full regular scholastic year taught by the teachers in the public schools of the state shall be counted as one year's experience.

**SECTION 4.** Each school district or operating unit shall be allowed for supervision and overhead Five (\$5.00) Dollars a school year for each pupil in average daily attendance. Average daily attendance shall be computed on the basis of the school year as determined by the State Board of Education. For the operation of this Act the average daily attendance shall be based on an estimate which may be adjusted as correct figures become available. These funds shall be disbursed monthly along with the disbursement of funds for teachers' salaries.

**SECTION 5.** For the fiscal year 1951-52 there are hereby appropriated from the General Fund of the State the following sums, if so much be necessary, to carry out the purposes of this Article.

For teachers' salaries .....	\$ 33,900,000.00
For supervision and overhead .....	\$ 2,150,000.00

## **ARTICLE VII**

### RETAIL SALES TAX

#### **Subarticle I**

(1) Definitions. The following words, terms and phrases, when used in this article shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) The term "person" or the term "company", herein used interchangeably, includes any individual, firm, co-partnership, association, corporation, receiver, trustee or any other group or combination acting as a unit, the State of South Carolina, or any agency or instrumentality, authority, or political sub-division thereof, including municipalities, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context

(b) The term "Tax Commission" or "Commission" means the South Carolina Tax Commission.

(c) The term "sale" or "sales" includes:

(1) Any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

(2) A transaction whereby the possession of tangible personal property is transferred but the seller retains the title as security for the payment of the price.

(3) Installment sales and credit sales and the exchange of tangible personal properties as well as the sale for money, every closed transaction constituting a sale.

(d) The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property (and including the proceeds from the sale of any property handled on consignment by the taxpayer), including merchandise of any kind and character without any deduction on account of the cost of the property sold, the cost of the materials used, labor, or service cost, interest paid, or any other expenses whatsoever, and without any deductions on account of losses; *provided* that cash discounts allowed and taken on sales shall not be included, and "gross proceeds of sales" shall not include the sale price of property returned by customers when the full sales price thereof is refunded either in cash or by credit; *Provided*, that in any transaction covered by a chattel mortgage or a retention title contract, wherein the seller receives second-hand goods as a trade-in on the purchase price, the amount allowed the purchaser shall not be treated as cash received. The term "gross proceeds of sale" shall also include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with the business, and shall also include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing it, except property which has been previously withdrawn from such business or stock and so used or consumed and with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, and except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of any person so withdrawing, using or consuming it. The term "gross proceeds of sales" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer, *provided*, however, than any manu-

facturer's or importer's excise tax shall be included in "gross proceeds of sales"

(e) The word "taxpayer" means any person liable for taxes hereunder.

(f) The term "gross receipts" means the value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character, all receipts actual and accrued, by reason of any business engaged in (not including, however, interest, discounts, rentals of real estate or royalties) and without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, or any other expenses whatsoever and without any deductions on account of losses. The term "gross receipts" include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with the business, and shall also include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing it, except property which has been previously withdrawn from such business or stock and so used or consumed and with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, and except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of any person so withdrawing, using or consuming it.

(g) The term "wholesale sale" or "sale at wholesale" means a sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale. The term "wholesale sale" shall include a sale of tangible personal property or products to a manufacturer or compounder which enters into and becomes an ingredient or component part of the tangible personal property or products which he manufactures or compounds for sale, or which are used directly in fabricating, converting or processing such materials or parts thereof and such term shall likewise include materials, containers, cores, labels, sacks or bags used for packaging tangible personal property for shipment or sale.

(h) The term "sale at retail" or "retail sale" shall mean all sales of tangible personal property except those above defined as wholesale sales. The quantities of goods sold or prices at which sold, are immaterial in determining whether or not a sale is at retail. Sales of building materials to contractors, builders, or landowners for resale or use in the the form of real estate are retail sales in whatever quantity sold. Sales of tangible personal property or products to manufacturers, quarry operators, mine operators or compounders, which are used or consumed by them in manufacturing, mining, quarrying or compounding and do not become an ingredient or component part of the tangible personal property manufactured or compounded are retail sales. The term "sale at retail" or "retail sale" shall also include the withdrawal, use or consumption of any tangible personal property by any one who purchases it at wholesale, except property which has been previously withdrawn from the business or stock and so used or consumed and with respect to which property the tax has been paid because of such previous withdrawal, use or consumption, and except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of any person so withdrawing, using or consuming it; or which are used directly in fabricating, converting, or processing such materials or parts thereof and such term shall likewise include materials, containers, cores, labels, sacks or bags used for packaging tangible personal property for shipment or sale, and such wholesale purchaser shall report and pay the taxes thereon.

(i) Retailer, or seller, includes:

(1) Every person engaged in the business of selling tangible personal property, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

(2) Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

(3) All cooperative organizations- regardless of tax or license exemptions heretofore provided by law.

When in the opinion of the Tax Commission, it is necessary for the efficient administration of this act, to regard any salesmen, representatives, truckers peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers, or persons under whom

they operate or from whom they obtained the tangible personal property sold by them, regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the Tax Commission may so regard them and may regard such dealers, distributors, supervisors, employers or persons as retailers for purposes of this act.

(J) "Retailer maintaining a place of business in this state" or any like term shall include any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business or any agent operating within this state under the authority of the retailer or its subsidiary, regardless of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this state.

(k) The word "business", as used in this article, shall include all activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit or advantage, either direct or indirect, and not excepting subactivities producing marketable commodities used or consumed in the main business activity, each of which subactivities shall be considered business engaged in, taxable in the class in which it falls.

(l) The use within this state of tangible personal property by the manufacturer thereof, as building materials, in the performance of a construction contract, shall for the purposes of this article be considered as a retail sale thereof by such manufacturer, who shall also be construed as the ultimate consumer of such materials or property, and who shall be required to report such transaction and pay the sales tax thereon, based upon the reasonable and fair market price thereof at the time and place where they are used or consumed by him or it. The provisions of this subsection shall not apply to any tangible personal property which is specifically exempted from the tax levied in this article.

(m) The term "storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased at retail.

(n) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction where possession is given, except that it shall not include the sale of that property in the regular course of business.

(o) The term "purchase" means acquired for a consideration, whether such acquisition was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer shall have been absolute or conditional, and by whatever means it shall have been effected; and whether such consideration be a price or rental in money, or by way of exchange or barter.

(p) The term "sales price" means the total amount for which tangible personal property is sold, including any services (including transportation) that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest charged, losses or any other expenses whatsoever; *provided*, that cash discounts allowed and taken on sales shall not be included and "sales price" shall not include the amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or by credit. The term "sales price" shall not include the amount allowed the purchaser for a trade in when second hand goods are received as a part of the purchase price of an article. The term "sales price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer, *provided*, however, that any manufacturer's importer's excise tax shall be included in the term "sales price".

(q) The term "tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses; except notes, bonds, mortgages or other evidences of debt and/or stocks.

(r) The term "in this state" or "in the state" means within the exterior limits of the State of South Carolina, and includes all territory within such limits owned by or ceded to the United States of America. It is hereby declared to be the legislative intent not to affect by the provisions of this section the exemptions specifically provided for in subarticles III and IV of this article.

(s) The term "single article" shall mean the smallest practicable unit of the particular personal property involved as customarily used in the retail trade.

## Subarticle II

(1) *Retail License.* Every person or company on or after July 1, 1951, who shall engage in or continue in any business as a retailer as defined by this act, as a condition precedent to engaging or con-

tinuing in such business, shall obtain from the Tax Commission a retail license for each branch, establishment or agency, and shall pay an annual license tax, in addition to all other license fees charged, for each retailer and each branch, establishment or agency of the retailer situate in this State, in accordance with the following schedule:

First retailer .....	\$ 5.00
Second retailer .....	10.00
Third retailer .....	15.00
Fourth retailer .....	20.00
Fifth retailer .....	25.00
Sixth retailer .....	30.00
Seventh retailer .....	35.00
Eighth retailer .....	40.00
Ninth retailer .....	45.00
Tenth retailer .....	50.00
Eleventh retailer .....	55.00
Twelfth retailer .....	60.00
Thirteenth retailer .....	65.00
Fourteenth retailer .....	70.00
Fifteenth retailer .....	75.00
Sixteenth retailer .....	80.00
Seventeenth retailer .....	85.00
Eighteenth retailer .....	90.00
Nineteenth retailer .....	95.00
Twentieth retailer .....	100.00
Twenty-first retailer .....	105.00
Twenty-second retailer .....	110.00
Twenty-third retailer .....	115.00
Twenty-fourth retailer .....	120.00
Twenty-fifth retailer .....	125.00
Twenty-sixth retailer .....	130.00
Twenty-seventh retailer .....	135.00
Twenty-eighth retailer .....	140.00
Twenty-ninth retailer .....	145.00
Thirtieth retailer .....	150.00

For each retailer, in excess of thirty retailers, an annual tax of one hundred and fifty (\$150.00) dollars for each retailer. As used in this section "retailer" includes branches, establishments, or agencies of the retailer.

Provided, however, that no license shall be issued under the provisions of this sub-article to any person who has not complied with

the provisions of this act, and no provisions of this act shall be construed as relieving any person from the payment of any license or privilege tax now or hereafter imposed by law.

For the purpose of grading and determining the amount of the tax herein provided, it is hereby declared to be the purpose and intent of this section to consider any person herein taxed as being the person which ultimately controls or directs the management or control of any retailers or group or association of retailers, whether they be operated under separate charter or not.

(2) The license herein provided for shall be paid to the South Carolina Tax Commission or or before the thirtieth (30th) day of June of each calendar year and shall be valid for the fiscal year beginning July 1st and ending June 30th, next succeeding; provided, that license fees for the year 1951 paid to the Tax Commission during the fiscal year ending June 30, 1951, under the provisions of Section 2556, Code of Laws of South Carolina, 1942, shall license the person for the period beginning July 1, 1951, and ending June 30, 1952.

Retailers commencing business on or after July 1, 1951, shall obtain the license provided for by this section prior to the date of commencement of such business. The full amount of the license tax shall apply in such cases regardless of the date on which business is commenced, and the license shall be valid from the date of issuance to June 30th, next succeeding.

(3) The application for the license shall show the name and address of each retailer for which license is applied, and the Tax Commission shall issue a separate license to each retailer. The license provided for herein shall not be assignable and shall be valid only for the person in whose name it is issued for the transaction of business at the place designated therein. The license shall at all times be conspicuously displayed at the place for which issued.

(4) Whenever any person or company fails to comply with any provision of this act relating to the sales tax, or use tax, or any rule or regulation of the Tax Commission relating to the sales tax, or use tax prescribed and adopted under this act, the Tax Commission upon a hearing, after giving the person or company ten (10) days' notice in writing specifying the time and place of hearing and requiring him to show cause why his license should not be revoked, may revoke or suspend any one or more of the licenses held by the person or company. The notice may be served personally or by mail.

(5) Section 2556, Code of Laws of South Carolina, 1942, is hereby repealed.

### Subarticle III

(1) Sales Tax. In addition to all other licenses, taxes, and charges now imposed there is hereby levied for the support of the public schools of South Carolina;

(a) Upon every person, or company engaged, or continuing within this state, in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidences of debt or stocks) an amount equal to three (3%) percent of the gross proceeds of sales of the business, *Provided*, That the tax hereby levied shall not exceed the following sums upon the gross proceeds of sale of any single article: \$25.00 on any article not exceeding \$1,500.00; \$40.00 on any article above \$1,500.00 and not exceeding \$3,000.00; \$75.00 on any article above \$3,000.00. *Provided* however, that any person engaging or continuing in business as a retailer, and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of such business at the rates specified, when his books are kept so as to show separately the gross proceeds of sales of each business, and when his books are not so kept he shall pay the tax as a retailer, on the gross sales of the business. For the purpose of the proper administration of this act and to prevent evasion of the sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail, is upon the person who makes the sale, unless he takes from the purchaser a certificate to the effect that the property is purchased for resale; *provided*, further, that on all sales of retailers made under conditional sales contracts or under other forms of sales, whereby title is retained by the vendor, the retailer may elect to include in the return only such portion of the sales price as has actually been received by the retailer during the taxable period or to include the entire sales price in the return for the taxable period during which the sale was consummated. Having once elected either method of reporting such sales, the taxpayer must so continue unless and until permission has been received from the Tax Commission to make a change. Nothing herein shall be construed to permit delay in reporting sales under other terms of credit or cash sales. The Tax Commission for any cause whatever may require the taxpayer to

include in returns the entire sales price of articles sold notwithstanding the above provisions.

(2) Exemptions. There are exempted from the provisions of this act and from the computation of the amount of the tax levied, assessed or payable under this article the following:

(a) The gross proceeds of sales of tangible personal property or the gross receipts of any business which the state is prohibited from taxing under the constitution or laws of the United States of America or under the constitution of this state.

(b) The gross proceeds of the sales of textbooks used in elementary schools, high schools, and institutions of higher learning.

(c) The gross proceeds of sales of all livestock by whomsoever sold.

(d) The gross proceeds of the sale or sales of feeds for use in production and maintenance of poultry or livestock.

(e) The gross proceeds of the sale or sales of insecticides, chemicals, or fertilizer or soil conditioners or seeds or seedlings or nursery stock for use solely upon the farm, dairy, grove, vineyard or garden in the production for sale of farm, dairy, grove, vineyard or garden products or in the cultivation of feeds for use in the production and maintenances of poultry or livestock.

(f) The gross proceeds of the sale, or sales, of boxes, crates, bags, bagging, ties, barrels, or other containers and the labels thereof used in preparing agricultural products, dairy products, grove or garden products for market, including barrels and other containers and the labels thereof used in preparing turpentine gum, gum spirits of turpentine and gum resin for market, when such boxes, crates, bags, bagging, ties, barrels, and other containers and the labels thereof are to be sold or furnished by the seller of the products contained therein to the purchaser of such products.

(g) The gross proceeds of the sale or sales of newsprint paper, newspapers and religious publications, including the Holy Bible.

(h) The gross proceeds of the sale or sales of coal or coke or other fuel to manufacturers, electric power companies and transportation companies for use or consumption in the production of by-products, for the generation of heat or power used in manufacturing tangible personal property for sale, for the generation of electric power or energy for the use in manufacturing tangible personal property for sale or for resale, or for the generation of motive power for transportation.

(i) The gross proceeds of the sale or sales of lunches to school children when such sales are made within school buildings and are not for profit.

(j) The gross proceeds of sales or gross receipts, of or by any person, firm or corporation, from the sale of communications, transportation, or water, of the kinds and natures, the rates and charges for which, when sold by public utilities, are fixed and determined by the **Public Service Commission of South Carolina**.

(k) The gross proceeds from the sale or sales of fuel, lubricants, and mechanical supplies for use or consumption aboard ships plying on the high seas either in intercoastal trade between ports of the State of South Carolina and ports in other states of the United States or its possessions, or in foreign commerce between ports in the State of South Carolina, and ports in foreign countries; *provided*, however, that nothing herein shall be construed to exempt or exclude from the tax herein levied, the gross proceeds of the sale or sales of materials and supplies to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships and other water craft.

(l) The gross proceeds of the sale or sales of wrapping paper, wrapping twine, paper bags, and containers for use incident to the delivery of tangible personal property.

(m) That portion of gross proceeds of sales of automobile vehicles, furniture or appliances represented by the value of such article transferred to the vendor in partial payment.

(n) The gross proceeds of the sale or sales of gasoline, or other motor vehicle fuels taxed at the same rate as gasoline.

(o) The gross proceeds of the sale of animal or motor drawn or operated machinery used in the planting, cultivating or harvesting of farm crops, or of machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property; provided that the term "machines", as herein used, shall include the parts of such machines, attachments and replacements therefor, which are used, or manufactured for use, on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used. Provided, that this exemption shall not include automobiles or trucks.

(p) The gross proceeds of the sale or sales of fuel for use exclusively in the curing of agricultural products.

(q) The gross proceeds of the sale or sales of electricity.

(r) Railroad cars and locomotives and the parts thereof, and vessels and barges of more than fifty (50) tons burden.

(s) The gross proceeds of the sale of products of the farm, grove, vineyard or garden when sold in the original state of production or preparation for sale and when sold by the producer thereof or by members of his immediate family.

(3) Taxes Due Monthly: Report, Exceptions. The taxes levied under the provisions of this article, except as otherwise provided, shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. On or before the twentieth day of each month after this Act shall have taken effect, every person on whom the taxes levied by this article are imposed shall render to the Tax Commission on a form prescribed by the Commission, a true and correct statement showing the gross sales, the gross proceeds of sales, or gross receipts of his business, as the case may be, for the next preceding month, the amount of gross proceeds or gross receipts which are not subject to the tax, or are not to be used as a measurement of the taxes due by such person, and the nature thereof, together with such other information as the Commission may demand and require, and at the time of making such monthly report such person shall compute the taxes due and shall pay to the Tax Commission the amount of taxes shown to be due. *Provided*, however, that when the total tax for which any person liable under this article does not exceed Ten (\$10.00) Dollars, for any month, a quarterly return and remittance in lieu of the monthly returns may be made on or before the twentieth day of the month next succeeding the end of the quarter for which the tax is due when specially authorized by the Tax Commission, and under such rules and regulations as may be prescribed

(4) Tax Bracketed to be Added to Purchase Price. Every person or company engaged in or continuing within this state in the business for which a license or privilege tax is required by this article may add to the sales price and collect from the purchaser on all sales upon the gross receipts or gross proceeds of which there is levied by this article a sales tax at the rate of three (3%) per cent an amount equal to the following: No amount on sales of ten cents or less; one cent on sales of eleven cents and over, but not in excess of thirty-five cents; two cents on sales of thirty-six cents and over, but not in excess of sixty-five cents; three cents on sales of sixty-six cents and over, but not in excess of one dollar; one cent additional for each thirty-three cents or major fraction thereof in excess of one dollar, *Provided*,

That in no case shall the amount to be added to the sales price of any single article exceed the following sums: Twenty-Five (\$25.00) Dollars on any article not exceeding Fifteen Hundred (\$1,500.00) Dollars; Forty (\$40.00) Dollars on any article above Fifteen Hundred (\$1,500.00) Dollars and not exceeding Three Thousand (\$3,000.00) Dollars; Seventy-Five (\$75.00) Dollars on any article exceeding Three Thousand (\$3,000.00) Dollars. It shall be unlawful for any person, or company described in this subarticle to fail or refuse to add to the sales price and collect from the purchaser the amount required by this subarticle to be so added to the sales price and collected from the purchaser; and it shall likewise be unlawful to refund or offer to refund all or any part of the amount collected, or to absorb or advertise directly or indirectly the absorption or refund of the amount required to be added to the sales price and collected from the purchaser, or any portion of such amount. Any person, or company violating any of the provisions of this subarticle shall be guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than Fifty (\$50.00) Dollars nor more than One Hundred (\$100.00) Dollars, or may be imprisoned in the county jail for not more than six months or by both such fine and imprisonment, and each act in violation of the provisions of this article shall constitute a separate offense. The provisions of this subarticle that there may be added to the sales price and collected from the purchaser the amounts provided herein shall in no way relieve the person, or company described in this subarticle of the tax levied by this article; nor shall the inability, impracticability, refusal, or failure to add to the sales price and collect from the purchaser the amounts provided herein relieve such person, or company from the tax levied by this article.

#### **Subarticle IV**

(1) Use Tax.—An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property, purchased at retail on or after July 1, 1951, for storage, use or other consumption in this state at the rate of three (3%) per cent of the sales price of such property, regardless of whether the retailer is or is not engaged in business in this state, *Provided*, That the tax hereby levied shall not exceed the following sums upon the gross proceeds of sale of any single article: Twenty-Five (\$25.00) Dollars on any article not exceeding Fifteen Hundred (\$1,500.00) Dollars; Forty (\$40.00) Dollars on any article above Fifteen Hundred (\$1,500.00)

Dollars and not exceeding Three Thousand (\$3,000.00) Dollars; Seventy-Five (\$75.00) Dollars on any article exceeding Three Thousand (\$3,000.00) Dollars. Every person storing, using or otherwise consuming in this state tangible personal property purchased at retail shall be liable for the tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to this state; *provided*, however, that a receipt from a retailer maintaining a place of business in this state or a retailer authorized by the Tax Commission, under such rules and regulations as it may prescribe, to collect the tax imposed hereby and who shall for the purposes of this article be regarded as a retailer maintaining a place of business in this state, given to the purchaser in accordance with the provisions of this Act, shall be sufficient to relieve the purchaser from further liability for a tax to which such receipt may refer.

(2) Exemptions. The storage, use or other consumption in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

(a) Property, the gross proceeds of sales of which are required to be included in the measure of the tax imposed by the provisions of Subarticle III of this Act and on which the tax has been paid by the seller or retailer thereof.

(b) All tangible personal property specifically exempted from the tax imposed by the provisions of Subarticle III of this Act.

(3) Retail Sellers to Register and Give Information. (a) Every seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this state, who:

(1) maintains a place of business,

(2) qualifies to do business.

(3) solicits and receives purchases or orders by agent or salesman, shall obtain from the Tax Commission a retail license as provided for by Subarticle II of this Act.

(b) Every person or company who distributes catalogs or other advertising matter and by reason thereof receives and accepts orders from residents, within the State of South Carolina, shall, within thirty days after the effective date of this article or prior to the commencement of such distribution, register with the Tax Commission and give the name and address of each agent operating in this state, the location of any and all distribution or sales houses or offices or other places of business in this state, the number of persons in

South Carolina to whom catalogs are delivered, by mail or otherwise, the number of persons in South Carolina from whom orders are received, by mail or otherwise, together with the amount of the purchase price charged and received and such other information as the Tax Commission may require with respect to matters pertinent to the enforcement of this article.

(4) Seller to Collect Tax; Regulations; Penalty. Every such seller making sales of tangible personal property for storage, use or other consumption in this state, not exempted under the provisions of paragraph (2) of Subarticle III of this article, shall, at the time of making such sales or, if the storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time such storage, use or other consumption becomes taxable hereunder, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the Tax Commission. The tax required to be collected by the seller from the purchaser shall be displayed separately from the list, advertised in the premises, marked or other price on the sales check or other proof of sales. It shall be unlawful for any such seller to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the seller or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. The tax herein required to be collected by the seller shall constitute a debt owed by the seller to this state.

(5) Seller to File Returns. The tax imposed by this article shall be due and payable to the Tax Commission quarterly on or before the twentieth day of the month next succeeding each quarterly period during which the storage, use or other consumption of tangible personal property became taxable hereunder, the first of such quarterly periods being the period ending the thirtieth day of September, 1951. Every seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this state, who:

- (a) maintains a place of business,
  - (b) qualifies to do business,
  - (c) solicits and receives purchases or orders by agent or salesman,
- or
- (d) distributes catalogs or other advertising matter and by reason thereof receives and accepts orders from residents, within the State

of South Carolina, shall, on or before the twentieth day of the month following the close of the first quarterly period as above defined, and on or before the twentieth day of the month following each subsequent quarterly period of three months, file with the Tax Commission a return for the preceding quarterly period in such form as may be prescribed by the Tax Commission showing the total sales price of the tangible personal property sold by such seller, the storage, use or consumption of which became subject to the tax imposed by this article during the preceding quarterly period and such other information as the Tax Commission may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of tax herein required to be collected by the seller during the period covered by the return. The Tax Commission, if it deems it necessary in order to insure payment to the state of the amount of tax herein required to be collected by sellers, may require returns and payment of such amount of tax for other than quarterly periods. Returns shall be signed by the seller or his duly authorized agent. Every person purchasing tangible personal property, the storage, use or other consumption of which is subject to the tax imposed by this article, and who has not paid the tax due with respect thereto to a seller required or authorized hereunder to collect the tax, shall on or before the twentieth day of the month following the close of the first quarterly period as above defined, and on or before the twentieth day of the month following each subsequent period of three months, file with the Tax Commission a return for the preceding quarterly period in such form as may be prescribed by the Tax Commission showing the total sales price of the tangible personal property purchased by such person, the storage, use or other consumption of which became subject to the tax imposed by this article during the preceding quarterly period, and with respect to which the tax was not paid to a seller required or authorized hereunder to collect the tax, and such other information as the Tax Commission may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of the tax herein imposed and not paid to a seller required or authorized hereunder to collect the tax during the period covered by the return. The Tax Commission, if it deems it necessary in order to insure payment to the state of the amount of such tax may require returns and payment for other than quarterly periods. Returns shall be signed by the person liable for the tax or his duly authorized agent. For the purpose of the proper administration of this article and to

prevent evasion of the tax and the duty to collect the same herein imposed, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use or other consumption in this state unless the person selling such property shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser to the effect that the property was purchased for resale and it shall be further presumed that tangible personal property shipped to this state by the purchaser thereof was purchased from a retailer on and after July 1, 1951, for storage, use or other consumption in this state.

#### Subarticle V

(1) The taxes imposed by this Act are due and shall be paid to the Tax Commission at the same time that the return required by Subarticles III and IV of this Act is filed, *provided*, that whenever the return is filed and the taxes shown due thereon are paid in full, on or before the final due date provided by this Act, the taxpayer shall be allowed a discount equal to three (3%) per cent of the taxes shown due by said return, but in no case shall any discount be allowed if either return or tax is received by the Tax Commission after the date due, or after the expiration of any extension granted by the Tax Commission. *Provided, Further*, that the discount permitted a taxpayer under this section shall not exceed a total of Five Thousand (\$5,000.00) Dollars during any one fiscal year.

(2) Notwithstanding other provisions of this Article, when in the opinion of the Tax Commission the nature of a taxpayer's business renders it impracticable or inequitable for the taxpayer to account for the taxes imposed by Sub-Articles III, and IV, separately, the Tax Commission may issue its certificate authorizing the sale at wholesale to said taxpayer, who thereupon shall be accountable for the tax levied by Sub-Articles III and IV with respect to the gross proceeds of sale of the property withdrawn, used, or consumed by said taxpayer for use, or consumption, or application within South Carolina.

(3) The Tax Commission for good cause may extend the time for making any return or paying any amount required to be paid under this Act. The extension may be granted only if request therefor is filed with the Tax Commission on or before the day the return of the tax is due.

Any person to whom an extension is granted shall pay in addition to the tax, interest at the rate of one-half of one per cent per month or fraction thereof from the date on which the tax was due until the date of payment.

(4) The person required to file the return shall deliver the return together with the remittance of the full amount of the tax due to the office of the Tax Commission, in Columbia.

(5) The members of the Tax Commission and such officers and agents as it may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person with respect to any return or report required by this Act or by the rules and regulations of the Tax Commission.

(6) Records to be Kept. (a) Every person engaging or continuing in this State in any business for which a privilege tax is imposed by this Act, shall keep and preserve suitable records of the gross sales, gross proceeds of sales, and gross receipts, or gross receipts of such sales of such business, and such other books of accounts as may be necessary to determine the amount of tax to which he is liable under the provisions of this Act. Such taxpayer shall keep and preserve for a period of three years all invoices of goods, wares and merchandise purchased for resale or otherwise, and all such books, invoices and other records shall be open for examination at any time by the Tax Commission or its duly authorized agent. Any person selling both at wholesale and at retail shall keep his books so as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales.

(b) Every seller and every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer, shall keep such records, receipts, invoices and other pertinent papers in such form as the Tax Commission may require. The Tax Commission or its duly authorized agent is hereby authorized to examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the tax imposed by this Act and to investigate the character of the business to any such person in order to verify the accuracy of any return made or, if no return was made by such person, to ascertain and determine the amount required to be paid hereunder.

(c) Any person required to keep records under the provisions of this section who shall fail so to do as herein required shall be penalized not less than Twenty-five (\$25.00) Dollars or more than Five Hun-

dred (\$500.00) Dollars for each offense. Each month of such failure shall constitute a separate offense. The Tax Commission is hereby authorized, directed and required to assess the amount of penalty imposed in the same manner as is provided in Subarticle V of this Act and to proceed to the collection of the amount of the penalty in the same manner and with like effect as provided for the collection of tax in Subarticle V.

(7) The Tax Commission for the purpose of ascertaining the correctness of any return or returns required by this Act, or for the purpose of making an estimate of the taxable sales or purchases of any person, shall have power to examine or cause to be examined by any agent or representative designated by it for that purpose, any books, papers, records, or memoranda bearing upon the matters required to be included in the return. Where any person who is required to make a return under this Act fails so to do at the time required, or delivers any return which, in the opinion of the Tax Commission, is erroneous, or refuses to allow any regularly authorized agent of the Tax Commission to examine his books and records, it shall be lawful for the Tax Commission to summon such person, or any other person having possession, care or custody of books of account, papers, records, or memoranda containing entries relating to or bearing upon the business of such person, or any other person it may deem proper, to appear before the Tax Commission, and to produce such books of account, papers, records, or memoranda at a time and place named in the summons and to give testimony and to answer questions under oath respecting any gross receipts, sales, purchases, storage, use or consumption, whether taxable or not. Such summons shall in all cases be served by an authorized agent of the Tax Commission by an attested copy delivered to such person in hand or left at his last or usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel computed from the place of service to the place of examination. When the summons requires the production of books and returns, papers, records, or memoranda, it shall be sufficient if such books, papers, records or memoranda are described with reasonable certainty; and whenever any person summoned under the provisions of this subarticle neglects or refuses to obey such summons as required, the Tax Commission may apply to any Circuit Judge of the South Carolina Circuit Court for an attachment against him for contempt. It shall be the duty of such Judge to hear the application and if satisfactory proof is made, to issue

an attachment directed to the Sheriff of the county in which the person resides for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case, and upon such hearing the Judge shall have power to make such order as he shall deem proper, not inconsistent with existing laws for the punishment of contempt, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(8) If the Tax Commission discovers from the examination of the return or otherwise that the tax paid is greater or less than the amount due, it shall give notice to the person of such underpayment, or overpayment, and such person shall thereupon have an opportunity within thirty days to confer with the Tax Commission as to the proposed adjustment. After the expiration of thirty days from such notification, the Tax Commission shall assess the underpayment, together with any interest or penalty, or both, due under the provisions of this Act and it shall be due and payable to the Tax Commission within ten days of the date of the notice of the assessment. After the expiration of thirty days of such notification in the case of an overpayment of the tax, the Tax Commission shall proceed to order a refund of the amount overpaid together with such interest as is provided by this Act. No additional tax amounting to less than fifty cents shall be assessed and no refunds for less than fifty cents shall be made.

(9) (a) If additional tax is found to be due where the return was made in good faith, and the understatement of the tax is not due to any fault of the taxpayer, there shall be no penalty added because of such understatement, but interest shall be added to the amount of the deficiency at the rate of one-half of one per cent for each month or fraction of a month from the date the tax was originally due until the date the deficiency is paid.

(b) If additional tax is found to be due and the understatement is due to negligence on the part of the person but without intent to defraud, there shall be added to the deficiency five (5%) per cent thereof and, in addition, interest shall be added at the rate of one per cent per month or fraction of a month.

(c) If additional tax is found to be due and the understatement is false or fraudulent, with intent to evade the tax, the amount of understatement shall be increased by fifty (50%) per cent thereof and, in addition, interest at the rate of one (1%) per cent per month or fraction of a month on the understated amount shall be added.

(d) The interest provided for in this section shall in all cases be computed from the date the tax was originally due to the date of payment.

(10) (a) If the Tax Commission discovers on examination of the return or otherwise that the tax, penalty or interest paid by any person is in excess of the amount legally due, then the Tax Commission shall have the power and authority to order refund of such illegally collected tax, penalty or interest, together with interest provided for in subparagraph (9) (b) of this subarticle.

(b) Upon the allowance of a credit or refund of any tax, penalty or interest erroneously, improperly or illegally paid, interest shall be allowed and paid on the amount of such credit or refund at the rate of one-half of one per cent per month from the date such tax, penalty, or interest was paid to the date the order for refund or credit was issued.

(11) Notwithstanding the provisions of paragraph (9) of subarticle V the Tax Commission may offset overpayments for a period or periods together with interest on the overpayments, against underpayments for another period or periods against penalties and against the interest on the underpayments.

(12) Except in the case of fraud, intent to evade this Act or authorized rules and regulations promulgated thereunder, or failure to make a return, every notice of an underpayment shall be mailed within three years after the last day of the calendar month following the period for which the amount is proposed for assessment or within three years after the day on which the return was filed, whichever period expires the later.

(13) If before the expiration of the time prescribed in the preceding paragraph (11) for the mailing of a notice of underpayment, the taxpayer has consented in writing to the mailing of the notice after such time, notice of either underpayment or overpayment may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(14) Any person liable for the license provided by subarticle II of this Act who shall fail to comply with the lawful regulation of the Tax Commission or who shall fail to pay the tax or obtain the license within the time provided shall be liable to a penalty of Five Hundred (\$500.00) Dollars, provided that the Tax Commission may

upon making a record of its reasons therefor remit said penalties in whole or in part. In addition to the penalty above provided, any person liable for the license provided by subarticle II of this Act, who shall engage in business as a seller or retailer in this State without a retail license or after such license has been suspended, and each officer of any corporation which so engages in business shall be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed Five Thousand (\$5,000.00) Dollars or be imprisoned not to exceed five years or both, at the discretion of the Court.

(15) No action, either in law or equity, on a sale or transaction as provided by the terms of this Act, may be had in the State by any non-resident seller, unless it be affirmatively shown that the provisions of this Act have been fully complied with.

(16) If any person fails to file a return, or has filed an incorrect or insufficient return and has been notified by the Tax Commission of his delinquency, and refuses or neglects within twenty days after such notice to file a proper return, or files a fraudulent return, the Tax Commission shall determine the amount of the gross receipts of the person, or as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person for storage, use, or other consumption which in this State is subject to the use tax, according to the best information and belief of the Tax Commission, and the Tax Commission thereupon shall compute and determine the amount required to be paid to the State, adding to the sum thus determined a penalty equal to Fifty (50%) Per Cent thereof and, in addition, interest upon such amount at the rate of One (1%) Per Cent per month or fraction of a month from the time the tax was originally due to the date of the payment of the tax and penalty.

(17) If any person fails to file a return or to pay a tax, if one is due, on or before the time required by or under the provisions of this Act, the tax shall be increased by Twenty-five (25%) Per Cent and, in addition thereto, interest at the rate of one-half of one per cent per month shall be added to the tax, the interest to be calculated from the date the tax was originally due to the date of payment.

(18) The Tax Commission shall have the power upon making a record of its reason therefor to waive or reduce any of the penalties or interest imposed under the provisions of this Act.

(19) If the Tax Commission is of opinion that the collection of any tax or any amount of tax required to be collected and paid to the

State will be jeopardized by delay, it shall thereupon make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the person, together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including interest and penalties. In the case of the tax for a current period, the Tax Commission may declare the taxable period of the person immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the person together with a demand for immediate payment of the tax based on the period declared terminated, and such tax shall be immediately due and payable whether or not the time otherwise allowed by law for filing the return and paying the tax has expired. Assessment or assessments provided for in this subsection shall be immediately due and payable and proceedings for collection shall commence at once, and if such tax, penalty and interest is not paid upon demand of the Tax Commission, the Tax Commission is hereby authorized and directed to forthwith issue a warrant for distraint against the property of the taxpayer or in its discretion, the Tax Commission may require the taxpayer to file such indemnity bond as in the judgment of the Tax Commission may be sufficient to protect the interest of the State.

(20) The Tax Commission, whenever it deems it necessary to insure compliance with this Act, may require any person subject thereto to deposit with it such security as the Tax Commission may determine. The amount of the security shall be fixed by the Tax Commission, and shall not be greater than twice the estimated average liability of persons filing returns determined in such manner as the Tax Commission deems proper. The Tax Commission may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, plus interest or penalty due. Notice of the sale may be served, upon the person who deposited the security, personally or by mail; if by mail, service shall be made in the manner prescribed for service of notice of assessment and shall be addressed to the person at his address as it appears in the records of the Tax Commission. Otherwise, notice of the sale may be served personally by any duly authorized agent of the Tax Commission. Upon any sale, any surplus above the amount due shall be returned to the person who deposited the security.

(21) Any person may apply to the Tax Commission for revision of the tax assessed against him at any time within one year from the

time of the filing of the return or from the date of the notice of the assessment of any additional tax. The Tax Commission shall grant a hearing thereon and if, upon such hearing, it is determined that the tax is excessive or incorrect, it shall resettle the same accordingly.

(22) The collection of sales tax and use tax as provided in this Act shall not be stayed or prevented by any injunction, writ or order issued by any Court or Judge thereon, and no writ, order, or process of any kind whatsoever, staying or preventing the Tax Commission from taking any step or proceeding in the assessment or collection of any sales or use tax, whether such tax is legally due or not, shall in any case be granted by any Court or the Judge of any Court; but in all cases the person against whom any sales or use tax shall stand charged by the Tax Commission shall be required to pay the same in such funds and monies as the Tax Commission shall be authorized to receive by any Act of the General Assembly, and thereupon shall have his remedy as is hereinafter provided.

(23) In all cases in which any sales or use tax shall be charged by the Tax Commission against any person and the Tax Commission shall claim the payment of the taxes so charged, or shall take any step or proceedings to collect them, the person against whom such steps or proceedings shall be taken, shall, if he conceives the same to be unjust or illegal for any cause, pay the taxes, which shall include the penalties, under protest in writing in such funds and monies as the Tax Commission shall be authorized to receive; and upon such payment being made the Tax Commission shall pay the taxes, and penalties if any, so collected into the State Treasury as now provided by law, giving notice at the time to the State Treasurer that the payment was made under protest; and the person so paying the taxes may at any time within thirty days after making such payment, but not afterwards, bring an action against the Tax Commission for the recovery thereof in the Court of Common Pleas of any county having jurisdiction; and if it be determined in the action that such taxes, and penalties if any, were wrongfully or illegally collected, for any reason going to the merits, then the Court before whom the case was tried shall certify of record that they were wrongfully collected and ought to be refunded, and thereupon the Tax Commission shall issue its order for the refund of the taxes, and penalties if any, so paid, in conformity with the order of the Court, which money shall be paid in preference to other claims against the State Treasury. There shall be no other remedy in any case of the illegal or wrongful

collection of the sales or use taxes imposed by this Act or attempt to collect such taxes, than that provided in this section.

(24) If any tax, interest, or penalty imposed by this Act remains due and unpaid for a period of ten days, the Tax Commission shall issue a warrant under its hand and official seal directed to the Sheriff or tax collector of any county of this State, commanding him to levy upon and sell the real and personal property of the person found within his county for the payment of the amount thereof, with the added penalties, interest, and cost of executing the warrant, and to return such warrant to the Tax Commission and to pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty days after the receipt of the warrant. Immediately upon receipt of the warrant, the Sheriff or tax collector shall file with the Clerk of Court of his county a copy thereof, and thereupon the Clerk of Court shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant was issued and the date when such copy was filed and shall index the warrant upon the index of judgments, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of the said Clerk. The Sheriff or tax collector shall proceed upon the warrant in all respects with like effect, and in the same manner prescribed by law with respect to executions issued against property upon judgments of a court of record. The Sheriff or tax collector shall be entitled to a fee equivalent to Five (5%) Per Cent of the total amount of the warrant, or Three (\$3.00) Dollars, whichever is greater, for service, in executing the warrant, and the Clerk of Court shall be entitled to the same fees for recording the warrant as is prescribed by law in respect to executions issued against property upon judgments of a court of record, the fees to be added to and collected with the total amount of the warrant. If a warrant be returned not satisfied in full, the Tax Commission shall have the same remedies to enforce the claim for taxes, penalties, and interest, against the taxpayer as if the people of the State had recovered judgment against the taxpayer for the amount of the tax, penalties, and interest.

(25) The South Carolina Tax Commission shall administer and enforce the tax herein imposed.

(26) The Tax Commission may appoint and remove a person to be known as the Sales and Use Tax Director, who, under its direction shall have the supervision and control of the assessment and collection of the license, sales, and use taxes provided by this Act. The Tax Commission may also appoint such other officers, agents, deputies, clerks, and employees as it may deem necessary, such persons to have such duties and powers as the Tax Commission may from time to time prescribe.

(27) (a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the members of the Tax Commission, any deputy, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of the sales or gross receipts or any particulars whatsoever set forth or disclosed in any report or return required under this Act. Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prohibit the identity of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representative of the State, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or penalty or interest imposed by this Act. Reports and returns shall be preserved for five years and thereafter, until the Tax Commission orders them to be destroyed.

(b) Any offense against subdivision (a) of this section shall be punished by a fine not exceeding One Thousand (\$1,000.00) Dollars or by imprisonment not exceeding one year, or both, at the discretion of the Court, and if the offender be an officer or employee of this State, he shall be dismissed from office and be incapable of holding any public office in this State for a period of five years thereafter.

(c) Notwithstanding the provisions of this section, the Tax Commission may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any State imposing a sales or use tax similar to that imposed by this Act, or the authorized representative of either such officer, to inspect the returns of any person, or may furnish to such officer or his authorized representative a copy of the return of any person or supply him with information concerning any item contained in any return or disclosed by the report of any investigation, but such permission shall be granted or such

information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grants substantially similar privileges to the proper officer of this State charged with the administration of this Act.

(28) The Tax Commission may from time to time make such rules and regulations not inconsistent with this section as it may deem necessary to enforce its provisions and the same shall have the full force and effect of law.

(29) The revenue derived from the tax levied in this article shall be remitted to the State Treasurer to be credited to the State Public School Building Fund for the purposes provided for in this Act and any sum over and above that so required shall be placed to the credit of the General Fund and shall be used for school purposes only.

(30) The sum of Three Hundred Thousand (\$300,000.00) Dollars, if so much be necessary, is hereby appropriated from the General Fund of the State for administration and enforcement of the provisions of this article for the fiscal year 1951-1952, and shall be available immediately upon approval of this Act. Should the amount so appropriated be insufficient for the administration and enforcement of the provisions of this article for the entire year the Tax Commission may, upon approval of the State Budget and Control Board, expend from the revenue derived from these taxes, in addition to the above appropriation, a sufficient amount to provide for proper administration and enforcement as herein provided.

(31) If any clause, sentence, paragraph, or part of this article shall for any reason be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not impair, affect, or invalidate the remainder of the article, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

No caption of any section or subsection shall in any way affect the interpretation of this article or any part thereof.

(32) The sales and use tax provided by this article, upon approval by the Governor, shall take effect on July 1, 1951, *provided*, that gross proceeds derived from deliveries of tangible personal property made on or after July 1, 1951, shall be included in the measure of the tax whether or not such delivery was made pursuant to contracts executed prior to July 1, 1951; *provided*, further, that the sales price of tangible personal property delivered on or after July 1, 1951, for storage, use or other consumption in this State shall be subject to the

use tax whether or not such delivery was made pursuant to contracts executed prior to July 1, 1951. *Provided However*, That the gross proceeds of the sales of tangible personal property delivered prior to January 1, 1952, under terms of construction contracts executed prior to April 1, 1951, shall be exempt from the sales and use taxes imposed under Subarticles III and IX, but only if a verified copy of such construction contract is filed with and approved by the South Carolina Tax Commission prior to July 1, 1951.

(33) The provisions of this Article shall constitute a part of the permanent laws of the State of South Carolina.

Appendix A-3

# PROPOSED ADDITION TO THE SCOTT

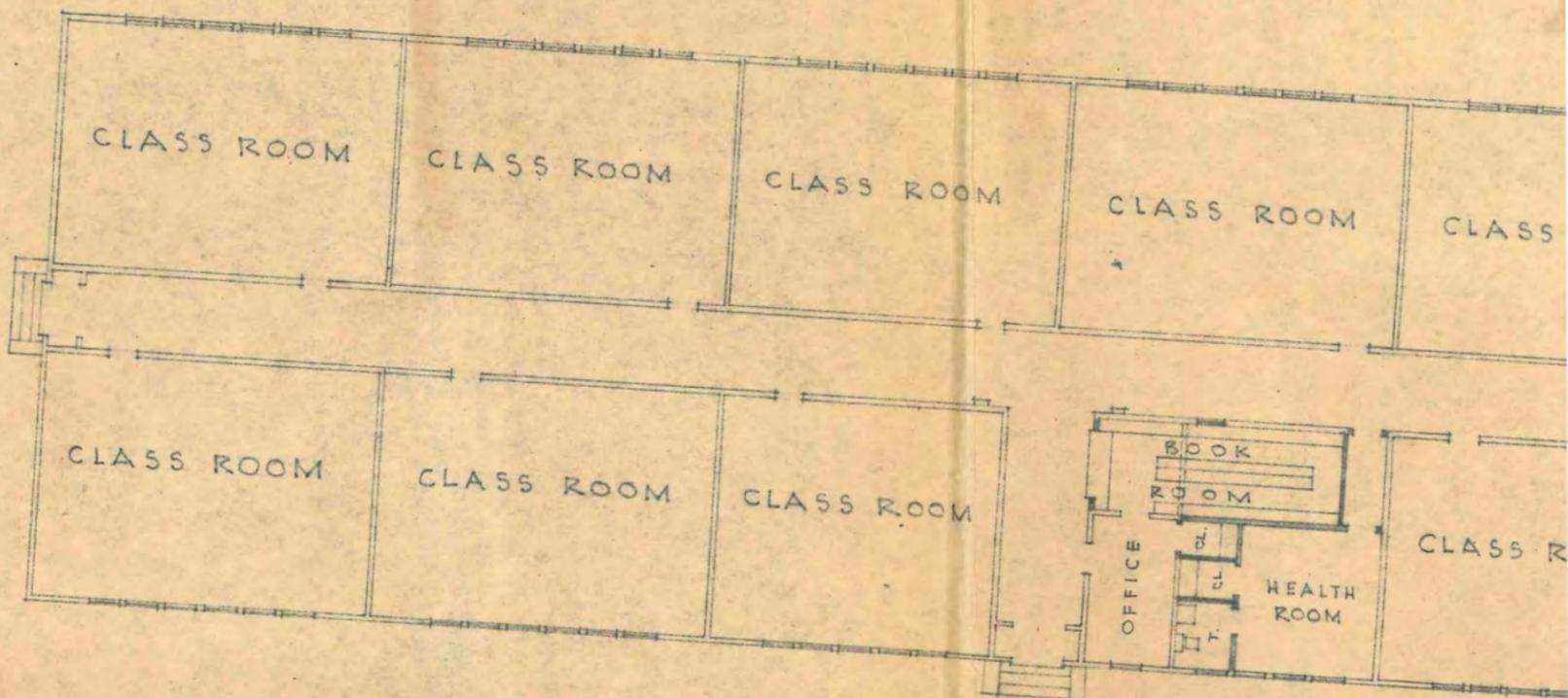
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JAMES J. DURANT AIA - R. S. JAMES AIA ASOC. - ARCHITECTS  
SUMTER, S. C.

SHEET

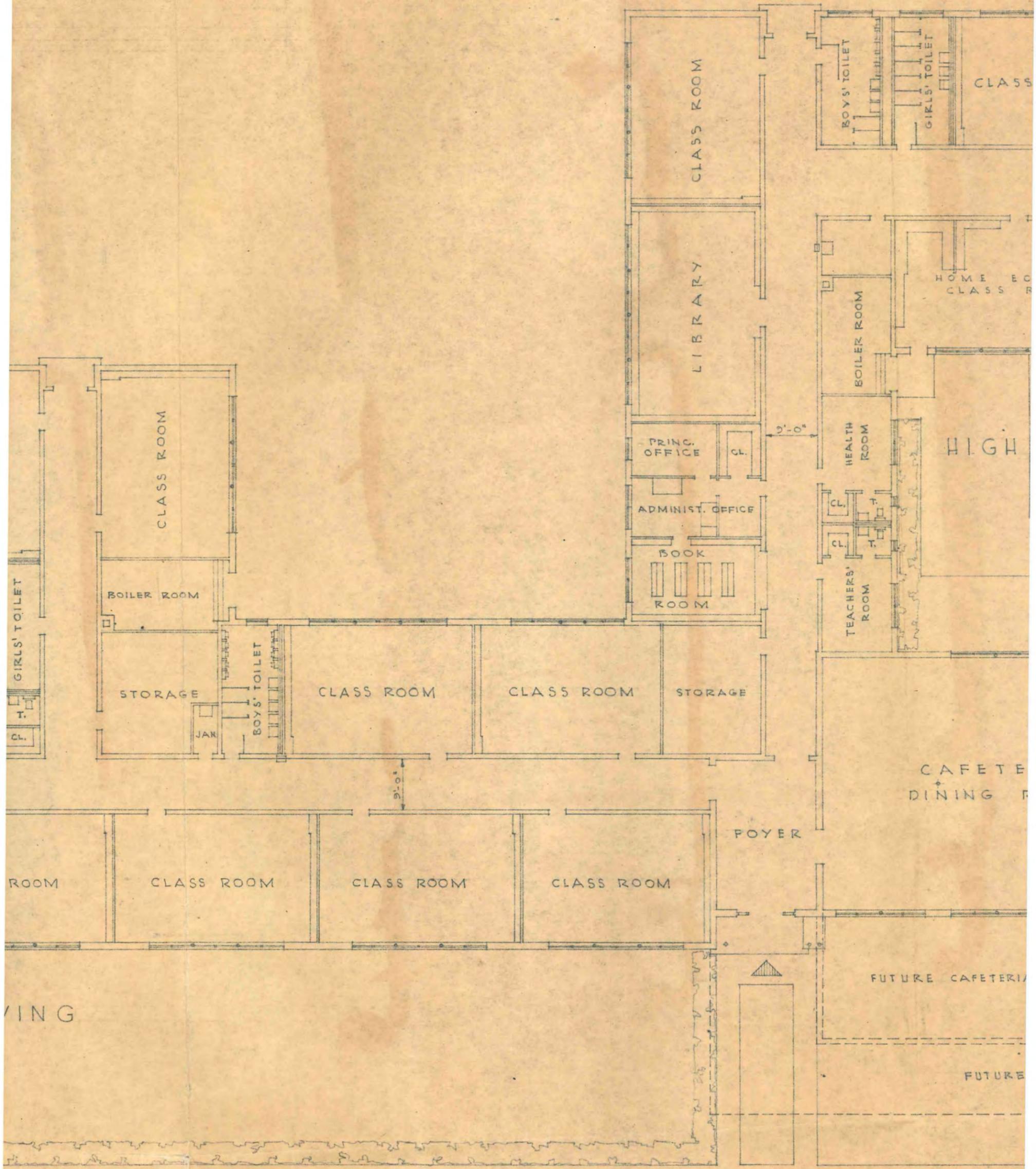
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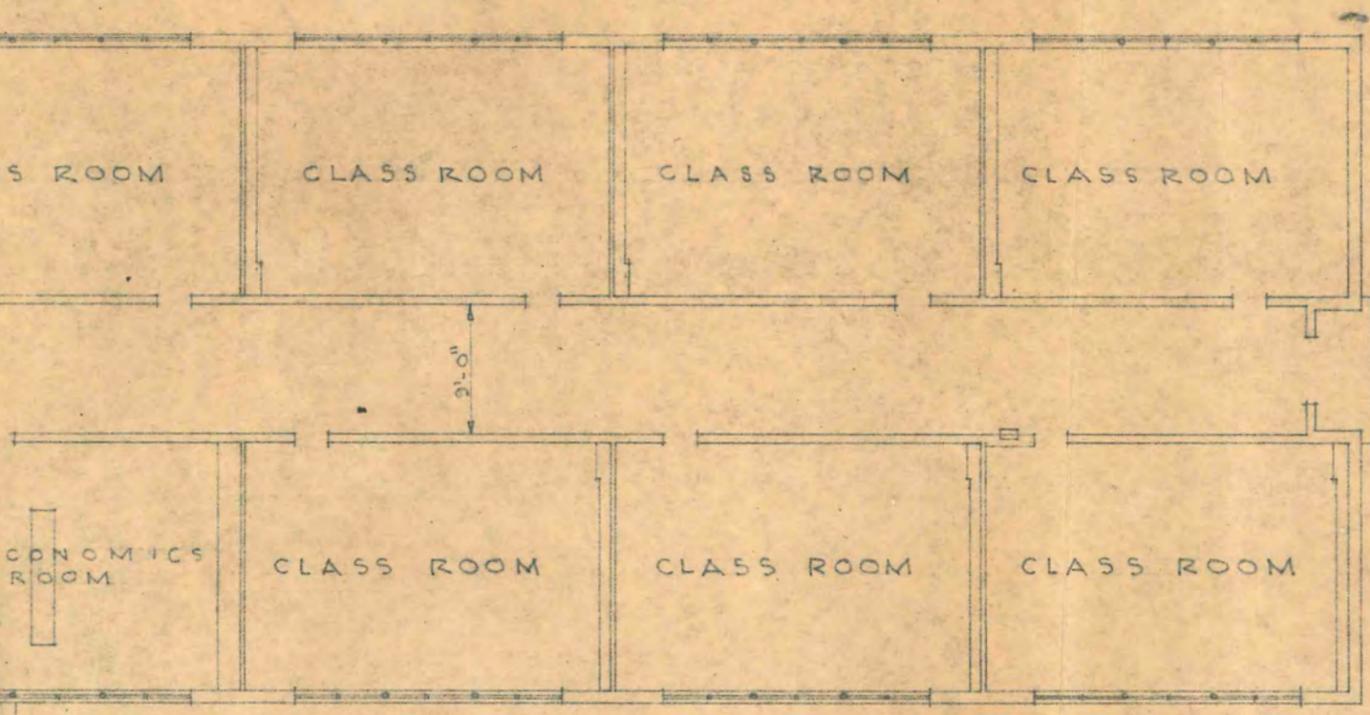
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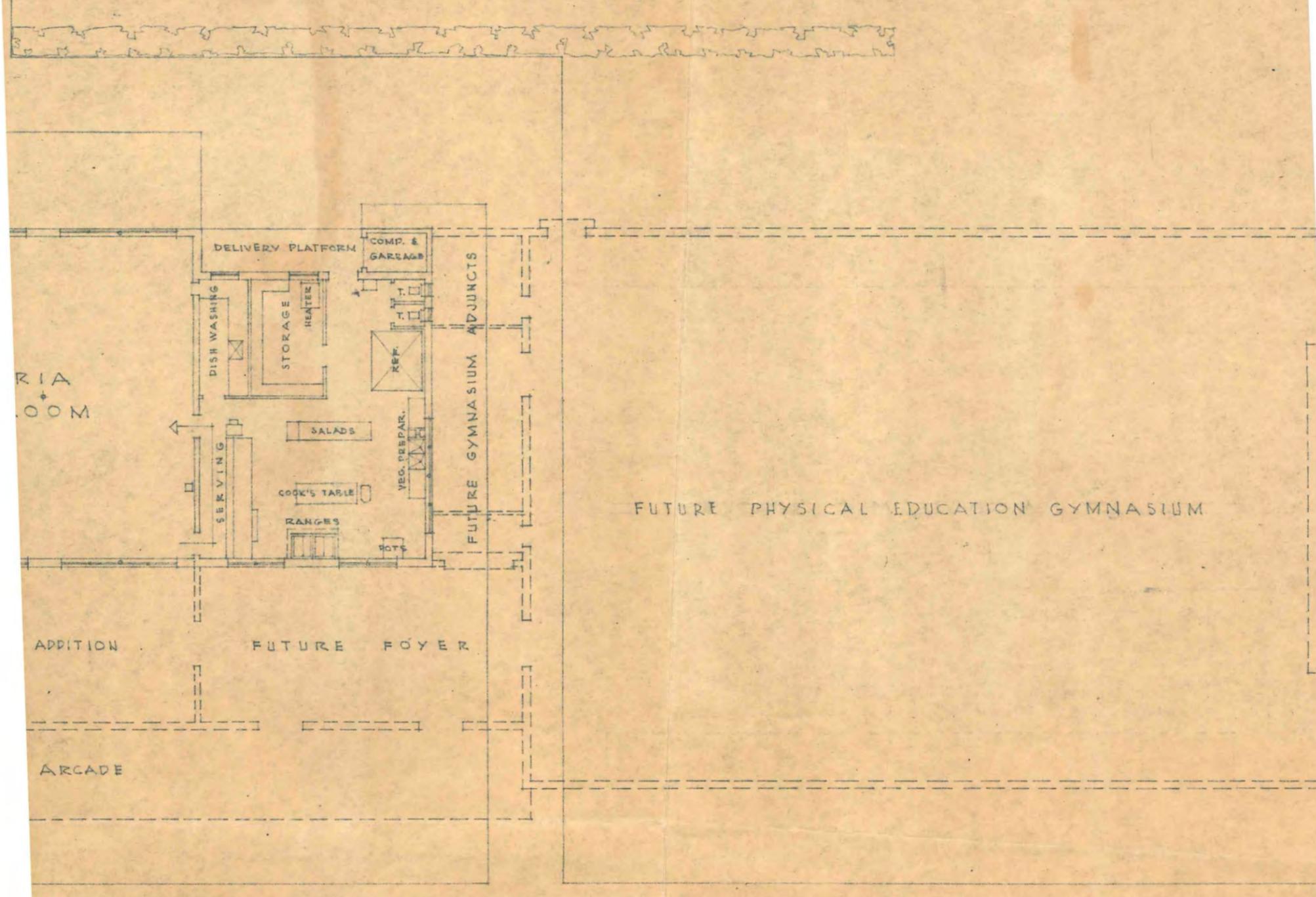
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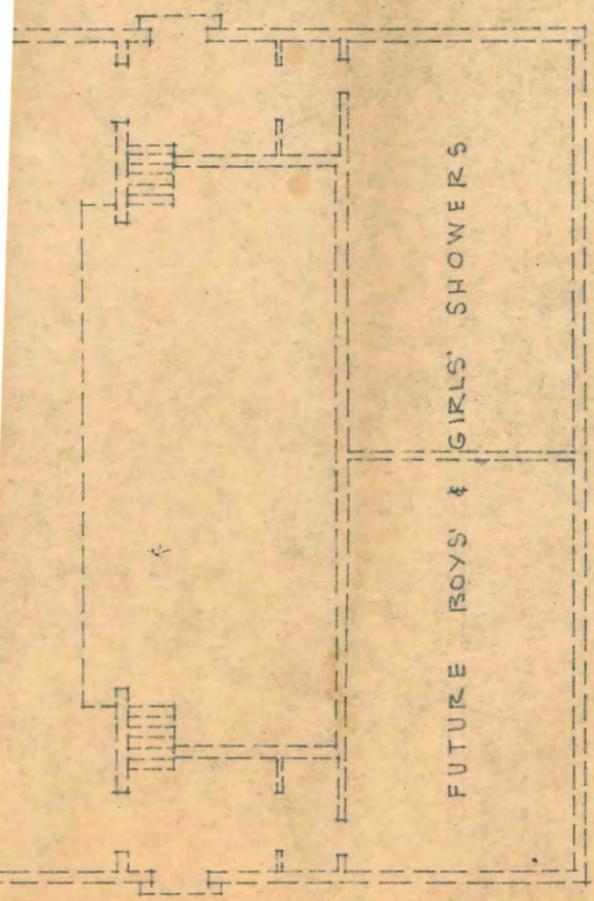
# H SCHOOL





SCHOOL WING





FUTURE BOYS & GIRLS' SHOWERS

**CLARENDON COUNTY'S ANSWER**—On June 23, a formal decree by a three-judge U. S. court sitting in Charleston told School District 22 in Clarendon County that it must equalize public school facilities for whites and Negroes, and allowed six months for the defendants to make a report to the court on what had been accomplished toward carrying out the decree. This architect's drawing of a brand-new school replacing Scott's Branch Negro school

on the outskirts of Summerton is the major account so far. The structure will cost upwards of \$21, and was designed by R. S. James of the architecture firm of James & Durant in Sumter. The only part of this structure now in existence is the frame building at the left, which (with a few strictly temporary structures) substitutes the present Scott's Branch High School elementary school—a plant which was denounced in fact as being unsuitable and inadequate. The entire

building which dominates the drawing is the "last word" in modern school planning; far finer than any other school in Clarendon County, white or Negro. It will offer every modern adjunct for public school education, with scientific lighting throughout, tiled toilets and washrooms, and entirely fireproof construction. Superintendent H. B. Bechtman said that the architects followed precisely all recommendations for school plants as stated by the National Education Association, and that there will be no more

modern building anywhere. The complete plans and specifications are now ready and on Sept. 28 the trustees of the school district advertised for bids, which will be opened three weeks from that date. Assuming that a contract is offered within the district's financial means, and assuming that priorities will be made available by the National Production Authority, Mr. Bechtman hopes to have the new plant in operation during the school year which opened last month.

# Clarendon Working Hard for School Equalization

## Negroes in Area Don't Want Mixed Schools

Editor's note: This is the first of three articles based upon on-the-scene investigation of what Clarendon County is doing to equalize public schools for whites and Negroes, as ordered in a U. S. court decree dated June 23.

By **BRYAN COLLIER**

As of this morning, three months and 13 days have elapsed since U. S. Judges John J. Parker and George Bell Timmerman (with Juudge J. Waties Waring dissenting) told School District 22 in Clarendon County that it must equalize public schools for whites and Negroes, if it meant to retain the traditional Deep South pattern of separate schools for the two races.

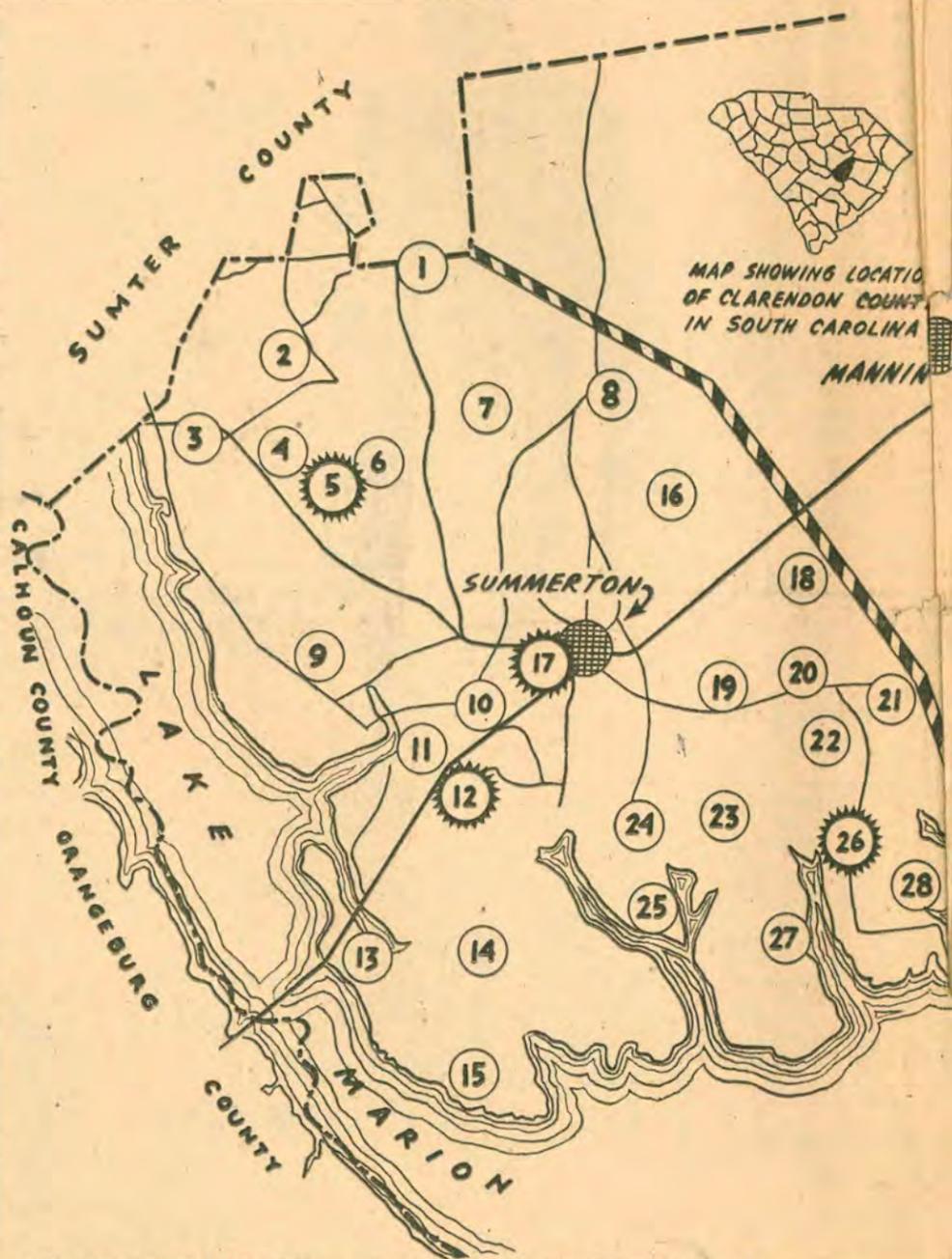
That decree was a setback for the National Association for the Advancement of Colored People, which had chosen No 22 for its first attack on the system of segregation at the common school level. It gave District 22 a fighting chance to keep the races separate by equalizing facilities. And it focused the eyes of the nation on this tiny rural community in South Carolina.

Judges Parker and Timmerman fixed six months from the date of the decree (Dec. 23) as the time when they would want to know what progress had been made in District 22. This series, then, is an interim report. It will be factual, unadorned, and give the bad with the good. The court, presumably, will want the truth, not a glossing-over.

I spent two days last week in the vicinity of Summerton, traveling rural roads and looking into Negro schools which achieved dismal notoriety at the trial here last spring. I talked with many Negroes, teachers, farmers, business men, including two of the plaintiffs in the NAACP action.

It is pleasant to report that the Negroes seem satisfied with what has happened this summer, or at any rate they said they were satisfied—and heartened.

I encountered not one Negro who said that he or she would



**NEW DISTRICT PATTERN**—South Carolina's new school development plan as implemented by the 3 per cent sales tax demands re-districting of many rural areas, notably Clarendon County, which formerly had up-

and also will absorb elementary school students from Ramby (16), Zoah Hill (18), Oak Grove (19) and Davis Station (20). The trustees have obtained by purchase and gift three 10-acre sites for other consolidated schools still in the preliminary

a workable basis for meeting a grave problem efficiently, but one or two illustrations are necessary to emphasize the predicament.

Three schools figured in the NAACP's attack—Scott's Branch, Liberty Hill, Rambay.

Scott's Branch has a main building which is not too bad, though dreadfully overcrowded. Using all the money he could lay hands on this summer—about \$15,000 all told—Supt. H. B. Bechtman, who now has charge of new district No. 1, has put new steel desks in Scott's Branch, and bulldozers were at work last week grading new streets and an athletic field.

Moreover, the trustees asked on Sept. 28 for bids on an entirely modern school plant at Scott's Branch (see architect's drawing) which will cost upwards of \$200,000 and which Mr. Bechtman said was designed strictly in conformity with National Educational Association standards of modern school trends including fine lighting, fireproof construction, and-tiled toilets!

"Personally I think concrete floors are more sensible," said Mr. Bechtman, grinning, "but we're going whole hog on Scott's Branch."

District 1, by the way, is entitled to borrow some \$551,000 under the S. C. educational plan. The money is ready to build Scott's Branch. Whether the National Production Authority will release critical materials is another matter, and that is Mr. Bechtman's main current worry.

"If they won't give us the materials," said Mr. Bechtman, "we will just have to hope the court will understand. If not, I'll just say that I've worked so hard on this that I don't care now if they put me in jail."

If Scott's Branch school can be built this winter, it will easily absorb the entire student bodies of Liberty Hill and Rambay, and that step alone would discharge the responsibility of old District 22, which was the only defendant in the NAACP action.

Nobody will quarrel with the

statement that Liberty Hill and Rambay deserve abandonment.

Both are utterly primitive.

Liberty Hill is a shaky frame structure with four rooms, though Mr. Bechtman has made a few improvements with the little money he had. I visited the school twice. On Tuesday the four teachers had 11 students in all eight grades; on Wednesday, the attendance had picked up to 27—still fewer than half its enrollment, which the teachers said was 57.

A look at nearby cotton fields explained the absenteeism. Negro parents were using even their tiniest offspring to pick cotton.

Rambay is, if possible, worse than Liberty Hill architecturally. It is a wretched place; two small dark rooms, with children crowded on broken chairs around a few cracked tables. Here, again, scarcely half the enrolled scholars were present. Again, the kids were picking cotton. The two teachers were dispirited, as if they didn't much care.

Mr. Bechtman said frankly that Rambay "is our worst". In point of fact, the trustees tried to close it last year (as was brought out in the trial), but it was kept open at the request of Negro parents, who needed their children in the field as soon as school closed for the day, and didn't want to send all the way to Scott's Branch in Summerton.

So—Liberty Hill and Rambay will be abandoned.

Under the overall plan for District 1, Liberty Hill will be absorbed eventually by a new consolidated school southwest of Summerton, in the vicinity of the present St. Paul, another Negro school which also offers a limited high school curriculum, though it is not accredited. Scott's Branch is accredited.

Under the re-districting, then, the new school at Scott's Branch—for which plans and specifications are complete with money in the bank and the contract ready for award to a low bidder—will do more than provide "equal facilities" for the three schools attacked by NAACP.

In addition to Rambay, it will

absorb the student bodies of three other Negro schools lying directly east of Summerton, plus high school students from the whole of District 1.

The consolidated school at St. Paul will eventually absorb all elementary students in its region. Another in the Panola area (see map) will "consolidate" Negro schools in the northwestern section of the district, and a fourth in the vicinity of Rogers will handle Negro students in the southeastern section.

Sites for all these projected consolidated schools are already owned. Scott's Branch has its original site. Ten acres in the Rogers area have been purchased for \$1,500; 10 acres in the St. Paul area have been purchased for \$3,500, and 10 acres for the Panola site have been given by W. S. Manning of Spartanburg from his family plantation.

So, in addition to the new furniture at Scott's Branch and elsewhere, the major and minor repairs which have been accomplished in numerous places, and the plans and money to build the new Scott's Branch school, District No. 1 has acquired sites to implement its overall plan.

Moreover, school bus transportation in District No. 1 is something that you have to see to believe.

Prior to this year, when the State of South Carolina assumed responsibility for all school buses, neither white nor Negro schools in Clarendon had buses.

As of now, the Negro schools of District 1 are served by twelve buses, all except two brand new.

Three buses, only one of them new, serve the two white schools.

There are some white people in District 1 who wonder, frankly, if it won't be time, pretty soon, for "equalization" to go in the other direction.

They are thinking about the buses.

But mainly they are thinking about the dream school—costing upwards of \$200,000—destined for Scott's Branch.

Clarendon County's elementary

school for white children is in Summerton. It was built in 1907 at a cost of \$28,000—and looks it. A good deal of NAACP testimony at the trial was pointed at the fact that this school does have indoor toilets. For the record, this plumbing was installed a few years back, NOT at public expense, but by the Summerton Parent-Teacher Association. They installed the plumbing in two old-fashioned "cloak rooms." The Negroes have not organized a PTA.

Across the street is the Summerton High School. It has modern plumbing—with concrete floors. It was built during the depression as a WPA project and cost \$25,000 or thereabouts. Its lunchroom and kitchen (also mentioned in the trial) are adequate but crude, featuring a coal-burning range and some quite plain chairs and tables.

Summerton High School does have a gymnasium. This facility will not be duplicated at Scott's Branch, because under emergency conditions NPA will not release materials for gymnasium and auditorium.

Finally, Summerton High teaches typing. This facility has been installed already at Scott's Branch. Mr. Bechtman bought 16 identical typewriter stands and equipped them with modern machines. Commercial typing is now available to Negro students.

"We've done our best, said Mr. Bechtman, "with what we had. We need time, and money. Mostly, with the money the state is making available, we need time. This job can't be finished overnight."

(Tomorrow: What will "equalization" of white and Negro schools cost in District 1?)

cluding two of the plaintiffs in the NAACP action.

It is pleasant to report that the Negroes seem satisfied with what has happened this summer, or at any rate they said they were satisfied—and heartened.

I encountered not one Negro who said that he or she wanted races mixed in the public schools of Clarendon County. Emphatically to the contrary, they said wanted Negro students taught in all-Negro schools by all-Negro teachers, and they offered reasons which they obviously had thought-out for themselves.

But—they do want BETTER schools for their children than they have had in the past. They have watched with intense interest what was done last summer, and the plans projected for the future, in carrying out the court's decree.

To understand what has been done, it is necessary to define a phrase which occurred frequently in the trial, but which was never explained adequately.

Often the lawyers referred to "re-districting". But you have to go into Clarendon County to know what that means. It is the very heart of the State of South Carolina's plan to modernize and equalize its public school system through a bond issue implemented by the 3 per cent sales tax.

This state-wide plan has had its most urgent impact in Clarendon County, because Clarendon is "in the fire." There's no doubt about it. Things have had to happen quickly, and they have happened quickly.

A prerequisite for participation in sales tax bond money was re-districting. Throughout Clarendon County, there were upwards of 60 separate Negro schools; rural schools operated by a couple of dozen "districts". One of these was No. 22, which under the old system embraced Scott's Branch elementary and high school on the outskirts of Summerton, plus nearby Liberty Hill and Rambay, both rickety and draughty and totally inadequate even by primitive standards, as counsel for the de-

#### NEW DISTRICT PATTERN—

South Carolina's new school development plan as implemented by the 3 per cent sales tax demands re-districting of many rural areas, notably Clarendon County, which formerly had upwards of 60 separate school districts and now has only three. This map shows the southwestern one-third of Clarendon County, which now constitutes School district No. 1, centering in Summerton. When the National Association for the Advancement of Colored People attacked segregation in Clarendon County it focused on old District 22, which included only three Negro schools, Liberty Hill (No. 10 on the map), Scott's Branch, No. 17, and Rambay, No. 16. The new districting merges No. 22 with old Nos. 1, 2, 3, 4, 7, 8, 26 and 30 into new District 1. This large area now has 24 separate Negro schools, only two for whites, both of which are in Summerton. The plan for District 1 calls eventually for abandoning practically all these Negro schools, and the construction of four consolidated schools, served by a comprehensive system of school buses. The new consolidated school at Scott's Branch, No. 17 in the center of the map, for which bids have been asked, will serve the entire high school needs of the district,

and also will absorb elementary school students from Ramby (16), Zoah Hill (18), Oak Grove (19) and Davis Station (20). The trustees have obtained by purchase and gift three 10-acre sites for other consolidated schools still in the preliminary planning stage. These sites are designated by the heavy circles Nos. 5, 12, and 26. When they are constructed, they will absorb existing school populations according to the following pattern: The school to be built at No. 5 will replace New Hope Elementary (No. 1), Wells (2), Spring Grove (3), St. John (4), Panola (6), Rockhart (7) and Silver (8). The new school at Circle No. 12 will replace St. Phillips (9), Liberty Hill (10), St. Paul (11), Oaks (13), Butler (14), Santee (15) and will also absorb about half the students at Briggs Chapel (25). The new consolidated school at Circle No. 26 will replace schools at Pine Grove (21), Spring Hill (22), another Spring Hill (23), Cross Roads (24), St. James (27), Felton Rosenwald (28), and the other half of students from Briggs Chapel (25). This plan of consolidation has been worked out after surveys by the S. C. Educational Finance Commission, which has adopted consolidation as the best method of replacing Negro rural schools with "equal" educational facilities.

fense speedily confessed at the trial.

As of now, District 22 no longer exists as a legal entity.

It has been merged with eight other districts in the southwestern end of the county, and is now District 1. It includes the white high school and the white elementary school, both at Summerton. It also includes 24 Negro schools, of which the largest and best is Scott's Branch, notwithstanding its outdoor privies.

Incidentally, the Negro professor from Howard University was dead wrong when he told the court that

Scott's Branch has "one (toilet) seat and one urinal for 309 boys."

Heaven knows the privy is disreputable but it does have four seats and it does have four urinals, made crudely by cracking 10-inch clay pipes in half and setting the pieces upright in a concrete drain. I did not inspect the distaff arrangement, which Prof. Whitehead said had "one seat for 394 girls," but its exterior dimensions were about the same as that of the male outhouse.

I shan't burden the record with descriptions of sordidness in the Negro schools which were merged into District 1 in order to provide

LAW OFFICES  
S. E. ROGERS  
SUMMERTON, S. C.

April 29, 1966

Judge Charles E. Simons, Jr.  
United States District Court  
Charleston, S. C. 29402

Dear Judge Simons:            Re: Civil Action No. 2657  
    Harry Briggs, et al.  
    vs. Elliott, et al.

I have received the Clerk's notice of a conference to be held in the above matter on Tuesday May 3rd.

I have not been Counsel for the School District, or the Board of Trustees, the Defendants in this matter, since the formation of the legal staff of the Gressette Committee, and I am not in a position to act for, or on behalf of, the Defendants. I have taken the liberty of handing your notice to Mr. J. W. Sconyers, the present Chairman of the Board of Trustees of School District No. 1, who has advised me that Mr. David W. Robinson, Jr., of Columbia, has been Counsel for the Board and will act for the Board in this matter.

Very truly yours,



S. E. Rogers

SER:lk

CC: Mr. D. W. Robinson, Jr.  
Robinson, McFadden, and Moore  
Attorneys-at-Law  
Box 1942  
Columbia, S. C.

Dean Robert Mc C. Figg, Jr.  
Law School  
University of South Carolina  
Columbia, S. C.

Mr. J. W. Sconyers, Chairman  
Board of Trustees  
School District No. 1  
Summerton, S. C.

LAW OFFICES OF  
ROBINSON, McFADDEN & MOORE

1213 LADY STREET  
P. O. BOX 1942  
COLUMBIA, S. C. 29202

TELEPHONE 252-6311

June 2, 1966

DAVID W. ROBINSON  
J. MEANS McFADDEN  
R. HOKE ROBINSON  
THOMAS T. MOORE  
DAVID W. ROBINSON II  
WILLIAM L. POPE  
JAMES F. DREHER, COUNSEL

DAVID W. ROBINSON, SR.  
(1869-1935)  
ALICE ROBINSON  
(RET. 1956)

JUN 3 1966

MILLER C. FOSTER, JR. (CLERK)

Mr. Miller C. Foster, Jr.  
Clerk, USDC, DSC  
Federal Court House  
Columbia, S. C.

Re: Briggs v. Elliott C/A No. 2657

Dear Miller:

In line with the direction of the Honorable Charles E. Simons, United States District Judge, we prepared and submitted to counsel for the plaintiffs, a proposed consent order dismissing this cause as moot. I enclose the original consents, together with copies to be forwarded to counsel for each party when the order is filed.

Sincerely,

  
D. W. Robinson

(Enc. Orig., 5 copies)

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

FILED

JUN - 3 1966

MILLER G. FOSTER, JR., CLERK

C/A No. 2657

Harry Briggs, Jr., et al, )  
)  
)  
Plaintiffs )  
)  
-vs- )  
)  
R. W. Elliott, et al, )  
)  
)  
Defendants )

ORDER OF DISMISSAL

# 1  
This suit for declaratory and injunctive relief was brought in behalf of Negro school children, then residing in School District No. 22, Clarendon County, South Carolina. The Complaint alleged that the plaintiff children were denied the equal protection of the laws both because the separate schools maintained by the School District for them were inferior to those maintained for white children and because separation of school children in schools on the basis of race was in itself a deprivation of equal protection. A three-judge district court was convened to hear the cause. Subsequent to the filing of the suit school districts in Clarendon County were consolidated and the suit was continued against the consolidated district, Clarendon District No. 1. Its history will be found in the several reports of the case. Briggs v. Elliott, 98 F.Supp. 529 (1951); 342 U.S. 350 (1952); 103 F.Supp. 920 (1952); 347 U.S. 483 (1954); 349 U.S. 294 (1955); 132 F.Supp. 776(1955). It need not here be repeated.

Since the decision of the three-judge district court in 1955 the cause has been dormant. Meanwhile a second suit entitled Bobby Brunson, et al, vs. Board of Trustees of Clarendon School District #1, et al, C/A 7210, asking for the same relief, was instituted in this court. Some of the plaintiffs were the same as those named in Briggs v. Elliott. Both suits were brought as class actions. The Brunson suit resulted in an order on the merits filed by this Court on August 19, 1965.

Since both suits asked for the same relief and since in the Brunson

suit an order on the merits has been filed, there seems to be no reason to continue Briggs v. Elliott on the calendar; it is, therefore:

ORDERED AND ADJUDGED that the above entitled action be and hereby is dismissed as moot.

Charles E. Limonick  
United States District Judge

# 2 June 3, 1966

WE CONSENT:

[Signature]  
[Signature]  
Attorneys for Plaintiffs

[Signature]  
[Signature]

Attorneys for Defendants

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
C/A No. 2657

---

Harry Briggs, Jr., et al,

Plaintiffs

-VS-

R. W. Elliott, et al,

Defendants

---

ORDER OF DISMISSAL

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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

C/A No. 2657

Harry Briggs, Jr., et al, )  
)  
)  
Plaintiffs )  
)  
-vs- )  
)  
R. W. Elliott, et al, )  
)  
)  
Defendants )

ORDER OF DISMISSAL

ORIGINAL FILED  
JUN 3 1966  
MILLER C. FOSTER, JR., CLERK

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Since both suits asked for the same relief and since in the Brunson

suit an order on the merits has been filed, there seems to be no reason to continue Briggs v. Elliott on the calendar; it is, therefore:

ORDERED AND ADJUDGED that the above entitled action be and hereby is dismissed as moot.

CHARLES E. SIMONS, JR.

United States District Judge

June 3, 1966

WE CONSENT:

Lincoln C. Jenkins Jr  
Matthew J. Perry

Attorneys for Plaintiffs

Robert McC. Figg Jr  
DW Robinson

Attorneys for Defendants

-2-

TRUE COPY

TEST:

MILLER C. FOSTER, JR., CLERK

By: John E. Rogers  
Deputy Clerk

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
C/A No. 2657

---

Harry Briggs, Jr., et al,

Plaintiffs

-vs-

R. W. Elliott, et al,

Defendants

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ORDER OF DISMISSAL

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No. \_\_\_\_\_

IN THE \_\_\_\_\_ COURT

OF THE UNITED STATES

FOR THE

of \_\_\_\_\_

vs.

Filed \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.

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

---

HARRY BRIGGS, Jr., et al  
Plaintiffs

v.

R.W.Elliott, et al  
Defendants

---

MOTION TO STRIKE PLAINTIFFS  
AND INTERVENORS

---

Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, N.Y.

Harold R. Boulware  
1109 $\frac{1}{2}$  Washington Street  
Columbia, S. Carolina

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

CIVIL ACTION NO. 2657

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HARRY BRIGGS, JR., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al.,

Defendants

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PRAECIPE

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Thurgood Marshall  
Counsel for Appellants

JUDGE'S COPY

Civil Action 2657

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

CHARLESTON DIVISION.

---

CIVIL ACTION FILE NO. 2657.

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,  
Defendants.

---

DESIGNATION OF ADDITIONAL  
PORTIONS OF THE RECORD DESIRED  
TO BE INCLUDED IN TRANSCRIPT.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

---

CIVIL ACTION FILE NO. 2657.

---

HARRY BRIGGS, et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, Chairman,  
J. D. CARSON, et al.,  
Members of Board of Trustees  
of SCHOOL DISTRICT #22,  
CLARENDON COUNTY, S. C.,  
et al.,

Defendants.

---

ANSWER.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
207 Peoples Office Bldg.,  
Charleston, S. C.

JUDGE'S COPY

Civil Action 2657

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

Civil Action No. 2657

---

HARRY BRIGGS, Jr., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al

Defendants

\*

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ORDER ALLOWING APPEAL  
CITATION ON APPEAL  
PETITION FOR APPEAL  
STATEMENT REQUIRED BY RULE 12  
ASSIGNMENT OF ERRORS

---

Harold R. Boulware  
1109½ Washington St.  
Columbia, S. Carolina

Spottswood W. Robinson, III  
628 North Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York, 18, N.Y.

Counsel for Plaintiffs-Appellants

JUDGE'S COPY

Civil Action 2659

1

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

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Civil Action No. 2657.

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HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, CHAIRMAN, et al.,  
Defendants.

---

CERTIFICATE OF ARCHITECT.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

JUDGES COPY

CIVIL ACTION

2657

IN THE  
UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF SOUTH  
CAROLINA

CHARLESTON DIVISION

CIVIL ACTION NO. 2657

---

HARRY BRIGGS, JR., ET AL.

Plaintiffs

VS

R. W. ELLIOTT, Chairman, et al.

Defendants

---

JURISDICTIONAL STATEMENT

---

Harold R. Boulware  
1109½ Washington St.  
Columbia, S. C.

Spottswood W. Robinson, III  
628 N. Third St.  
Richmond, Va.

Robert L. Carter  
Thurgood Marshal 1  
20 West 40th St.  
New York 18, N. Y.

Counsel for Plaintiffs-Appellants

Arthur D. Shores  
A. T. Walden

Of Counsel

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

---

Civil Action No. 2657

---

HARRY BRIGGS, JR., Et. Al.,

Plaintiffs

vs

R. W. ELLIOTT, Chairman, Et Al.,

Defendants

---

STATEMENT AS TO JURISDICTION

---

Harold R. Boulware  
1109½ Washington Street  
Columbia 20, S. Carolina

Spottswood W. Robinson, III  
623 N. Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40 Street  
New York, 18, New York

Counsel for Plaintiffs-Appellants

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

CIVIL ACTION No. 2657

---

HARRY BRIGGS, Jr., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al.

Defendants

---

~~PETITION FOR APPEAL~~  
ORDER ALLOWING APPEAL  
~~CITATION ON APPEAL~~

---

Harold R. Boulware  
1109 $\frac{1}{2}$  Washington St.  
Columbia, S. Carolina

Spottswood W. Robinson, III  
623 N. Third Street  
Richmond, Virginia

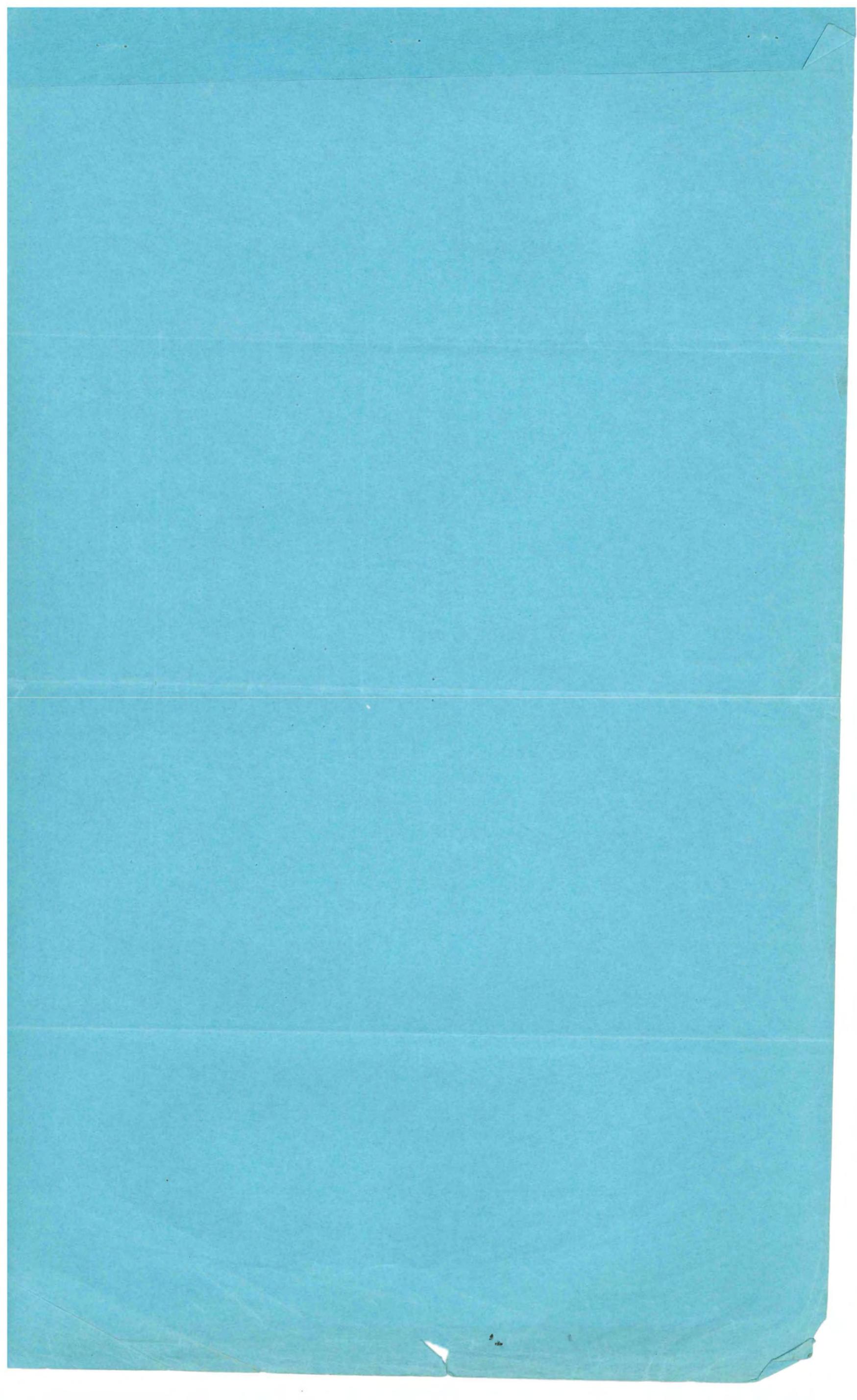
Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs-Appellant

Arthur D. Shores  
A. T. Walden,

Of Counsel

CIVIL ACTION 2657



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

---

Civil Action No. 2657.

---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, CHAIRMAN, et al.,  
Defendants.

---

SUPPLEMENTARY REPORT OF DEFENDANTS,

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

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

---

Civil Action No. 2657.

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, CHAIRMAN, et al.,  
Defendants.

---

RETURN.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

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

Civil Action No. 2657

**FILED**

MAY 23 1952

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HARRY BRIGGS, Jr., Et. Al., :  
 :  
Plaintiffs :  
 :  
vs. :  
 :  
R. W. Elliott, Chairman, et al., :  
 :  
Defendants :  
----- :

ERNEST L. ALLEN  
U. S. D. C. U. S. E. D. S. C.

ACKNOWLEDGMENT OF SERVICE

Legal and timely service, pursuant to Paragraph 2, Rule 12 of the Rules of the Supreme Court of the United States, upon undersigned counsel for defendants-appellees in the above-styled case, of true copies of:

- (a) The Petition for Appeal;
- (b) The Order Allowing the Appeal;
- (c) The Assignment of Errors and Prayer for Reversal;
- (d) The Statement as to Jurisdiction;
- (e) The Statement Directing Attention to the Provisions of Paragraph 3, Rule 12 of the Rules of the Supreme Court of the United States;
- (f) The Citation on Appeal;
- (g) Praecipe;
- (h) Stipulation as to Printing.

in the above-styled action, is hereby acknowledged this 12<sup>th</sup> day of May, 1952.

*S. E. Rogers*  
*Robert G. King Jr.*  
-----  
Counsel for Defendants-Appellees

THE EASTERN DISTRICT  
OF SOUTH CAROLINA - CHARLESTON  
DIVISION

Civil Action No 2657

HARRY BRIGGS, JR., et al.,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al

Defendants

---

STIPULATION AS TO PRINTING  
ACKNOWLEDGMENT OF SERVICE

---

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. Carolina

Spottswood W. Robinson, III  
623 N. Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, N.Y.

Counsel for Plaintiffs-Appellants

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

Civil Action No. 2657

HARRY BRIGGS, JR., ET AL.,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, ET AL.,

Defendants.

**FILED**

MAY 26 1952

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

STATEMENT OPPOSING JURISDICTION AND  
MOTION TO DISMISS OR AFFIRM.

The appellees, believing that the matters set forth below will demonstrate the lack of substance in the questions raised in this appeal, file this statement in opposition to appellants' statement as to jurisdiction, under Rule 12, paragraph 3, of the Rules of the Supreme Court of the United States.

Appellees include herein their motion to dismiss the appeal, or, in the alternative, to affirm the judgment of the United States District Court for the Eastern District of South Carolina, on the ground that the questions raised in behalf of the appellants are so unsubstantial as not to need further argument.

The instant action is for a declaratory judgment declaring the rights and legal relations of the parties. The appellants are Negro pupils attending the elementary and high schools of School District No. 22 of Clarendon County, South Carolina, and their parents or guardians. The appellees are the school officials of the school district and the county.

The complaint alleged that the elementary and high schools in the county provided for white students are superior in plant, equipment, curricula, and in other material respects to the corresponding schools provided for Negro students, and stated that the questions in actual controversy, upon which the

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required the appellees to report to that Court within six months as to the action taken by them to carry out the order. 98 F. Supp. 529.

The appellants brought a timely appeal directly to the Supreme Court under 28 U. S. C. (Supp. IV) Section 1253, and after the appeal was docketed but before its consideration by the Supreme Court the appellees on December 21, 1951, filed in the District Court their report as ordered. The District Court entered an order stating that it would withhold further action on the report while the cause was pending in the Supreme Court on appeal, and on January 28, 1952, the Supreme Court, two Justices dissenting, vacated the judgment of the District Court and remanded the case to that Court for further proceedings, stating: (342 U. S. 350)

"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."

Upon issuance of the mandate, the appellants noticed a motion for judgment upon grounds contending, in substance, (1) that the report showed that the physical facilities for Negro pupils were still unequal to those for white pupils, and (2) that equal educational opportunities could not be obtained by the appellants, "even assuming a situation of comparability in physical facilities," where Negro pupils are required to attend separate schools, as such requirement allegedly "caused injury to them in the form of permanent psychological damage, affected them with a feeling of inferiority and impaired their motivation to learn," which "would continue as long as the schools remained segregated."

The cause was heard March 3, 1952, on the report filed by the appellees, a supplementary report bringing the December 21 report up to date, filed at the hearing with leave of the Court, and the motion of the appellants. The appellants did not challenge the correctness of the reports, and the order of the District Court, filed March 13, 1952, stated:

"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."

The Court briefly summarized the reports as follows:

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"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. Enabling 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 Educational Finance Commission has resulted in funds being made available to District 1 and a plan of school house construction based on a survey of educational 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."

It should be emphasized that the December 21 report showed that all curricula and all phases of educational opportunities other than school buildings had been fully equalized at the beginning of the current school session in September, 1951, and the architect's certificate filed by the appellees in the March hearing showed that the remodeling of the Scotts Branch Elementary School and the construction of the new Scotts Branch High School (which would be attended by the appellant pupils) were then 41% complete, and that the construction contract insured their completion in August, 1952, so that the schools would be ready for occupancy in the school session beginning September, 1952.

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The District Court found and held:

"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. As 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."

The assignment of errors in the present appeal seeks to have the Supreme Court consider again the question whether the

appellants predicate their claim for relief, are: (1) that the constitutional and statutory provisions of the State of South Carolina requiring separate schools "for children of the white and colored races" (So. Car. Const. Art. XI, sec. 7; S. C. Code 1942, sec. 5377) are invalid under the Fourteenth Amendment, and (2) that the appellees have not furnished to the appellants separate educational facilities, opportunities and advantages which are equal to those afforded and available to white children of public school age similarly situated, and that this constitutes a denial of equal protection of the laws under the Fourteenth Amendment.

At the trial, commenced May 28, 1951, before a Special District Court of three Judges convened under Title 28, United States Code, Sections 2281 and 2284, the appellees, with leave of the Court, filed an amendment to their answer admitting on the record that the educational facilities, equipment, curricula, and opportunities afforded in the school district for Negro pupils were not substantially equal to those afforded in the district for white pupils. The appellees referred to the South Carolina educational legislation enacted in 1951 under which State funds to aid school districts in school construction were made available, for the specifically declared purpose of insuring equality of educational opportunity for all children throughout the State. They stated that they propose to employ every resource at their command under the new school legislation to carry out the declared purpose of the legislation in School District No. 22, and urged the Court in its discretion to give them a reasonable time to formulate and carry out a plan for ending the existing inequalities in buildings, equipment, facilities, curricula, and other aspects of the district's school system.

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 also found that the educational facilities afforded by the appellees for Negro pupils were not equal to those provided for white children, and ordered the appellees to proceed at once to furnish educational facilities for Negroes equal to those furnished white pupils. In its order, dated June 21, 1951, the District Court

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constitutional and statutory provisions of a State requiring separate schools for white and Negro school children are of themselves violative of the Fourteenth Amendment.

In Gong Lum v. Rice (1927), 275 U. S. 78, the Supreme Court held that the question sought to be presented by this appeal "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," that the "right and power of the State to regulate the method of providing for the education of its youth at public expense is clear," and that the decision "is within the discretion of the State in regulating its public schools and does not conflict with the Fourteenth Amendment."

That decision, which was preceded by many Federal and State decisions to the same effect, was clearly intended to set at rest the construction of the Fourteenth Amendment in respect to State power to provide separate schools for the two races. There can be no doubt that the construction followed by the Court in Gong Lum v. Rice, supra, was the construction placed upon the Amendment by the Congress which wrote and proposed it. That Congress also enacted legislation providing for separate schools for the two races in the District of Columbia, and those which immediately followed it consistently refused to include measures to prohibit the establishment of separate schools by the States in the several Civil Rights Acts. Compare Cory v. Carter (1874), 48 Ind. 327; Carr v. Corning (1950), 182 F. 2d 14; and, inter alia, 42nd Cong., 2nd Sess., pp. 3271, 3734, 3735; 43rd Cong., 2nd Sess., pp. 997, 1010, 1011.

The decisions of State and Federal courts construing the Fourteenth Amendment within a few years of its proposal by the Congress and its ratification by the States show the general understanding that the Amendment was not intended to and did not limit State power to provide separate schools for the two races. State ex rel Carnes v. McCann (1871), 21 Oh. St. 198; Cory v. Carter (1874), 48 Ind. 327; Ward v. Flood (1874), 48 Cal. 36; Bertonneau v. Board of Directors (1878), Fed. Cas. No. 1, -361, 3 Woods 177; Eggle ex rel King v. Gallagher (1883), 93 N. Y. 438. State

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

VOL 73 PAGE 328  
FILED  
MAY 9 1952  
ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

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HARRY BRIGGS, Jr., et al, :  
 :  
 Plaintiffs :  
 :  
 vs. :  
 :  
 R. W. ELLIOTT, Chairman, et al, :  
 :  
 Defendants :  
 :  
 :  

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CITATION ON APPEAL

TO: R. W. Elliott, Chairman, J. D. 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; and 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

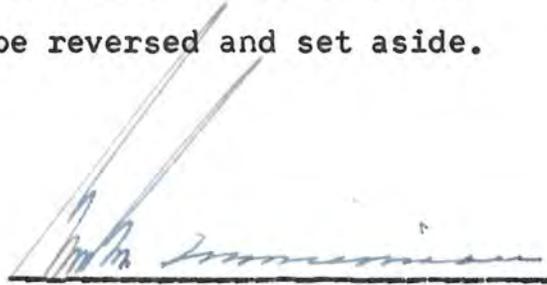
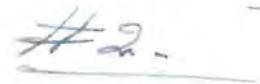
Defendants

Greetings:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, within forty (40) days from the date hereof

#1. BT  
*[Signature]*

pursuant to an order allowing an appeal from the final decree made and entered in the above-entitled cause on March 12, 1952 to show cause, if any there be, why said decree rendered against appellants should not be reversed and set aside.

  
Judge  
  


Dated: May 9, 1952

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs  
vs.  
R. W. ELLIOTT, Chairman, et al.,  
Defendants

---

FILED

MAY 9 1952

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

TO: R. W. Elliott, Chairman, J. D. 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; H. B. Betchman, Superintendent of School District #22; and 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

Pursuant to paragraph 2, Rule 12, of the Rules of the Supreme Court of the United States, you are hereby served with copies of the petition for appeal, for a stay of the judgment and decree of March 12, 1952, the issuance of citation and for the fixing of the amount of the appeal bond; order allowing appeal directing the issuance of citation and fixing the amount of the appeal bond; assignment of errors and prayer for reversal, statement of jurisdiction, and citation.

Your attention is directed to the provision of Rule 12, paragraph 3, which reads as follows:

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"Within 15 days after such service the appellee may file with the Clerk of the Court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this Court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3."

*Harold R. Boulware*

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

*Spottswood W. Robinson, III*

Spottswood W. Robinson, III  
623 North Third Street  
Richmond, Virginia

*Robert L. Carter*  
*Thurgood Marshall*

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs

George E. C. Hayes

James M. Nabrit

Arthur D. Shores

A. T. Walden

Of Counsel

Dated: May 9, 1952

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED

MAY 14 1952

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

---

HARRY BRIGGS, et al.,  
Plaintiffs,  
vs.  
R. W. ELLIOTT, Chairman, et al.,  
Defendants.

---

PRAECIPE

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

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.

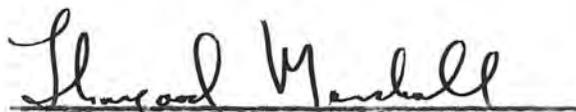
21. Transcript of second hearing held March 3, 1952.

22. Opinion and decree of district court filed March 13, 1952.

23. Petition for appeal

24. Order allowing appeal

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

THE EASTERN DISTRICT OF SOUTH  
CAROLINA - CHARLESTON DIVISION

CIVIL ACTION NO. 2657

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al  
Defendants

---

PRAECIPE

---

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. Carolina

Spottswood W. Robinson, III  
623 N. Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs-Appellants

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

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HARRY BRIGGS, JR., et al.,	:	<b>FILED</b> MAY 9 1952 ERNEST L. ALLEN C. D. C. U. S. E. D. S. C.
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
R. W. ELLIOTT, Chairman, et al,	:	
	:	
Defendants.	:	
	:	

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PETITION FOR APPEAL

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 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

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HRB

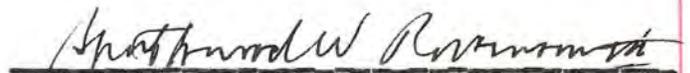
Richardson, infants, by Lee Richardson, their father and next friend; Daniel Bennett, John Bennett and Clifton Bennett, infants, by James H. Bennett, their father and next friend; Louis Oliver, Jr., an infant, by Mary Oliver, his mother and next friend; Gardeneia Stukes, Willie M. Stukes, Jr., and Louis 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; 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 Gabriel 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

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HRB

authenticated be sent to the Supreme Court of the United  
in accordance with the rules in such case made and provided.

Respectfully submitted,

  
Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

  
Spottswood W. Robinson, III  
623 North Third Street  
Richmond, Virginia

  
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

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

---

HARRY BRIGGS, et al.,  
Plaintiffs,  
vs.  
R. W. ELLIOTT, Chairman, et al.,  
Defendants.

---

FILED

MAY 14 1952

ERNEST L. ALLEN  
CLERK U.S.D.C.

PRAECIPE

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:

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- ✓ 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

✓ 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.

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✓ 22. Opinion and decree of district court filed March 18, 1952.

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- X 29. Acknowledgment of Service of these appeal papers.
- ✓ 30. This Praecipe.

*Thurgood Marshall*

---

Thurgood Marshall  
Counsel for Plaintiffs-  
Appellants

Dated: May 9, 1952

Civil Action No. 2657

---

HARRY BRIGGS, JR., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al

Defendants

---

PRAECIPE

---

Harold R. Boulware  
1109 $\frac{1}{2}$  Washington Street  
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Spottswood W. Robinson, III  
623 North Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40 Street  
New York 18, N.Y.

Counsel for Plaintiffs-Appellants

May 19, 1952

Thurgood Marshall, Esquire  
Attorney at Law  
20 West 40th Street  
New York 18, New York

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al  
vs.  
R. W. Elliott, Chairman, et al

Dear Sir:

I have your letter of the 15th instant in the above matter, for which I thank you.

The appeal record which is forwarded to the Supreme Court of the United States is always retained by that Court as they do not have the same rules as those which have been adopted by the various Courts of Appeal. In the case of the Courts of Appeal, the original record is certified by the Clerk and it is returned to the Clerk's office along with the Mandate and Opinion when the case has been decided. Hence, the transcript of the first trial is not available for the second appeal. It would, therefore, seem to me that you should probably authorize Mrs. Appleby to file with me her copy of the transcript of the first trial to be forwarded with the appeal record in the case, as designated by you, and let me retain the copy now on file. As a matter of fact, if the copy of the transcript of the first trial that is in my office is used for the purpose of this appeal, then under the decision of the Judicial Council of Senior Circuit Judges of September, 1951, she would be entitled to bill you for such copy. Hence, from the standpoint of expense to Appellants, it would not make any difference as the reporter would be entitled to pay in either event.

For the above reasons, I suggest that you immediately authorize Mrs. Appleby to file the copy transcript of the first trial with me as I am now doing preliminary work on assembling the appeal record and, of course,

Thurgood Marshall, Esquire

-2-

May 19, 1952

would like to get it completed and out of the office as early as possible as I have many other appeals pending.

I assume the acknowledgment of service by the defendants of the papers mailed to Mr. Figg will be filed with me in a day or so either by Mr. Figg or by your office.

With my best wishes to you, I am

Most sincerely,

Ernest L. Allen,  
Clerk

ELA:vj







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

Civil Action No. 2657.

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
versus  
R. W. ELLIOTT, Chairman, et al.,  
Defendants.

FILED

MAY 21 1952

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD  
DESIRED TO BE INCLUDED IN TRANSCRIPT.

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.

A TRUE COPY. ATTEST

*Ernest L. Allen*  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

/s/ S. E. Rogers  
S. E. Rogers, Summerton, S. C.

/s/ Robert McC. Figg, Jr.  
Robert McC. Figg, Jr.,  
18 Broad Street, Charleston, S. C.

Counsel for Appellees.

Dated May 20, 1952.

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

Civil Action No. 2657.

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
versus  
R. W. ELLIOTT, Chairman, et al.,  
Defendants.

FILED

MAY 21 1952

ERNEST L. ALLEN  
Clerk, U.S. E.D.S.C.

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD  
DESIRED TO BE INCLUDED IN TRANSCRIPT.

TO THE HONORABLE ERNEST L. ALLEN, CLERK OF THE ABOVE NAMED COURT:-

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3. This Designation as to the record.

*S. E. Rogers*

S. E. Rogers, Summerton, S. C.

*Robert McC. Figg, Jr.*

Robert McC. Figg, Jr.,  
18 Broad Street, Charleston, S. C.

Counsel for Appellees.

Dated May 20, 1952.

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

---

Civil Action No. 2657.

---

HARRY BRIGGS, Jr., et al.,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,

Defendants.

---

DESIGNATION OF ADDITIONAL  
PORTIONS OF THE RECORD  
DESIRED TO BE INCLUDED IN  
TRANSCRIPT.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

power to provide such separate schools was recognized and upheld prior to the adoption of the Fourteenth Amendment, under a State constitutional provision similar in effect. Roberts v. City of Boston (1849), 5 Cush. 198. These cases and many others were cited with approval in Plessy v. Ferguson (1896), 163 U. S. 537, and in Gong Lum v. Rice (1927), supra.

We have failed to discover any decision, Federal or State, in the period immediately after the adoption of the Fourteenth Amendment or since then, or any action of the Congress, which has cast any doubt upon the power of a State under that Amendment in regulating its public schools to provide separate schools for the pupils of the two races.

This conclusion is not affected by "the rationale" of Sweatt v. Painter (1950, 339 U. S. 629) and McLaurin v. Board of Regents (1950, 339 U. S. 637), as is contended by the appellants. In the Sweatt case a separate law school was enjoined because it was found that equality could not in fact be thereby afforded, in view of considerations peculiar to the requirements of a legal education, while in the McLaurin case discriminatory regulations imposed on a Negro student in the enjoyment of the only facilities furnished students by the State were enjoined. The lack of power to discriminate in the use of a single facility does not support a conclusion that equality of educational opportunities may not be afforded by separate facilities. These cases represent an application of, and not a departure from, the long-standing interpretation of the equal protection clause. The obvious differences in the problems presented by graduate and professional schools on the one hand and elementary and high schools on the other were noticed in the opinion of the District Court, and referred to in the testimony. (R. 178, 179.) Appellants' counsel stated to the Court in his summation: "I grant there is a difference between university and college levels and elementary and high school levels. I agree there is a difference. Of course there is a difference." The District Court held that "as good education can be afforded in Negro schools as in white schools." There was no evidence offered to the contrary.

The District Court noted the fact that South Carolina has a compulsory education law applicable to children of public school age. If the State cannot provide separate schools for the two

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racess, it would be put to a choice of ending its compulsory education law or of compelling enforced commingling of the children of the two races under penalties imposed upon the parents or guardians of the children. Appellants' witness Mrs. Trager conceded that emotional conflict between the races and frustrations and aggressions do arise between the white and colored races where they live together in the same area in great numbers (R. 176). In the new school district, District 1, the reports filed by the appellees show that in a class of 30 pupils, there would on the average be 3 white pupils and 27 colored pupils. The administrative difficulties and disruption of the school system which would result from mixed schools at the present time and under present conditions are testified to by the witness E. R. Crow (R. 127, 128), and recognized by the appellants' witness Dr. Redfield (R. 210, 211, 212, 215, 223-224), whose testimony almost entirely concerned college and professional school levels. There is no phase of the instant case which is comparable to that presented in the case of professional and graduate schools.

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R.M.F.G.  
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The contention of the appellants that Negro children suffer psychological damage from the State's requirement that they attend Negro schools is quite theoretical under the evidence, but even if accepted at face value it would not serve to invalidate the power of the State to prescribe such regulations, including separate schools for the two races, in reference to its system of public schools as are found necessary to conserve, promote and secure the educational advantages of both races. The incidental effect upon an individual or group of such necessary regulations does not limit the power to make them, unless they are, "beyond all question, a plain, palpable invasion of rights secured by the fundamental law \* \* \* ." Compare Jacobson v. Commonwealth of Massachusetts, 197 U. S. 11, 30, 31, 36-38. It is apparent that this attack upon the constitutionality of the State's constitutional and statutory provisions under consideration "begs the question."

The appellants say that the District Court predicated its decision on the doctrine of Plessy v. Ferguson, supra. The District Court, however, after considering all of the applicable

authorities, held:

"\* \* \* 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."

It should be borne in mind that in the instant case the appellants are assured, and not denied, equal educational opportunities, advantages and facilities. Decisions and dicta condemning the denial to one race of what another is given or permitted, or disapproving a classification based upon race which has no reasonable relation to the object of legislation, have no application.

There remains to be referred to the contention of the appellants that in any event the District Court should have enjoined the maintenance of separate schools in the school district, the State's constitutional and statutory provisions to the contrary notwithstanding, because they were admitted not to be equal. The District Court, upon full consideration of the circumstances, including the ability of the school district in the light of the state aid made available by the 1951 State school legislation, exercised its equitable discretion to command the provision of equal educational facilities, advantages and opportunities. In a school district having a school population of approximately 9 to 1 colored, this was obviously highly favorable to the cause of Negro education, for the white schools were manifestly unable to contain the whole school population. With equality assured by the opening of the September, 1952, school session, and only a few months of the current school term remaining, the Court did not attempt to achieve equal protection of the laws by "the indiscriminate imposition of inequalities," with the attendant disruption of the schools of the district.

The action being one for a declaratory judgment, the

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matter was addressed to the equitable discretion of the Court. In Eccles v. Peoples Bank, etc., 333 U. S. 426, the Supreme Court held:

"A declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest \* \* \* It is always the duty of a court of equity to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief. Especially where governmental action is involved, courts should not intervene unless the need for equitable relief is clear, not remote or speculative."

In the instant case, there was clearly no abuse of judicial discretion on the part of the District Court. It recognized and declared the rights of the appellants, and decreed that they be promptly afforded by immediate action. The Court found that the appellees had acted promptly and in the highest good faith to carry out the Court's command. The Court concluded that it was in the public interest, and in the interest of the appellants and their educational opportunities to order that equality of such opportunities be afforded, and that it was not in either their interest or in the public interest that they be given a somewhat speculative opportunity to share in existing inequalities. The end to be attained was better educational advantages for the appellants; and this end was more surely and speedily attainable by the Court's action than it was in any other way.

WHEREFORE, the appellees respectfully move the Court to dismiss this appeal, or, in the alternative, to affirm the decree of the District Court heretofore entered herein.

Respectfully submitted,

*S. E. Rogers*

S. E. Rogers,  
Summerton, S. C.

*Robert McC. Figg, Jr.*

Robert McC. Figg, Jr.,  
Charleston, S. C.

Counsel for appellees.

S. E. R.  
R. M. F. J.

9

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

---

Civil Action No. 2657.

---

HARRY BRIGGS, Jr., et al.,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,

Defendants.

---

STATEMENT OPPOSING JURISDICTION  
AND MOTION TO DISMISS OR AFFIRM.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
Charleston, S. C.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19 54.

Costs of Harry Briggs, Jr., et al.,

in No. 2

19 54., October Term—Docketing cause and filing record, \$		
<del>appearance,</del>		
<del>filing precipe and receipt,</del>		
<del>;</del> <del>filing papers,</del>		
<del>filing briefs, \$</del>		
<del>;</del> <del>submission, .20; order, .20; filing and recording, .65; cer-</del>		
<del>tified copy of the order, \$</del>		
<del>;</del> <del>Docket Fees</del>	150	00
<del>Supervising Printing of Record</del>	270	48
<del>Printing Record</del>	1293	73
<del>argument, .20; judgment, decree, \$1.00; filing same, .25; recording, .40; mandate,</del>		
<del>\$</del>		
<del>;</del> <del>preparing record for printer, etc., \$</del>		
<del>;</del> <del>cost of printing</del>		
<del>record, \$</del>		
<del>;</del> <del>attorney's docket fee, \$20.00; costs and copy, .40;</del>		
	1714	21

FEE BOOK, PAGE 56 009

Harold B. Willey  
 TEST: ~~CHARLES ELMORE CROPLEY,~~  
 Clerk of the Supreme Court of the United States.

By Hughw Barr  
 Deputy.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19 54

Costs of Harry Briggs, Jr., et al.,

in No. 2

19 54, October Term—Docketing cause and filing record, \$	appearance,		
filing precept and receipt,	filing papers,		
filing briefs, \$	submission, 20; order, 20; filing and recording, 65; cer-		
tical copy of the order, \$	Docket Fees	150	00
	Supervising Printing of Record	270	48
	Printing Record	1293	73
argument, 20; judgment, decree, \$1.00; filing same, 25; recording, 40; mandate,			
\$	preparing record for printer, etc., \$		
record, \$	attorney's docket fee, \$20.00; costs and copy, 40;		
		1714	21

FEE BOOK, PAGE 56 009

Harold E. Willey  
 TEST: ~~CHARLES ELMORE GROBLEY,~~  
 Clerk of the Supreme Court of the United States.

By Hughw Barr  
 Deputy.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

Costs of Harry Briggs, Jr., et al.,

in No. 2

1954, October Term—Docketing cause and filing record, \$	appearance,		
filing precept and receipt,	filing papers,		
filing brief, \$	submission, 20; order, 20; filing and recording, 63; cer-		
ified copy of the order, \$	Docket Fees	150	00
	Supervising Printing of Record	270	48
	Printing Record	1293	73
argument, 20; judgment, decree, \$1.00; filing same, 25; recording, 40; mandate,			
\$	preparing record for printer, etc., \$		
cost of printing	record, \$		
attorney's docket fee, \$20.00; costs and copy, 40;			
		1714	21

FEE BOOK, PAGE 56 009

Harold E. Willey  
 TEST: ~~CHARLES ELMORE CROBLEY,~~  
 Clerk of the Supreme Court of the United States.

By Hugh W. Barr  
 Deputy.

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF SOUTH CAROLINA

CHARLESTON A

ERNEST L. ALLEN  
CLERK

February 11th, 1955

Mr. John C. Rogers, Deputy Clerk  
United States District Court  
Columbia, South Carolina

RE: Civil Action No. 2657  
Harry Briggs, Jr., et al. vs.  
R. W. Elliott, Chairman, et al.

Dear John:

Blaney Cook talked with me over the telephone this afternoon about securing a copy of the testimony in the above case and I told him that I would send it to you with the understanding that you would be responsible for it and that when it has served its purpose it would be delivered to you to be sent back to me.

Hence, I am enclosing three volumes, two volumes being filed July 25th, 1951 and one volume being filed April 24th, 1952. I understand Judge Timmerman may be interested in this testimony but you will get in touch with Blaney and find out who really wants it sent. Send the three volumes back when they have served their purpose.

With my regards, I am

Most sincerely yours,

Ernest L. Allen, Clerk.

ELA: chp

Encls.

FILED

JUN 29 1955

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

UNITED STATES OF AMERICA, SS:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the United States

District Court for Eastern District of South Carolina

GREETING:

Whereas, lately in the United States District Court for the Eastern District of South Carolina, before you, or some of you, in a cause between Harry Briggs, Jr., et al., Plaintiffs, and 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., et al., Defendants, wherein the judgment of the said District Court, filed in said cause on the 13th day of March, A. D. 1952, is in the following words, viz:

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. H. 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 sections 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 District of South  
Carolina.

as by the inspection of the transcript of the record of the said District Court, which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-four, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel;

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court, in this cause be, and the same is hereby, reversed with costs; and that the said plaintiffs, Harry Briggs, et al., recover from the said defendants One Thousand Seven Hundred Fourteen Dollars and Twenty-one Cents for their costs herein expended.

AND IT IS FURTHER ORDERED that this cause be, and the same is hereby, remanded to the said District Court to take such proceedings and enter such orders and decrees consistent with the opinions of this Court as are necessary and proper to admit to public schools on a racially

nondiscriminatory basis with all deliberate speed the parties to this case.

May 31, 1955.

You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinions and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable EARL WARREN, Chief Justice of the United States, the twenty-seventh day of June, in the year of our Lord one thousand nine hundred and fifty-five.

Costs of plaintiffs

Clerk \$420.48

Printing record \$1293.73

\$1714.21

/s/ HAROLD B. WILLEY  
Clerk of the Supreme Court of the  
United States.

By: /s/ Hugh W. Barr

Deputy.

FILED

JUN 29 1955

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

UNITED STATES OF AMERICA, SS:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the United States

District Court for Eastern District of South Carolina

GREETING:

Whereas, lately in the United States District Court for the Eastern District of South Carolina, before you, or some of you, in a cause between Harry Briggs, Jr., et al., Plaintiffs, and R. W. Elliott, Chairman, J. B. Carson and George Kennedy, Members of the Board of Trustees of School District No. 22, Clarendon County, S. C., et al., Defendants, wherein the judgment of the said District Court, filed in said cause on the 13th day of March, A. D. 1952, is in the following words, viz:

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(1) That R. W. Elliott, Chairman, J. B. 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 District of South  
Carolina.

as by the inspection of the transcript of the record of the said District Court, which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-four, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is ordered and adjudged by this Court that the judgment of the said District Court, in this cause be, and the same is hereby, reversed with costs; and that the said plaintiffs, Harry Briggs, et al., recover from the said defendants One Thousand Seven Hundred Fourteen Dollars and Twenty-one Cents for their costs herein expended.

AND IT IS FURTHER ORDERED that this cause be, and the same is hereby, remanded to the said District Court to take such proceedings and enter such orders and decrees consistent with the opinions of this Court as are necessary and proper to admit to public schools on a racially

nondiscriminatory basis with all deliberate speed the parties to this case.

May 31, 1955.

You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinions and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable EARL WARREN, Chief Justice of the United States, the twenty-seventh day of June, in the year of our Lord one thousand nine hundred and fifty-five.

Costs of plaintiffs

Clerk \$420.48

Printing record \$1293.73

\$1714.21

/s/ HAROLD B. WILLEY  
Clerk of the Supreme Court of the  
United States.

By: /s/ Hugh W. Barr

Deputy.

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(S.) Armistead A. Dobie, U. S. Circuit Judge,  
Fourth Circuit,

(S.) George Bell Timmerman, U. S. District Judge,  
Eastern and Western District of South  
Carolina.

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AND IT IS FURTHER ORDERED that this cause be, and the same is hereby, remanded to the said District Court to take such proceedings and enter such orders and decrees consistent with the opinions of this Court as are necessary and proper to admit to public schools on a racially

nondiscriminatory basis with all deliberate speed the parties to this case.

May 31, 1955.

You, therefore, are hereby commanded that such proceedings be had in said cause, in conformity with the opinions and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable EARL WARREN, Chief Justice of the United States, the twenty-seventh day of June, in the year of our Lord one thousand nine hundred and fifty-five.

Costs of plaintiffs

Clerk \$420.48

Printing record \$1293.73

\$1714.21

/s/ HAROLD B. WILLEY  
Clerk of the Supreme Court of the  
United States.

By: /s/ Hugh W. Barr

Deputy.

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

FILED

JUN 29 1955

ERNEST L. ALLEN  
U. S. D. C. U. S. E. D. S. C.

---

HARRY BRIGGS, Jr., et al.,

Plaintiffs

v.

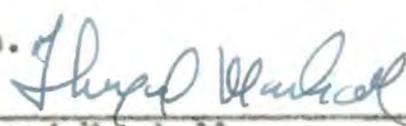
R. W. ELLIOTT, et al.

---

CIVIL ACTION  
No. 2657

MOTION FOR HEARING ON FORMULATION OF DECREE AND JUDGMENT

Plaintiffs in the above entitled case respectfully move the Court to set this case for an early hearing for the purpose of formulating and entering a decree in conformity with the decisions of the Supreme Court of the United States heretofore rendered in this action.

  
Thurgood Marshall  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, of counsel for plaintiffs in the above entitled action hereby certify that on the twenty-eighth day of June, 1955 I served the attached Motion for Hearing On Formulation of Decree and Judgment upon Robert McC.Figg, Jr., Esq.

206-208 Peoples Office Bldg., Charleston, South Carolina,  
S.E. Rogers, Esq., Summerton, South Carolina and Hon. T. C.  
Callison, Attorney General of South Carolina, Columbia, South  
Carolina, attorneys for defendants, by depositing copies in the  
United States mails, prepaid, respectively addressed to them at  
the above addresses.

*Thurgood Marshall*

---

Thurgood Marshall  
Counsel for Plaintiffs.

206-208 Peoples Bldg., Charleston, South Carolina,  
S. E. Rogers, Esq., Summerton, South Carolina and Hon. T. C.  
Callison, Attorney General of South Carolina, Columbia, South  
Carolina, attorneys for defendants, by depositing copies in the  
United States mails, prepaid, respectively addressed to them at  
the above addresses.

/s/ Thurgood Marshall

---

Thurgood Marshall  
Counsel for Plaintiffs.

THE EASTERN DISTRICT OF SOUTH  
CAROLINA - CHARLESTON DIVISION

HARRY BRIGGS, Jr., et al.,

Plaintiffs

v

R. W. ELLIOTT, et al

---

CIVIL ACTION No. 2657

---

Thurgood Marshall  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. Carolina

Counsel for Plaintiffs

FILED

JUN 29 1955

ERNEST L. ALLEN  
U.S. D. & C.

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

FILED

JUN 29 1955

ERNEST L. ALLEN  
U.S. D. & C.

_____	:	
HARRY BRIGGS, Jr., et al.,	:	
Plaintiffs	:	CIVIL ACTION
v.	:	No. 2657
R. W. ELLIOTT, et al.	:	
_____	:	

MOTION FOR HEARING ON FORMULATION OF DECREE AND JUDGMENT

Plaintiffs in the above entitled case respectfully move the Court to set this case for an early hearing for the purpose of formulating and entering a decree in conformity with the decisions of the Supreme Court of the United States heretofore rendered in this action.

/s/ Thurgood Marshall  
Thurgood Marshall  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109 1/2 Washington Street  
Columbia, South Carolina  
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, of counsel for plaintiffs in the above entitled action hereby certify that on the twenty-eighth day of June, 1955 I served the attached Motion for Hearing On Formulation of Decree and Judgment upon Robert McC. Figg, Jr., Esq.

UNITED STATES OF AMERICA, SS:

FILED

JUN 29 1955

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

To the Honorable the Judges of the United States

District Court for Eastern District of South Carolina

GREETING:

Whereas, lately in the United States District Court for the Eastern District of South Carolina, before you, or some of you, in a cause between Harry Briggs, Jr., et al., Plaintiffs, and 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., et al., Defendants, wherein the judgment of the said District Court, filed in said cause on the 13th day of March, A. D. 1952, is in the following words, viz:

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 sections 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

SUPREME COURT OF THE UNITED STATES 29 1955

Nos. 1, 2, 3, 4 AND 5.—OCTOBER TERM, 1954 ERNEST L. ALLEN  
C. D. C. U. S. & E. D. S. C.

1 Oliver Brown, et al., Appellants, }  
v. } On Appeal From the  
Board of Education of Topeka, } United States Dis-  
Shawnee County, Kansas, } trict Court for the  
et al. } District of Kansas.

2 Harry Briggs, Jr., et al., }  
Appellants, } On Appeal From the  
v. } United States Dis-  
R. W. Elliott, et al. } trict Court for the  
Eastern District of  
South Carolina.

3 Dorothy E. Davis, et al., }  
Appellants, } On Appeal From the  
v. } United States Dis-  
County School Board of Prince } trict Court for the  
Edward County, Virginia, et } Eastern District of  
al. } Virginia.

4 Spottswood Thomas Bolling, et }  
al., Petitioners, } On Writ of Certiorari  
v. } to the United States  
C. Melvin Sharpe, et al. } Court of Appeals for  
the District of Co-  
lumbia Circuit.

5 Francis B. Gebhart, et al., Peti- }  
tioners, } On Writ of Certiorari  
v. } to the Supreme Court  
Ethel Louise Belton, et al. } of Delaware.

[May 31, 1955.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases were decided on May 17, 1954. The opinions of that date,<sup>1</sup> declaring the fundamental principle

<sup>1</sup> 347 U. S. 483; 347 U. S. 497.

for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case—ordering the immediate admission of the plaintiffs to schools previously attended only by white children—is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that court may deem necessary in light of this opinion.

*It is so ordered.*

that racial discrimination in public education is unconstitutional, are incorporated herein by reference. All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.

Because these cases arose under different local conditions and their disposition will involve a variety of local problems, we requested further argument on the question of relief.<sup>2</sup> In view of the nationwide importance of the decision, we invited the Attorney General of the United States and the Attorneys General of all states requiring or permitting racial discrimination in public education to present their views on that question. The parties, the United States, and the States of Florida, North Carolina, Arkansas, Oklahoma, Maryland, and Texas filed briefs and participated in the oral argument.

<sup>2</sup> Further argument was requested on the following questions, 347 U. S. 483, 495-496, n. 13, previously propounded by the Court:

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so, what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

These presentations were informative and helpful to the Court in its consideration of the complexities arising from the transition to a system of public education freed of racial discrimination. The presentations also demonstrated that substantial steps to eliminate racial discrimination in public schools have already been taken, not only in some of the communities in which these cases arose, but in some of the states appearing as *amici curiae*, and in other states as well. Substantial progress has been made in the District of Columbia and in the communities in Kansas and Delaware involved in this litigation. The defendants in the cases coming to us from South Carolina and Virginia are awaiting the decision of this Court concerning relief.

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.<sup>3</sup>

In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies<sup>4</sup> and by a facility for adjusting and reconciling public and private needs.<sup>5</sup> These cases call

<sup>3</sup> The cases coming to us from Kansas, South Carolina, and Virginia were originally heard by three-judge District Courts convened under 28 U. S. C. §§ 2281 and 2284. These cases will accordingly be remanded to those three-judge courts. See *Briggs v. Elliott*, 342 U. S. 350.

<sup>4</sup> See *Alexander v. Hillman*, 296 U. S. 222, 239.

<sup>5</sup> See *Hecht Co. v. Bowles*, 321 U. S. 321, 329-330.

for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases. The judgment in the Delaware case—ordering the immediate admission of the plaintiffs to schools previously attended only by white children—is affirmed on the basis of the principles stated in our May 17, 1954, opinion, but the case is remanded to the Supreme Court of Delaware for such further proceedings as that court may deem necessary in light of this opinion.

*It is so ordered.*

1E19478

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

**FILED**

JUN 29 1955

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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HARRY BRIGGS, Jr., et al.,

Plaintiffs

v.

R. W. ELLIOTT, et al.

---

CIVIL ACTION  
No. 2657

MOTION FOR HEARING ON FORMULATION OF DECREE AND JUDGMENT

Plaintiffs in the above entitled case respectfully move the Court to set this case for an early hearing for the purpose of formulating and entering a decree in conformity with the decisions of the Supreme Court of the United States heretofore rendered in this action.

  
\_\_\_\_\_  
Thurgood Marshall  
107 West 43 Street  
New York 36, New York

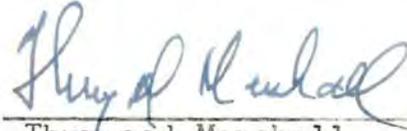
Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, of counsel for plaintiffs in the above entitled action hereby certify that on the twenty-eighth day of June, 1955 I served the attached Motion for Hearing On Formulation of Decree and Judgment upon Robert McC.Figg, Jr., Esq.

206-208 Peoples Office Bldg., Charleston, South Carolina,  
S.E. Rogers, Esq., Summerton, South Carolina and Hon. T. C.  
Callison, Attorney General of South Carolina, Columbia, South  
Carolina, attorneys for defendants, by depositing copies in the  
United States mails, prepaid, respectively addressed to them at  
the above addresses.



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Thurgood Marshall  
Counsel for Plaintiffs.

THE EASTERN DISTRICT OF SOUTH  
CAROLINA - CHARLESTON DIVISION

HARRY BRIGGS, Jr., et al.,

Plaintiffs

v

R. W. ELLIOTT, et al

---

CIVIL ACTION No. 2657

---

Thurgood Marshall  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. Carolina

Counsel for Plaintiffs



United States of America, vs:  
The President of the United States of America,

FILED

JUN 29 1955

ERNEST L. ALLEN  
C.D.G.U.S.E.D.S.C.

To the Honorable the Judges of the United States

District Court for the Eastern -----

District of South Carolina, -----

**GREETING:**

Whereas, lately in the United States District Court for the Eastern District of South Carolina, ----- before you, or some of you, in a cause between Harry Briggs, Jr., et al., Plaintiffs, and 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., et al., Defendants, wherein the judgment of the said District Court, filed in said cause on the 13th day of March, A. D. 1952, is in the following words, viz:

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 District of South  
Carolina.

*as by the inspection of the transcript of the record -----*

*----- of the said District -----  
Court, which was brought into the SUPREME COURT OF THE UNITED STATES  
by virtue of an appeal, -----*

*agreeably to the act of Congress, -----*

*----- in such case made and provided, fully and at  
large appears.*

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifty-four --- , the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was argued by counsel:

On consideration whereof, It is ordered and ----- adjudged ----- by this Court that the judgment --- of the said District ----- Court, in this cause be, and the same is hereby, reversed with costs; and that the said plaintiffs, Harry Briggs et al., recover from the said defendants One Thousand Seven Hundred Fourteen Dollars and Twenty-one Cents ----- for their costs herein expended.

AND IT IS FURTHER ORDERED that this cause be, and the same is hereby, remanded to the said District Court to take such proceedings and enter such orders and decrees consistent with the opinions of this Court as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to this case.

May 31, 1955.

You, therefore, are hereby commanded that such ~~execution and~~ proceedings be had in said cause, in conformity with the opinions and judgment of this Court, --- as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

EARL WARREN,  
 Witness, the Honorable ~~FRED M. VINSON~~, Chief Justice of the United States, the twenty-seventh --- day of June -----, in the year of our Lord one thousand nine hundred and fifty-five.

Costs of	plaintiffs	
Clerk	\$ 420.48	}
Printing record	\$ 1293.73	
	\$ 1714.21	

HAROLD B. WILLEY  
 Clerk of the Supreme Court of the United States.  
 By *Hugh W. Barr*  
 Deputy

File No. -----

Supreme Court of the United States

No. 2 -----, October Term, 1954.

Harry Briggs et al.,

vs.

R. W. Elliott, Chairman,

J. D. Carson et al., etc.

MANDATE

FILED

JUN 29 1955

## SUPREME COURT OF THE UNITED STATES

Nos. 1, 2, 4 AND 10.—OCTOBER TERM, 1954.

ERNEST L. ALLEN

C. C. U. S. E. D. S. C.

1	Oliver Brown, et al., Appellants, v. Board of Education of Topeka, Shawnee County, Kansas, et al.	}	On Appeal From the United States District Court for the District of Kansas.
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2	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.
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4	Dorothy E. Davis, et al., Appellants, v. County School Board of Prince Edward County, Virginia, et al.	}	On Appeal From the United States District Court for the Eastern District of Virginia.
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10	Francis B. Gebhart, et al., Petitioners, v. Ethel Louise Belton, et al.	}	On Writ of Certiorari to the Supreme Court of Delaware.
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[May 17, 1954.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions,

but a common legal question justifies their consideration together in this consolidated opinion.<sup>1</sup>

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in

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<sup>1</sup> In the Kansas case, *Brown v. Board of Education*, the plaintiffs are Negro children of elementary school age residing in Topeka. They brought this action in the United States District Court for the District of Kansas to enjoin enforcement of a Kansas statute which permits, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan. Gen. Stat. § 72-1724 (1949). Pursuant to that authority, the Topeka Board of Education elected to establish segregated elementary schools. Other public schools in the community, however, are operated on a nonsegregated basis. The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, found that segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. 98 F. Supp. 797. The case is here on direct appeal under 28 U. S. C. § 1253.

In the South Carolina case, *Briggs v. Elliott*, the plaintiffs are Negro children of both elementary and high school age residing in Clarendon County. They brought this action in the United States District Court for the Eastern District of South Carolina to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. S. C. Const., Art. XI, § 7; S. C. Code § 5377 (1942). The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, denied the requested relief. The court found that the Negro schools were inferior to the white schools and ordered the defendants to begin immediately to equalize the facilities. But the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 98 F. Supp. 529. This Court vacated the District Court's judgment and remanded the case for the purpose of obtaining the court's views on a report filed by the defendants concerning the progress made in the equalization program. 342 U. S. 350. On remand, the District Court found that substantial equality had been achieved except for buildings and that the defendants were proceeding to rectify this

obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segre-

inequality as well. 103 F. Supp. 920. The case is again here on direct appeal under 28 U. S. C. § 1253.

In the Virginia case, *Davis v. County School Board*, the plaintiffs are Negro children of high school age residing in Prince Edward County. They brought this action in the United States District Court for the Eastern District of Virginia to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Va. Const., § 140; Va. Code § 22-221 (1950). The three-judge District Court, convened under 28 U. S. C. §§ 2281 and 2284, denied the requested relief. The court found the Negro school inferior in physical plant, curricula, and transportation, and ordered the defendants forthwith to provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant. But, as in the South Carolina case, the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 103 F. Supp. 337. The case is here on direct appeal under 28 U. S. C. § 1253.

In the Delaware case, *Gebhart v. Belton*, the plaintiffs are Negro children of both elementary and high school age residing in New Castle County. They brought this action in the Delaware Court of Chancery to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Del. Const., Art. X, § 2; Del. Rev. Code § 2631 (1935). The Chancellor gave judgment for the plaintiffs and ordered their immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extra-curricular activities, physical plant, and time and distance involved in travel. 87 A. 2d 862. The Chancellor also found that segregation itself results in an inferior education for Negro children (see note 10, *infra*), but did not rest his decision on that ground. *Id.*, at 865. The Chancellor's decree was affirmed by the Supreme Court of Delaware, which intimated, however, that the defendants might be

gation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Ferguson*, 163 U. S. 537. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction.<sup>2</sup> Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.<sup>3</sup>

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This

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able to obtain a modification of the decree after equalization of the Negro and white schools had been accomplished. 91 A. 2d 137, 152. The defendants, contending only that the Delaware courts had erred in ordering the immediate admission of the Negro plaintiffs to the white schools, applied to this Court for certiorari. The writ was granted, 344 U. S. 891. The plaintiffs, who were successful below, did not submit a cross-petition.

<sup>2</sup> 344 U. S. 1, 141, 891.

<sup>3</sup> 345 U. S. 972. The Attorney General of the United States participated both Terms as *amicus curiae*.

South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost non-existent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public education had already advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race.<sup>5</sup> The doctrine of

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<sup>5</sup> *Slaughter-House Cases*, 16 Wall. 36, 67-72 (1873); *Strauder v. West Virginia*, 100 U. S. 303, 307-308 (1879):

"It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. 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

discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time.<sup>4</sup> In the

<sup>4</sup> For a general study of the development of public education prior to the Amendment, see Butts and Cremin, *A History of Education in American Culture* (1953), Pts. I, II; Cubberley, *Public Education in the United States* (1934 ed.), cc. II-XII. School practices current at the time of the adoption of the Fourteenth Amendment are described in Butts and Crimen, *supra*, at 269-275; Cubberley, *supra*, at 288-339, 408-431; Knight, *Public Education in the South* (1922), cc. VIII, IX. See also H. Ex. Doc. No. 315, 41st Cong., 2d Sess. (1871). Although the demand for free public schools followed substantially the same pattern in both the North and the South, the development in the South did not begin to gain momentum until about 1850, some twenty years after that in the North. The reasons for the somewhat slower development in the South (*e. g.*, the rural character of the South and the different regional attitudes toward state assistance) are well explained in Cubberley, *supra*, at 408-423. In the country as a whole, but particularly in the South, the War virtually stopped all progress in public education. *Id.*, at 427-428. The low status of Negro education in all sections of the country, both before and immediately after the War, is described in Beale, *A History of Freedom of Teaching in American Schools* (1941), 112-132, 175-195. Compulsory school attendance laws were not generally adopted until after the ratification of the Fourteenth Amendment, and it was not until 1918 that such laws were in force in all the states. Cubberley, *supra*, at 563-565.

“separate but equal” did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, *supra*, involving not education but transportation.<sup>6</sup> American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the “separate but equal” doctrine in the field of public education.<sup>7</sup> In *Cumming v. County Board of Education*, 175 U. S. 528, and *Gong Lum v. Rice*, 275 U. S. 78, the validity of the doctrine itself was not challenged.<sup>8</sup> In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337; *Sipuel v. Oklahoma*, 332 U. S. 631; *Sweatt v. Painter*, 339 U. S. 629; *McLaurin v.*

right, most valuable to the colored race,—the right to exemption from unfriendly legislation 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.”

See also *Virginia v. Rives*, 100 U. S. 313, 318 (1879); *Ex parte Virginia*, 100 U. S. 339, 344-345 (1879).

<sup>6</sup> The doctrine apparently originated in *Roberts v. City of Boston*, 59 Mass. 198, 206 (1849), upholding school segregation against attack as being violative of a state constitutional guarantee of equality. Segregation in Boston public schools was eliminated in 1855. Mass. Acts 1855, c. 256. But elsewhere in the North segregation in public education has persisted until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

<sup>7</sup> See also *Berea College v. Kentucky*, 211 U. S. 45 (1908).

<sup>8</sup> In the *Cumming* case, Negro taxpayers sought an injunction requiring the defendant school board to discontinue the operation of a high school for white children until the board resumed operation of a high school for Negro children. Similarly, in the *Gong Lum* case, the plaintiff, a child of Chinese descent, contended only that state authorities had misapplied the doctrine by classifying him with Negro children and requiring him to attend a Negro school.

*Oklahoma State Regents*, 339 U. S. 637. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter*, *supra*, the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt v. Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors.<sup>9</sup> Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school

<sup>9</sup>In the Kansas case, the court below found substantial equality as to all such factors. 98 F. Supp. 797, 798. In the South Carolina case, the court below found that the defendants were proceeding "promptly and in good faith to comply with the court's decree." 103 F. Supp. 920, 921. In the Virginia case, the court below noted that the equalization program was already "afoot and progressing" (103 F. Supp. 337, 341); since then, we have been advised, in the Virginia Attorney General's brief on reargument, that the program has now been completed. In the Delaware case, the court below similarly noted that the state's equalization program was well under way. 91 A. 2d 137, 149.

attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter, supra*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents, supra*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds

in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

“Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.”<sup>10</sup>

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority.<sup>11</sup> Any lan-

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<sup>10</sup> A similar finding was made in the Delaware case: “I conclude from the testimony that in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated.” 87 A. 2d 862, 865.

<sup>11</sup> K. B. Clark, *Effect of Prejudice and Discrimination on Personality Development* (Midcentury White House Conference on Children and Youth, 1950); Witmer and Kotinsky, *Personality in the Making* (1952), c. VI; Deutscher and Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 J. Psychol. 259 (1948); Chein, *What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?*, 3 Int. J. Opinion and Attitude Res. 229 (1949); Brameld, *Educational Costs, in Discrimination and National Welfare* (McIver, ed., 1949), 44-48; Frazier, *The Negro in the United States* (1949), 674-681. And see generally Myrdal, *An American Dilemma* (1944).

guage in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.<sup>12</sup>

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term.<sup>13</sup> The Attorney General

<sup>12</sup> See *Bolling v. Sharpe*, *infra*, concerning the Due Process Clause of the Fifth Amendment.

<sup>13</sup> "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (a) and (b) are

of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as *amici curiae* upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.<sup>14</sup>

*It is so ordered.*

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based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),

“(a) should this Court formulate detailed decrees in these cases;

“(b) if so, what specific issues should the decrees reach;

“(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

“(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?”

<sup>14</sup> See Rule 42, Revised Rules of this Court (effective July 1, 1954).

Micro-filmed

Civil Action 2657

Form No. 680

No. \_\_\_\_\_

IN THE \_\_\_\_\_ COURT  
OF THE UNITED STATES

FOR THE

of \_\_\_\_\_

vs.

Filed \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.









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

**FILED**  
JUL -9 1955  
ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
v.  
R. W. ELLIOTT, et al.

CIVIL ACTION  
No. 2657

NOTICE OF MOTION

TO: Robert McC. Figg, Jr., Esq.  
206-208 Peoples Office Building  
Charleston, South Carolina

S. E. Rogers, Esq.  
Summerton  
South Carolina

Hon. T. C. Callison  
Attorney General of South Carolina  
Columbia, South Carolina

Attorneys for Defendants

Please take notice, that the undersigned will bring the attached motion on for hearing before this Court at the United States Court House, City of Columbia, on the 15th day of July, 1955, at 9 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

*Thurgood Marshall*

Thurgood Marshall  
107 West 43rd Street  
New York 36, New York

Robert L. Carter  
107 West 43rd Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington St.  
Columbia, South Carolina

Counsel for Plaintiffs-Intervenor

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

FILED  
JUL - 9 1955  
ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

\_\_\_\_\_  
HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
v.  
R. W. ELLIOTT, et al.  
\_\_\_\_\_  
Civil Action No. 2657

MOTION TO INTERVENE AS PLAINTIFFS

Willie and Nathaniel Briggs, infants, by Harry Briggs, Sr., their father and next friend; Dorothy Bethane, infant, by Thelma Bethane, her mother and next friend; Francis, Bennie and Evan Lawson, infants, by Mary D. Lawson, their mother and next friend; Windell and Octavia Hilton, by Joseph Hilton, their father and next friend; Elijah and Emma McBride, infants, by Hessie McBride, their mother and next friend; Joe and Frankie Brooks, infants, by Hessie McBride, their guardian and next friend; James, Jacqueline, Annie and Samuel Washington, infants, by Camilla Washington, their mother and next friend; Emanuel, Gussie and Jacob Lawson, infants, by Barbara Lawson, their mother and next friend; Floridere Solomon, infant, by Margie Solomon, her mother and next friend; Shirley A. James, infant, by Mable James, her mother and next friend; Henry, William and Ann Richardson, infants, by Hattie Richardson, their mother and next friend; Rebecca, Wilbert and Moses Lemon, infants, by Joseph Lemon, their father and next friend; Spurgeon, Hoveen Lee, and Meree Pearson, infants, by Gussie Pearson, their mother and next

friend; Abraham, Franklyn, Cynthia, Patricia, Judy and Eleanor Robinson, infants, by Anna Robinson, their mother and next friend; Elouise Felder, infant, by Nora Felder, her mother and next friend; Charlie, Mary, Elizah, Dorothy, and Willie Lawson, infants, by Lula Lawson, their mother and next friend; Morris Lee, infant, by Peter Martin, his guardian and next friend; Evens Isaac Martin, infant, by Peter Martin, his father and next friend; Joseph and Sophronia Richburg, infants, by Joseph Richburg, their father and next friend; Natalie and Recebba Lawson, infants, by Mary Gertrude Lawson, their mother and next friend; Leaon and David Tindal, infants, by Lucile Tindal, their mother and next friend; Jeremiah and Mary Oliver, infants, by Mary Jane Oliver, their mother and next friend; Shirley and Beverly Jean McGainey, infants, by Rosa Lee McGainey, their mother and next friend; Dorothy Nelson, infant, by Dorothy Nelson her mother and next friend; Odessa and Ethel Mae Conyers, infants, by Thomas Conyers, their father and next friend; Hezekiah, Kirby Lee, Lemiul and Susie House, infants, by Hezekiah House, their father and next friend; Rita Mae McDonald, infant by John E. McDonald, her father and next friend; Daisy, John and Earline Gaymon, infants, by Delia Gaymon, their mother and next friend; Hazel, Levone and Jero Durant, infants, by Julian Durant, their father and next friend; Johnnie, Joshape and Francona Gipson, infants, by Johnnie Gipson, their father and next friend; John, Durant and Wanetha Richardson, infants, by Birdie Richardson, their mother and next friend; Levi, Olie, Harrie, Carriene, Delevany and Harrie Pearson, infants, by Levi Pearson, their father and next friend; Charlotte, Larry, Wilhelemania and Dorothy Bowman, by Mary Bowman, their mother and next friend; Louise Gamble, infant, by Rufus Gamble, Jr., her father and next friend; Vivian and Jerlene Oliver, infants, by Celestine Oliver,

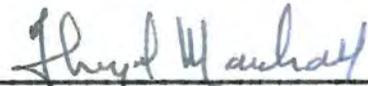
their mother and next friend; Deloris, Avon and Laritta Jones, infants, by Caroline Robinson, their guardian and next friend; Charlie, Isabelle, Loretta, Joyce and Allen Brailsford, infants, by Willie Brailsford, their father and next friend; Yvonie Ragin, infant, by Edward Ragin, her father and next friend; Willie, Franklin, Sylvester and Helen Pearson, infants, by Hannett Pearson, their father and next friend; Earl Lenons, infant, by Charlie Lenons, his father and next friend; Jessie and Roland Pearson, infants, by Jessie Pearson their father and next friend; Elijah and Charlie Lawson, infants by Henry Lawson, their father and next friend; Leon Walker, Jr., infant, by Leon Walker, Sr., his father and next friend; Bettie, Viola, Tilton, Thomas and Josephine Junious, infants, by Minnie Junious, their mother and next friend; Blease, Thomas, Evelyn and Francis Gibson, infants, by Frances Gibson, their mother and next friend; Benjamin, Julia and Christine Smith, infants, by George W. Smith, their father and next friend; Carolyn, Joseph, Arthur, Ezekel Hampton, infants, by A. N. Hampton, their father and next friend; Eartha and Eliza James, infants, by Jessie James, their mother and next friend; Annie, Sarah, Dorothy and Mary Lee Oliver, infants, by Annie E. Brown, their guardian and next friend; Nancy and George Gaymon, infants, by George W. Gaymon, their father and next friend; Aliean Brunson, infant, by Joe Brunson, her father and next friend; Ethel and Bobby Johnson, infants, by Blanche Johnson, their mother and next friend; Matthew, Vashti and Lue Vivian Bosia, infants, by Susan Bosia, their mother and next friend; Earnestine, Virginia, Christine, J. Harris and Henry White, infants, by Amanda White, their mother and next friend; Louisa, Willie, Earnestine, Henry and Vernell Cooper, infants, by

Earnest Cooper, their father and next friend; Deloris, Mattie, Emma, Robert, Harold and John Ragin, infants, by Mary Ragin, their mother and next friend; Joe, Charles, Eddie and Phylis Henry, infants, by G. H. Henry, their father and next friend; Emmett and James Richburg, infants, by J. H. Richburg, their father and next friend; Willie May Tindal, infant, by Lawrence Tindal, her father and next friend; Etta and Stella Lee, infants, by Allen Lee, their father and next friend; Willie Lee and Mary Davis, infants, by Willie Davis, their father and next friend; Joseph, Cleo, Robert, Moses and Jeff Ragin, infants, by Minnie Ragin, their mother and next friend; Life, War and Who Mack, infants, by Geneva Mack, their mother and next friend; Theodore Kind and Willie E. Doaen, infants, by Mabissa Ragin, their guardian and next friend; Henriett, and Hattie Mae Hilton, infants, by William Hilton, their father and next friend; Rufus, James, David and Ruth Ragin, infants, by Maggie S. Ragin, their mother and next friend; Maxine Bowman, infant, by Rosa Bowman, her mother and next friend; Thelma, Ulene, Ethel, Lina, Marion and Able Stukes, infants, by Ladson Stukes, their father and next friend, are among those generally classified as Negroes and are citizens of the United States and the State of South Carolina. Infants hereinabove named are within the statutory age limit of eligibility to attend the public schools of Clarendon County School District No. 1. They satisfy all the requirements for admission to such schools and are attending public schools under the supervision, operation and control of defendants herein.

The adults named herein are among those classified as Negroes and are citizens of the United States and of the State of South Carolina. They are taxpayers of the State of South Carolina and of the United States and are guardians and parents of infants referred to above and are required by law to send the children under their charge and control to public or private schools.

As such, both infants and adults move for leave to intervene as plaintiffs in this action in order to assert their claims against defendants in accordance with the decision entered herein by the Supreme Court of the United States on May 17, 1954, and May 31, 1955. They assert that they are in the class on whose behalf this suit was brought and are entitled to benefit by whatever decrees are entered into pursuant to those decisions by this Court regarding their right to attend public schools under the supervision and control of the defendants herein without restriction based upon race or color.

WHEREFORE, applicants pray that this motion be granted and that such relief as may be determined by this Court, in accordance with whatever decrees it may enter herein, be made applicable to them.



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Thurgood Marshall  
Robert L. Carter  
107 West 43rd Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

Counsel for Plaintiffs-Intervenors

#### CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 8th day of July, 1955, I served the above Notice of Motion and Motion to Intervene as Plaintiffs upon Robert McC. Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S. E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.



---

Thurgood Marshall  
Counsel for Plaintiffs-Intervenor

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

CIVIL ACTION  
NO. 2657

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HARRY BRIGGS, Jr., et al.,  
Plaintiffs

v.

R. W. ELLIOTT, et al.

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NOTICE OF MOTIONS  
and  
MOTION TO INTERVENE AS PLAINTIFFS

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Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

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

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
vs.  
R. W. ELLIOTT, et al.,  
Defendants.

CIVIL ACTION NO. 2657.

PETITION.

**FILED**

JUL 15 1955

ERNEST L. ALLEN  
C. C. U. S. E. D. S. C.

The Petition of J. D. Carson, Chairman, W. C. Sprott, W. A. Brunson, R. H. Elliott, and R. P. Felder, Members of the Board of Trustees of School District No. 1, Clarendon County, South Carolina, respectfully shows unto the Court:

1. That under the South Carolina educational legislation of 1951, School District No. 22 of Clarendon County, as to which school district this suit was originally instituted, was consolidated with a number of other school districts in Clarendon County into School District No. 1 of the said County, the other school districts so consolidated being School Districts Nos. 1, 2, 3, 4, 7, 8, 26 and 30 of the said County.

2. That by the order of the Court dated the 12th day of March, 1952, R. W. Elliott, Chairman, J. D. Carson, E. M. Touchberry, W. A. Brunson, and A. E. Brock, Sr., constituting the Board of Trustees of the said School District No. 1, were made parties to this suit in their respective capacities as such and became bound by all orders and decrees that had then or may thereafter be entered herein.

3. That R. W. Elliott, E. M. Touchberry and A. E. Brock, Sr., are not now members of the said Board of Trustees, and the Board is now composed of J. D. Carson, Chairman, W. C. Sprott, W. A. Brunson, R. H. Elliott and R. P. Felder, as the members thereof.

4. That the said W. C. Sprott, R. H. Elliott and R. P. Felder should now by order of the Court be made parties to

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this suit in their respective capacities as such and bound by all orders and decrees that have been or may hereafter be entered herein, and they hereby consent to such an order.

5. That R. W. Elliott, E. M. Touchberry and A. E. Brock, Sr., should be eliminated as parties to this suit by order of the Court, and the name of George Kennedy should be eliminated, he having died since the commencement of the suit.

6. That the petitioners have received notice of a motion to be made by a large number of Negro pupils and their parents or guardians to be permitted to intervene in this suit as parties plaintiff, as being entitled to benefit by whatever decrees are entered herein; and the petitioners, as the members of the Board of Trustees of School District No. 1, Clarendon County, South Carolina, offer no objection to the granting of the said motion and the intervention herein as parties plaintiff of the several movants who may live in the said District.

7. That by means of State aid for capital construction obtained by School District No. 1 under the 1951 legislation above referred to (Act No. 379 of the Acts of 1951, Articles II, III, IV and V), the Board of Trustees brought about equality of physical facilities and all other "tangible" factors in the public school system of the District. The petitioners show that in the operation of the schools under their control during the school year 1954-1955, they afforded efficient public educational advantages and opportunities to all of the school children of the District.

8. That in the opinion of the Supreme Court of the United States filed May 17, 1954, (347 U. S. 483,) it was held that, despite such equality of tangible factors, segregation in public education is a denial of the equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States; and reargument was ordered on questions propounded by the Court relating to the formulation of the decrees to be entered in this and other suits in which the opinion filed May 17, 1954, was rendered.

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9. That in the opinion of the Supreme Court of the United States filed May 31, 1955, (75 S. Ct. 753,) the judgment herein (103 F. Supp. 920) was reversed, and the cause was remanded to this Court "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."

10. In the opinion filed May 31, 1955, the Supreme Court stated:

"Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles."

11. In that opinion, the Supreme Court stated further:

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for the elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."

12. In that opinion, the Supreme Court stated further:

"While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases."

13. That in the reorganization of the public school system of School District No. 1 upon a racially nondiscriminatory basis in endeavoring to comply with the Supreme Court's decisions, the petitioners as the Board of Trustees of the School District are faced with almost every obstacle and problem that has been or could be presented in such a program. The situation in this School District represents one extreme of "the great variety of local conditions" and the "varied local school problems" to which the Supreme Court has referred in its opinions in this cause. The District is in a predominantly rural and agricultural section, sparsely settled. Approximately 10% of its school population is white. Both its white and Negro schools are centralized, with reliance to an unusual degree upon school bus transportation (presently operated upon a dual system basis). The problem in this District is not the assignment of a comparatively small number of Negro pupils to white schools. Here is involved the assignment of white pupils, in the proportion of approximately one out of ten, or a less proportion in some instances, to what are in reality Negro schools, and the transportation of many of the white pupils in what are essentially Negro school buses, all in abrupt departure from and rupture of the pattern of community ways and habits of nearly a century. The petitioners believe that it is impossible to conceive of a problem arising under the Supreme Court's decision which is more difficult of solution than that facing them in their School District, or one in which there is more need for the exercise by the Court of equitable discretion to enable them in the public interest to continue the provision of efficient public education to all of the school children of the District while they are endeavoring to bring their numerous problems to a solution. As was stated in the evidence of Dr. Robert Redfield (R. 166), "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," and "the circumstances of the community and how long there has been segregation will have a bearing on it."

14. That the problems facing the petitioners include necessary changes in State legislation providing for the distribution of State funds for teachers' salaries;<sup>1/</sup> the probability of the division of the District into several new school districts more appropriate to the operation of the several schools on a racially nondiscriminatory basis, and the enactment of legislation to that end;<sup>2/</sup> revision of the school transportation system; reorganization of school personnel; and obtaining public support and acceptance of the transition in the District.

15. That the petitioners themselves do not have the knowledge, training and experience needed to discharge their responsibility for elucidating, assessing and solving the problems and overcoming the obstacles presented in their district, and they have therefore directed and made provision for a comprehensive survey of the organization of the school system of the District, and of the community served by its schools, by competent technical consultants in the fields of education and sociology and such other fields as may be found appropriate, including the visiting and study of school systems in other jurisdictions which have handled or are presently handling similar transitions to see what obstacles have been encountered and what measures have been employed to meet the same and to solve the problems

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<sup>1/</sup> This problem was referred to in the Brief for the United States on the Further Argument of the Questions on Relief, filed by the Attorney General of the United States in the October Term, 1954, at page 10, as an example of necessary revision of State laws and regulations "which were tailored to fit the needs of a segregated school system," as follows:

"In South Carolina, for example, the statutory formula now employed in the distribution of State funds for teachers' salaries requires that minimum enrollment and average daily attendance in each district be determined separately for each race.<sup>3/</sup>

<sup>3</sup>

South Carolina Code (1952), §§ 21-25, 290. Cf. D. C. Code (1951 ed.), §§ 31-1110, 31-1112."

<sup>2/</sup> School District No. 1 was consolidated for the construction and operation of the three Negro schools therein on a segregated basis.

which have arisen in such school systems.

16. That the petitioners have carefully considered the situation in the District in relation to the operation of its school system during the ensuing school year 1955-1956, and it is their considered judgment as such Board of Trustees that it will be impracticable to operate the schools therein on any other basis during said school year as to the admission and assignment of pupils than that on which they were operated during the school year 1954-1955. They are convinced beyond doubt that any effort to operate on any other basis during said school year will so disorganize the schools of the District, will so impair the efficiency of the educational advantages afforded therein, and will so adversely affect public support of public education in the District that it cannot be reasonably expected that public education would survive. Accordingly, they, in the discharge of their responsibility as such Board of Trustees, have directed that the superintendent, school principals and other school authorities in the District make all arrangements and take all steps necessary to open and operate the schools in the District in the school year 1955-1956 on the same basis as to the admission and assignment of pupils to the said schools as was in effect in the school year 1954-1955, and they respectfully urge that the Court, in the exercise of its discretion, permit such interim operation during the school year 1955-1956 as being necessary in the public interest and in the best interest of all of the pupils of said District.

17. That the petitioners hereto annex a copy of their resolution as the Board of Trustees of said District by which they took the actions referred to in paragraphs 15 and 16 hereof.

18. That the petitioners believe that the plan set forth in said resolution is in the public interest and serves the best interest of public education in the said District, and is consistent with good faith compliance at the earliest practicable date; and they will file with this Court the Report of the Survey above referred to and directed in said resolution as soon as they have received the same, and also their proposed further action in

the matter on the basis thereof, and will themselves report further to the Court on the progress being made thereon at such time or times as the Court may direct.

WHEREFORE, the petitioners pray that the plan adopted by the petitioners be considered and approved by the Court, and that the Court make such further order as it may deem proper for the filing of the Report of Survey and such report or reports by petitioners as it may deem proper.

J. Stanson  
W. A. Brunson  
R. P. Felder  
W. H. H. H. H.  
W. C. Spratt  
 Petitioners  
S. E. Rogers  
Robert McClellan Jr  
 Attorneys for Petitioners.

STATE OF SOUTH CAROLINA, }  
COUNTY OF CLARENDON. }

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PERSONALLY appeared before me J. D. CARSON, who, being duly sworn, said that he is one of the petitioners in the foregoing petition, and is Chairman of the Board of Trustees of School District No. 1, Clarendon County, South Carolina; that he has read the foregoing petition, and that the same is true to the best of his knowledge, information and belief.

SWORN to and subscribed before me,  
this 13<sup>th</sup> day of July, 1955.

J. Stanson

S. E. Rogers (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA.

Summerton, S. C.

July 12, 1955.

BE IT RESOLVED By the Board of Trustees of School District No. 1, Clarendon County, South Carolina:

1. That the Chairman and Superintendent of the District be and they are hereby authorized and directed to cause a comprehensive survey forthwith to be made of the organization of the schools of the District, and of the community served by such schools, for the purpose of determining the problems which will be encountered in bringing about a re-organization of the District's school system in compliance with the decision of the Supreme Court of the United States requiring that school children in the District be admitted and assigned to schools on a racially non-discriminatory basis, including the visiting and study of school systems in other jurisdictions which have handled or are presently handling similar transitions to see what obstacles have been encountered and what measures have been employed to meet the same and to solve the problems which have arisen in such school systems, and also to determine what action by the Board of Trustees may be practicable in endeavoring to meet such problems, and the earliest practicable date by which compliance with such decision may be brought about in the District.

2. That the Chairman and the Superintendent are hereby authorized and directed to retain as soon as practicable the services of competent technical consultants in the fields of education and sociology, and such other fields as may be found appropriate, to make for the Board of Trustees the survey referred to in the preceding paragraph, and to report thereon with their specific findings and recommendations as soon as possible, their compensation and expenses to be arranged for by the said Chairman and Superintendent, with the approval of the Board of Trustees.

3. That in the selection of such consultants the Chairman and Superintendent are hereby authorized to seek the recommendations of the heads of the Departments of Education and Sociology of the University of North Carolina, or of any other

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institution of like standing in such fields.

4. That it is the considered judgment of the Board of Trustees that it will be impracticable to operate the schools of the District in the school year 1955-1956 on any other basis as to the admission and assignment of pupils than that on which they were operated during the school year 1954-1955, and that any effort on their part to operate on any other basis during said school year will so disorganize the schools of the District, will so impair the efficiency of the educational advantages afforded therein, and will so adversely affect public support of public education in the District that it cannot be reasonable<sup>y</sup> expected that public education will survive.

5. That the Superintendent and the principals and the other school authorities are hereby authorized and directed to make all arrangements and take all steps necessary to open and operate the schools in the District in the school year 1955-1956 on the same basis as to the admission and assignment of pupils to the said schools as was in effect in the school year 1954-1955, the Board of Trustees hereby finding that such interim operation during the school year 1955-1956 is necessary in the public interest and in the best interest of all of the school children of the District.

*SER*  
*RD*  
*9*

WE HEREBY CERTIFY That the foregoing is a copy of resolution of the Board of Trustees of School District No. 1, Clarendon County, South Carolina, duly adopted at a special meeting of the said Board duly called and held on the 12th day of July, 1955, at Summerton, S. C.

*J. Stinson*  
\_\_\_\_\_  
Chairman

*W. Spratt*  
\_\_\_\_\_  
Clerk

*W. A. Brunson*  
\_\_\_\_\_

*R. P. Felder*  
\_\_\_\_\_

*R. E. Smith*  
\_\_\_\_\_

Members of the Board of Trustees,  
School District No. 1, Clarendon  
County, South Carolina.

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

---

CIVIL ACTION NO. 2657.

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, et al.,  
Defendants.

---

PETITION.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

DISTRICT COURT OF THE UNITED STATES  
EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
Civil Action No. 2657

**FILED**

JUL 15 1955

ERNEST L. ALLEN  
686433240

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Harry Briggs, Jr., et al.,  
versus

Plaintiffs,

R. W. Elliott, et al.,

Defendants.

D E C R E E

This cause coming on to be heard on the motion of plaintiffs for a judgment and decree in accordance with the mandate of the Supreme Court, and the Court having carefully considered the decision of the Supreme Court, the arguments of counsel, and the record heretofore made in this cause:

It is ordered that the decree heretofore entered by this Court be set aside and, in accordance with the decision and mandate of the Supreme Court, it is ordered, adjudged and decreed that the provisions of the Constitution and laws of the State of South Carolina requiring segregation of the races in the public schools are null and void because violative of the Fourteenth Amendment to the Constitution of the United States; and that the defendants be and they are hereby restrained and enjoined from refusing on account of race to admit to any school under their supervision any child qualified to enter such school, from and after such time as they may have made the necessary arrangements for admission of children to such school on a non-discriminatory basis with all deliberate speed as required by the decision of the Supreme Court in this cause.

It is further ordered that this cause be retained on the docket for the entry of further orders herein if necessity for same should arise.

This 15 day of July, 1955.

*John J. Parker*  
\_\_\_\_\_  
Chief Judge, Fourth Circuit

*Samuel M. Noble*  
\_\_\_\_\_  
U. S. Circuit Judge, Fourth Circuit

*[Signature]*  
\_\_\_\_\_  
U. S. District Judge, Eastern &  
Western Districts of South Carolina.

No. \_\_\_\_\_

IN THE \_\_\_\_\_ COURT  
OF THE UNITED STATES

FOR THE

of \_\_\_\_\_

vs.

Filed \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

-----  
Harry Briggs, Jr., et al

Plaintiffs:

-v-

R. W. Elliott, et al,

Defendants:  
-----

CIVIL ACTION 2657

Federal Court House,

Columbia, S. C.

July 15, 1955

BEFORE:

HON: JOHN J. PARKER, U. S. Circuit Judge;  
HON. ARMISTEAD M. DOBIE, U. S. Circuit Judge; and  
HON. GEORGE BELL TIMMERMAN, U. S. District Judge.

B. D. Cook,

Official Reporter.



PROCEEDINGS

JUDGE PARKER: This is a United States Statutory District Court of three judges convened to consider the decree that shall be entered in Civil Action 2657, Harry Briggs, Jr. and others against R. W. Elliott and others. The Court makes this statement:

This court in its prior decisions in this case followed what it conceived to be the law as laid down in prior decisions of the Supreme Court that nothing in the Fourteenth Amendment to the Constitution of the United States forbids segregation of the races in the public schools provided equal facilities are accorded the children of all races. Our decision has been reversed by the Supreme Court, which has remanded the case to us with direction "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases."

Whatever may have been the views of this Court as to the law when the case was originally before us, it is our duty now to accept the law as declared by the Supreme Court.

Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the

states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but, if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals.

The Supreme Court has pointed out that the solution of the problem in accord with its decisions is the primary responsibility of school authorities and that the function of the courts is to determine whether action of the school

authorities constitute "good faith implementation of the governing constitutional principles". With respect to the action to be taken under its decision the Supreme Court said: I think it important at the outset of the hearing to read exactly what it is that we are to do. I quote from the decision of the Supreme Court.

"Full implementation of these Constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a non-

discriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

"While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations

which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

"The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."

The Court is convened to hear any concrete suggestions you may have to make as to the decree that it should enter. Now, that brings you up to date as to the position of this court. Are there any motions in the case?

MR. MARSHALL: May it please The Court, a preliminary motion. A new lawyer, Oliver W. Hill, is new to this case of Richmond, Virginia, a member of the bar of the State of Virginia and the federal court and the Fourth Circuit, and we ask permission that he sit at this hearing.

JUDGE PARKER: He may be admitted to practice Pro Hac Vice.

MR. MARSHALL: May it please The Court, we have a

motion for intervening complaintiffs in the case, and notice has been served on the other side. At this time we would like to present the motion.

Judge Parker: Well, that is the motion that you sent copies of to the Court?

MR. MARSHALL: Yes, sir.

JUDGE PARKER: What is the ground of the motion?

MR. MARSHALL: It is that these are school children of regular school age attending school in School District #1 and want to intervene at this stage in order that their rights may be fully protected.

JUDGE PARKER: Do you take the position that this is a class action?

MR. MARSHALL: Yes, sir.

JUDGE PARKER: What is the necessity for their intervention if it is a class action?

MR. MARSHALL: Because we believe that during the long pendency of this case, there are considerable children that have passed out of the school system, and we want to have a good cross-section of plaintiffs. And, as a class action, we consider that they are already members of the class, but we just don't want any question about it.

JUDGE PARKER: Have you any objection to it?

MR. FIGG: No, we do not object to that motion. And, if Your Honor please, we wish to present for the Trustees

of this school district a petition in which we state that we have no objection to counsel's motion. And, I would like at this time to hand it up to the Court.

JUDGE PARKER: Can we get that motion out of the way before we consider your motion?

MR. FIGG: Yes, sir. If you will look at paragraph six of our petition, we state there that we offer no objection to the granting of the said motion and the intervention herein as parties plaintiff of the several movants who may live in the said District. We haven't had a chance to check. We don't want to obligate ourselves to anybody who may be in there that is not properly in there.

JUDGE TIMMERMAN: In other words, you are reserving the right to strike any party that is improperly there?

MR. FIGG: That's right.

JUDGE TIMMERMAN: That you find facts to show that they are improperly parties?

MR. FIGG: That's right.

JUDGE TIMMERMAN: All right.

JUDGE PARKER: Well, that motion then to allow them to intervene may be allowed?

MR. FIGG: Yes, sir.

JUDGE PARKER: All right. The motion is allowed. What is your next motion?

MR. FIGG: I would like to read my petition, if

Your Honor would permit me to do it.

"The Petition of J. D. Carson, Chairman, W. C. Sprott, W. A. Brunson, R. H. Elliott, and R. P. Felder, Members of the Board of Trustees of School District No. 1, Clarendon County, South Carolina, respectfully shows unto the Court:

"1. That under the South Carolina educational legislation of 1951, School District No. 22 of Clarendon County, as to which school district this suit was originally instituted, was consolidated with a number of other school districts in Clarendon County into School District No. 1 of the said County, the other school districts so consolidated being School Districts Nos. 1, 2, 3, 4, 7, 8, 26 and 30 of the said County.

"2. That by the order of the Court dated the 12th day of March, 1952, R. W. Elliott, Chairman, J. D. Carson, E. M. Touchberry, W. A. Brunson, and A. E. Brock, Sr., constituting the Board of Trustees of the said School District No. 1, were made parties to this suit in their respective capacities as such and became bound by all orders and decrees that had then or may thereafter be entered herein.

"3. That R. W. Elliott, E. M. Touchberry and A. E. Brock, Sr., are not now members of the said Board of Trustees, and the Board is now composed of J. D. Carson, Chairman, W. C. Sprott, W. A. Brunson, R. H. Elliott and R. P. Felder,

as the members thereof.

"4. That the said W. C. Sprott, R. H. Elliott and R. P. Felder should now by order of the Court be made parties to this suit in their respective capacities as such and bound by all orders and decrees that have been or may hereafter be entered herein, and they hereby consent to such an order.

"5. That R. W. Elliott, E. M. Touchberry and A. E. Brock, Sr., should be eliminated as parties to this suit by order of the Court, and the name of George Kennedy should be eliminated, he having died since the commencement of the suit.

"6. That the petitioners have received notice of a motion to be made by a large number of Negro pupils and their parents or guardians to be permitted to intervene in this suit as parties plaintiff, as being entitled to benefit by whatever decrees are entered herein; and the petitioners, as the members of the Board of Trustees of School District No. 1, Clarendon County, South Carolina, offer no objection to the granting of the said motion and the intervention herein as parties plaintiff of the several movants who may live in the said District.

"7. That by means of State aid for capital construction obtained by School District No. 1 under the 1951 legislation above referred to, the Board of Trustees brought about equality of physical facilities and all other 'tangible' factors in the public school system of the District. The

petitioners show that in the operation of the schools under their control during the school year 1954-1955, they afforded efficient public educational advantages and opportunities to all of the school children of the District.

"8. That in the opinion of the Supreme Court of the United States filed May 17, 1954, (347 U.S. 483) it was held that, despite such equality of tangible factors, segregation in public education is a denial of the equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States; and reargument was ordered on questions propounded by the Court relating to the formulation of the decrees to be entered in this and other suits in which the opinion filed May 17, 1954, was rendered.

"9. That in the opinion of the Supreme Court of the United States filed May 31, 1955 (75 S. Ct. 753) the judgment herein (103 F. Supp 920) was reversed, and the cause was remanded to this Court 'to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases'."

The next three paragraphs involve quotations from the Supreme Court's opinion of May 31st and Your Honor has already read the same portions, and I will skip that.

"13. That in the reorganization of the public

school system of School District No. 1 upon a racially non-discriminatory basis in endeavoring to comply with the Supreme Court's decisions, the petitioners as the Board of Trustees of the School District are faced with almost every obstacle and problem that has been or could be presented in such a program. The situation in this School District represents one extreme of 'the great variety of local conditions' and the 'varied local school problems' to which the Supreme Court has referred in its opinions in this cause. The District is in a predominantly rural and agricultural section, sparsely settled. Approximately 10% of its school population is white. Both its white and Negro schools are centralized, with reliance to an unusual degree upon school bus transportation (presently operated upon a dual system basis). The problem in this District is not the assignment of a comparatively small number of Negro pupils to white schools. Here is involved the assignment of white pupils, in the proportion of approximately one out of ten, or a less proportion in some instances, to what are in reality Negro schools, and the transportation of many of the white pupils in what are essentially Negro school buses, all in abrupt departure from and rupture of the pattern of community ways and habits of nearly a century. The petitioners believe that it is impossible to conceive of a problem arising under the Supreme Court's decision which is more difficult of solution than that facing them in their

School District, or one in which there is more need for the exercise by the Court of equitable discretion to enable them in the public interest to continue the provision of efficient public education to all of the school children of the District while they are endeavoring to bring their numerous problems to a solution. As was stated in the evidence of Dr. Robert Redfield, "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" and "the circumstances of the community and how long there has been segregation will have a bearing on it.

"14. That the problems facing the petitioners include necessary changes in State legislation providing for the distribution of State funds for teachers' salaries." In a footnote we say "This problem was referred to in the Brief for the United States on the Further Argument of the Questions on Relief, filed by the Attorney General of the United States in the October Term, 1954, at page 10, as an example of necessary revision of State Laws and regulations 'which were tailored to fit the needs of a segregated school system,' as follows: 'In South Carolina, for example, the statutory formula now employed in the distribution of State Funds for teachers' salaries requires that minimum enrollment and average daily attendance in each district be determined separately for each race'."

"The probability of the division of the District into several new school districts more appropriate to the operation of the several schools on a racially nondiscriminatory basis, and the enactment of legislation to that end." In the footnote we point out that school District No. 1 was consolidated for the construction and operation of the three Negro schools therein on a segregated basis. That was done under that 1951 legislation. "Revision of the school transportation system; reorganization of school personnel; and obtaining public support and acceptance of the transition in the District.

"15. That the petitioners themselves do not have the knowledge, training and experience needed to discharge their responsibility for elucidating, assessing and solving the problems and overcoming the obstacles presented in their district, and they have therefore directed and made provision for a comprehensive survey of the organization of the school system of the District, and of the community served by its schools, by competent technical consultants in the fields of education and sociology and such other fields as may be found appropriate, including the visiting and study of school systems in other jurisdictions which have handled or are presently handling similar transitions to see what obstacles have been encountered and what measures have been employed to meet the same and to solve the problems which have arisen in such

school systems.

"16. That the petitioners have carefully considered the situation in the District in relation to the operation of its school system during the ensuing school year 1955-1956, and it is their considered judgment as such Board of Trustees that it will be impracticable to operate the schools therein on any other basis during said school year as to the admission and assignment of pupils than that on which they were operated during the school year 1954-1955. They are convinced beyond doubt that any effort to operate on any other basis during said school year will so disorganize the schools of the District, will so impair the efficiency of the educational advantages afforded therein, and will so adversely affect public support of public education in the District that it cannot be reasonably expected that public education would survive. Accordingly, they, in the discharge of their responsibility as such Board of Trustees, have directed that the superintendent, school principals and other school authorities in the District make all arrangements and take all steps necessary to open and operate the schools in the District in the school year 1955-1956 on the same basis as to the admission and assignment of pupils to the said schools as was in effect in the school year 1954-1955, and they respectfully urge that the Court, in the exercise of its discretion, permit such interim operation during the school year 1955-1956 as being

necessary in the public interest and in the best interest of all of the pupils of said District.

"17. That the petitioners hereto annex a copy of their resolution as the Board of Trustees of said District by which they took the actions referred to in paragraphs 15 and 16 hereof.

"18. That the petitioners believe that the plan set forth in said resolution is in the public interest and serves the best interest of public education in the said District, and is consistent with good faith compliance at the earliest practicable date; and they will file with this Court the report of the Survey above referred to and directed in said resolution as soon as they have received the same, and also their proposed further action in the matter on the basis thereof, and will themselves report further to the Court on the progress being made thereon at such time or times as the Court may direct.

"Wherefore, the petitioners pray that the plan adopted by the petitioners be considered and approved by the Court, and that the Court make such further order as it may deem proper for the filing of the Report of Survey and such report or reports by petitioners as it may deem proper."

That petition is signed by each of the trustees of the district and by Mr. Rogers and me as their attorneys, and it is sworn to by Mr. J. D. Carson, the Chairman of the

Board of Trustees, and attached to it is the resolution of the Board of Trustees of School District Number 1, Clarendon County, South Carolina, passed on July 12, 1955, as follows:

"1. That the Chairman and Superintendent of the District be and they are hereby authorized and directed to cause a comprehensive survey forthwith to be made of the organization of the schools of the District, and of the community served by such schools, for the purpose of determining the problems which will be encountered in bringing about a re-organization of the District's school system in compliance with the decision of the Supreme Court of the United States requiring that school children in the District be admitted and assigned to schools on a racially nondiscriminatory basis, including the visiting and study of school systems in other jurisdictions which have handled or are presently handling similar transitions to see what obstacles have been encountered and what measures have been employed to meet the same and to solve the problems which have arisen in such school systems, and also to determine what action by the Board of Trustees may be practicable in endeavoring to meet such problems, and the earliest practicable date by which compliance with such decision may be brought about in the District.

"2. That the Chairman and the Superintendent are hereby authorized and directed to retain as soon as practicable the services of competent technical consultants in the fields

of education and sociology, and such other fields as may be found appropriate, to make for the Board of Trustees the survey referred to in the preceding paragraph, and to report thereon with their specific findings and recommendations as soon as possible, their compensation and expenses to be arranged for by the said Chairman and Superintendent, with the approval of the Board of Trustees.

"3. That in the selection of such consultants the Chairman and Superintendent are hereby authorized to seek the recommendations of the heads of the Departments of Education and Sociology of the University of North Carolina, or of any other institution of like standing in such fields.

"4. That it is the considered judgment of the Board of Trustees that it will be impracticable to operate the schools of the District in the school year 1955-1956 on any other basis as to the admission and assignment of pupils than that on which they were operated during the school year 1954-1955, and that any effort on their part to operate on any other basis during said school year will so disorganize the schools of the District, will so impair the efficiency of the educations advantages afforded therein, and will so adversely affect public support of public education in the District that it cannot be reasonably expected that public education will survive.

"5. That the Superintendent and the principals and

the other school authorities are hereby authorized and directed to make all arrangements and take all steps necessary to open and operate the schools in the District in the school year 1955-1956 on the same basis as to the admission and assignment of pupils to the said schools as was in effect in the school year 1954-1955, the Board of Trustees hereby finding that such interim operation during the school year 1955-1956 is necessary in the public interest and in the best interest of all of the school children of the District." And, that copy of the resolution is certified as correct by the signature of each member of the Board of Trustees.

JUDGE PARKER: Mr. Figg, as I catch this motion, this petition, it does two things. It asks for a change in the parties.

MR. FIGG: Yes, sir.

JUDGE PARKER: Which you have suggested, and it proposed a plan with respect to the decree.

MR. FIGG: Yes, sir.

JUDGE PARKER: It would seem to me to be appropriate to pass on the first matter right now. There is no objection, is it, to the change in the parties he suggests?

MR. MARSHALL: No, sir, no objection.

JUDGE PARKER: Well, an order will be entered to that effect. Prepare and present an order. Now, with respect to the other matter, we will hear you in the general argument

of the case. Now, are we ready to proceed with the argument? Is there anything else to be done before the argument begins?

MR. MARSHALL: Nothing that I know of, sir.

JUDGE PARKER: How long do you think it should take to argue the case?

MR. FIGG: Your Honor, I don't think it would take us very long, because there is not much more that we as attorneys can add to what the Trustees as the Board of Trustees have certified to the Court. And, I think that the question is one of quantum. The Court has the power to make the order which would follow the granting of the petition of the trustees under the Supreme Court's decision. It is just a question of quantum; whether in the court's judgment it meets the requirements of the Chancellor.

JUDGE PARKER: Well, you don't suggest any specific time. What time do you suggest, Mr. Marshall?

MR. MARSHALL: I don't think I will need more than fifteen or twenty minutes because the only thing is about the plan. Consequently, the burden is on the defendants to present a plan, and it is our duty to oppose it or to agree to it.

JUDGE PARKER: Well, that is correct in a way, but also the Court is here to hear any suggestions that anybody may have to make with respect to the decree, and we are not limited to this plan. I don't know whether the Court is

going to adopt this plan or some other plan. The question is what the Court ought to embody in its decree, and the Court wants to be advised about that. He thinks the burden is on you, Mr. Figg. What do you say about that?

MR. FIGG: Well, if Your Honor please . . .

JUDGE PARKER: If the burden is on you, you have the right to open and conclude. If it is on the other side, they have the right to open and conclude.

MR. FIGG: If Your Honor please, we have undertaken here to set forth the action of the trustees over their signatures, taken in the manner in which Boards of Trustees act as political subdivisions of South Carolina, and we have set forth somewhat in the same language as they did in the resolution the reasons which they have given for believing that this plan in this district is the only way that they can devise to bring about the continuance of public education while they undertake to perform their responsibility of elucidating, assessing and solving the problems presented by the Supreme Court's decision. The Court put that responsibility upon the trustees, and if the plan which they propose does not meet the conscience of the Chancellor, I presume that they will in normal course of events have to go off and determine another plan. But, they say they cannot present to this court in this district any other plan.

It seems to me that one thing is clear from the

action which the Supreme Court took, because it heard argument in this particular case, among others which were heard, and that is that the Supreme Court adopted its opinion of May 31st to grant time in appropriate cases, and I think that this was the case probably above all others that demonstrated to the Supreme Court the necessity of granting to the school authorities time to meet the problems which were produced by the decision of May 17, 1954. It was discussed at great length in the argument. The Chief Justice asked me a number of questions and Mr. Rogers about this particular school district, and we undertook to give him all of the information that we as lawyers had about its affairs and its problems. And, if there is one thing that seemed to me when I read that decision, it was that the Court had realized that after the law had been written on the books in the decision of May 17, 1954, the more difficult problem of implementation was going to vary from maybe state to state and from school district to school district. I was much impressed by the statement made by the Attorney General of Kansas when he made his statement to the Court reporting that by September 1955 Kansas would be in compliance with the decision of May 17, 1954. And, he said that the reason was because in September of 1953 they began their program to eliminate their permissive separate schools. And, he told the Court that there was no opposition to that program in Kansas; there was no opposition

among the people or the school authorities; that it was as easy a proposition as could be found. And he said "It will take us, before we are through, two years where the difficulties are only administrative, and we believe that we will have done a good job by September 1955." And, he added the remark that if it took them two years, that illustrates the difficulties faced in jurisdictions where, unlike Kansas, the population ratio is not "less than four percent Negro pupils and ninety-six-plus percent white pupils", but where the ratio is more evenly divided.

And one reason that we set forth in the petition Doctor Redfield's testimony, Doctor Redfield, as Your Honor will recall, gave that evidence in the University of Texas Law School case, and we agreed that it should go in this case by agreement of counsel. And, Doctor Redfield was an anthropologist, a scientist, and his testimony in that case showed what we have quoted from, that the steps by which and the time within which transitions of this kind can be accomplished with benefit to the public will vary in each community, and that the status of the community and how long segregation has been maintained in the community will have an important bearing upon it. That was a scientific opinion; we thought one of the few scientific opinions in the record of the case that we tried in Charleston.

And, I think that everyone will agree that the

Supreme Court in effect has followed the same philosophy as Doctor Redfield scientifically stated, and that is, the circumstances will vary from community to community, from condition to condition, and that each problem must be assessed on its own basis.

Now, we say in our petition, and we told the Supreme Court, that this school district presents the extreme of difficulty because of the population ratio. Under the scientific opinion that I have referred to, we are at the extreme. Kansas was at one extreme and this particular school district is at the other. The population ratio in this district at the time that we were last in this court was less than 300 white and 2799 Negro pupils. I think at the past year it was 296 white and 2483 Negro pupils.

The district was a consolidated district in order to construct centralized school buildings for the large Negro school population of the district under the order of this Court which permitted us time to obtain the funds and provide physical and tangible equality, which we did. There is a good feature already demonstrate, we believe; it is good faith in this matter by complying to the limit with the permission which this Court itself granted at the end of the previous hearing in the District Court.

JUDGE DOBIE: May I ask you a question, Mr. Figg?

MR. FIGG: Yes, sir.

JUDGE DOBIE: Do I understand you to say that you wish us to incorporate in our decree a specific provision that the schools may be operated for the ensuing session on a segregated basis?

MR. FIGG: That is what we want you to approve. We don't say you have to say it in your decree. If you approve the plan of the Trustees, it is already in effect unless you enjoin them. They have already taken that action and presented to you, not as something they propose to do, but as something they had to go ahead and do because September is almost on us. And, even if everybody wanted to do it, the Trustees feel that it would be impossible to reorganize this school system by September 1955. It may be possible in some school districts in the United States which had separate schools, but it will be impossible in this school district for a number of reasons. One is the district itself will inevitably have to be broken up in order to run an efficient school system. It was centralized to run segregated schools, and we don't believe the centralization adapts itself to any other than the set-up which was created under the 1951 legislation. The State Education Finance Commission, before it would let this school district have the money, it didn't let the school district #22 which was before this court have the money; it let School District #1, after in the exercise of their power they had ordered the consolidation of

these seven or eight districts to bring about an efficient school operation. But, that was an efficient school operation on one basis. Now we are asked to operate it on another.

Then you have the teacher problem, the personnel problem, the transportation problem. You have this problem of state aid for teachers' pay which is allocated on a basis, as the Attorney General says "It was tailored to fit a segregated school system." It may be that this district on any other basis couldn't comply until the legislature has had a chance to consider making exceptions or re-vamping the state aid legislation. But certainly they will run into a position of conjecture as to the substantial contribution that the state of South Carolina makes to teachers' pay.

Then the most important problem as we read the learning on this subject - and principally we have received what information we have as lawyers from the briefs filed by the Attorney General of the United States in the last hearing - and it is pointed out in there that in many districts and jurisdictions where transitions of this kind have been attempted and have been carried out, that it was found necessary before anything else was done to have months of work in the community itself in order to be able to attempt a transition of the school system from one basis to the other without destroying support for public education among the people of the district.

The Supreme Court of the United States was much interested in the argument in that particular phase, the attitude of the community. Of course the Chief Justice did ask one time if it took until the year 2045 would it do anybody presently living any good. The answer was that was not the time table that was realistic in the matter. But that it was a situation in which there are forces at play beyond the control of the school trustees. And they have to be analyzed and they have to be studied. They have had to be coped with in jurisdictions in which there were far less difficulties and far less problems than this particular school district. As we pointed out in our argument, the Attorney General discussed the situation in New Jersey. In New Jersey in 1947, a constitutional amendment was adopted prohibiting separate schools. There were forty-three separate schools at the time of the adoption of that amendment, as I read his brief, in the State. And, four years later, forty of them had been eliminated. In four years there were still three that they were struggling with in a state where there was no such problem, no such situation, no such 90 years of bi-racial social structure as the Court was informed existed in this school district, with all of the difficulties to be encountered as to support of public education, as well as the mere revamping of the physical and tangible structure of a school system. So that these trustees feel this, they have not the knowledge or the

training or the experience to perform the elucidating, assessing and solving duty which has been placed upon them by the Supreme Court. They have ordered that the District will provide the funds for and will obtain people who have been trained in assessing those problems, in studying this particular school District, in studying this particular community, in finding out what the situation is to be faced and what can be done about it. And they have done that, if Your Honors please, in the interest of continuing public education in this district. And they are going to do that, they are going to have that survey and, in the meantime, they want the schools to run. Of course, they could make the survey; it wouldn't be as easy to make it without the schools in operation. But they want to make the survey and they want the schools to continue and they want the school children throughout that district to receive the present public education that they are getting, which, we respectfully submit is efficient public education. it does not comply, run separately, with the interpretation which the Supreme Court rendered in 1954 of the equal protection clause. But it does comply with the habits and the ways of the community for ninety years and it can go ahead without dislocation and disruptions, without throwing the education into confusion, without upsetting the personnel, without upsetting the transportation system, without upsetting the physical affairs of the district. The District knows that

it has the money on that basis to run its schools next year. It does not know what money it will have to run the schools on any other basis. And we think, and the percentage of the pupils, the white pupils, who would be allocated in the literal compliance this minute with the decision of the Supreme Court of the United States, the percentage is so negligible; and we told the Supreme Court this in our argument, in closing our argument, the percentage is so negligible that this is one District in which the discrimination found under the equal protection clause would almost come, if it did not come within the principle De Minimis Non Curat Lex (the law cares not for small things). So these trustees, if Your Honors please, have come before this Court and they have said "We have read this decision, we have seen our duty, we have considered this matter as we saw it, we have exercised our considered judgment; we certify to you we want to continue public education and educational advantage in the district for all of the children, we make provision for it to go forward next year as it did last year. We say that was efficient, we say that was equal to everybody. We say that it is better for the children to have that than any disorganized and dislocated system that we could set up or none at all in the coming year. And we ask Your Honors as the Chancellors, in the exercise of your conscience as the Chancellor, to respect the integrity and the good faith of these trustees, acting as public officials, to continue

educational advantages to these children, to allow them to get the people they need to study their district and advise them what the problems are and what they, as country trustees, can do about them. We say that we will bring that report to Your Honors when it is brought to us and we have ordered it to be done as soon as possible. We will make any report you ask for in the interim. We have called the operation for the coming year an interim operation. We say that is consistent with good faith, compliance with the decree at the earliest practicable date and it is the only thing practicable these trustees see to do now and we ask Your Honors, as the Chancellors of this Court to enter an order approving that plan and specifying what further reports you may wish from these trustees in the exercise of the Court's functions, which is also, as I read the decision of the Supreme Court of the United States, to enable public education to continue while these problems are being coped with and studied and solved. The Supreme Court would never have rendered the decision of May 31st if they did not mean some school districts to have them. And if this school district is not entitled to time, no school district is entitled to time. And there is no use to give two weeks or a month or two months. When you start a school year you are organized for it and you set it up and you finance it. Then that school year would be cut to pieces by having any complete disorganization or reorganization or unorganization

occurring in the middle of it. It is to the best interest of the children, weighing their own private interests, that when they start a school year that they finish it. It is to the best interest of the public that the children of this district receive educational advantages in the coming year. The Supreme Court says it is a function of this Court to weigh the public and the private interests involved, and the private interest in immediate compliance with this decision, as I have pointed out, is negligible as far as the plaintiffs are concerned because of the very over balanced and small numbers of the white pupils compared to the large numbers of the negro pupils. There would be very little difference, if you threw a complete integration immediately, there would be so little difference caused in the schools of what would be the difference to any one of these plaintiffs. Now, the trustees have redognized the principle laid down by the Supreme Court. They want to operate under it. They want to continue education while they do it and they want to report to this Court what they are told by people who are competent to elucidate, assess and solve these problems, what should be done, and they ask Your Honors to approve this plan.

MR. MARSHALL: May it please the Court, I do not think that it would help the Court if I review the arguments that have already been made in the Supreme Court. I believe that what is wrong with this proposed plan and petition is brought out by the repeated arguments over and over again of the matters that

were decided by the Supreme Court, not May 31 but May 17 of last year. In the first place, this petition does not present a plan of any kind. It is a petition asking for time, unlimited time, if you please, to get a plan to present to the Court. And that, we submit, is not the type of start toward compliance with the decree that was meant by the decision of May 31. It is also highly significant that practically fourteen months after May 17th of last year is the first move made by the defendants in this case toward compliance with the May 17, 1954 decision.

JUDGE DOBIE: Well, were they obligated to do anything, Mr. Marshall, until the Supreme Court handed down the decree.

MR. MARSHALL: I think they were obligated as citizens to look for this type of information they are now looking for. The Court said on May 17th that the maintenance of segregated schools was unconstitutional as of May 17th. That was the May 17th decision. The only thing that they could have argued was that they couldn't actually segregate . . .

JUDGE DOBIE: Do you think there was any obligation on these school people here to act in any way until the decree came down from the Supreme Court. And the decree of the Supreme Court was not what you would call with inconsequential speed. It took them more than a year to formulate a decree.

MR. MARSHALL: I think, Judge Dobie, that the District

of Columbia, one of the other defendants in another case, desegregated immediately after May 17th and in a far more complicated and involved school system than Clarendon County will ever have. And accelerated its plan so that, in the argument preceding the May 31st decision of this year, the District of Columbia could come into the Court and say "We have complied with your May 17th decision." And I believe that the defendants in this case should not wait until the last minute. And I also do not think they have a right, after May 31st of this year and after this case was set for this hearing, to adopt a resolution deliberately saying that, at least for one more year, we are going to violate the law. I don't think they had a right to do that either.

JUDGE TIMMERMAN: Don't you think that these trustees had a right to expect the Supreme Court to elucidate its own opinion, to make it plain and not refer to these non-lawyers the obligation and duty of elucidating, that is, making plain what the Supreme Court was driving at?

MR. MARSHALL: Well, I think Judge Timmerman that the Supreme Court did not have to do anything more to get the defendants in other school boards started than to make the law clear, which is maintenance of racially-segregated public education is unconstitutional. Now, as to how you would get rid of it, yes, anybody could lawfully wait until the Supreme Court came down with its May 31 decision. But this Board hasn't, as of yet

changed its policy. It is still operating under the same policy. I think a minimum step forward would be a resolution adopted by the Board saying that our present system of running schools on a segregated basis is admittedly unlawful. Now, we are going to take steps to correct it. And then put down what the steps are. That is my idea of what a plan is. As I understand this plan, they say they don't know anything about anything except that, to comply with the law of the land would disrupt the school system. That is the only idea I see. They say that the laws that is arranged for teachers' salaries are limited to white and negro teachers. Well, the Supreme Court took care of that in its last decision when it said that all State laws and Local laws contrary to this principal must yield. So, all of the laws in South Carolina based on segregation in public education must yield in this Court to the Constitution of the United States.

JUDGE TIMMERMAN: Doesn't that argument preclude the equitable consideration if you are standing on a legal right when you make that assertion.

MR. MARSHALL: I'm not standing on an equitable right or legal right, I'm standing on the Constitutional right, which is a right to non-segregated schools.

JUDGE TIMMERMAN: Hasn't the Supreme Court said this is an equitable case?

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: All right, they meet; The Board does and they want to impliment this and they are desirous and it is admitted that there are no group of men in the world that want to put integration completely into effect so severely and so quickly and so effectively as this school board.

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: They get the advantage of the best expert advise they can, not foreign Communistic anthropologists but people who know the problems that face them in the South. In the light of all that information, they decide on the finest faith in the world that they cannot integrate for two months but that, at the end of the two months, that there will be complete integration. Would you say they violated the law during that two months?

MR. MARSHALL: I go further than that, sir. I have agreed already with one two just like that for one year.

JUDGE DOBIE: Well, you spoke just now of time they were maintaining segregation. The answer to my question, then, is that is not violating the law by that Board, or is it?

MR. MARSHALL: Technically, it could be because the statute, the statute we operate under here says anybody that denies anybody rights guaranteed by the Constitution is subject to laws and actions in law or equity. And, just because somebody is violating the law does not mean that the other side wants redress. We have done that all along, Judge Dobie. Go

JUDGE TIMMERMAN: And should be governed by equitable principles?

MR. MARSHALL: Yes, sir, should be governed by equitable principals but the equitable principals should not go in opposition to the law. For example, to adopt what they say would be for this Court to say to Clarendon County that you can, specifically, you can continue to violate the law of the land for at least another year. And we say . . .

JUDGE DOBIE: You don't contend that this is a violation of the law.

MR. MARSHALL: Sir?

JUDGE DOBIE: Let me put this question to you.

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: Let's suppose that in X County, not Clarendon County . . .

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: The feeling there toward the colored race is the fondest anywhere in the world.

MR. MARSHALL: Is what.

JUDGE DOBIE: The feeling toward the colored race and between the colored and white is the fondest of anywhere in the entire world.

MR. MARSHALL: The fondest?

JUDGE DOBIE: Yes. All right.

MR. MARSHALL: Yes, sir.

outside therecord in our teacher salary question . . .

JUDGE DOBIE: Well, would you answer my question directly? You don't have to. Would you say that, during those two months under the ideal conditions that I have imposed as to X County, would you say that during those two months they are violating the law? When the Supreme Court said it is going to take time.

MR. MARSHALL: I would say, sir, that, on the basis of the May 31st decision, they would most certainly not be violating the law.

JUDGE DOBIE: All right. That is all I wanted to know.

MR. MARSHALL: And I say further, sir, that, in situations like that, we are in the frame of mind of cooperating with such cities, for so long a period of time as a year. And we have been doing that in cases. But I believe that the important thing in any of these cases is the point that is emphasized in the decision, which is the good faith of the school board. And this is most certainly not good faith, when, pending this hearing, while this hearing has been set, they decide that they are going to run their schools for another year on a segregated basis. They decide and come in here and present it to the Court as an accomplished fact and then ask this Court to approve that or to not knock it down and then to allow them to appoint a committee and to study this problem. And the study on this problem, there is not one piece of testimony before this Court

of the need for it. All we have before us is a signed petition by trustees, admittedly parties of interest, admittedly so, who say that it is their opinion, that is all they can say, that this cannot be done immediately. Assuming they are correct, that it would be unwise to do it immediately, then the burden is on them to show why they need more time and for what purpose, not just to study. Certainly the Court meant more than . . . The Supreme Court meant more than that they would get around to the point of study. And when we talk about these cases that take two and three years to desegregate, two of the largest school systems in the Country desegregated in three or four months, Baltimore, Maryland and the District of Columbia. St. Louis, Missouri desegregated in less than a year. Half of the counties in West Virginia are desegregated. It didn't take them time. I think that, when the burden is on somebody to show just grounds for delaying relief which we would otherwise be entitled to, that that is a burden that should be met with competent evidence to the extent of showing that there is one, reason for the delay and two, that there is an actual constructive plan, step by step which will bring about compliance with the Supreme Court's decision at some day certain. Otherwise, the plaintiffs in this case are left without any remedy that they can actually know is a remedy. They have shown no reason why they can't open these schools in September, except, as I get it, that it would disrupt

the school system. Well, the Supreme Court pointed out specifically in its opinion that it should go without saying that the vitality of these Constitutional principles cannot be allowed to yield simply because of disagreement with them. That is no ground for delay. The Supreme Court specifically set that aside. The other one, they say is that they will have to change the District. Well, the record in this very case will show that they changed to this District in very short order, a matter of a few weeks. Well, they can change back to another district in just as short order so that doesn't take time. This very record shows that. Number Two, they say there will be a problem with the busses. The only problem with busses is assigning the children that are along the bus route, without regard to race. Any ordinary clerk in the offices of the school, as a clerk that is there could do that. They have to census the children, well, they census them every year, that is no problem. The teachers can do the census. So, to my mind, to make myself specific, this is not a plan and we believe that we are entitled to have a plan presented to this Court which will assure the compliance with the decision at some time, whether it is in September of 1955 or September, '56, at some time. But that there is assurance that, at some time there will be compliance, full and complete, and that there is a start toward compliance, which is to use the language of the Supreme Court. This petition does not present either of these

two and for that reason we think it should be rejected. And, at that stage, so far as I am concerned, I am still in the position that I have been all along, in these cases, I would like very much to see a plan that could be worked out that we would readily be in agreement with. And we are perfectly willing to do it, but this is not the type of plan. We just saw it this morning but, as it was read and as I have gone over it, I don't believe that it is the type of thing that this Court could accept and I would therefore respectfully represent to the Court that an order be entered instructing the defendants in this case to either present a plan at a day certain or to have the children admitted as of the next school term. And when such a plan is presented, step by step, I say frankly, I would be very glad to give our best judgment on it, with the idea of working something out on a cooperative basis. But there is nothing here that gives us a working basis to work on.

JUDGE PARKER: Have you completed. If you have completed your argument, I want to ask a question of both sides.

MR. MARSHALL: Yes, sir.

JUDGE PARKER: The Supreme Court has said very clearly that the operation of schools is primarily a matter for the school board.

MR. MARSHALL: Yes, sir.

JUDGE PARKER: The Supreme Court didn't have to say that but they did it anyhow. All that a Court can do is to direct the observance of Constitutional limitations. Consequently, for us to approve or disapprove a plan doesn't seem to me to be germane to the matters before us. Why isn't the decree that is indicated here, the decree that is called for here, a decree which will forbid the discrimination in the schools with respect to race from and after such time as the trustees may have made necessary arrangements for admission of children to such schools on a nondiscriminatory basis, which is to be done with "all deliberate speed." That is the language of the Supreme Court. Now, if we say that, we have said to the defendants they must obey the law as laid down by the Supreme Court. I assume that the defendants are going to obey the law. I assume that when this Court speaks, its decrees are going to be obeyed and observed. If, after entering such a decree, there should be failure to comply with it, then you could make a motion here or thereafter for relief and this Court will find ways to see that its decrees are complied with. When we issue a decree, we expect it to be obeyed. But, until that is done, we have the right to assume that the people are going to obey the law and obey the decrees of the Court. Now why doesn't that take care of the situation?

MR. MARSHALL: If I might . . . Judge Parker, we have here a resolution, which says that they are going to operate for

the next year on a segregated basis, so that we know full well that deliberate speed will not be any sooner than the year '56 and '57.

JUDGE PARKER: Well, what I am thinking about, Mr. Marshall is this - suppose we entered a decree here without approving or disapproving this plan and they go to work at once to bring about what they say they have in mind. That would be compliance in good faith and you wouldn't question it. If, on the other hand, they show that they are stalling and delaying and are not acting in good faith, you can make a motion to attach them for contempt.

MR. MARSHALL: Well, how about their making their reports like they did in the other case?

JUDGE PARKER: Well, they don't need any reports. If they comply you don't want any reports.

MR. MARSHALL: I would be the first one to say so. But the thing that actually; frankly, it is pointed out that the Court suggested that this Court consider the adequacy of the plans as they come along.

JUDGE PARKER: I know, it said that and that would come up on a petition to attach for contempt.

MR. MARSHALL: Well, as I see it, if Your Honors please, the only thing, as I said, is that they have agreed that nothing would change then for the next year and I think that we are precluded within that year and I would like some-

thing to be done about that one resolution.

JUDGE PARKER: Well, let me ask you this? As a practical matter, this Court can't get itself in the attitude of trying to run the schools.

MR. MARSHALL: No, sir.

JUDGE PARKER: That is a hopeless undertaking. If we give a general injunction, such as is contemplated, such as I have suggested to you, enjoining them from and after a reasonable time and they go to work at once in an effort to solve the problem, you wouldn't contend that they could do it probably in the course of a week or two. You know enough about running the schools to know that couldn't be done. If they start to work now and get it done within the next year they will have done it about as fast as they could do it, wouldn't you say so?

MR. MARSHALL: No. No, sir. It can be done between now and September and I can site you some large places where it has been done, large towns. Kansas City for example or Baltimore, Washington.

JUDGE DOBIE: Were conditions similar there to those in this case, you think?

MR. MARSHALL: Sir.

JUDGE DOBIE: Are the conditions in those localities, you think, similar to those that are existing in this case?

MR. MARSHALL: The racial percentage is nowhere

near the same but I take the position of a lawyer operating under the 14th Amendment that the racial percentage one way or the other is unimportant.

JUDGE TIMMERMAN: Do you have any segregated schools in Baltimore.

MR. MARSHALL: As such? There are some schools where there are nobody but negroes still.

JUDGE TIMMERMAN: And you have somewhere there are nobody but whites?

MR. MARSHALL: Right.

JUDGE TIMMERMAN: And the ones in which you do have them mixed is only just a handful?

MR. MARSHALL: Oh, no sir.

JUDGE TIMMERMAN: Isn't that correct?

MR. MARSHALL: No sir, it is several thousand and the faculties are also mixed.

JUDGE TIMMERMAN: The faculties?

MR. MARSHALL: They are mixed all the way up to the Assistant Superintendent of Schools there is a negro.

JUDGE TIMMERMAN: I am not concerned with the faculties.

MR. MARSHALL: Well, it is more than a token number.

JUDGE TIMMERMAN: I am talking about the children who are to be educated or who are to lose their right to be educated.

MR. MARSHALL: I don't remember, Judge Timmerman,

exactly how many but it is far from a token number.

JUDGE PARKER: Here is what I am thinking about. I think it is important for schools systems of the South to be preserved.

MR. MARSHALL: And to work out . . .

JUDGE PARKER: You don't want and your adversaries don't want and I don't want to see what Chief Justice Hughes called delusive tactics wreck the school system in any district. The Supreme Court used the words "all deliberate speed." It is an old phrase, used in former decisions.

MR. MARSHALL: That is right.

JUDGE PARKER: And has a well understood meaning.

MR. MARSHALL: That is right.

JUDGE PARKER: That is that they must do it, not in haste but to do it as soon as they conveniently can work out the problems. That is what it means. Now, why isn't such a decree as I have indicated the wise decree from the standpoint of your client as well as from the standpoint of the community at large.

MR. MARSHALL: If I may say so, Judge Parker, our research shows, and in our brief we pointed out that, in the past ten years there has been considerable scientific writing on the question of desegregation, running through labor unions, hospitals, housing and schools. And the conclusion of these people who have studied this and, if I might say, Judge Dobie,

highly reputable people, is that the postponement hurts more than it helps. That is the far weight of authority with very few exceptions. Because the delay allows people to get together and discuss it and it sorta breaks into two sides. When it is done as a final act once and with finality, it tends to work out.

JUDGE PARKER: I think there is no question about that. But when you take the final act, it must be taken with deliberation, with knowledge of what you are doing.

MR. MARSHALL: That was my suggestion sir about the decree, if it could be this type of decree, that this is what the judgment is, the laws are unconstitutional, that the practice of segregating on the basis of race is unlawful and unconstitutional but the operative effect of it is - injunction will be postponed providing that the work is done with deliberate speed so that it is made final that this Court says that this must be stopped.

JUDGE PARKER: Well now, that is exactly what I suggested, I think. I don't think you heard what I did say.

MR. MARSHALL: I thought you said . . .

JUDGE PARKER: Let me read it again. I have been thinking about this thing and I have written it down.

MR. MARSHALL: All right, sir.

JUDGE PARKER: Defendants be and they are hereby restrained and enjoined from refusing, on account of race, to

good faith, they have nothing to fear, admit to any school under their supervision any child quali-

MR. FIGG: I think the limit is such time as they may have made the necessary arrangement for admission of

JUDGE TIMMERMAN: Wouldn't the trustees have to take the chance of elucidating what the Supreme Court meant children to such school on a nondiscriminatory basis which is and then finally meeting the approval of the Supreme Court to be done with all deliberate speed as required by the decision of the Supreme Court.

MR. FIGG: Take the chance. MR. MARSHALL: May it please the Court, as we understand it, this does not in any way approve this. I mean, I

JUDGE TIMMERMAN: Have to take that chance. MR. FIGG: Well, they would take a lot of chances, just want the understanding.

I think, if they proceed. MR. FIGG: Well, they would take a lot of chances, I think, if they proceed.

JUDGE PARKER: No, that doesn't approve or disapprove. MR. FIGG: Well, they would take a lot of chances, I think, if they proceed.

JUDGE PARKER: What I am thinking, Mr. Figg is this - I know you want to operate the schools, from then on it is up to the defendants to move with deliberate

MR. FIGG: Yes, sir. speed and it is up to us to watch and be satisfied.

JUDGE PARKER: And your adversaries too want to operate them and I certainly want to see them operate. My

JUDGE PARKER: What do you say now, Mr. Figg? MR. FIGG: Your Honor, there is one thing I am

idea is that a decree in this general terms, which says nothing wondering about. That is a very general decree. Your Honor

said that, if there should be complaining, if the Court would there, as you will notice, the very language of the Supreme

hold that it didn't agree with the action the trustees were court opinion; that will give the people of that community

taking, that they could be attached for contempt. an opportunity to work out their problems. If they work it out

JUDGE PARKER: That is an incident of any decree. in good faith, why they have nothing to fear from anybody, the

MR. FIGG: Well, I think the average trustee would be very difficult to persuade to open schools and run the risk

Court or anybody else. A man who obeys the law has got his foot on a rock. And if they proceed with all deliberate speed

of punishment by this Court for contempt without something more to do it, even though it may take a month or so or a year to

definite. do it, this Court has got sense enough to know that they are

JUDGE PARKER: Well, if the trustees are acting in

good faith, they have nothing to fear.

MR. FIGG: I think the limit . . .

JUDGE TIMMERMAN: Wouldn't the trustees have to take the chance of elucidating what the Supreme Court meant and then finally meeting the approval of the Supreme Court elucidation.

MR. FIGG: Take the chance.

JUDGE TIMMERMAN: Have to take that chance.

MR. FIGG: Well, they would take a lot of chances, I think, if they proceed.

JUDGE PARKER: What I am thinking, Mr. Figg is this - I know you want to operate the schools.

MR. FIGG: Yes, sir.

JUDGE PARKER: And your adversaries too want to operate them and I certainly want to see them operate. My idea is that a decree in this general terms, which says nothing except what the Supreme Court has said; I have embodied in there, as you will notice, the very language of the Supreme court opinion; that will give the people of that community an opportunity to work out their problems. If they work it out in good faith, why they have nothing to fear from anybody, the Court or anybody else. A man who obeys the law has got his foot on a rock. And if they proceed with all deliberate speed to do it, even though it may take a month or so or a year to do it, this Court has got sense enough to know that they are

proceeding in good faith and I think that, if you proceed in good faith that your adversaries may accept what you are doing down there as a satisfactory solution.

MR. FIGG: If I were a trustee, I would have to pre-suppose that the Court is going to agree with me or I'm punished.

JUDGE PARKER: Well, if you are a trustee, I would suppose you were going to act in good faith.

MR. FIGG: I know, but your idea of good faith and mine may differ. You may not always approve of what I think to be good faith. That is common between people. And I think that the limit of the power of this Court is to enjoin the operations of schools that are not constitutional and not to make an affirmative directive to trustees on the pains and penalties of contempt to do something affirmative.

JUDGE PARKER: Well, we are not doing anything affirmative.

MR. FIGG: But you said that if you came to the conclusion that they had not complied with that very general language, then they might be attached for contempt. Up to that point, I think the decree that Your Honor has proposed would be a beneficial decree. But I don't think it would be one I would care to be under under the penalty of contempt because the other side and the Court might disagree with my idea of good faith. I think the decree should order that in

a little different language that the schools . . . that they be enjoined from operating schools which are not in conformity with the Constitution within a reasonable time, or something like that.

JUDGE PARKER: Well, I don't think you listened to it.

MR. FIGG: I listened to it.

JUDGE PARKER: That is exactly what I have done except that I have done this - in the decree I have given you time.

MR. FIGG: I understand that. But I don't know when your idea of time is going to run out. I'm saying that seriously, Your Honor, that I have got to assist in advising these trustees. And I am not at all sure that they would be comfortable with my explaining to them that we can probably convince the Court at any time the question comes up that they have been in good faith and haven't taken too much time. I think the idea, a decree, this is in the public interest and that is what Your Honor has emphasized in reading that, and that is what we are interested in. And I believe that the other side is interested in the public interest certainly in this District. They are a great part of the public. But I want something that there can be at least some action to bring the time element to a conclusion before they are in contempt of Court. I think the other side should not be able to have them cited for contempt next month or six months from now or a year from now;

that there should be a proceeding in which the matter can come before the Court and the question be adjudicated without their running the risk of being in contempt of this Court. I hope I make you see what I am envisioning.

JUDGE PARKER: Yes, I do, Mr. Figg. And what I am thinking about is this - I know the school trustees, I have never been one, I was a member of the Board of Trustees of our University and I know that they want to obey the law and I know that they are going to obey the law ordinarily. When I mentioned the fact that men could be attached for contempt for refusal to obey a decree, that wasn't mean as a threat or anything of that sort. I assume that they are going to obey the law. I don't think there is any question about that. What I am thinking about is that we don't want to put ourselves in the attitude of attempting to run the schools of this State. We can't do it in the first place.

MR. FIGG: No, sir.

JUDGE PARKER: We haven't got the knowledge to do it, we haven't got the machinery to do it. That has got to be done by the school boards. All that we can say to them is you must not violate the Constitution.

MR. FIGG: That is right.

JUDGE PARKER: In your running of the schools. Now, when we say that, unless we put some time element in, why, they would be violating the decree at once if they didn't

abolish segregation. Consequently, it is necessary to put this time element in. I don't see how you can put it in in general language that would protect both sides in a better way than I have suggested. If you can suggest a better way, I would be glad to hear it.

MR. FIGG: It may be that another sentence - the Supreme Court said this Court should retain jurisdiction of the case during the transition period - and it may be that a sentence that gave leave to the defendants at any time to submit to the Court any matter that it saw fit.

JUDGE PARKER: Oh, I don't want them running to us with plans and asking us to approve this, that or the other. That is a matter for them, not for us.

MR. FIGG: Yes, sir. Well, we don't want to have a lot of papers served on us every time we are in a disagreement with the other side.

JUDGE PARKER: Well, I don't imagine you will. You have appeared in these labor board cases, which issue order after order demanding obedience to the National Labor Relations Act. And, whenever one of those is issued, if a man doesn't obey it, of course he is in contempt and we have had, oh, I think two or three contempt proceedings in the last fifteen years. The men obey the law and they obey the mandates of the Court and I haven't any doubt that these people will.

MR. FIGG: That, I am sure they would but the

difference then that intangible quality of when one person may think they have obeyed the law in their heart and the other one may think they haven't; that is what is worrying me.

JUDGE TIMMERMAN: What you are worrying about, you don't know what the law is and they don't either.

MR. FIGG: Well, I think, if Your Honor please, I believe that we could petition this Court for instructions or for a declaration or something at any time we got into trouble or felt we were in trouble.

JUDGE PARKER: You could do that of course. We have retained the case on the docket.

MR. FIGG: You have retained jurisdiction under the mandate of the Supreme Court.

JUDGE PARKER: That is right.

MR. FIGG: And then, if any question came up that looked like they were headed into trouble, I imagine our proceeding then would be to file a petition with you to convene and let us present our problems to you.

JUDGE PARKER: I think so.

MR. FIGG: And that would protect the situation. I hadn't thought of that.

JUDGE DOBIE: Mr. Marshall, you don't suggest, do you that there ought to be a time limit in here.

MR. MARSHALL: I came into Court with that idea. We had agreed on it. But listening to what Judge Parker said

there, it seems to me that we could get one of the other, either the general language with all speed it says or a definite time limit and, for that reason we now are perfectly willing to accept what is there.

JUDGE DOBIE: Well, the Supreme Court I mean very definitely said they wouldn't set any time limit.

MR. MARSHALL: Well, to this extent; we urged them to set it and they didn't set it but they didn't deliberately discard it. They just didn't use it and it was my understanding, Judge Dobie, that the Supreme Court, I could be wrong, that the Supreme Court took the position that the District Court, the three-judge Court, would be in a better position to set a time than the Supreme Court. But I don't think it precluded the District Court from setting a time limit if the District Court wished to do so.

JUDGE DOBIE: Of course the District Court of course would limit it to a particular case that is before it.

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: Whereas the Supreme Court of course had a group of cases.

MR. MARSHALL: Yes sir, as it was argued before, even if you should issue an injunction which called for forthwith, as of September of '55 and the School Boards, suppose we had come in and asked for contempt, the school board of course could come in even at that stage and say they are not in contempt and

you get into the old tearing down of the dam over the river in those cases which immediately means a reasonable time. So, I think either way. Even if there were a definite time limit, I think there would be limitations on that. So, as I understand it now, they move with all speed and move along and I would assume that we find out one way or the other how they are proceeding and when it got to the point where either side was dissatisfied and it couldn't be worked out on an amicable basis, then to petition this Court, with this Court having retained jurisdiction I understand.

JUDGE PARKER: Yes.

MR. MARSHALL: You have retained jurisdiction.

JUDGE DOBIE: Well, I understood from you just now and I was very glad to hear it, that you want to cooperate.

MR. MARSHALL: Absolutely.

JUDGE DOBIE: You don't want a Pyrrhic victory which would result in a destruction of the public schools.

MR. MARSHALL: No sir, Judge Dobie. We are working in States as far South as Arkansas. We are working with the School Board in Houston, Texas where there is no way possible for them to desegregate before '56. We know it. We haven't even filed a petition. We are just working with them cooperatively to get it worked out on a mutual basis that is understandable. And wherever we are permitted to do it, we do it. And terrific progress is being made in all sections, including

two counties in Arkansas, El Paso, Texas, and I think it is moving along.

JUDGE DOBIE: All right.

MR. MARSHALL: That is all unless there are more questions.

JUDGE PARKER: Do you want to say anything further, Mr. Figg?

MR. FIGG: No further argument, Your Honor. I did recall, and I think I should mention this as representing the trustees, the school trustees are not a particularly attractive office.

JUDGE PARKER: I am aware of that.

MR. FIGG: It's going to be a very difficult office to hold in the near future and I remember the late Justice Jackson in the first argument of this case remarking that if the Court should decide the case as it eventually did, he would not like to be a school trustee; in fact he would resign. Now these trustees are not here resigning, they are here to try to keep public education going.

JUDGE PARKER: I think that is commendable.

MR. FIGG: And I do hope we will have the cooperation of the other side.

JUDGE PARKER: Anything else anyone wishes to say, if not, adjourn the Court.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

-----  
Harry Briggs, Jr., et al

Plaintiffs:

-v-

R. W. Elliott, et al,

Defendants:  
-----

CIVIL ACTION 2657

Federal Court House,  
Columbia, S. C.

July 15, 1955

BEFORE:

HON. JOHN J. PARKER, U. S. Circuit Judge;  
HON. ARMISTEAD M. DOBIE, U. S. Circuit Judge, and  
HON. GEORGE BELL TIMMERMAN, U. S. District Judge.

B. D. Cook,  
Official Reporter.

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APPEARANCES:

THURGOOD MARSHALL, ESQUIRE, HAROLD R. BOULWARE, ESQUIRE,  
 SPOTTSWOOD W. ROBINSON III, ESQUIRE, and  
 OLIVER W. HILL, ESQUIRE, Represented the Plaintiffs.

ROBERT McC. FIGG, ESQUIRE and S. E. ROGERS, ESQUIRE,  
 Represented the Defendants.

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PROCEEDINGS

JUDGE PARKER: This is a United States Statutory District Court of three judges convened to consider the decree that shall be entered in Civil Action 2657, Harry Briggs, Jr. and others against R. W. Elliott and others. The Court makes this statement:

This court in its prior decisions in this case followed what it conceived to be the law as laid down in prior decisions of the Supreme Court that nothing in the Fourteenth Amendment to the Constitution of the United States forbids segregation of the races in the public schools provided equal facilities are accorded the children of all races. Our decision has been reversed by the Supreme Court, which has remanded the case to us with direction "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases."

Whatever may have been the views of this Court as to the law when the case was originally before us, it is our duty now to accept the law as declared by the Supreme Court.

Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the

states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but, if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals.

The Supreme Court has pointed out that the solution of the problem in accord with its decisions is the primary responsibility of school authorities and that the function of the courts is to determine whether action of the school

authorities constitute "good faith implementation of the governing constitutional principles". With respect to the action to be taken under its decision the Supreme Court said: I think it important at the outset of the hearing to read exactly what it is that we are to do. I quote from the decision of the Supreme Court.

"Full implementation of these Constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

"In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a non-

discriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

"While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations

which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

"The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases."

The Court is convened to hear any concrete suggestions you may have to make as to the decree that it should enter. Now, that brings you up to date as to the position of this court. Are there any motions in the case?

MR. MARSHALL: May it please The Court, a preliminary motion. A new lawyer, Oliver W. Hill, is new to this case of Richmond, Virginia, a member of the bar of the State of Virginia and the federal court and the Fourth Circuit, and we ask permission that he sit at this hearing.

JUDGE PARKER: He may be admitted to practice Pro Hac Vice.

MR. MARSHALL: May it please The Court, we have a

motion for intervening complaintiffs in the case, and notice has been served on the other side. At this time we would like to present the motion.

Judge Parker: Well, that is the motion that you sent copies of to the Court?

MR. MARSHALL: Yes, sir.

JUDGE PARKER: What is the ground of the motion?

MR. MARSHALL: It is that these are school children of regular school age attending school in School District #1 and want to intervene at this stage in order that their rights may be fully protected.

JUDGE PARKER: Do you take the position that this is a class action?

MR. MARSHALL: Yes, sir.

JUDGE PARKER: What is the necessity for their intervention if it is a class action?

MR. MARSHALL: Because we believe that during the long pendency of this case, there are considerable children that have passed out of the school system, and we want to have a good cross-section of plaintiffs. And, as a class action, we consider that they are already members of the class, but we just don't want any question about it.

JUDGE PARKER: Have you any objection to it?

MR. FIGG: No, we do not object to that motion. And, if Your Honor please, we wish to present for the Trustees

of this school district a petition in which we state that we have no objection to counsel's motion. And, I would like at this time to hand it up to the Court.

JUDGE PARKER: Can we get that motion out of the way before we consider your motion?

MR. FIGG: Yes, sir. If you will look at paragraph six of our petition, we state there that we offer no objection to the granting of the said motion and the intervention herein as parties plaintiff of the several movants who may live in the said District. We haven't had a chance to check. We don't want to obligate ourselves to anybody who may be in there that is not properly in there.

JUDGE TIMMERMAN: In other words, you are reserving the right to strike any party that is improperly there?

MR. FIGG: That's right.

JUDGE TIMMERMAN: That you find facts to show that they are improperly parties?

MR. FIGG: That's right.

JUDGE TIMMERMAN: All right.

JUDGE PARKER: Well, that motion then to allow them to intervene may be allowed?

MR. FIGG: Yes, sir.

JUDGE PARKER: All right. The motion is allowed. What is your next motion?

MR. FIGG: I would like to read my petition, if

Your Honor would permit me to do it.

"The Petition of J. D. Carson, Chairman, W. C. Sprott, W. A. Brunson, R. H. Elliott, and R. P. Felder, Members of the Board of Trustees of School District No. 1, Clarendon County, South Carolina, respectfully shows unto the Court:

"1. That under the South Carolina educational legislation of 1951, School District No. 22 of Clarendon County, as to which school district this suit was originally instituted, was consolidated with a number of other school districts in Clarendon County into School District No. 1 of the said County, the other school districts so consolidated being School Districts Nos. 1, 2, 3, 4, 7, 8, 26 and 30 of the said County.

"2. That by the order of the Court dated the 12th day of March, 1952, R. W. Elliott, Chairman, J. D. Carson, E. M. Touchberry, W. A. Brunson, and A. E. Brock, Sr., constituting the Board of Trustees of the said School District No. 1, were made parties to this suit in their respective capacities as such and became bound by all orders and decrees that had then or may thereafter be entered herein.

"3. That R. W. Elliott, E. M. Touchberry and A. E. Brock, Sr., are not now members of the said Board of Trustees, and the Board is now composed of J. D. Carson, Chairman, W. C. Sprott, W. A. Brunson, R. H. Elliott and R. P. Felder,

as the members thereof.

"4. That the said W. C. Sprott, R. H. Elliott and R. P. Felder should now by order of the Court be made parties to this suit in their respective capacities as such and bound by all orders and decrees that have been or may hereafter be entered herein, and they hereby consent to such an order.

"5. That R. W. Elliott, E. M. Touchberry and A. E. Brock, Sr., should be eliminated as parties to this suit by order of the Court, and the name of George Kennedy should be eliminated, he having died since the commencement of the suit.

"6. That the petitioners have received notice of a motion to be made by a large number of Negro pupils and their parents or guardians to be permitted to intervene in this suit as parties plaintiff, as being entitled to benefit by whatever decrees are entered herein; and the petitioners, as the members of the Board of Trustees of School District No. 1, Clarendon County, South Carolina, offer no objection to the granting of the said motion and the intervention herein as parties plaintiff of the several movants who may live in the said District.

"7. That by means of State aid for capital construction obtained by School District No. 1 under the 1951 legislation above referred to, the Board of Trustees brought about equality of physical facilities and all other 'tangible' factors in the public school system of the District. The

petitioners show that in the operation of the schools under their control during the school year 1954-1955, they afforded efficient public educational advantages and opportunities to all of the school children of the District.

"8. That in the opinion of the Supreme Court of the United States filed May 17, 1954, (347 U.S. 483) it was held that, despite such equality of tangible factors, segregation in public education is a denial of the equal protection of the laws under the Fourteenth Amendment of the Constitution of the United States; and reargument was ordered on questions propounded by the Court relating to the formulation of the decrees to be entered in this and other suits in which the opinion filed May 17, 1954, was rendered.

"9. That in the opinion of the Supreme Court of the United States filed May 31, 1955 (75 S. Ct. 753) the judgment herein (103 F. Supp 920) was reversed, and the cause was remanded to this Court 'to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases'."

The next three paragraphs involve quotations from the Supreme Court's opinion of May 31st and Your Honor has already read the same portions, and I will skip that.

"13. That in the reorganization of the public

school system of School District No. 1 upon a racially non-discriminatory basis in endeavoring to comply with the Supreme Court's decisions, the petitioners as the Board of Trustees of the School District are faced with almost every obstacle and problem that has been or could be presented in such a program. The situation in this School District represents one extreme of 'the great variety of local conditions' and the 'varied local school problems' to which the Supreme Court has referred in its opinions in this cause. The District is in a predominantly rural and agricultural section, sparsely settled. Approximately 10% of its school population is white. Both its white and Negro schools are centralized, with reliance to an unusual degree upon school bus transportation (presently operated upon a dual system basis). The problem in this District is not the assignment of a comparatively small number of Negro pupils to white schools. Here is involved the assignment of white pupils, in the proportion of approximately one out of ten, or a less proportion in some instances, to what are in reality Negro schools, and the transportation of many of the white pupils in what are essentially Negro school buses, all in abrupt departure from and rupture of the pattern of community ways and habits of nearly a century. The petitioners believe that it is impossible to conceive of a problem arising under the Supreme Court's decision which is more difficult of solution than that facing them in their

School District, or one in which there is more need for the exercise by the Court of equitable discretion to enable them in the public interest to continue the provision of efficient public education to all of the school children of the District while they are endeavoring to bring their numerous problems to a solution. As was stated in the evidence of Dr. Robert Redfield, "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" and "the circumstances of the community and how long there has been segregation will have a bearing on it.

"14. That the problems facing the petitioners include necessary changes in State legislation providing for the distribution of State funds for teachers' salaries." In a footnote we say "This problem was referred to in the Brief for the United States on the Further Argument of the Questions on Relief, filed by the Attorney General of the United States in the October Term, 1954, at page 10, as an example of necessary revision of State Laws and regulations 'which were tailored to fit the needs of a segregated school system,' as follows: 'In South Carolina, for example, the statutory formula now employed in the distribution of 'State Funds for teachers' salaries requires that minimum enrollment and average daily attendance in each district be determined separately for each race'."

"The probability of the division of the District into several new school districts more appropriate to the operation of the several schools on a racially nondiscriminatory basis, and the enactment of legislation to that end." In the footnote we point out that school District No. 1 was consolidated for the construction and operation of the three Negro schools therein on a segregated basis. That was done under that 1951 legislation. "Revision of the school transportation system; reorganization of school personnel; and obtaining public support and acceptance of the transition in the District.

"15. That the petitioners themselves do not have the knowledge, training and experience needed to discharge their responsibility for elucidating, assessing and solving the problems and overcoming the obstacles presented in their district, and they have therefore directed and made provision for a comprehensive survey of the organization of the school system of the District, and of the community served by its schools, by competent technical consultants in the fields of education and sociology and such other fields as may be found appropriate, including the visiting and study of school systems in other jurisdictions which have handled or are presently handling similar transitions to see what obstacles have been encountered and what measures have been employed to meet the same and to solve the problems which have arisen in such

school systems.

"16. That the petitioners have carefully considered the situation in the District in relation to the operation of its school system during the ensuing school year 1955-1956, and it is their considered judgment as such Board of Trustees that it will be impracticable to operate the schools therein on any other basis during said school year as to the admission and assignment of pupils than that on which they were operated during the school year 1954-1955. They are convinced beyond doubt that any effort to operate on any other basis during said school year will so disorganize the schools of the District, will so impair the efficiency of the educational advantages afforded therein, and will so adversely affect public support of public education in the District that it cannot be reasonably expected that public education would survive. Accordingly, they, in the discharge of their responsibility as such Board of Trustees, have directed that the superintendent, school principals and other school authorities in the District make all arrangements and take all steps necessary to open and operate the schools in the District in the school year 1955-1956 on the same basis as to the admission and assignment of pupils to the said schools as was in effect in the school year 1954-1955, and they respectfully urge that the Court, in the exercise of its discretion, permit such interim operation during the school year 1955-1956 as being

necessary in the public interest and in the best interest of all of the pupils of said District.

"17. That the petitioners hereto annex a copy of their resolution as the Board of Trustees of said District by which they took the actions referred to in paragraphs 15 and 16 hereof.

"18. That the petitioners believe that the plan set forth in said resolution is in the public interest and serves the best interest of public education in the said District, and is consistent with good faith compliance at the earliest practicable date; and they will file with this Court the report of the Survey above referred to and directed in said resolution as soon as they have received the same, and also their proposed further action in the matter on the basis thereof, and will themselves report further to the Court on the progress being made thereon at such time or times as the Court may direct.

"Wherefore, the petitioners pray that the plan adopted by the petitioners be considered and approved by the Court, and that the Court make such further order as it may deem proper for the filing of the Report of Survey and such report or reports by petitioners as it may deem proper."

That petition is signed by each of the trustees of the district and by Mr. Rogers and me as their attorneys, and it is sworn to by Mr. J. D. Carson, the Chairman of the

Board of Trustees, and attached to it is the resolution of the Board of Trustees of School District Number 1, Clarendon County, South Carolina, passed on July 12, 1955, as follows:

"1. That the Chairman and Superintendent of the District be and they are hereby authorized and directed to cause a comprehensive survey forthwith to be made of the organization of the schools of the District, and of the community served by such schools, for the purpose of determining the problems which will be encountered in bringing about a re-organization of the District's school system in compliance with the decision of the Supreme Court of the United States requiring that school children in the District be admitted and assigned to schools on a racially nondiscriminatory basis, including the visiting and study of school systems in other jurisdictions which have handled or are presently handling similar transitions to see what obstacles have been encountered and what measures have been employed to meet the same and to solve the problems which have arisen in such school systems, and also to determine what action by the Board of Trustees may be practicable in endeavoring to meet such problems, and the earliest practicable date by which compliance with such decision may be brought about in the District.

"2. That the Chairman and the Superintendent are hereby authorized and directed to retain as soon as practicable the services of competent technical consultants in the field<sup>ds</sup>

of education and sociology, and such other fields as may be found appropriate, to make for the Board of Trustees the survey referred to in the preceding paragraph, and to report thereon with their specific findings and recommendations as soon as possible, their compensation and expenses to be arranged for by the said Chairman and Superintendent, with the approval of the Board of Trustees.

"3. That in the selection of such consultants the Chairman and Superintendent are hereby authorized to seek the recommendations of the heads of the Departments of Education and Sociology of the University of North Carolina, or of any other institution of like standing in such fields.

"4. That it is the considered judgment of the Board of Trustees that it will be impracticable to operate the schools of the District in the school year 1955-1956 on any other basis as to the admission and assignment of pupils than that on which they were operated during the school year 1954-1955, and that any effort on their part to operate on any other basis during said school year will so disorganize the schools of the District, will so impair the efficiency of the educational advantages afforded therein, and will so adversely affect public support of public education in the District that it cannot be reasonably expected that public education will survive.

"5. That the Superintendent and the principals and

the other school authorities are hereby authorized and directed to make all arrangements and take all steps necessary to open and operate the schools in the District in the school year 1955-1956 on the same basis as to the admission and assignment of pupils to the said schools as was in effect in the school year 1954-1955, the Board of Trustees hereby finding that such interim operation during the school year 1955-1956 is necessary in the public interest and in the best interest of all of the school children of the District." And, that copy of the resolution is certified as correct by the signature of each member of the Board of Trustees.

JUDGE PARKER: Mr. Figg, as I catch this motion, this petition, it does two things. It asks for a change in the parties.

MR. FIGG: Yes, sir.

JUDGE PARKER: Which you have suggested, and it proposed a plan with respect to the decree.

MR. FIGG: Yes, sir.

JUDGE PARKER: It would seem to me to be appropriate to pass on the first matter right now. There is no objection, is it, to the change in the parties he suggests?

MR. MARSHALL: No, sir, no objection.

JUDGE PARKER: Well, an order will be entered to that effect. Prepare and present an order. Now, with respect to the other matter, we will hear you in the general argument

of the case. Now, are we ready to proceed with the argument? Is there anything else to be done before the argument begins?

MR. MARSHALL: Nothing that I know of, sir.

JUDGE PARKER: How long do you think it should take to argue the case?

MR. FIGG: Your Honor, I don't think it would take us very long, because there is not much more that we as attorneys can add to what the Trustees as the Board of Trustees have certified to the Court. And, I think that the question is one of quantum. The Court has the power to make the order which would follow the granting of the petition of the trustees under the Supreme Court's decision. It is just a question of quantum; whether in the court's judgment it meets the requirements of the Chancellor.

JUDGE PARKER: Well, you don't suggest any specific time. What time do you suggest, Mr. Marshall?

MR. MARSHALL: I don't think I will need more than fifteen or twenty minutes because the only thing is about the plan. Consequently, the burden is on the defendants to present a plan, and it is our duty to oppose it or to agree to it.

JUDGE PARKER: Well, that is correct in a way, but also the Court is here to hear any suggestions that anybody may have to make with respect to the decree, and we are not limited to this plan. I don't know whether the Court is

going to adopt this plan or some other plan. The question is what the Court ought to embody in its decree, and the Court wants to be advised about that. He thinks the burden is on you, Mr. Figg. What do you say about that?

MR. FIGG: Well, if Your Honor please . . .

JUDGE PARKER: If the burden is on you, you have the right to open and conclude. If it is on the other side, they have the right to open and conclude.

MR. FIGG: If Your Honor please, we have undertaken here to set forth the action of the trustees over their signatures, taken in the manner in which Boards of Trustees act as political subdivisions of South Carolina, and we have set forth somewhat in the same language as they did in the resolution the reasons which they have given for believing that this plan in this district is the only way that they can devise to bring about the continuance of public education while they undertake to perform their responsibility of elucidating, assessing and solving the problems presented by the Supreme Court's decision. The Court put that responsibility upon the trustees, and if the plan which they propose does not meet the conscience of the Chancellor, I presume that they will in normal course of events have to go off and determine another plan. But, they say they cannot present to this court in this district any other plan.

It seems to me that one thing is clear from the

action which the Supreme Court took, because it heard argument in this particular case, among others which were heard, and that is that the Supreme Court adopted its opinion of May 31st to grant time in appropriate cases, and I think that this was the case probably above all others that demonstrated to the Supreme Court the necessity of granting to the school authorities time to meet the problems which were produced by the decision of May 17, 1954. It was discussed at great length in the argument. The Chief Justice asked me a number of questions and Mr. Rogers about this particular school district, and we undertook to give him all of the information that we as lawyers had about its affairs and its problems. And, if there is one thing that seemed to me when I read that decision, it was that the Court had realized that after the law had been written on the books in the decision of May 17, 1954, the more difficult problem of implementation was going to vary from maybe state to state and from school district to school district. I was much impressed by the statement made by the Attorney General of Kansas when he made his statement to the Court reporting that by September 1955 Kansas would be in compliance with the decision of May 17, 1954. And, he said that the reason was because in September of 1953 they began their program to eliminate their permissive separate schools. And, he told the Court that there was no opposition to that program in Kansas; there was no opposition

among the people or the school authorities; that it was as easy a proposition as could be found. And he said "It will take us, before we are through, two years where the difficulties are only administrative, and we believe that we will have done a good job by September 1955." And, he added the remark that if it took them two years, that illustrates the difficulties faced in jurisdictions where, unlike Kansas, the population ratio is not "less than four percent Negro pupils and ninety-six-plus percent white pupils", but where the ratio is more evenly divided.

And one reason that we set forth in the petition Doctor Redfield's testimony, Doctor Redfield, as Your Honor will recall, gave that evidence in the University of Texas Law School case, and we agreed that it should go in this case by agreement of counsel. And, Doctor Redfield was an anthropologist, a scientist, and his testimony in that case showed what we have quoted from, that the steps by which and the time within which transitions of this kind can be accomplished with benefit to the public will vary in each community, and that the status of the community and how long segregation has been maintained in the community will have an important bearing upon it. That was a scientific opinion; we thought one of the few scientific opinions in the record of the case that we tried in Charleston.

And, I think that everyone will agree that the

Supreme Court in effect has followed the same philosophy as Doctor Redfield scientifically stated, and that is, the circumstances will vary from community to community, from condition to condition, and that each problem must be assessed on its own basis.

Now, we say in our petition, and we told the Supreme Court, that this school district presents the extreme of difficulty because of the population ratio. Under the scientific opinion that I have referred to, we are at the extreme. Kansas was at one extreme and this particular school district is at the other. The population ratio in this district at the time that we were last in this court was less than 300 white and 2799 Negro pupils. I think at the past year it was 296 white and 2483 Negro pupils.

The district was a consolidated district in order to construct centralized school buildings for the large Negro school population of the district under the order of this Court which permitted us time to obtain the funds and provide physical and tangible equality, which we did. There is a good feature already demonstrate, we believe; it is good faith in this matter by complying to the limit with the permission which this Court itself granted at the end of the previous hearing in the District Court.

JUDGE DOBIE: May I ask you a question, Mr. Figg?

MR. FIGG: Yes, sir.

JUDGE DOBIE: Do I understand you to say that you wish us to incorporate in our decree a specific provision that the schools may be operated for the ensuing session on a segregated basis?

MR. FIGG: That is what we want you to approve. We don't say you have to say it in your decree. If you approve the plan of the Trustees, it is already in effect unless you enjoin them. They have already taken that action and presented to you, not as something they propose to do, but as something they had to go ahead and do because September is almost on us. And, even if everybody wanted to do it, the Trustees feel that it would be impossible to reorganize this school system by September 1955. It may be possible in some school districts in the United States which had separate schools, but it will be impossible in this school district for a number of reasons. One is the district itself will inevitably have to be broken up in order to run an efficient school system. It was centralized to run segregated schools, and we don't believe the centralization adapts itself to any other than the set-up which was created under the 1951 legislation. The State Education Finance Commission, before it would let this school district have the money, it didn't let the school district #22 which was before this court have the money; it let School District #1, after in the exercise of their power they had ordered the consolidation of

these seven or eight districts to bring about an efficient school operation. But, that was an efficient school operation on one basis. Now we are asked to operate it on another.

Then you have the teacher problem, the personnel problem, the transportation problem. You have this problem of state aid for teachers' pay which is allocated on a basis, as the Attorney General says "It was tailored to fit a segregated school system." It may be that this district on any other basis couldn't comply until the legislature has had a chance to consider making exceptions or re-vamping the state aid legislation. But certainly they will run into a position of conjecture as to the substantial contribution that the state of South Carolina makes to teachers' pay.

Then the most important problem as we read the learning on this subject - and principally we have received what information we have as lawyers from the briefs filed by the Attorney General of the United States in the last hearing - and it is point out in there that in many districts and jurisdictions where transitions of this kind have been attempted and have been carried out, that it was found necessary before anything else was done to have months of work in the community itself in order to be able to attempt a transition of the school system from one basis to the other without destroying support for public education among the people of the district.

The Supreme Court of the United States was much interested in the argument in that particular phase, the attitude of the community. Of course the Chief Justice did ask one time if it took until the year 2045 would it do anybody presently living any good. The answer was that was not the time table that was realistic in the matter. But that it was a situation in which there are forces at play beyond the control of the school trustees. And they have to be analyzed and they have to be studied. They have had to be coped with in jurisdictions in which there were far less difficulties and far less problems than this particular school district. As we pointed out in our argument, the Attorney General discussed the situation in New Jersey. In New Jersey in 1947, a constitutional amendment was adopted prohibiting separate schools. There were forty-three separate schools at the time of the adoption of that amendment, as I read his brief, in the State. And, four years later, forty of them had been eliminated. In four years there were still three that they were struggling with in a state where there was no such problem, no such situation, no such 90 years of bi-racial social structure as the Court was informed existed in this school district, with all of the difficulties to be encountered as to support of public education, as well as the mere revamping of the physical and tangible structure of a school system. So that these trustees feel this, they have not the knowledge or the

training or the experience to perform the elucidating, assessing and solving duty which has been placed upon them by the Supreme Court. They have ordered that the District will provide the funds for and will obtain people who have been trained in assessing those problems, in studying this particular school District, in studying this particular community, in finding out what the situation is to be faced and what can be done about it. And they have done that, if Your Honors please, in the interest of continuing public education in this district. And they are going to do that, they are going to have that survey and, in the meantime, they want the schools to run. Of course, they could make the survey; it wouldn't be as easy to make it without the schools in operation. But they want to make the survey and they want the schools to continue and they want the school children throughout that district to receive the present public education that they are getting, which, we respectfully submit is efficient public education. It does not comply, run separately, with the interpretation which the Supreme Court rendered in 1954 of the equal protection clause. But it does comply with the habits and the ways of the community for ninety years and it can go ahead without dislocation and disruptions, without throwing the education into confusion, without upsetting the personnel, without upsetting the transportation system, without upsetting the physical affairs of the district. The District knows that

it has the money on that basis to run its schools next year. It does not know what money it will have to run the schools on any other basis. And we think, and the percentage of the pupils, the white pupils, who would be allocated in the literal compliance this minute with the decision of the Supreme Court of the United States, the percentage is so negligible; and we told the Supreme Court this in our argument, in closing our argument, the percentage is so negligible that this is one District in which the discrimination found under the equal protection clause would almost come, if it did not come within the principle De Minimis Non Curat Lex (the law cares not for small things). So these trustees, if Your Honors please, have come before this Court and they have said "We have read this decision, we have seen our duty, we have considered this matter as we saw it, we have exercised our considered judgment, we certify to you we want to continue public education and educational advantage in the district for all of the children, we make provision for it to go forward next year as it did last year. We say that was efficient, we say that was equal to everybody. We say that it is better for the children to have that than any disorganized and dislocated system that we could set up or none at all in the coming year. And we ask Your Honors as the Chancellors, in the exercise of your conscience as the Chancellor, to respect the integrity and the good faith of these trustees, acting as public officials, to continue

educational advantages to these children, to allow them to get the people they need to study their district and advise them what the problems are and what they, as country trustees, can do about them. We say that we will bring that report to Your Honors when it is brought to us and we have ordered it to be done as soon as possible. We will make any report you ask for in the interim. We have called the operation for the coming year an interim operation. We say that is consistent with good faith, compliance with the decree at the earliest practicable date and it is the only thing practicable these trustees see to do now and we ask Your Honors, as the Chancellors of this Court to enter an order approving that plan and specifying what further reports you may wish from these trustees in the exercise of the Court's functions, which is also, as I read the decision of the Supreme Court of the United States, to enable public education to continue while these problems are being coped with and studied and solved. The Supreme Court would never have rendered the decision of May 31st if they did not mean some school districts to have them. And if this school district is not entitled to time, no school district is entitled to time. And there is no use to give two weeks or a month or two months. When you start a school year you are organized for it and you set it up and you finance it. Then that school year would be cut to pieces by having any complete disorganization or reorganization or unorganization

occurring in the middle of it. It is to the best interest of the children, weighing their own private interests, that when they start a school year that they finish it. It is to the best interest of the public that the children of this district receive educational advantages in the coming year. The Supreme Court says it is a function of this Court to weigh the public and the private interests involved, and the private interest in immediate compliance with this decision, as I have pointed out, is negligible as far as the plaintiffs are concerned because of the very over balanced and small numbers of the white pupils compared to the large numbers of the negro pupils. There would be very little difference, if you threw a complete integration immediately, there would be so little difference caused in the schools of what would be the difference to any one of these plaintiffs. Now, the trustees have recognized the principle laid down by the Supreme Court. They want to operate under it. They want to continue education while they do it and they want to report to this Court what they are told by people who are competent to elucidate, assess and solve these problems, what should be done, and they ask Your Honors to approve this plan.

MR. MARSHALL: May it please the Court, I do not think that it would help the Court if I review the arguments that have already been made in the Supreme Court. I believe that what is wrong with this proposed plan and petition is brought out by the repeated arguments over and over again of the matters that

were decided by the Supreme Court, not May 31 but May 17 of last year. In the first place, this petition does not present a plan of any kind. It is a petition asking for time, unlimited time, if you please, to get a plan to present to the Court. And that, we submit, is not the type of start toward compliance with the decree that was meant by the decision of May 31. It is also highly significant that practically fourteen months after May 17th of last year is the first move made by the defendants in this case toward compliance with the May 17, 1954 decision.

JUDGE DOBIE: Well, were they obligated to do anything, Mr. Marshall, until the Supreme Court handed down the decree.

MR. MARSHALL: I think they were obligated as citizens to look for this type of information they are now looking for. The Court said on May 17th that the maintenance of segregated schools was unconstitutional as of May 17th. That was the May 17th decision. The only thing that they could have argued was that they couldn't actually segregate . . .

JUDGE DOBIE: Do you think there was any obligation on these school people here to act in any way until the decree came down from the Supreme Court. And the decree of the Supreme Court was not what you would call with inconsequential speed. It took them more than a year to formulate a decree.

MR. MARSHALL: I think, Judge Dobie, that the District

of Columbia, one of the other defendants in another case, desegregated immediately after May 17th and in a far more complicated and involved school system than Clarendon County will ever have. And accelerated its plan so that, in the argument preceding the May 31st decision of this year, the District of Columbia could come into the Court and say "We have complied with your May 17th decision." And I believe that the defendants in this case should not wait until the last minute. And I also do not think they have a right, after May 31st of this year and after this case was set for this hearing, to adopt a resolution deliberately saying that, at least for one more year, we are going to violate the law. I don't think they had a right to do that either.

JUDGE TIMMERMAN: Don't you think that these trustees trustees had a right to expect the Supreme Court to elucidate its own opinion, to make it plain and not refer to these non-lawyers the obligation and duty of elucidating, that is, making plain what the Supreme Court was driving at?

MR. MARSHALL: Well, I think Judge Timmerman that the Supreme Court did not have to do anything more to get the defendants in other school boards started than to make the law clear, which is maintenance of racially-segregated public education is unconstitutional. Now, as to how you would get rid of it, yes, anybody could lawfully wait until the Supreme Court came down with its May 31 decision. But this Board hasn't, as of yet

changed its policy. It is still operating under the same policy. I think a minimum step forward would be a resolution adopted by the Board saying that our present system of running schools on a segregated basis is admittedly unlawful. Now, we are going to take steps to correct it. And then put down what the steps are. That is my idea of what a plan is. As I understand this plan, they say they don't know anything about anything except that, to comply with the law of the land would disrupt the school system. That is the only idea I see. They say that the laws that is arranged for teachers' salaries are limited to white and negro teachers. Well, the Supreme Court took care of that in its last decision when it said that all State laws and Local laws contrary to this principal must yield. So, all of the laws in South Carolina based on segregation in public education must yield in this Court to the Constitution of the United States.

JUDGE TIMMERMAN: Doesn't that argument preclude the equitable consideration if you are standing on a legal right when you make that assertion.

MR. MARSHALL: I'm not standing on an equitable right or legal right, I'm standing on the Constitutional right, which is a right to non-segregated schools.

JUDGE TIMMERMAN: Hasn't the Supreme Court said this is an equitable case?

MR. MARSHALL: Yes, sir.

JUDGE TIMMERMAN: And should be governed by equitable principles?

MR. MARSHALL: Yes, sir, should be governed by equitable principals but the equitable principals should not go in opposition to the law. For example, to adopt what they say would be for this Court to say to Clarendon County that you can, specifically, you can continue to violate the law of the land for at least another year. And we say . . .

JUDGE DOBIE: You don't contend that this is a violation of the law.

MR. MARSHALL: Sir?

JUDGE DOBIE: Let me put this question to you.

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: Let's suppose that in X County, not Clarendon County . . .

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: The feeling there toward the colored race is the fondest anywhere in the world.

MR. MARSHALL: Is what.

JUDGE DOBIE: The feeling toward the colored race and between the colored and white is the fondest of anywhere in the entire world.

MR. MARSHALL: The fondest?

JUDGE DOBIE: Yes. All right.

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: All right, they meet; The Board does and they want to impliment this and they are desirous and it is admitted that there are no group of men in the world that want to put integration completely into effect so severely and so quickly and so effectively as this school board.

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: They get the advantage of the best expert advise they can, not foreign Communistic anthropologists but people who know the problems that face them in the South. In the light of all that information, they decide on the finest faith in the world that they cannot integrate for two months but that, at the end of the two months, that there will be complete integration. Would you say they violated the law during that two months?

MR. MARSHALL: I go further than that, sir. I have agreed already with one two just like that for one year.

JUDGE DOBIE: Well, you spoke just now of time they were maintaining segregation. The answer to my question, then, is that is not violating the law by that Board, or is it?

MR. MARSHALL: Technically, it could be because the statute, the statute we operate under here says anybody that denies anybody rights guaranteed by the Constitution is subject to laws and actions in law or equity. And, just because somebody is violating the law does not mean that the other side wants redress. We have done that all along, Judge Dobie. Go

outside therecord in our teacher salary question . . .

JUDGE DOBIE: Well, would you answer my question directly? You don't have to. Would you say that, during those two months under the ideal conditions that I have imposed as to X County, would you say that during those two months they are violating the law? When the Supreme Court said it is going to take time.

MR. MARSHALL: I would say, sir, that, on the basis of the May 31st decision, they would most certainly not be violating the law.

JUDGE DOBIE: All right. That is all I wanted to know.

MR. MARSHALL: And I say further, sir, that, in situations like that, we are in the same of mind of cooperating with such cities, for so long a period of time as a year. And we have been doing that in cases. But I believe that the important thing in any of these cases is the point that is emphasized in the decision, which is the good faith of the school board. And this is most certainly not good faith, when, pending this hearing, while this hearing has been set, they decide that they are going to run their schools for another year on a segregated basis. They decide and come in here and present it to the Court as an accomplished fact and then ask this Court to approve that or to not knock it down and then to allow them to appoint a committee and to study this problem. And the study on this problem, there is not one piece of testimony before this Court

of the need for it. All we have before us is a signed petition by trustees, admittedly parties of interest, admittedly so, who say that it is their opinion, that is all they can say, that this cannot be done immediately. Assuming they are correct, that it would be unwise to do it immediately, then the burden is on them to show why they need more time and for what purpose, not just to study. Certainly the Court meant more than . . . The Supreme Court meant more than that they would get around to the point of study. And when we talk about these cases that take two and three years to desegregate, two of the largest school systems in the Country desegregated in three or four months, Baltimore, Maryland and the District of Columbia. St. Louis, Missouri desegregated in less than a year. Half of the counties in West Virginia are desegregated. It didn't take them time. I think that, when the burden is on somebody to show just grounds for delaying relief which we would otherwise be entitled to, that that is a burden that should be met with competent evidence to the extent of showing that there is one, reason for the delay and two, that there is an actual constructive plan, step by step which will bring about compliance with the Supreme Court's decision at some day certain. Otherwise, the plaintiffs in this case are left without any remedy that they can actually know is a remedy. They have shown no reason why they can't open these schools in September, except, as I get it, that it would disrupt

the school system. Well, the Supreme Court pointed out specifically in its opinion that it should go without saying that the vitality of these Constitutional principles cannot be allowed to yield simply because of disagreement with them. That is no ground for delay. The Supreme Court specifically set that aside. The other one, they say is that they will have to change the District. Well, the record in this very case will show that they changed to this District in very short order, a matter of a few weeks. Well, they can change back to another district in just as short order so that doesn't take time. This very record shows that. Number Two, they say there will be a problem with the busses. The only problem with busses is assigning the children that are along the bus route, without regard to race. Any ordinary clerk in the offices of the school, as a clerk that is there could do that. They have to census the children, well, they census them every year, that is no problem. The teachers can do the census. So, to my mind, to make myself specific, this is not a plan and we believe that we are entitled to have a plan presented to this Court which will assure the compliance with the decision at some time, whether it is in September of 1955 or September, '56, at some time. But that there is assurance that, at some time there will be compliance, full and complete, and that there is a start toward compliance, which is to use the language of the Supreme Court. This petition does not present either of these

two and for that reason we think it should be rejected. And, at that stage, so far as I am concerned, I am still in the position that I have been all along, in these cases, I would like very much to see a plan that could be worked out that we would readily be in agreement with. And we are perfectly willing to do it, but this is not the type of plan. We just saw it this morning but, as it was read and as I have gone over it, I don't believe that it is the type of thing that this Court could accept and I would therefore respectfully represent to the Court that an order be entered instructing the defendants in this case to either present a plan at a day certain or to have the children admitted as of the next school term. And when such a plan is presented, step by step, I say frankly, I would be very glad to give our best judgment on it, with the idea of working something out on a cooperative basis. But there is nothing here that gives us a working basis to work on.

JUDGE PARKER: Have you completed. If you have completed your argument, I want to ask a question of both sides.

MR. MARSHALL: Yes, sir.

JUDGE PARKER: The Supreme Court has said very clearly that the operation of schools is primarily a matter for the school board.

MR. MARSHALL: Yes, sir.

JUDGE PARKER: The Supreme Court didn't have to say that but they did it anyhow. All that a Court can do is to direct the observance of Constitutional limitations. Consequently, for us to approve or disapprove a plan doesn't seem to me to be germane to the matters before us. Why isn't the decree that is indicated here, the decree that is called for here, a decree which will forbid the discrimination in the schools with respect to race from and after such time as the trustees may have made necessary arrangements for admission of children to such schools on a nondiscriminatory basis, which is to be done with "all deliberate speed." That is the language of the Supreme Court. Now, if we say that, we have said to the defendants they must obey the law as laid down by the Supreme Court. I assume that the defendants are going to obey the law. I assume that when this Court speaks, its decrees are going to be obeyed and observed. If, after entering such a decree, there should be failure to comply with it, then you could make a motion here or thereafter for relief and this Court will find ways to see that its decrees are complied with. When we issue a decree, we expect it to be obeyed. But, until that is done, we have the right to assume that the people are going to obey the law and obey the decrees of the Court. Now why doesn't that take care of the situation?

MR. MARSHALL: If I might . . . Judge Parker, we have here a resolution, which says that they are going to operate for

the next year on a segregated basis, so that we know full well that deliberate speed will not be any sooner than the year '56 and '57.

JUDGE PARKER: Well, what I am thinking about, Mr. Marshall is this - suppose we entered a decree here without approving or disapproving this plan and they go to work at once to bring about what they say they have in mind. That would be compliance in good faith and you wouldn't question it. If, on the other hand, they show that they are stalling and delaying and are not acting in good faith, you can make a motion to attach them for contempt.

MR. MARSHALL: Well, how about their making their reports like they did in the other case?

JUDGE PARKER: Well, they don't need any reports. If they comply you don't want any reports.

MR. MARSHALL: I would be the first one to say so. But the thing that actually; frankly, it is pointed out that the Court suggested that this Court consider the adequacy of the plans as they come along.

JUDGE PARKER: I know, it said that and that would come up on a petition to attach for contempt.

MR. MARSHALL: Well, as I see it, if Your Honors please, the only thing, as I said, is that they have agreed that nothing would change then for the next year and I think that we are precluded within that year and I would like some-

thing to be done about that one resolution.

JUDGE PARKER: Well, let me ask you this? As a practical matter, this Court can't get itself in the attitude of trying to run the schools.

MR. MARSHALL: No, sir.

JUDGE PARKER: That is a hopeless undertaking. If we give a general injunction, such as is contemplated, such as I have suggested to you, enjoining them from and after a reasonable time and they go to work at once in an effort to solve the problem, you wouldn't contend that they could do it probably in the course of a week or two. You know enough about running the schools to know that couldn't be done. If they start to work now and get it done within the next year they will have done it about as fast as they could do it, wouldn't you say so?

MR. MARSHALL: No. No, sir. It can be done between now and September and I can site you some large places where it has been done, large towns. Kansas City for example or Baltimore, Washington.

JUDGE DOBIE: Were conditions similar there to those in this case, you think?

MR. MARSHALL: Sir.

JUDGE DOBIE: Are the conditions in those localities, you think, similar to those that are existing in this case?

MR. MARSHALL: The racial percentage is nowhere

near the same but I take the position of a lawyer operating under the 14th Amendment that the racial percentage one way or the other is unimportant.

JUDGE TIMMERMAN: Do you have any segregated schools in Baltimore.

MR. MARSHALL: As such? There are some schools where there are nobody but negroes still.

JUDGE TIMMERMAN: And you have somewhere there are nobody but whites?

MR. MARSHALL: Right.

JUDGE TIMMERMAN: And the ones in which you do have them mixed is only just a handful?

MR. MARSHALL: Oh, no sir.

JUDGE TIMMERMAN: Isn't that correct?

MR. MARSHALL: No sir, it is several thousand and the faculties are also mixed.

JUDGE TIMMERMAN: The faculties?

MR. MARSHALL: They are mixed all the way up to the Assistant Superintendent of Schools there is a negro.

JUDGE TIMMERMAN: I am not concerned with the faculties.

MR. MARSHALL: Well, it is more than a token number.

JUDGE TIMMERMAN: I am talking about the children who are to be educated or who are to lose their right to be educated.

MR. MARSHALL: I don't remember, Judge Timmerman,

exactly how many but it is far from a token number.

JUDGE PARKER: Here is what I am thinking about. I think it is important for schools systems of the South to be preserved.

MR. MARSHALL: And to work out . . .

JUDGE PARKER: You don't want and your adversaries don't want and I don't want to see what Chief Justice Hughes called delusive tactics wreck the school system in any district. The Supreme Court used the words "all deliberate speed." It is an old phrase, used in former decisions.

MR. MARSHALL: That is right.

JUDGE PARKER: And has a well understood meaning.

MR. MARSHALL: That is right.

JUDGE PARKER: That is that they must do it, not in haste but to do it as soon as they conveniently can work out the problems. That is what it means. Now, why isn't such a decree as I have indicated the wise decree from the standpoint of your client as well as from the standpoint of the community at large.

MR. MARSHALL: If I may say so, Judge Parker, our research shows, and in our brief we pointed out that, in the past ten years there has been considerable scientific writing on the question of desegregation, running through labor unions, hospitals, housing and schools. And the conclusion of these people who have studied this and, if I might say, Judge Dobie,

highly reputable people, is that the postponement hurts more than it helps. That is the far weight of authority with very few exceptions. Because the delay allows people to get together and discuss it and it sorta breaks into two sides. When it is done as a final act once and with finality, it tends to work out.

JUDGE PARKER: I think there is no question about that. But when you take the final act, it must be taken with deliberation, with knowledge of what you are doing.

MR. MARSHALL: That was my suggestion sir about the decree, if it could be this type of decree, that this is what the judgment is, the laws are unconstitutional, that the practice of segregating on the basis of race is unlawful and unconstitutional but the operative effect of it is - injunction will be postponed providing that the work is done with deliberate speed so that it is made final that this Court says that this must be stopped.

JUDGE PARKER: Well now, that is exactly what I suggested, I think. I don't think you heard what I did say.

MR. MARSHALL: I thought you said . . .

JUDGE PARKER: Let me read it again. I have been thinking about this thing and I have written it down.

MR. MARSHALL: All right, sir.

JUDGE PARKER: Defendants be and they are hereby restrained and enjoined from refusing, on account of race, to

admit to any school under their supervision any child qualified to enter such school from and after such time as they may have made the necessary arrangement for admission of children to such school on a nondiscriminatory basis which is to be done with all deliberate speed as required by the decision of the Supreme Court.

MR. MARSHALL: May it please the Court, as we understand it, this does not in any way approve this. I mean, I just want the understanding.

JUDGE PARKER: No, that doesn't approve or disapprove.

MR. MARSHALL: Well, on that basis, it seems, sir, from then on it is up to the defendants to move with deliberate speed and it is up to us to watch and be satisfied.

JUDGE PARKER: What do you say now, Mr. Figg?

MR. FIGG: Your Honor, there is one thing I am wondering about. That is a very general decree. Your Honor said that, if there should be complaining, if the Court would hold that it didn't agree with the action the trustees were taking, that they could be attached for contempt.

JUDGE PARKER: That is an incident of any decree.

MR. FIGG: Well, I think the average trustee would be very difficult to persuade to open schools and run the risk of punishment by this Court for contempt without something more definite.

JUDGE PARKER: Well, if the trustees are acting in

good faith, they have nothing to fear.

MR. FIGG: I think the limit . . .

JUDGE TIMMERMAN: Wouldn't the trustees have to take the chance of elucidating what the Supreme Court meant and then finally meeting the approval of the Supreme Court elucidation.

MR. FIGG: Take the chance.

JUDGE TIMMERMAN: Have to take that chance.

MR. FIGG: Well, they would take a lot of chances, I think, if they proceed.

JUDGE PARKER: What I am thinking, Mr. Figg is this - I know you want to operate the schools.

MR. FIGG: Yes, sir.

JUDGE PARKER: And your adversaries too want to operate them and I certainly want to see them operate. My idea is that a decree in this general terms, which says nothing except what the Supreme Court has said; I have embodied in there, as you will notice, the very language of the Supreme court opinion; that will give the people of that community an opportunity to work out their problems. If they work it out in good faith, why they have nothing to fear from anybody, the Court or anybody else. A man who obeys the law has got his foot on a rock. And if they proceed with all deliberate speed to do it, even though it may take a month or so or a year to do it, this Court has got sense enough to know that they are

proceeding in good faith and I think that, if you proceed in good faith that your adversaries may accept what you are doing down there as a satisfactory solution.

MR. FIGG: If I were a trustee, I would have to pre-suppose that the Court is going to agree with me or I'm punished.

JUDGE PARKER: Well, if you are a trustee, I would suppose you were going to act in good faith.

MR. FIGG: I know, but your idea of good faith and mine may differ. You may not always approve of what I think to be good faith. That is common between people. And I think that the limit of the power of this Court is to enjoin the operations of schools that are not constitutional and not to make an affirmative directive to trustees on the pains and penalties of contempt to do something affirmative.

JUDGE PARKER: Well, we are not doing anything affirmative.

MR. FIGG: But you said that if you came to the conclusion that they had not complied with that very general language, then they might be attached for contempt. Up to that point, I think the decree that Your Honor has proposed would be a beneficial decree. But I don't think it would be one I would care to be under under the penalty of contempt because the other side and the Court might disagree with my idea of good faith. I think the decree should order that in

a little different language that the schools . . . that they be enjoined from operating schools which are not in conformity with the Constitution within a reasonable time, or something like that.

JUDGE PARKER: Well, I don't think you listened to it.

MR. FIGG: I listened to it.

JUDGE PARKER: That is exactly what I have done except that I have done this - in the decree I have given you time.

MR. FIGG: I understand that. But I don't know when your idea of time is going to run out. I'm saying that seriously, Your Honor, that I have got to assist in advising these trustees. And I am not at all sure that they would be comfortable with my explaining to them that we can probably convince the Court at any time the question comes up that they have been in good faith and haven't taken too much time. I think the idea, a decree, this is in the public interest and that is what Your Honor has emphasized in reading that, and that is what we are interested in. And I believe that the other side is interested in the public interest certainly in this District. They are a great part of the public. But I want something that there can be at least some action to bring the time element to a conclusion before they are in contempt of Court. I think the other side should not be able to have them cited for contempt next month or six months from now or a year from now;

that there should be a proceeding in which the matter can come before the Court and the question be adjudicated without their running the risk of being in contempt of this Court. I hope I make you see what I am envisioning.

JUDGE PARKER: Yes, I do, Mr. Figg. And what I am thinking about is this - I know the school trustees, I have never been one, I was a member of the Board of Trustees of our University and I know that they want to obey the law and I know that they are going to obey the law ordinarily. When I mentioned the fact that men could be attached for contempt for refusal to obey a decree, that wasn't mean as a threat or anything of that sort. I assume that they are going to obey the law. I don't think there is any question about that. What I am thinking about is that we don't want to put ourselves in the attitude of attempting to run the schools of this State. We can't do it in the first place.

MR. FIGG: No, sir.

JUDGE PARKER: We haven't got the knowledge to do it, we haven't got the machinery to do it. That has got to be done by the school boards. All that we can say to them is you must not violate the Constitution.

MR. FIGG: That is right.

JUDGE PARKER: In your running of the schools. Now, when we say that, unless we put some time element in, why, they would be violating the decree at once if they didn't

abolish segregation. Consequently, it is necessary to put this time element in. I don't see how you can put it in in general language that would protect both sides in a better way than I have suggested. If you can suggest a better way, I would be glad to hear it.

MR. FIGG: It may be that another sentence - the Supreme Court said this Court should retain jurisdiction of the case during the transition period - and it may be that a sentence that gave leave to the defendants at any time to submit to the Court any matter that it saw fit.

JUDGE PARKER: Oh, I don't want them running to us with plans and asking us to approve this, that or the other. That is a matter for them, not for us.

MR. FIGG: Yes, sir. Well, we don't want to have a lot of papers served on us every time we are in a disagreement with the other side.

JUDGE PARKER: Well, I don't imagine you will. You have appeared in these labor board cases, which issue order after order demanding obedience to the National Labor Relations Act. And, whenever one of those is issued, if a man doesn't obey it, of course he is in contempt and we have had, oh, I think two or three contempt proceedings in the last fifteen years. The men obey the law and they obey the mandates of the Court and I haven't any doubt that these people will.

MR. FIGG: That, I am sure they would but the

difference than that intangible quality of when one person may think they have obeyed the law in their heart and the other one may think they haven't; that is what is worrying me.

JUDGE TIMMERMAN: What you are worrying about, you don't know what the law is and they don't either.

MR. FIGG: Well, I think, if Your Honor please, I believe that we could petition this Court for instructions or for a declaration or something at any time we got into trouble or felt we were in trouble.

JUDGE PARKER: You could do that of course. We have retained the case on the docket.

MR. FIGG: You have retained jurisdiction under the mandate of the Supreme Court.

JUDGE PARKER: That is right.

MR. FIGG: And then, if any question came up that looked like they were headed into trouble, I imagine our proceeding then would be to file a petition with you to convene and let us present our problems to you.

JUDGE PARKER: I think so.

MR. FIGG: And that would protect the situation. I hadn't thought of that.

JUDGE DOBIE: Mr. Marshall, you don't suggest, do you that there ought to be a time limit in here.

MR. MARSHALL: I came into Court with that idea. We had agreed on it. But listening to what Judge Parker said

there, it seems to me that we could get one of the other, either the general language with all speed it says or a definite time limit and, for that reason we now are perfectly willing to accept what is there.

JUDGE DOBIE: Well, the Supreme Court I mean very definitely said they wouldn't set any time limit.

MR. MARSHALL: Well, to this extent; we urged them to set it and they didn't set it but they didn't deliberately discard it. They just didn't use it and it was my understanding, Judge Dobie, that the Supreme Court, I could be wrong, that the Supreme Court took the position that the District Court, the three-judge Court, would be in a better position to set a time than the Supreme Court. But I don't think it precluded the District Court from setting a time limit if the District Court wished to do so.

JUDGE DOBIE: Of course the District Court of course would limit it to a particular case that is before it.

MR. MARSHALL: Yes, sir.

JUDGE DOBIE: Whereas the Supreme Court of course had a group of cases.

MR. MARSHALL: Yes sir, as it was argued before, even if you should issue an injunction which called for forthwith, as of September of '55 and the School Boards, suppose we had come in and asked for contempt, the school board of course could come in even at that stage and say they are not in contempt and

you get into the old tearing down of the dam over the river in those cases which immediately means a reasonable time. So, I think either way. Even if there were a definite time limit, I think there would be limitations on that. So, as I understand it now, they move with all speed and move along and I would assume that we find out one way or the other how they are proceeding and when it got to the point where either side was dissatisfied and it couldn't be worked out on an amicable basis, then to petition this Court, with this Court having retained jurisdiction I understand.

JUDGE PARKER: Yes.

MR. MARSHALL: You have retained jurisdiction.

JUDGE DOBIE: Well, I understood from you just now and I was very glad to hear it, that you want to cooperate.

MR. MARSHALL: Absolutely.

JUDGE DOBIE: You don't want a Pyrrhic victory which would result in a destruction of the public schools.

MR. MARSHALL: No sir, Judge Dobie. We are working in States as far South as Arkansas. We are working with the School Board in Houston, Texas where there is no way possible for them to desegregate before '56. We know it. We haven't even filed a petition. We are just working with them cooperatively to get it worked out on a mutual basis that is understandable. And wherever we are permitted to do it, we do it. And terrific progress is being made in all sections, including

two counties in Arkansas, El Paso, Texas, and I think it is moving along.

JUDGE DOBIE: All right.

MR. MARSHALL: That is all unless there are more questions.

JUDGE PARKER: Do you want to say anything further, Mr. Figg?

MR. FIGG: No further argument, Your Honor. I did recall, and I think I should mention this as representing the trustees, the school trustees are not a particularly attractive office.

JUDGE PARKER: I am aware of that.

MR. FIGG: It's going to be a very difficult office to hold in the near future and I remember the late Justice Jackson in the first argument of this case remarking that if the Court should decide the case as it eventually did, he would not like to be a school trustee; in fact he would resign. Now these trustees are not here resigning, they are here to try to keep public education going.

JUDGE PARKER: I think that is commendable.

MR. FIGG: And I do hope we will have the cooperation of the other side.

JUDGE PARKER: Anything else anyone wishes to say, if not, adjourn the Court.

*No Cause*

*John J. Parker  
U.S. Circuit Judge*

*Stromland M. Dobbie  
U.S. Circuit Judge*

*[Signature]*  
*U.S. District Judge*

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF SOUTH CAROLINA

Charleston Division

Civil Action No. 2657

**FILED**

**JUL 15 1955**

**ERNEST TALAMON  
CLERK**

Harry Briggs, Jr., et al.,

Plaintiffs,

versus

R. W. Elliott, et al.,

Defendants.

On Remand from the Supreme Court of the United States.

Heard July 15, 1955.

Decided July 15, 1955

Before Parker and Dobbie, Circuit Judges, and Timmerman,  
District Judge.

DISTRICT COURT OF THE UNITED STATES  
EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
Civil Action No. 2657

**FILED**

JUL 15 1955

ERNEST L. ALLEN  
C. O. U. S. S. C. Y.

\*\*

Harry Briggs, Jr., et al.,

Plaintiffs,

versus

R. W. Elliott, et al.,

Defendants.

DECREE

This cause coming on to be heard on the motion of plaintiffs for a judgment and decree in accordance with the mandate of the Supreme Court, and the Court having carefully considered the decision of the Supreme Court, the arguments of counsel, and the record heretofore made in this cause:

It is ordered that the decree heretofore entered by this Court be set aside and, in accordance with the decision and mandate of the Supreme Court, it is ordered, adjudged and decreed that the provisions of the Constitution and laws of the State of South Carolina requiring segregation of the races in the public schools are null and void because violative of the Fourteenth Amendment to the Constitution of the United States, and that the defendants be and they are hereby restrained and enjoined from refusing on account of race to admit to any school under their supervision any child qualified to enter such school, from and after such time as they may have made the necessary arrangements for admission of children to such school on a non-discriminatory basis with all deliberate speed as required by the decision of the Supreme Court in this cause.

It is further ordered that this cause be retained on the docket for the entry of further orders herein if necessity for same should arise.

This \_\_\_ day of July, 1955.

\_\_\_\_\_  
Chief Judge, Fourth Circuit

\_\_\_\_\_  
U. S. Circuit Judge, Fourth Circuit

\_\_\_\_\_  
U. S. District Judge, Eastern & Western Districts of South Carolina.

OFFICE OF THE CLERK  
**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON A

ERNEST L. ALLEN  
CLERK

July 16, 1955

Mr. Thurgood Marshall  
Attorney at Law  
107 W. 43rd Street  
New York, N. Y.

Mr. Harold Boulware  
Attorney at Law  
1109½ Washington St.  
Columbia, S. C.

Hon. T. C. Callison  
Attorney General of S. C.  
Columbia, S. C.

Mr. Robert McC. Figg, Jr.  
Attorney at Law  
Peoples Building  
Charleston, S. C.

Mr. S. E. Rogers  
Attorney at Law  
Summerton, S. C.

In re: Briggs, et al v. Elliott, et al,  
C/A 2657

Dear Sirs:

I am enclosing to each of you a copy of an order signed by the three judges who heard the above case in Columbia on yesterday and also a copy of per curiam and opinion in the above case, likewise filed on July 15th.

Most sincerely yours,

Ernest L. Allen,  
Clerk

ELA/nhl

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 15th day of August, 1955, I served the above Motion upon Robert McC. Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S. E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.

*Thurgood Marshall*

Thurgood Marshall  
Attorney for Plaintiffs-  
Intervenors

Dated: August 15, 1955

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

**FILED**

AUG 17 1955

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

v.

R. W. ELLIOTT, et al.,  
Defendants.

CIVIL ACTION  
No. 2657

MOTION

Plaintiffs move the Court for an order striking the following names from the list of intervenors admitted by order of this Court on July 15, 1955: "Joseph and Sophronia Richburg, infants, by Joseph Richburg, their father and next friend;" and "Emmett and James Richburg, infants, by J. H. Richburg, their father and next friend." Grounds for this motion are as follows: attorneys for plaintiffs received a joint letter from Joseph Richburg and J. H. Richburg instructing them: "We respectfully request that our names be stricken from the aforementioned instruments and that our names not be affixed to, or that they be withdrawn from, if already affixed to, any suit or suits which are in essence contrary to our stated convictions."

*Thurgood Marshall*

Thurgood Marshall  
Robert L. Carter  
107 West 43rd Street  
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Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

Attorneys for Plaintiffs-Intervenors

Dated: August 15, 1955

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

**FILED**  
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Thurgood Marshall  
Robert L. Carter  
107 West 43rd Street  
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Harold R. Boulware  
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Columbia, South Carolina

Attorneys for Plaintiffs-Intervenors

Dated: August 15, 1955

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

**FILED**

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ERNEST L. ALLEN  
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*Thurgood Marshall*

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Robert L. Carter  
107 West 43rd Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

Attorneys for Plaintiffs-Intervenors

Dated: August 15, 1955

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 15th day of August, 1955, I served the above Motion upon Robert McC. Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S. E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.

*Thurgood Marshall*

---

Thurgood Marshall  
Attorney for Plaintiffs-  
Intervenors

Dated: August 15, 1955

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

**FILED**  
SEP - 9 1955  
ERNEST L. ALLEN  
-C.D.C.U.S.E.D.S.C.

\_\_\_\_\_  
HARRY BRIGGS, JR., et al.,  
Plaintiffs,

v.

R. W. ELLIOTT, et al.,  
Defendants  
\_\_\_\_\_

CIVIL ACTION  
No. 2657

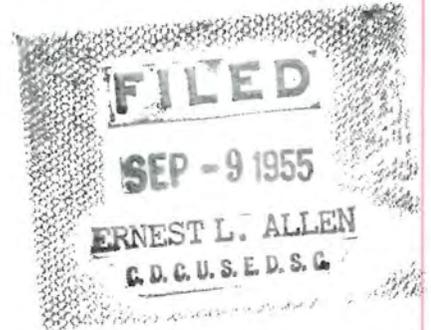
CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 8th day of September, 1955, I served the above Motion upon Robert McC.Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S.E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.

*5/*  
\_\_\_\_\_  
Thurgood Marshall  
Attorney for Plaintiffs-  
Intervenors

Dated: September 8, 1955

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



---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs,

v.

R. W. ELLIOTT, et al. Defendants

---

CIVIL ACTION  
No. 2657

MOTION

Plaintiffs move the Court for an order striking the following names from the list of plaintiffs in the above entitled case: "Mitchell Oliver and Richard Allen Oliver, infants, by Mose Oliver, their father and next friend."

Plaintiffs also move the Court for an order striking the following names from the list of intervenors admitted by order of this Court on July 15, 1955: "John, Durant and Wanetha Richardson, infants, by Birtie Richardson, their mother and next friend;" . . . "Louisa, Willie, Earnestine, Henry and Vernell Cooper, infants, by Ernest Cooper, their father and next friend;" . . . "Earnestine, Virginia, Christine, J. Harris and Henry White, infants, by Amanda White, their mother and next friend."

Grounds for this motion are that attorneys for plaintiffs have received letters from each of the above parents instructing

them to withdraw their names as parties and/or intervenors in the above entitled case.

5/  
Thurgood Marshall  
Robert L. Carter  
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New York 36, New York

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Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

Attorneys for Plaintiffs-Intervenors

Dated: September 8, 1955

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

---

HARRY BRIGGS, Jr., et al  
Plaintiffs

v  
R. W. ELLIOTT, et al  
Defendants

---

MOTION TO STRIKE PLAINTIFFS  
AND INTERVENORS

---

Thurgood Marshall  
Robert L. Carter

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New York 36, N.Y.

Harold R. Boulware  
1109 $\frac{1}{2}$  Washington Street  
Columbia, S. Carolina

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

\_\_\_\_\_  
HARRY BRIGGS, Jr., et al.,  
Plaintiffs,  
  
v.  
  
R. W. ELLIOTT, et al.  
Defendants  
\_\_\_\_\_

**FILED**

**SEP - 9 1955**

**ERNEST L. ALLEN**  
**C. D. C. U. S. E. D. S. C.**

CIVIL ACTION  
No. 2657

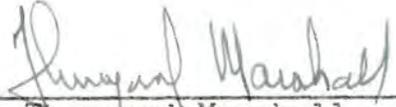
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Columbia, South Carolina

Attorneys for Plaintiffs-Intervenors

Dated: September 8, 1955

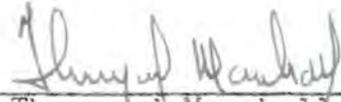
IN THE  
UNITED STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

**FILED**  
SEP - 9 1955  
ERNEST L. ALLEN  
C.D.U.S.E.D.S.C.

\_\_\_\_\_  
HARRY BRIGGS, JR., et al., :  
 :  
 : Plaintiffs, :  
 :  
 :  
 : v. : CIVIL ACTION  
 : No. 2657  
 :  
 : R. W. ELLIOTT, et al., :  
 :  
 : Defendants :  
 :  
 : \_\_\_\_\_ :

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 8th day of September, 1955, I served the above Motion upon Robert McC.Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S.E.Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.

  
\_\_\_\_\_  
Thurgood Marshall  
Attorney for Plaintiffs-  
Intervenors

Dated: September 8, 1955

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

HARRY BRIGGS, Jr., et al.,

Plaintiffs,

v.

R. W. ELLIOTT, et al.,

Defendants



CIVIL ACTION  
No. 2657

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 15th day of September, 1955, I served the above Motion upon Robert McC.Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S. E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.

*SM*  
\_\_\_\_\_  
Thurgood Marshall  
Attorney for Plaintiffs-  
Intervenors

Dated: September 15, 1955

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

**FILED**  
**SEP 16 1955**  
**ERNEST L. ALLEN**  
**C. C. G. S. E. D. S. C.**

\_\_\_\_\_  
HARRY BRIGGS, Jr., et al.,  
Plaintiffs,  
v.  
R. W. ELLIOTT, et al.  
Defendants  
CIVIL ACTION  
No. 2657

MOTION

Plaintiffs move the Court for an order striking the following names from the list of plaintiffs in the above entitled case: "Zelia Ragin and Sarah Ellen Ragin, infants, by Hazel Ragin, their mother and next friend."

Plaintiffs also move the Court for an order striking the following names from the list of intervenors admitted by order of this Court on July 15, 1955: "James, Jacqueline, Annie and Samuel Washington, infants, by Camilla Washington, their mother and next friend;" . . . "Spurgeon, Hoverlee and Marie Pearson, infants, by Gussie Pearson, their mother and next friend."

Grounds for this motion are that attorneys for plaintiffs have received letters from each of the above parents instructing them to withdraw their names as parties and/or intervenors in the above entitled case.

5/  
\_\_\_\_\_  
Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, New York

\_\_\_\_\_  
Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina  
Attorneys for Plaintiffs-Intervenors

Dated: Sept. 15, 1955

FOR THE EASTERN DISTRICT OF  
SOUTH CAROLINA -CHARLESTON  
DIVISION

---

HARRY BRIGGS, Jr., et al.,

Plaintiffs

v

R. W. ELLIOTT, et al.,

Defendants

---

CIVIL ACTION No. 2637

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MOTION

---

Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina  
Attorneys for Plaintiffs-  
Intervenors

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

**FILED**

SEP 16 1955

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

\_\_\_\_\_  
HARRY BRIGGS, Jr., et al.,

Plaintiffs,

v.

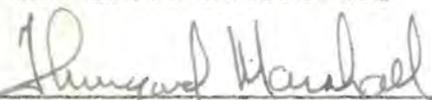
R. W. ELLIOTT, et al.,

Defendants  
\_\_\_\_\_

CIVIL ACTION  
No. 2657

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 15th day of September, 1955, I served the above Motion upon Robert McC.Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S. E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.

  
\_\_\_\_\_  
Thurgood Marshall  
Attorney for Plaintiffs-  
Intervenors

Dated: September 15, 1955

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

---

CIVIL ACTION NO. 2657

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HARRY BRIGGS, JR., et al.,  
Plaintiffs,

v.

R. W. ELLIOTT, et al.,  
Defendants.

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MOTION  
CERTIFICATE OF SERVICE

---

Thurgood Marshall  
Robert L. Carter  
107 West 43rd Street  
New York 36, N. Y.

Harold R. Bouleware  
1109 $\frac{1}{2}$  Washington St.  
Columbia, S. C.



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

---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs

v

R. W. ELLIOTT, et al.,  
Defendants

---

CIVIL ACTION  
No. 2657

---

MOTION

---

Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina  
Attorneys for Plaintiffs-  
Intervenors

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

**FILED**

SEP 16 1955

**ERNEST L. ALLEN**  
C.D.C.U.S.E.D.S.C.

HARRY BRIGGS, Jr., et al.,

Plaintiffs,

v.

R. W. ELLIOTT, et al.

Defendants

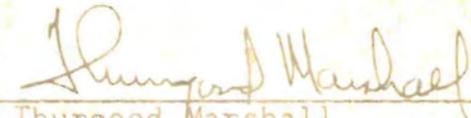
CIVIL ACTION  
No. 2657

MOTION

Plaintiffs move the Court for an order striking the following names from the list of plaintiffs in the above entitled case: "Zelia Ragin and Sarah Ellen Ragin, infants, by Hazel Ragin, their mother and next friend."

Plaintiffs also move the Court for an order striking the following names from the list of intervenors admitted by order of this Court on July 15, 1955: "James, Jacqueline, Annie and Samuel Washington, infants, by Camilla Washington, their mother and next friend;" . . . "Spurgeon, Hoverlee and Marie Pearson, infants, by Gussie Pearson, their mother and next friend."

Grounds for this motion are that attorneys for plaintiffs have received letters from each of the above parents instructing them to withdraw their names as parties and/or intervenors in the above entitled case.



Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina  
Attorneys for Plaintiffs-Intervenors

Dated: Sept. 15, 1955

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

**FILED**

SEP 16 1955

ERNEST L. ALLEN  
CLERK

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HARRY BRIGGS, Jr., et al.,

Plaintiffs,

v.

R. W. ELLIOTT, et al.,

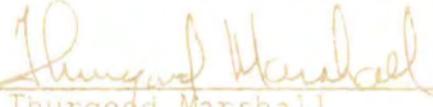
Defendants

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CIVIL ACTION  
No. 2657

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 15th day of September, 1955, I served the above Motion upon Robert McC.Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S. E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.

  
Thurgood Marshall  
Attorney for Plaintiffs-  
Intervenors

Dated: September 15, 1955

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

---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs,  
v.  
R. W. ELLIOTT, et al.,  
Defendants

---

**FILED**  
OCT 12 1955  
ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.  
CIVIL ACTION  
No. 2657

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 11th day of October, 1955, I served the above Motion upon Robert McC.Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S.E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid respectively addressed to them at the above addresses.

---

Thurgood Marshall  
Attorney for Plaintiffs-Intervenors

Dated: October 11, 1955

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 15th day of August, 1955, I served the above Motion upon Robert McC. Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S. E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid, respectively addressed to them at the above addresses.

---

Thurgood Marshall  
Attorney for Plaintiffs-  
Intervenors

Dated: August 15, 1955

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

\_\_\_\_\_  
HARRY BRIGGS, Jr., et al.,  
Plaintiffs,

v.

R. W. ELLIOTT, et al.,  
Defendants  
\_\_\_\_\_



CIVIL ACTION  
No. 2657

MOTION

Plaintiffs move the Court for an order striking the following names from the list of intervenors in the above entitled case admitted by order of this Court on July 15, 1955: "Charlotte, Larry, Wilhelemania and Dorothy Bowman, by Mary Bowman, their mother and next friend;" ... "Theodore King and Willie Edward Dawns, infants, by Malissa Ragin, their guardian and next friend;" . . . "Daisy, John and Earline Gaymon, infants, by Delia Gaymon, their mother and next friend."

Grounds for this motion are that attorneys for plaintiffs-intervenors have received letters from each of the above parents instructing them to withdraw their names as parties and/or intervenors in the above entitled case.

\_\_\_\_\_  
Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, New York

\_\_\_\_\_  
Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

Attorneys for Plaintiffs-Intervenors

Dated: Oct. 11, 1955

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

---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs

v.

R. W. ELLIOTT, et al.,  
Defendants

---

CIVIL ACTION No. 2657

---

MOTION

---

Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, N.Y.

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. Carolina

Attorneys for Plaintiffs  
Intervenors

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

**FILED**  
**OCT 12 1955**  
**ERNEST L. ALLEN**  
**C.D.C.U.S.E.D.S.C.**

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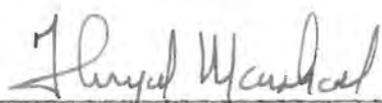
HARRY BRIGGS, Jr., et al.,  
Plaintiffs,  
v.  
R. W. ELLIOTT, et al.,  
Defendants

---

CIVIL ACTION  
No. 2657

CERTIFICATE OF SERVICE

I, THURGOOD MARSHALL, counsel for plaintiffs-intervenors in the above-entitled action, hereby certify that on the 11th day of October, 1955, I served the above Motion upon Robert McC.Figg, Jr., Esq., 206-208 Peoples Office Bldg., Charleston, South Carolina; S.E. Rogers, Esq., Summerton, South Carolina, and Hon. T. C. Callison, Attorney General of South Carolina, Columbia, South Carolina, attorneys for defendants, by depositing copies in the United States mails, prepaid respectively addressed to them at the above addresses.

  
\_\_\_\_\_  
Thurgood Marshall  
Attorney for Plaintiffs-Intervenors

Dated: October 11, 1955

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

**FILED**  
**OCT 12 1955**  
**ERNEST L. ALLEN**  
**C.D.C.U.S.E.D.S.C.**

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HARRY BRIGGS, Jr., et al.,

Plaintiffs,

v.

R. W. ELLIOTT, et al.,

Defendants

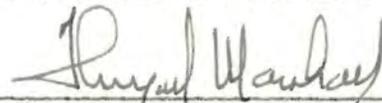
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CIVIL ACTION  
No. 2657

MOTION

Plaintiffs move the Court for an order striking the following names from the list of intervenors in the above entitled case admitted by order of this Court on July 15, 1955: "Charlotte, Larry, Wilhelemania and Dorothy Bowman, by Mary Bowman, their mother and next friend;" ... "Theodore King and Willie Edward Dawns, infants, by Malissa Ragin, their guardian and next friend;" . . . "Daisy, John and Earline Gaymon, infants, by Delia Gaymon, their mother and next friend."

Grounds for this motion are that attorneys for plaintiffs-intervenors have received letters from each of the above parents instructing them to withdraw their names as parties and/or intervenors in the above entitled case.



---

Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, New York

---

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

Attorneys for Plaintiffs-Intervenors

Dated: Oct. 11, 1955

HARRY BRIGGS, Jr., et al.,  
Plaintiffs

v.

R. W. ELLIOTT, et al.,  
Defendants

---

CIVIL ACTION No. 2657

---

MOTION

---

Thurgood Marshall  
Robert L. Carter  
107 West 43 Street  
New York 36, New York

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. Carolina

Attorneys for Plaintiffs,  
Intervenors

FILED

MAR 22 1956

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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

Harry Briggs, Jr., et al,  
Plaintiffs,  
-vs-  
R. W. Elliott, Chairman, et al,  
Defendants.

Civil Action No. 2657

Acceptance of Service

Due and legal service of a copy of the Motion for Substitution of  
Counsel and Notice in the above entitled matter accepted this 14th  
day of March, 1956.

*Robert McC. Figg, Jr.*

Robert McC. Figg, Jr.

Charleston S. C.

March 14th, 1956

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

FILED

MAR 22 1956

ERNEST L. ALLEN  
C.D.C. U.S.E.D.S.C.

Harry Briggs, Jr., et al  
Plaintiffs

v.

R. W. Elliott, Chairman, et al  
Defendants

ORDER

G/A 2657

I have for consideration the motion of Harold R. Boulware, Esquire, to be allowed to withdraw as attorney of record for the plaintiffs in the above stated action and to substitute in his place and stead as such attorney Lincoln C. Jenkins, Jr., Esquire. The motion is dated March 13, 1956, on which date it appears that Lincoln C. Jenkins, Jr., endorsed thereon in writing his consent to the substitution. The motion was made returnable on the 20th day of March, 1956. On March 17, 1956, Thurgood Marshall, another attorney for the plaintiffs, endorsed on the notice of the motion his acceptance of service thereof. On March 14, 1956, Robert McC. Figg, Jr., attorney for the defendants, duly accepted service of said motion in writing.

No good cause having been shown to the contrary, and it being considered that the movant should be allowed to withdraw as an attorney of record for plaintiffs in the above stated case and that Lincoln C. Jenkins, Jr., Esquire, should be allowed to become an attorney of record for plaintiffs in this cause, it is so ORDERED.

Let a certified copy of this order be forthwith mailed by the Clerk of this Court to the remaining counsel of record for plaintiffs in the above stated case, to the movant and to Robert McC. Figg, Jr., Charleston, S. C., as attorney for the defendants.

This 21st day of March, 1956.

United States District Judge

No. \_\_\_\_\_

IN THE \_\_\_\_\_ COURT  
OF THE UNITED STATES

FOR THE

of \_\_\_\_\_

vs.

Filed \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.

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

Harry Briggs, Jr., et al,  
Plaintiffs,  
-vs-  
R. W. Elliott, Chairman, et al,  
Defendants.

Cival Action No. 2657  
MOTION FOR SUBSTITUTION  
OF COUNSEL AND NOTICE

FILED

MAR 22 1956

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

TO: Thurgood Marshall, Esq., Attorney for Plaintiffs and Robert McC.  
Figg, Jr., Attorney for Defendants.

PLEASE TAKE NOTICE that the undersigned will move this Court at  
the United States Courthouse, City of Columbia, South Carolina on  
the 20th day of March, 1956, at 10:00 o'clock in the forenoon, or  
as soon thereafter as counsel can be heard for an order allowing  
Harold R. Boulware to withdraw as attorney of record in the above  
entitled case and to substitute in his place Lincoln C. Jenkins, Jr.,  
Esq., said motion being based on the health of said Harold R. Boul-  
ware.

Harold R. Boulware  
Harold R. Boulware

Columbia, S. C.

March 13, 1956

I CONSENT:

Lincoln C. Jenkins, Jr.  
Lincoln C. Jenkins, Jr.

Service accepted this 15<sup>th</sup> day of March 1956.

Thurgood Marshall,  
Attorney for plaintiffs

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF S. C.

CHARLESTON DIVISION

Harry Briggs, Jr., et al,

Plaintiffs,

-vs-

R. W. Elliott, Chairman, et al,

Defendants.

---

NOTICE OF MOTION

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

FILED

MAR 22 1956

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

Harry Briggs, Jr., et al  
Plaintiffs

v.

R. W. Elliott, Chairman, et al  
Defendants

ORDER

C/A 2657

I have for consideration the motion of Harold R. Boulware, Esquire, to be allowed to withdraw as attorney of record for the plaintiffs in the above stated action and to substitute in his place and stead as such attorney Lincoln C. Jenkins, Jr., Esquire. The motion is dated March 13, 1956, on which date it appears that Lincoln C. Jenkins, Jr., endorsed thereon in writing his consent to the substitution. The motion was made returnable on the 20th day of March, 1956. On March 17, 1956, Thurgood Marshall, another attorney for the plaintiffs, endorsed on the notice of the motion his acceptance of service thereof. On March 14, 1956, Robert McC. Figg, Jr., attorney for the defendants, duly accepted service of said motion in writing.

No good cause having been shown to the contrary, and it being considered that the movant should be allowed to withdraw as an attorney of record for plaintiffs in the above stated case and that Lincoln C. Jenkins, Jr., Esquire, should be allowed to become an attorney of record for plaintiffs in this cause, it is so ORDERED.

Let a certified copy of this order be forthwith mailed by the Clerk of this Court to the remaining counsel of record for plaintiffs in the above stated case, to the movant and to Robert McC. Figg, Jr., Charleston, S. C., as attorney for the defendants.

This 21st day of March, 1956.

George Bell Timmerman  
United States District Judge

A TRUE COPY, ATTEST,

*Ernest L. Allen*  
CLERK OF U. S. DISTRICT COURT  
EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON

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

FILED

MAR 22 1956

Harry Briggs, Jr., et al,  
Plaintiffs,

-vs-

R. W. Elliott, Chairman, et al,  
Defendants.

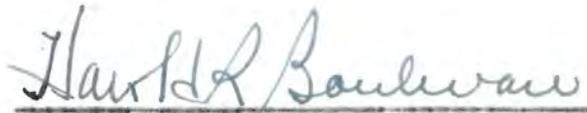
Civil Action No. 2657 ERNEST L. ALLEN

MOTION FOR SUBSTITUTION  
OF COUNSEL AND NOTICE

C. B. C. S. E. D. 34

TO: Thurgood Marshall, Esq., Attorney for Plaintiffs and Robert McC.  
Figg, Jr., Attorney for Defendants.

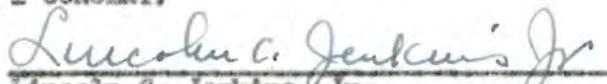
PLEASE TAKE NOTICE that the undersigned will move this Court at  
the United States Courthouse, City of Columbia, South Carolina on  
the 20th day of March, 1956, at 10:00 o'clock in the forenoon, or  
as soon thereafter as counsel can be heard for an order allowing  
Harold R. Boulware to withdraw as attorney of record in the above  
entitled case and to substitute in his place Lincoln C. Jenkins, Jr.,  
Esq., said motion being based on the health of said Harold R. Boul-  
ware.

  
Harold R. Boulware

Columbia, S. C.

March 13, 1956

I CONSENT:

  
Lincoln C. Jenkins, Jr.

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF S. C.

CHARLESTON DIVISION

Harry Briggs, Jr., et al,

Plaintiffs,

-vs-

R. W. Elliott, Chairman, et al,

Defendants.

---

NOTICE OF MOTION

---

January 6, 1952

Harold R. Boulware, Esq.  
Attorney at Law  
1109 1/2 Washington Street  
Columbia, South Carolina

Thurgood Marshall, Esq.  
Attorney at Law  
20 West 40th Street  
New York 18, New York

Robert L. Carter, Esq.  
Attorney at Law  
20 West 40th Street  
New York 18, New York

A. T. Walden, Esq.  
Attorney at Law  
c/o Thurgood Marshall, Esq.  
20 West 40th Street  
New York 18, New York

Spotwood Robinson, III, Esq.  
Attorney at Law  
623 North Third Street  
Richmond, Virginia

Arthur D. Shores, Esq.  
Attorney at Law  
c/o Thurgood Marshall, Esq.  
20 West 40th Street  
New York 18, New York

S. E. Rogers, Esq.  
Attorney at Law  
Summerton, South Carolina

Honorable T. C. Callison  
Attorney General  
State of South Carolina  
Columbia, South Carolina

January 6, 1952

Robert McC. Figg, Jr., Esq.  
Attorney at Law  
Broad Street  
Charleston, South Carolina

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al  
vs.  
H. W. Elliott, Chairman, et al

Dear Sirs:

I am enclosing to each of you a certified copy of an Order of Judge Parker and Judge Timmerman, in which Judge Waring does not join, in the above case, dated and filed as of today.

A certified copy is today being forwarded to the Clerk of the United States Supreme Court as directed therein.

Yours most truly,

Ernest L. Allen,  
Clerk

ELA:vj

Encl.

January 8, 1952

Honorable John J. Parker  
Chief Judge, Fourth Circuit  
United States Court of Appeals  
Charlotte, North Carolina

Honorable George Bell Timmerman  
United States District Judge  
Columbia, South Carolina

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al

Dear Judge Parker and Judge Timmerman:

I am enclosing to you for your file a certified copy of your Order, dated and filed as of today, in the above case, in which Judge Waring does not join.

A certified copy of the Order has been forwarded to the Clerk of the United States Supreme Court, together with a Certificate to be attached to the copy of the Report of the Defendants heretofore sent him, at the request of counsel, and a certified copy is being mailed to all Attorneys of record.

With my kindest regards to each of you, I am

Most sincerely,

Ernest L. Allen,  
Clerk

ELA:vj

Encl.

January 8, 1952

Honorable Elmore Cropley, Clerk  
United States Supreme Court  
Supreme Court Building  
Washington, D. C.

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al

Dear Mr. Cropley:

I am enclosing herewith certified copy of an Order of Judge Parker and Judge Timmerman, in which Order Judge Waring does not join, in the above-entitled case, dated and filed in this office as of today.

Also enclosed is a Certificate which I wish you would please attach to the Report of Defendants filed in this office December 20, 1951, which copy was forwarded to you to be placed with the original appeal record. You will note that the Order enclosed provides that a certified copy be transmitted to your court, and I think this Certificate will suffice. If, however, you prefer to have the copy I sent you certified, then please forward it to me and I shall promptly certify and return the same to you.

Most sincerely yours,

Ernest L. Allen, Clerk

ELA:vj

Encls.

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

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,  
Defendants.

CERTIFICATE OF CLERK

Civil Action No. 2657

I, Ernest L. Allen, do certify that the foregoing  
Report of Defendants is a true and correct copy of the original  
Report filed in my office at Charleston, South Carolina, Decem-  
ber 20, 1951.

Witness my hand and seal this 8th day of January,  
1952.

Clerk, United States District  
Court, Eastern District of  
South Carolina

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

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
vs.  
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IN THE DISTRICT COURT OF THE UNITED STATES  
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CHARLESTON DIVISION

HARRY BRIGGS, JR., et al.,  
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vs.  
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Clerk, United States District  
Court, Eastern District of  
South Carolina

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

Charleston Division  
Civil Action No. 2657.

FILED

JAN 8 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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. N. Betcham, Superintendent of School District No. 22,  
Defendants.

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.

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

/s/ John J. Parker  
Chief Judge, Fourth Circuit.

/s/ George Bell Timmerman  
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

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
Charleston Division  
Civil Action No. 2657.

FILED

JAN 8 1952

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

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. N. Betchan, Superintendent of School District No. 22,  
Defendants.

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This the 8th day of January 1952.

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and this decree have no place  
in this case and, therefore,  
I do not join herein.

/s/ John J. Parker  
Chief Judge, Fourth Circuit.

January 8, 1952

/s/ George Bell Timmerman  
U. S. District Judge, Eastern  
District of South Carolina

/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

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
Charleston Division  
Civil Action No. 2657.

FILED

JAN 8 1952

ERNEST L. ALLEN  
C. D. U. S. E. D. S. C.

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. H. Betchan, Superintendent of School District No. 22,  
Defendants.

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having on December 20, 1951, filed a report as required by  
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This the 8th day of January 1952.

In my opinion, the report  
and this decree have no place  
in this case and, therefore,  
I do not join herein.

/s/ John J. Parker  
Chief Judge, Fourth Circuit.

January 8, 1952

/s/ George Bell Timmerman  
U.S. District Judge, Eastern  
District of South Carolina

/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

Civil Action

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

Charleston Division

Civil Action No. 2657.

VOL 70 PAGE 436 FILED  
JAN 8 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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;  
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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.

In my opinion, the report  
and this decree have no place  
in this case and, therefore,  
I do not join herein.

January 8, 1952

*John J. Parker*  
Chief Judge, Fourth Circuit.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

*[Signature]*  
U.S. District Judge, Eastern District  
of South Carolina.

*[Signature]*  
U.S. District Judge, Eastern District  
of South Carolina.

No. ....

IN THE ..... DISTRICT ..... COURT  
OF THE UNITED STATES

FOR THE

EAST, DIST. of SOUTH CAROLINA

HARRY BRIGGS, JR., ET AL.

v.s.

R. W. ELLIOTT, CHAIRMAN, ETC.

Filed ..... 19.....

....., Clerk.

By ..... Deputy.

United States of America, ss:

FILED

FEB 7 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

The President of the United States of America,

To the Honorable the Judges of the United States

District Court for the Eastern -----

District of South Carolina, -----

GREETING:

Whereas, lately in the United States District Court for the Eastern District of South Carolina, -----before you, or some of you, in a cause between Harry Briggs, Jr., et al., Plaintiffs, and 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. et al., Defendants, Civil Action No. 2657, wherein the decree of the said District Court, entered in said cause on the 21st day of June, A. D. 1951, is in the following words, viz:

"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 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. 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 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,

You, therefore, are hereby commanded that such ~~execution and~~ further proceedings be had in said cause, in conformity with the opinion and decree of this Court, ----- as according to right and justice, and the laws of the United States, ought to be had, the said appeal ----- notwithstanding.

Witness, the Honorable FRED M. VINSON, Chief Justice of the United States, the fifth ----- day of February -----, in the year of our Lord one thousand nine hundred and fifty-two.

Costs of -----  
Clerk ----- \$-----  
Printing record ----- \$-----  
\$-----

CHARLES ELMORE CROPLEY

Clerk of the Supreme Court of the United States.

By

*Hugh W. Bar*  
Deputy

File No. -----

Supreme Court of the United States

No. 273 --, October Term, 1951.

Harry Briggs, Jr., et al.,

vs.

R. W. Elliott, Chairman,

J. D. Carson et al., etc.

MANDATE

U. S. GOVERNMENT PRINTING OFFICE 910024

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

---

HARRY BRIGGS, JR., et al., :  
 :  
Plaintiffs, :  
 :  
v. :  
 :  
R. W. ELLIOTT, Chairman, et al., :  
 :  
Defendants :  
 :

---

**FILED**  
FEB 7 1952  
ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

MOTION FOR JUDGMENT

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.

TM  
RLC

3. This Report by defendants prays that a further order be issued "for the filing of an additional Report or Reports by them."

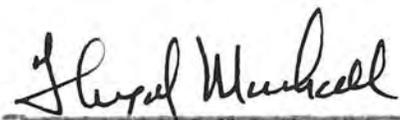
4. During the final argument of counsel for the defendants in the original trial, Chief Judge Parker stated:

"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

TM  
RLC

I hereby certify that a copy of this motion has been mailed to Robert McC. Figg, Jr., Esq., 206-208 Peoples Office Building, Charleston, S. Carolina.



---

Thurgood Marshall  
Attorney for Plaintiffs

TM  
RUE

CIVIL ACTION 2657

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs

v.

R.W. ELLIOTT, Chairman, et al  
Defendants

---

MOTION FOR JUDGMENT

---

Harold R. Boulware  
1109½ Washington St.  
Columbia 20, S. Carolina

Spottswood W. Robinson, III  
623 N. Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED:

*Feb. 7* 1952  
Ernest L. Allen,  
G.D.C.U.S., E.D.S.C.

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
v.  
R. W. ELLIOTT, Chairman, et al.,  
Defendants

---

MOTION FOR JUDGMENT

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."

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

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 defendants 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  
/s/ Thurgood Marshall

---

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Attorneys for Plaintiffs

February 5, 1952

I hereby certify that a copy of this motion has been  
mailed to Robert McC. Figg, Jr., Esq., 206-208 Peoples Office  
Building, Charleston, S. Carolina.

/s/ Thurgood Marshall  
Thurgood Marshall  
Attorney for Plaintiffs

February 7, 1952

Honorable John J. Parker  
Chief Judge  
Fourth Judicial Circuit  
Charlotte, North Carolina

Honorable J. Waties Waring  
United States District Judge  
Charleston, South Carolina

Honorable George Bell Timmerman  
United States District Judge  
Columbia, South Carolina

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al vs.  
R. W. Elliott, etc., et al

My dear Judges Parker, Waring and Timmerman:

For Mr. Allen, who is out of the city, I am enclosing to each of you a certified copy of Motion for Judgment which has been filed today on behalf of the plaintiffs in the above entitled cause.

With my regards to each of you, I am

Most sincerely yours,

Thomas A. Cauthen,  
Chief Deputy Clerk

TAC:vj

Enc.



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.

SUPREME COURT OF THE UNITED STATES

FILED:

Feb. 7

1952

Ernest L. Allen,  
C.D.C.U.S., E.D.S.C.

No. 273. - October Term, 1951.

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.

(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 No. 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.

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.

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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.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED:  
*Feb. 7* 1952  
Ernest L. Allen,  
C.D.C.U.S., E.D.S.C.

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HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
v.  
R. W. ELLIOTT, Chairman, et al.,  
Defendants

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MOTION FOR JUDGMENT

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- A. For an early hearing and final disposition of the  
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2. The "Report of Defendants Pursuant to Decree  
Dated June 21, 1951" heretofore filed shows that the physical  
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pupils.

3. This Report by defendants prays that a further  
order be issued "for the filing of an additional Report or Reports  
by them."

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."

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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 defendants 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  
/s/ Thurgood Marshall  
Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Attorneys for Plaintiffs

February 5, 1952

I hereby certify that a copy of this motion has been mailed to Robert McC. Figg, Jr., Esq., 206-208 Peoples Office Building, Charleston, S. Carolina.

/s/ Thurgood Marshall  
Thurgood Marshall  
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
Eastern District of South Carolina

Chambers of  
J. Waties Waring  
District Judge

February 11, 1952

H onorable John J. Parker  
United States Circuit Judge  
Charlotte 2, North Carolina

In re: C/A 2657  
Briggs v. Elliott

My dear Judge Parker:

I am today in receipt of your letter of the 9th instant informing me of your decision to have a hearing tentatively set for February 29th in the above case and also you wish to change the venue from the Charleston to the Columbia Division for personal convenience. Since my term of active service will have expired by that time, I make no comment as to the propriety of either the place or date.

As the matters to be submitted to this proposed hearing are entirely under the separate but equal theory and seem to be entirely irrelevant to the basis of the case which is the matter of whether Racial Segregation is Constitutional, I would not be willing to accept a designation to sit with you in the case or take any part in it.

Very truly yours

/s/ J. Waties Waring  
J. Waties Waring  
United States District Judge

cc: Honorable George Bell Timmerman  
United States District Judge  
Columbia 3, South Carolina

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

Charleston Division

Civil Action No. 2657.

---

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. N. Betcham, Superintendent of School District No. 22, Defendants.

---

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 hearing 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.

1912  
DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

Charleston Division  
Civil Action No. 2657.

FILED

FEB 14 1952

ERNEST L. ALLEN  
S.C. U.S. D.S.C.

Harry Briggs, Jr., et al., Plaintiffs,

versus

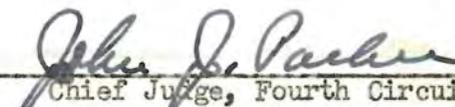
R.W.Elliott, Chairman, J.D.Carson and George Kennedy, Members of the Board of Trustees of School District No. 22, Clarendon County, S.C.; Summerton High School District, a body corporate; L. B. McCord, Superintendent of Education for Clarendon County, and Chairman A. J. Plowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. N. Betcham, Superintendent of School District No. 22, Defendants.

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 hearing at Columbia:

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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.

  
Chief Judge, Fourth Circuit.

No. \_\_\_\_\_

IN THE \_\_\_\_\_ COURT  
OF THE UNITED STATES

FOR THE

of \_\_\_\_\_

U.S.

Filed \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.

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

**FILED**

**FEB 14 1952**

Charleston Division  
Civil Action No. 2657.

**ERNEST L. ALLEN**  
CLERK U.S. DIST. CT.

---  
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. N. Betcham, Superintendent of School District No. 22, Defendants.

---  
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 hearing 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

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

Charleston Division  
Civil Action No. 2657.

FILED

FEB 14 1952

ERNEST L. ALLEN  
CLERK U.S. DIST. CT.

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. M. Betcham, Superintendent of School District No. 22, Defendants.

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 hearing 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

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

Charleston Division  
Civil Action No. 2657.

FILED

FEB 14 1952

ERNEST L. ALLEN  
CLERK U.S. 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. McFord, 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. N. Betcham, Superintendent of School District No. 22, Defendants.

---

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 hearing 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.

  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

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

FILED

Charleston Division  
Civil Action No. 2657.

FEB 14 1952

ERNEST L. ALLEN  
CLERK

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. Flowden, W. E. Baker,  
Members of the County Board of Education for Clarendon County;  
and H. K. Setcham, Superintendent of School District No. 22,  
Defendants.

In the above entitled cause it appearing that  
defendants have filed a report pursuant to the decree here-  
before 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 hearing 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

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

FILED

Charleston Division

FEB 14 1952

Civil Action No. 2657.

ERNEST L. ALLEN  
CLERK U.S. 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. N. Betcham, Superintendent of School District No. 22, Defendants.

---  
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 hearing 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

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

Charleston Division

Civil Action No. 2697.

FILED

FEB 14 1952

ERNEST L. ALLEN  
CLERK U.S. DISTRICT COURT

Harry Wiagg, Jr., et al., Plaintiffs,

versus

W. W. Elliott, Chairman, J. D. Carson and George Kennedy,  
Members of the Board of Trustees of School District No. 22,  
Clarendon County, S. C.; Sumner High School District, a  
body corporate; L. B. McCord, Superintendent of Education for  
Clarendon County, and Chairman A. J. Flouren, W. L. Baker,  
Members of the County Board of Education for Clarendon County;  
and H. H. Hutches, Superintendent of School District No. 22,  
Defendants.

In the above entitled cause it appearing that de-  
fendants have filed a report pursuant to the decree hereto-  
fore 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 hearing 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 any 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 I. Parker  
Chief Judge, Fourth Circuit.

A TRUE COPY, ATTEST

  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. S. CAROLINA

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

Charleston Division  
Civil Action No. 2657.

FILED

FEB 14 1952

ERNEST L. ALLEN  
CLERK U.S. DIST. CT.

Harry Briggs, Jr., et al., Plaintiffs,

versus

E. 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; J. B. McCard, Superintendent of Education  
for Clarendon County, and Chairman A. J. Flouder, W. E. Baker,  
Members of the County Board of Education for Clarendon County;  
and H. H. Setcham, Superintendent of School District No. 22,  
Defendants.

In the above entitled cause it appearing that  
defendants have filed a report pursuant to the decree here-  
before 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 hearing 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.

  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

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

Charleston Division  
Civil Action No. 2657.

FILED

FEB 14 1952

---  
Harry Briggs, Jr., et al., Plaintiffs, ERNEST L. ALLEN  
VERSUS CLAUDE B. B. B.

H. W. Elliott, Chairman, J. D. German 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. McLeod, Superintendent of Education for  
Clarendon County, and Chairmen A. J. Flouder, W. E. Baker,  
Members of the County Board of Education for Clarendon County;  
and H. N. Satchan, Superintendent of School District No. 22,  
Defendants.

---  
In the above entitled cause it appearing that de-  
fendants have filed a report pursuant to the decree hereto-  
fore 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 hearing 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 the District Court  
Eastern District of South Carolina

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

Charleston Division

Civil Action No. 2657.

FILED

FEB 14 1952

ERNEST L. ALLEN  
CLERK U.S.D.C.

Harry Briggs, Jr., et al., Plaintiffs,

versus

R. F. 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. H. Betchem, Superintendent of School District No. 22,  
Defendants.

In the above entitled cause it appearing that  
defendants have filed a report pursuant to the decree here-  
before 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 hearing 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

February 14, 1952

Honorable Alfred J. Plowden, Jr.  
United States Marshal  
Charleston, South Carolina

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al  
vs. R. W. Elliott, Chair-  
man, et al

Dear Mr. Plowden:

This is to advise that a three-judge court will hear further matters in the above case in the United States Courtroom at Columbia on Monday, March 3, 1952, at 10:30 a. m.

You or your deputies should arrange to be present at the above stated time.

Most sincerely,

Ernest L. Allen,  
Clerk

ELA:vj

cc: Honorable George Bell Timmerman  
United States District Judge  
Columbia, South Carolina

February 15, 1952

Mr. R. M. Elliott, Trustee  
School District Number 1  
Summerton, South Carolina

Mr. J. D. Carson, Trustee  
School District Number 1  
Summerton, South Carolina

Mr. William A. Brunson, Trustee  
School District Number 1  
Summerton, R.F.D.  
South Carolina

Mr. A. E. Brock, Sr., Trustee  
School District Number 1  
Summerton, South Carolina

Mr. A. E. Touchberry, Trustee  
School District Number 1  
Summerton, South Carolina

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al  
vs. R. W. Elliott, Chairman, et al

Gentlemen:

I am enclosing to each of you certified copies of two orders of Honorable John J. Parker, Chief Judge of the Fourth Judicial Circuit, calling a three-judge court in the above case, the same to be held in the United States Courtroom at Columbia, S. C., on Monday, March 3, 1952, at 10:30 o'clock in the forenoon.

You will note that the order filed on February 14 provided an earlier date, but the second order, dated and filed as of today, changes the date of the hearing to March 3, 1952.

February 15, 1952

Certified copies of the Orders are being sent to you pursuant to the provisions of the first Order of Judge Parker, filed in this office February 14, 1952.

Yours most truly,

Ernest L. Allen,  
Clerk

ELA:vj

Encs.

February 15, 1952

Honorable James F. Byrnes  
Governor  
State of South Carolina  
Columbia, South Carolina

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al

Dear Governor:

I am enclosing to you certified copies of two Orders of Judge Parker, one filed February 14 and the second Order filed as of today, calling a three-judge court to be held in Columbia on March 3, 1952, at 10:30 o'clock in the forenoon. Copies of the Orders have, of course, been forwarded to all counsel of record and to the Trustees of Clarendon County School District Number 1. It has occurred to me that you would like to have these copies.

With my highest personal regards, I am

Most sincerely,

Ernest L. Allen,  
Clerk

ELA:vj

Encs.

FILED

FEB 15 1952

ERNEST L. ALLEN  
C. D. C. U. S. C.

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

Charleston Division

Civil Action No. 2657.

---

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. N. Betcham, Superintendent of  
School District No. 22, Defendants.

---

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. S. CAROLINA

FILED

FEB 15 1952

ERNEST L. ALLEN  
CLERK U.S. DIST. CT.

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
Charleston Division  
Civil Action No. 2657.

---

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. Flowden, W. E.  
Baker, Members of the County Board of Education for  
Clarendon County; and H. N. Betcham, Superintendent of  
School District No. 22, Defendants.

---

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.

  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

FILED

FEB 15 1952

ERNEST L. ALLEN  
C. & G. S. E. D. S. C.

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

Charleston Division

Civil Action No. 2657.

---

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. Flowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. N. Betcham, Superintendent of School District No. 22, Defendants.

---

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

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ERNEST L. ALLEN  
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DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

Charleston Division

Civil Action No. 2657.

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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. H. Betcham, Superintendent of  
School District No. 22, Defendants.

---

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

FILED

FEB 15 1952

ERNEST L. ALLEN  
C. C. C. U. S. E. S. C.

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
Charleston Division  
Civil Action No. 2637.

---  
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. H. Betcham, Superintendent of  
School District No. 22, Defendants.

---  
In the above entitled cause, upon application  
of plaintiffs, it is ordered that the hearing heretofore  
set for February 27, 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

FILED

FEB 15 1952

ERNEST L. ALLEN  
C. D. C. U. S. D. S. C.

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

Charleston Division

Civil Action No. 2657.

---

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. H. Betcham, Superintendent of School District No. 22, Defendants.

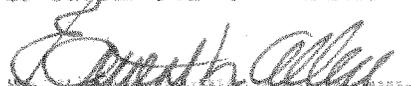
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In the above entitled cause, upon application of plaintiffs, it is ordered that the hearing heretofore set for February 29, 1952, be continued to March 3, 1952, and be held at Columbia, S. C. on the latter date at 10:30 o'clock in the morning.

Done at Charlotte, N. C., this February 14, 1952.

/s/ John J. Parker  
Chief Judge, Fourth Circuit.

A TRUE COPY. ATTEST.



CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

FILED

FEB 15 1952

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

ERNEST L. ALLEN  
CLERK U.S.D.C.

Charleston Division

Civil Action No. 2657.

---

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. N. Betcham, Superintendent of School District No. 22, Defendants.

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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

FILED

FEB 15 1952

ERNEST L. ALLEN  
C. G. U. S. E. & S. C.

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
Charleston Division  
Civil Action No. 2657.

---  
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. N. Betcham, Superintendent of  
School District No. 22, Defendants.

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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

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

E. R. CROW  
DIRECTOR  
P. C. SMITH  
ASSISTANT DIRECTOR

COLUMBIA, S. C.

February 15, 1952

Honorable James F. Byrnes  
Governor of South Carolina  
Columbia, South Carolina

Dear Governor:

To date the State Educational Finance Commission has given its approval to building projects in the counties and school districts listed below:

*SER  
Rm  
7*

Building Projects Approved

	<u>Negro Schools</u>	<u>White Schools</u>	<u>Total</u>
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



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

Charleston Division

Civil Action No. 2657.

FILED

FEB 15 1952

ERNEST L. ALLEN  
CLERK U.S. DISTRICT COURT

*Vol 71 Page 462*

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. N. Betcham, Superintendent of School District No. 22, Defendants.

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.

*John J. Packer*  
Chief Judge, Fourth Circuit.



Columbia, South Carolina  
March 3, 1952.

Honorable Armistead M. Dobie,  
Circuit Judge,  
Fourth Judicial Circuit,  
Richmond, Virginia.

Honorable George Bell Timmerman,  
District Judge,  
Eastern District of South Carolina,  
Columbia, South Carolina.

RE: Civil Action 2657  
Briggs, et al  
v  
Elliott, etc. et al.

My Dear Judges Dobie and Timmerman:-

As directed by Judge Parker earlier today, I am enclosing to each of you a certified copy of copy of his letter to Judge Waring under date of February 9, 1952, and Judge Waring's reply under date of February 11, 1952, together with Order filed this date designating Judge Dobie to sit as a member of the Court in the above matter.

With my personal regards to each of you, I am,

Most sincerely,

Ernest L. Allen,  
Clerk.

TAC/c  
encl.

CC: Judge John J. Parker.

Columbia, South Carolina  
March 3, 1952.

Honorable Claude M. Dean,  
Clerk, Court of Appeals,  
Fourth Judicial Circuit,  
Richmond, Virginia.

RE: Civil Action 2657  
Briggs, et al  
v  
Elliott, etc. et al.

My Dear Mr. Dean:-

At the direction of Judge Parker earlier today, I am enclosing to you herewith a certified copy of copy of his letter to Judge J. Waties Waring, dated February 9, 1952; certified copy of Judge Waring's letter to Judge Parker, dated February 11, 1952, and certified copy of Order of Judge Parker, dated and filed today, designating Honorable Armistead M. Dobie as a member of the Court in the above matter.

With my personal regards, I am,

Most sincerely,

Ernest L. Allen,  
Clerk.

TAC/c  
encl.

CC: Judge Parker.

I concur: DISTRICT COURT OF THE UNITED STATES  
A.M. Dobie, FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
U.S. Circuit  
Judge Charleston Division

Civil Action No. 2657.

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.

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.

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* 96 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 additional 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 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 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

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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. Enabling 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 therefore 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.

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 buildings 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 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 \$1,992,016.00 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.

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. As 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 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

/s/ Ernest L. Allen  
Clerk of U.S. District Court  
East Dist. So. Carolina

I concur: DISTRICT COURT OF THE UNITED STATES  
A.M. Dobie, FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
U.S. Circuit  
Judge Charleston Division

Civil Action No. 2657.

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.

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  
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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 additional 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 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 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

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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. Enabling 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 therefore 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.

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 buildings 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 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.

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. As 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 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

/s/ Ernest L. Allen  
Clerk of U.S. District Court  
East Dist. So. Carolina

I concur:  
A.M. Dobie,  
U.S. Circuit  
Judge

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

Charleston Division

Civil Action No. 2657.

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.

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. L. Rogers and Robert McC. Figgs, Jr., for  
Defendants.

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 96 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 additional 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 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 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

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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. Enabling 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 therefore 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.

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 buildings 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 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.

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. As 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 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

/s/ Ernest L. Allen  
Clerk of U.S. District Court  
East Dist. So. Carolina

CLERK'S CERTIFICATE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CIVIL ACTION

I, Ernest L. Allen, Clerk of the United States District Court for the Eastern District of South Carolina, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of HARRY BRIGGS, JR., et al vs. R. W. ELLIOTT, Chairman, et al, together with Final Decree and all papers relating to the same, and as designated by counsel to constitute the record on appeal, and as appears by the original record now on file in my office.

Given under my hand and seal of said Court, at Charleston, S. C., this 21<sup>st</sup> day of May, 1952.

(Seal)

ERNEST L. ALLEN

Clerk, U. S. D. C., E. D. S. C.

DISTRICT COURT OF THE UNITED STATES

County of CLARENDON FOR THE EASTERN DISTRICT OF SOUTH CAROLINA,  
CHARLESTON DIVISION.

Civil Action No. 2657.

**FILED**

MAR 3 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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, Superintend-  
ent of SCHOOL DISTRICT NO. 22,

Defendants.

RETURN.

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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. D. 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 Super-  
intendent of School District No. 22.

2. That on October 16, 1951, the State Educational  
Finance Commission of South Carolina approved the order of the

*R. W. Elliott*  
*J. D. Carson*

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

SEE  
SER  
Am 7/2

W. A. Brunson

E. M. Truchberry

H. B. Betchman

S. E. Rogers

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.

Robert McC. Figg, Jr.,  
18 Broad Street  
Charleston, S. C.

Attorneys for Respondents.

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

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Civil Action No. 2657.

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HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, CHAIRMAN, et al.,  
Defendants.

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RETURN.

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S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

The Court opened at Columbia, S. C., on MAR 3 1952, 19... according to adjournment  
John J Parker, C.J., Armistead M. Dobie, C.J  
Honorable George Bell Timmerman, D.J. Presiding.

PRESENT

Ernest L. Allen, Clerk Alfred J. Plowden Jr, Marshal  
Bailiff DORIS C. APPLEBY - Reporter

HARRY BRIGGS, JR. et al  
Plaintiff.  
vs.  
R. W. Elliott, et al  
Defendant.

Case No. 9a 2657

APPEARANCES: Thurgood Marshall Esq., Harold Boslward, Esq., Robert L. Walker, Esq., Spotswood W. Robinson III Esq. A.T. Walden  
For Plaintiff.  
Robt M. G. Figg Esq., J. E. Rogers, Esq., T. C. Callison, Esq.  
For Defendant.

Plaintiff For Judgment (Filed 2-7-52)

Motion by

Defendant

ARGUMENTS:

Pro Motion

Contra Motion

EXHIBITS:

Plaintiff

Defendant

At opening of Court, Judge Parker reviewed the former constitution of the Special Court and filed in the record copy of his letter to Judge Waring of Feb. 9, 1952 and Judge Waring's reply of Feb. 11, 1952, declining designation to participate further in the case. Thereupon an Order was filed designating Judge Armistead M. Dobie, to be third member of the Court. Counsel for Defendant then filed a Report supplemental

JURY

to that filed Dec. 20, 1951, and this Report was summarized for the Court by Mr. Figg.

Mr. Marshall replied on behalf of the Plaintiffs and was frequently interrupted by members of the Court

WITNESSES:

Plaintiff

Defendant

with questions relating to the present opinions of the Plaintiffs as to what was desired of the Court at this time. During the arguments, the Court requested defendant's counsel to file progress report as to construction of Scott's Branch School, and definite information as to its being available for coming School Year.

Mr. Figg in reply:

Counsel for both sides were questioned by the Court as to form and extent of the Decree to be filed.

Mr. Figg for Defendants, Mr. Marshall for Plaintiffs.

ARGUMENT:

JUDGE'S CHARGE:

VERDICT:

The Court adjourned at 11:50 o'clock, A.M. until 10 Am Mch 4 1952

MAR 3 - 1952

ERNEST L. ALLEN  
C.D.C.S.E.D.S.C.

CHAMBERS OF  
J. WATIES WARING  
DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON, S. C.

February 11, 1952

Honorable John J. Parker  
United States Circuit Judge  
Charlotte 2, North Carolina

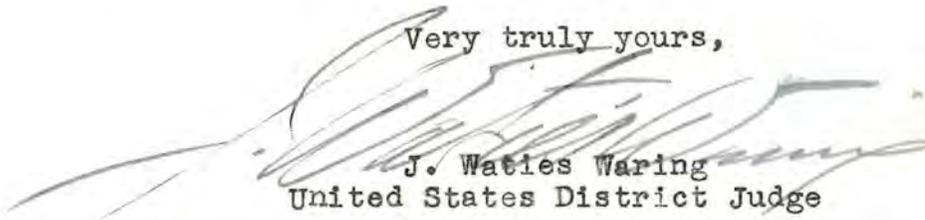
In re: C/A 2657  
Briggs v. Elliott

My dear Judge Parker:

I am today in receipt of your letter of the 9th instant informing me of your decision to have a hearing tentatively set for February 29th in the above case and also you wish to change the venue from the Charleston to the Columbia Division for personal convenience. Since my term of active service will have expired by that time, I make no comment as to the propriety of either the place or date.

As the matters to be submitted to this proposed hearing are entirely under the separate but equal theory and seem to be entirely irrelevant to the basis of the case which is the matter of whether Racial Segregation is Constitutional, I would not be willing to accept a designation to sit with you in the case or take any part in it.

Very truly yours,



J. Waties Waring  
United States District Judge

cc: Honorable George Bell Timmerman  
United States District Judge  
Columbia 3, South Carolina

MAR 3 - 1952

ERNEST L. ALLEN  
C. C. U. S. E. & C.

February 9, 1952.

Hon. J. Waties Waring,  
United States District Judge,  
Charleston, S. C.

Hon. George Bell Timmerman,  
United States District Judge,  
Columbia, S. C.

Gentlemen:

I have received copy of motion filed by plaintiffs in Briggs v. Elliott asking that plaintiff be accorded an early hearing on the motion. I do not know whether mandate has been received by the Clerk from the Supreme Court or not; but, if not, it will doubtless be received at an early date and I think we should proceed to arrange for the hearing of the motion.

I suggest that the motion be set down for hearing on Friday February 29, and that the hearing be had in Columbia, which will be much more convenient for Judge Timmerman and me than Charleston and equally convenient for Judge Waring, who, I understand, will not be in Charleston at the time. It will also be much more convenient for counsel.

I understand that Judge Waring enters upon his retirement next Friday, February 15; but he will be eligible to sit in this case upon my designation, and I shall designate him to sit in it if he is willing to do so.

I shall appreciate it if you will advise me at once whether you approve of setting the motion for hearing at Columbia on Friday February 29 and, if not, what date you suggest, bearing in mind that it will not be possible for me to hold the hearing between February 20 and February 27 because of prior commitments, and that I must be in Richmond at the March term of the Court of Appeals beginning March 5. I ask, also, that Judge Waring indicate whether he is willing to accept a designation to sit in the hearing of the motion.

With highest regards and best wishes to you both, I am

Sincerely yours,

*John J. Parker*

JJP/B

2657  
Civil Action

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

FILED

Charleston Division

MAR 3 - 1952

Civil Action No. 2657.

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

--- VOL 72 FILE 102 ---  
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.N. Betcham, Superintendent of School District No. 22, Defendants.

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It appearing that, upon application filed before Hon. J. Waties Waring, United States District Judge for the Eastern District of South Carolina, a special District Court of three judges was convened in the above entitled cause by the undersigned Chief Judge of the Fourth Circuit pursuant to 28 USC 2284, consisting of said Judge Waring, Judge George Bell Timmerman and the undersigned:

And it further appearing that the said special three judge District Court entered a decree in the above entitled cause from which an appeal was taken to the Supreme Court of the United States, and that the Supreme Court has vacated the decree and remanded the case to the special three-judge District Court for further proceedings in the light of a report which defendants had filed in accordance with the requirements of the decree (see Briggs v. Elliott 72 S. Ct. 327):

And it further appearing that Hon. J. Waties Waring has now retired from regular active service as a judge pursuant to the provisions of 28 USC 371(b) and as a retired judge is eligible to perform judicial duties when designated and assigned thereto if willing to undertake same, but not otherwise:

And it further appearing that the undersigned has stated in writing to Judge Waring that he would designate him to sit in the further hearing of the case if Judge Waring was willing to accept the designation and that Judge Waring has replied in writing that he was not willing to accept the designation:

And it further appearing that no successor to Judge Waring has as yet been appointed, but that Judge Timmerman, already designated as a member of the court, is a Judge of the Eastern as well as of the Western District of South Carolina:

Now therefore, it is ordered that Hon. Armistead M. Dobie, one of the Circuit Judges of the Fourth Judicial Circuit, be and he is hereby designated to sit with the Honorable George Bell Timmerman and the undersigned, in place of Hon. J. Waties Waring, as a member of the special three judge District Court in the further hearing of the case.

Done at Columbia, S. C., this March 3, 1952.

  
Chief Judge, Fourth Circuit.

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA,  
CHARLESTON DIVISION.  
Civil Action No. 2657.

**FILED**

**MAR 3 - 1952**

**ERNEST L. ALLEN**  
RECORDED

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. MCGORD,  
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, Superintend-  
ent of SCHOOL DISTRICT NO. 22,

Defendants.

REPORT OF THE DEFEN-  
DANTS SUPPLEMENTARY  
TO THE REPORT FILED  
DECEMBER 20, 1951.

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

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No. 22 was by order of the County 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

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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

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Issuance of Bonds of School 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 remodeling program, so that conditions in said period will be no different

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from those 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*

S. E. Rogers,  
Summerton, S. C.

*Robert McC. Figg, Jr.*

Robert McC. Figg, Jr.  
18 Broad Street,  
Charleston, S. C.

Attorneys for Defendants.

*SER*  
*Remedy*

STATE OF SOUTH CAROLINA. )  
COUNTY OF *Richland* )

Personally appeared before me *R. M. Elliott*

who made oath and said that he has read the foregoing Supplementary Report, and that the same is true to the best of his knowledge, information and belief.

*R. M. Elliott*

Sworn to and subscribed before me  
this *3rd* day of *March*, 1952.

*Frank B. Rosewood*  
Notary Public for So. Carolina.

R. F. S. C. My Commission Expires  
at the Pleasure of the Governor.

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

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Civil Action No. 2657.

---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, CHAIRMAN, et al.,  
Defendants.

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SUPPLEMENTARY REPORT OF DEFENDANTS.

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA,  
CHARLESTON DIVISION.  
Civil Action No. 2657.

**FILED**

MAR 3 1952

CHNESI L. ALLEN  
C.D.C.U.S.E.D.S.C.

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, Superintend- )  
ent of SCHOOL DISTRICT NO. 22, )  
 )  
Defendants. )

RETURN.

SER  
RMK  
1

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 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

SER  
RMP  
2

W. A. Brunson

E. M. Truckenberry

H. B. Petreman

S. E. Rogers

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.

Robert McC. Figg, Jr.,  
18 Broad Street  
Charleston, S. C.

Attorneys for Respondents.

SER  
Amish  
3

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

---

Civil Action No. 2657.

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, CHAIRMAN, et al.,  
Defendants.

---

RETURN.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

CLAUDE M. DEAN  
CLERK

Clerk's Office  
United States Court of Appeals  
For the Fourth Circuit

Richmond, Virginia  
March 4, 1952

Ernest L. Allen, Esq.,  
Clerk, U. S. District Court,  
Columbia, South Carolina

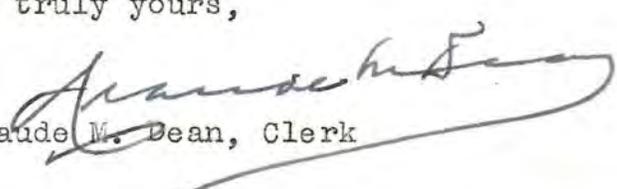
Re: Civil Action 2657,  
Briggs, et al., v. Elliott, etc., et al.

Dear Mr. Allen:

I beg to acknowledge receipt of your letter of March 3rd, enclosing two certified copies of Judge Waring's letter of February 11, 1952, to Judge Parker, together with certified copy of Judge Parker's order designating Judge Dobie as a member of the Court in the above entitled matter. The certified copy of copy of Judge Parker's letter to Judge Waring, dated February 9, 1952, as mentioned in your letter, was not enclosed.

With kind regards, I am,

Very truly yours,

  
Claude M. Dean, Clerk

D to D

Columbia, South Carolina  
March 5, 1952.

Hon. Claude M. Dean,  
Clerk, Court of Appeals,  
Fourth Judicial Circuit,  
Richmond, Virginia.

My Dear Mr. Dean:-

Thank you for your letter  
of the 4th. inst., in connection with copies  
of correspondence and Order forwarded to you  
in my letter of the 3rd.

I regret this oversight, and  
am enclosing certified copy of letter from  
Judge Parker to Judge Waring, dated February  
9, 1952.

With my regards, I am,

Most sincerely,

Ernest L. Allen,  
Clerk.

TAC/c  
encl.

*James and DuRant, A.I.A.* : ARCHITECTS : SUMTER, S. C.

March 6, 1952

SCOTT'S BRANCH  
ELEMENTARY & HIGH SCHOOL  
SCHOOL DISTRICT NO. 1  
SUMMERTON, S. C.  
COMMISSION NO. 419

---

GENERAL CONTRACT	\$261,300.00
Change Orders No. 1 and 2	- 1,568.00
	<hr/>
	259,732.00
Change Order No. 3	+ 770.00
	<hr/>
GENERAL CONTRACT THIS DATE	\$ 260,502.00
KITCHEN EQUIPMENT CONTRACT	8,117.32
	<hr/>
TOTAL CONTRACTS TO DATE	\$ 268,619.32

Percent complete on contracts this date - - - - - 41%

Contract commenced on November 25, 1951, to be completed within 255 calendar days which will be around August 6, 1952.

Respectfully submitted

JAMES & DURANT, A.I.A.

BY   
W. E. DURANT

WED/ep

March 7, 1952

Honorable John J. Parker  
Chief Judge  
United States Court of Appeals  
Richmond, Virginia

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al

Dear Judge Parker:

I am enclosing herewith transcript of testimony  
of the hearing in the above entitled matter held in the  
United States Courtroom at Columbia on March 3, 1952.

With kind regards, I am

Most sincerely,

Ernest L. Allen,  
Clerk

GWS:vj

Enc.

March 7, 1952

Honorable Armistead M. Dobie  
Circuit Judge  
United States Court of Appeals  
Richmond, Virginia

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al

Dear Judge Dobie:

I am enclosing herewith transcript of  
testimony of the hearing in the above entitled  
matter held in the United States Courtroom at  
Columbia on March 3, 1952.

With kind regards, I am

Most sincerely,

Ernest L. Allen,  
Clerk

GWS:vj

Enc.

March 7, 1952

Honorable George Bell Timmerman  
United States District Judge  
Columbia, South Carolina

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al

Dear Judge Timmerman:

I am enclosing herewith transcript of  
testimony of the hearing in the above entitled  
matter held in the United States Courtroom at  
Columbia on March 3, 1952.

With kind regards, I am

Most sincerely,

Ernest L. Allen,  
Clerk

GWS:vj

Enc.

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

Civil Action No. 2657.

FILED

MAR 11 1952

ERNEST L. ALLEN  
S.D.C.U.S.E.D.S.C.

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, Superintend-  
ent of SCHOOL DISTRICT NO. 22,

Defendants.

CERTIFICATE  
OF ARCHITECT.

Come now the defendants and, pursuant to leave granted by the Court in the hearing in this cause held March 3, 1952, counsel for the plaintiffs not objecting, file the attached Certificate of James & Durant, A.I.A., by W. E. Durant, dated March 6, 1952, showing in reference to the remodelling of Scott's Branch Elementary School and the construction of Scott's Branch High School that the present contract cost, including kitchen equipment contract, totals \$268,619.32, not including architect's fees; that the percentage of completion of the construction under the contracts as of March 6, 1952, is 41%; and that the performance of the contract commenced on November 25, 1951, and is required to be completed within 255 calendar days, which will be around August 6, 1952, so that the schools will be ready for occupancy in the school session commencing September 1952.

Respectfully submitted,

*S. E. Rogers*

S. E. Rogers, Summerton, S. C.

*Robert McC. Figg, Jr.*

Robert McC. Figg, Jr.,  
18 Broad St., Charleston, S. C.  
Attorneys for Defendants.

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

---

Civil Action No. 2657.

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, CHAIRMAN, et al.,  
Defendants.

---

CERTIFICATE OF ARCHITECT.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

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

Charleston Division  
Civil Action No. 2657.

FILED

MAR 13 1952

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

---  
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

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 III 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

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.

*Joseph H. Allen*  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

This court in its prior decisions in this case followed what it conceived to be the law as laid down in prior decisions of the Supreme Court that nothing in the Fourteenth Amendment to the Constitution of the United States forbids segregation of the races in the public schools provided equal facilities are accorded the children of all races. Our decision has been reversed by the Supreme Court, which has remanded the case to us with direction "to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases".

\*\*\*\*

Whatever may have been the views of this court as to the law when the case was originally before us, it is our duty now to accept the law as declared by the Supreme Court. \*\*\*\*

Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but, if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation

upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals.

The Supreme Court has pointed out that the solution of the problem in accord with its decisions is the primary responsibility of school authorities and that the function of the courts is to determine whether action of the school authorities constitute "good faith implementation of the governing constitutional principles." With respect to the action to be taken under its decision the Supreme Court said:

The court is convened to hear any concrete suggestions you may have to make as to the decree that it should enter.

SUPREME COURT OF THE UNITED STATES

FILED:

Feb. 7

Ernest L. Allen, 1952  
G.D.C.U.S., E.D.S.C.

No. 273. - October Term, 1951.

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.  
)

(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 No. 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.

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.

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

Civil Action No. 2657.

FILED

MAY 21 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
versus  
R. W. ELLIOTT, Chairman, et al.,  
Defendants.

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD  
DESIRED TO BE INCLUDED IN TRANSCRIPT.

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/ S. E. Rogers  
S. E. Rogers, Summerton, S. C.

/s/ Robert McC. Figg, Jr.  
Robert McC. Figg, Jr.,  
18 Broad Street, Charleston, S. C.

Counsel for Appellees.

TRUE COPY. ATTEST.

*Ernest L. Allen*  
CLERK OF U. S. DISTRICT COURT  
EAST. DIST. SO. CAROLINA

Dated May 20, 1952.

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

Charleston Division  
Civil Action No. 2657.

FILED

MAR 13 1952

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

---

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. McGord, Superintendent of Education for Clarendon County, and Chairman A. J. Plowden, W. A. Baker, Members of the County Board of Education for Clarendon County; and H. B. Betchman, Superintendent of School District No. 22, Defendants.

---

DECREE

In the above entitled case the Court finds the facts to be as set forth in its written majority opinion filed June 2, 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

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.

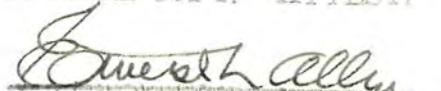
This the 12th day of March 1952.

/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.

  
CLERK OF U. S. DISTRICT COURT  
EAST DIST SO CAROLINA

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

Charleston Division  
Civil Action No. 2657.

**FILED**

MAR 18 1952

ERNEST L. ALLEN  
C. D. U. S. E. D. S. C.

---

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. Flowden, 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

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

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.

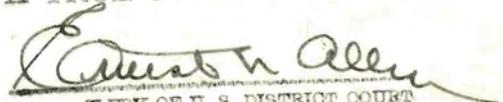
This the 12th day of March 1952.

/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:

  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
Charleston Division  
Civil Action No. 2657.

**FILED**  
MAR 18 1952  
ERNEST L. ALLEN  
C. D. U. S. E. D. S. C.

---  
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

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 III 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

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.

Lawson Allen  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

TRANSCRIPT OF RECORD

CAPTION

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF SOUTH CAROLINA  
CIVIL ACTION

At a United States District Court for the  
Eastern District of South Carolina,  
began and held at the Courthouse in  
the City of Columbia, South Carolina  
on the 3rd day of March, 1952.

Present: Honorable John J. Parker,  
United States Circuit Judge, Fourth Circuit;  
Honorable Armistead M. Dobie, United States  
Circuit Judge, Fourth Circuit; and Honorable  
George Bell Timmerman, United States District  
Judge for the Eastern and Western Districts  
of South Carolina.

Proceedings were as follows:

C L E R K ' S   N O T E

Judge John J. 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

JUDGE'S COPY

Civil Action 2657

I concur:  
A. M. Dobie,  
U. S. Circuit  
Judge

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

Charleston Division

FILED

MAR 13 1952

I concur:  
George Bell Timmerman  
U. S. District Judge

Civil Action No. 2657.

ERNEST L. ALLEN  
FACULTY

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.

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.

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 additional

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 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

---

\* 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. Enabling 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.

No. 22 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 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.

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. As 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 administra-

tion 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 *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 J. Allen*  
CLERK OF U. S. DISTRICT COURT  
EAST DIST. SO. CAROLINA

9 cases  
W. A. Dobie,  
U.S. Circuit Judge

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

Charleston Division

Civil Action No. 2657.

FILED

MAR 13 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

Concurrence:  
W. A. Timmerman  
U.S. District Judge

VOL 72 BR 252

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.

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Heard March 3, 1952.

Decided

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Before Parker and Dobie, Circuit Judges, and Timmerman, District Judge.

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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.

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Parker, Circuit Judge:

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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 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

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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. Enabling 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.

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78 256

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. As 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

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.

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

Charleston Division

Civil Action No. 2657.

FILED

MAR 13 1952

ERNEST L. ALLEN  
CLERK U.S.D.C.

MAR 22 1952

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

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

VOL 72 PAGE 259

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 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 12<sup>th</sup> day of March 1952.

John J. Parker  
Chief Judge, Fourth Circuit

Frederick M. Dobie  
U. S. Circuit Judge, Fourth Circuit

W. H. Zimmerman  
U. S. District Judge, Eastern and Western Districts of South Carolina

March 14, 1952

Harold R. Boulware, Esquire  
Attorney at Law  
1109½ Washington Street  
Columbia, South Carolina

Robert L. Carter, Esquire  
Attorney at Law  
20 West 40th Street  
New York, New York

Thurgood Marshall, Esquire  
Attorney at Law  
20 West 40th Street  
New York, New York

Austin T. Walden, Esquire  
Suite 200, Walden Building  
28 Butler Street, N. E.  
Atlanta, Georgia

Spotswood Robinson III, Esquire  
Attorney at Law  
623 North Third Street  
Richmond, Virginia

Arthur D. Shores, Esquire  
Attorney at Law  
c/o Thurgood Marshall, Esquire  
20 West 40th Street  
New York 18, New York

S. E. Rogers, Esquire  
Attorney at Law  
Summerton, South Carolina

Honorable T. C. Callison  
Attorney General  
State of South Carolina  
Columbia, South Carolina

Robert McC. Figg, Jr., Esquire  
Attorney at Law  
Peoples Building  
Charleston, South Carolina

Page 2

March 14, 1952

In re: Civil Action No. 2657  
Harry Briggs, Jr., et al vs.  
R. W. Elliott, Chairman, et al

Dear Sirs:

I am enclosing to each of you a certified copy  
of Opinion and Decree of the three-judge court in the above  
case, filed March 13, 1952.

Yours most truly,

Ernest L. Allen,  
Clerk

ELA:vj

Encs.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

**FILED**

MAY 9 1952

ERNEST L. ALLEN  
C. C. U. S. D. S. C.

---

HARRY BRIGGS, JR., et al,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al,

Defendants

---

ORDER ALLOWING APPEAL

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 Luchriser 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 friends 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 Gabriel 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 assignment 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.

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

---

HARRY BRIGGS, Jr., et al,  
Plaintiffs  
vs.  
R. W. ELLIOTT, Chairman, et al,  
Defendants

---

FILED:

*May 9* 1952  
Ernest L. Allen,  
C.D.C.U.S., E.D.S.C.

CITATION ON APPEAL

TO: R. W. Elliott, Chairman, J. D. 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; and 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

Defendants

Greetings:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, within forty (40) days from the date hereof

pursuant to an order allowing an appeal from the final decree made and entered in the above-entitled cause on March 12, 1952 to show cause, if any there be, why said decree rendered against appellants should not be reversed and set aside.

GEORGE BELL TIMMERMAN

---

Judge

Dated: May 9, 1952

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
vs.  
R. W. ELLIOTT, Chairman, et al,  
Defendants.

---

FILED:

*May 9* 1952  
Ernest L. Allen,  
C.D.C.U.S., E.D.S.C.

PETITION FOR APPEAL

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 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 Luchriser 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; 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 Gabriel 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

authenticated be sent to the Supreme Court of the United  
in accordance with the rules in such case made and provided.

Respectfully submitted,

---

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

---

Spottswood W. Robinson, III  
623 North Third Street  
Richmond, Virginia

*Thurgood Marshall*

---

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs-Appellants

George E.C. Hayes

James H. Nabrit

Arthur D. Shores

A. T. Walden

Of Counsel

Dated: May 9, 1952

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

---

HARRY BRIGGS, Jr., et al.,  
Plaintiffs  
vs.  
R. W. ELLIOTT, Chairman, et al.,  
Defendants

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TO: R. W. Elliott, Chairman, J. D. 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; H. B. Betchman, Superintendent of School District #22; and 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

Pursuant to paragraph 2, Rule 12, of the Rules of the Supreme Court of the United States, you are hereby served with copies of the petition for appeal, for a stay of the judgment and decree of March 12, 1952, the issuance of citation and for the fixing of the amount of the appeal bond; order allowing appeal directing the issuance of citation and fixing the amount of the appeal bond; assignment of errors and prayer for reversal, statement of jurisdiction, and citation.

Your attention is directed to the provision of Rule 12, paragraph 3, which reads as follows:

"Within 15 days after such service the appellee may file with the Clerk of the Court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this Court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3."

---

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

---

Spottswood W. Robinson, III  
623 North Third Street  
Richmond, Virginia

*Thurgood Marshall*

---

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs

George H. C. Hayes

James M. Nabrit

Arthur D. Shores

A. T. Walden

Of Counsel

Dated: May 9, 1952

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

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Civil Action No. 2657  
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HARRY BRIGGS, JR., ET AL.,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, ET AL.,

Defendants

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ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

*Admitted Plaintiff*  
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:

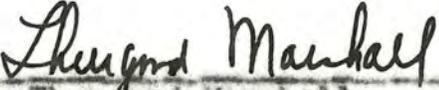
1. The District Court erred in refusing to enjoin the enforcement of the laws of South Carolina requiring racial segregation in the public schools of Clarendon County on the ground that these laws violate rights secured under the equal

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 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

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

Civil Action No. 2657

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HARRY BRIGGS, JR., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al

Defendants

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ORDER ALLOWING APPEAL  
CITATION ON APPEAL  
PETITION FOR APPEAL  
STATEMENT REQUIRED BY RULE 12  
ASSIGNMENT OF ERRORS

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

VOL 73 PAGE 325

FILED

MAY 9 1952

ERNEST L. ALLEN  
C. B. C. U. S. E. D. S. C.

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HARRY BRIGGS, JR., et al,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al,

Defendants

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ORDER ALLOWING APPEAL

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 Bennett, John Bennett and Clifton

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[Signature]

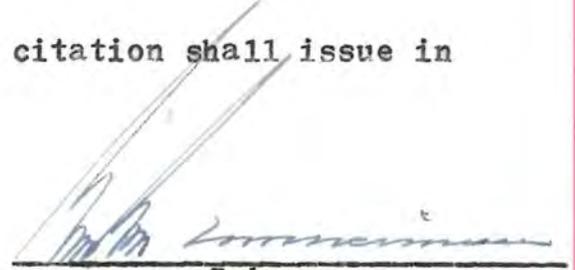
Bennett, infants, by James H. Bennett, their father and next friends Louis Oliver, Jr., an infant, by Mary Oliver, his mother and next friend; Gardeneia Stukes, Willie M. Stukes, Jr., and Louis W. Stukes, infants by Willie M. Stukes, their father and next friend; Joe Nathan Henry, Charles R. Henry, Eddie 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 Gabriel 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 assignment 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.

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-2- 

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.

  
Judge

# 3.

DATED: May 9, 1952

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

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Civil Action No. 2657  
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FILED

MAY 9 1952

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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HARRY BRIGGS, JR., ET AL.,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, ET AL.,

Defendants

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STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, plaintiffs-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this case.

PART ONE

OPINIONS BELOW

The majority and dissenting opinions filed at the conclusion of the first hearing are reported in 98 F.Supp.529 and copies appear in the Appendix to this Statement. The

opinion filed at the conclusion of the second hearing has not yet been officially reported. A copy of this opinion also appears in the Appendix to this Statement.

#### JURISDICTION

The judgment of the statutory three judge District Court was entered on March 13, 1952. A petition for appeal is presented to the district court herewith, to wit, on May 10, 1952. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this case: Briggs v. Elliott, 342 U.S. 350; Wilson v. Board of Supervisors, 340 U.S. 909; McLaurin v. Board of Regents, 339 U.S. 637.

#### NATURE OF THE CASE AND RULINGS BELOW

##### The Constitutional Issue Involved

The complaint in this case was filed by Negro children of public school age residing in School District No. 22, Clarendon County, South Carolina, and their respective parents and guardians, against the public school officials of said county and school district who, as officers of the State, maintain, operate and control the public schools for children residing in said district. It was alleged that defendants maintained certain public schools for the exclusive use of white children and certain other public schools for Negro children; that the schools for Negro children were in all respects inferior to the schools for white children; that the defendants excluded the infant plaintiffs from the white schools pursuant to

Article XI, Section 7, of the Constitution of South Carolina, and section 5377 of the Code of Laws of South Carolina of 1942, which require the segregation of the races in public schools; and that it was impossible for the infant plaintiffs to obtain a public school education equal to that afforded and available to white children as long as the defendants enforced these laws.

The complaint sought a judgment declaring the invalidity of these laws as a denial of the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States, and an injunction restraining the defendants from enforcing them and from making any distinctions based upon race or color in the educational opportunities, facilities and advantages afforded public school children residing in said district.

Defendants in their answer joined issue on this question and admitted that in obedience to the constitutional and statutory mandates separate schools were provided for the children of the white and colored races; and that no child of either race was permitted to attend a school provided for children of the other race. In the Third Defense of defendants' answer they alleged that the above constitutional and statutory provisions were a valid exercise of the State's legislative power.

The jurisdiction of a three-judge District Court was invoked pursuant to Title 28, United States Code, sections 2281, 2284, for the purpose of determining the validity of the provisions of the Constitution and laws of South Carolina requiring segregation of the races in public schools. This issue was clearly raised, and was decided by upholding the validity of these provisions and by refusing to enjoin their

enforcement.

#### First Hearing

At the opening of the trial (before a three-judge District Court as required by Title 28, United States Code, sections 2281 and 2284) 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 defendants also stated that they did "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 Clarendon County now exist, and enjoining any discrimination in respect thereto."

These admissions were made part of the record being filed as an amendment to the answer. The only issue remaining to be tried was the question of the constitutionality of the laws requiring segregation of the races in public education as applied to the plaintiffs.

During the trial the plaintiffs produced testimony showing the extent of the physical inequality in the segregated schools of Clarendon County and especially School District No. 22. Over the objection of the plaintiffs<sup>1/</sup> the defendants introduced testimony that a three per cent sales tax and authorization of a \$75,000,000 bond issue for improvement of schools had recently been adopted by the State of South Carolina, and that the State Educational Finance Commission to supervise the distribution of these funds had just been organized

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<sup>1/</sup> On the grounds that equality within the meaning of the Fourteenth Amendment did not include contemplated future action.

and had not even set up rules or procedures.<sup>2/</sup> About a week before the trial Clarendon County had "inquired" about making an application for funds.

The testimony of nine expert witnesses was introduced by plaintiffs; two experts in the field of education who offered a comparison of the public schools; one expert in educational psychology, three experts in the respective fields of child and social psychology, one expert in political science, one expert in school administration, and one expert in the field of anthropology.

The uncontroverted testimony of these witnesses demonstrated that the Negro schools in question were inferior in every material aspect to the white schools, and that similarly the caliber of education offered to Negro pupils was inferior to that offered to white pupils. The testimony of these witnesses also established the fact that the segregation of Negro pupils in these schools would in and of itself preclude an equality of education offered to white pupils or pupils in a non-segregated school. These witnesses not only established their qualifications in their respective fields but also supported their conclusions by objective and scientific authorities.

One of the experts in the field of child and social psychology testified that he had made special studies of the recognized methods of testing the effects of race and segregation on children. He used a test of this type on

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<sup>2/</sup> It was admitted that although the school population of South Carolina was approximately forty to forty-five per cent Negro there were no Negroes on the Commission and no Negro employees of the Commission.

Negro school children including the infant plaintiffs in School District No. 22 a few days before the trial. From his general experience in this field and the results of his tests he testified:

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

These witnesses testified as to the unreasonableness of segregation in public education and the lack of any scientific basis for such segregation and exclusion. They testified that all scientists agreed that there are no fundamental biological differences between white and Negro school pupils which would justify segregation. An expert in anthropology testified:

"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."

Another expert witness testified:

"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 from whatever harmful effect racial prejudice and discrimination can wreck."

The defendants did not produce a single expert to contradict these witnesses. There were only two witnesses for the defendants. The Superintendent of Schools for District No. 22 testified as to the reasons for the physical inequalities between the white and Negro schools. The Director of the Educational Finance Commission testified as to the proposed operation of the Commission and the possibility of the defendants obtaining funds to improve public schools. The latter witness testified that from his experience as a school administrator in Sumter and Columbia, South Carolina, it would be "unwise" to remove segregation in public schools in South Carolina. On cross-examination, he admitted he had not made any formal study of racial tensions but based his conclusion on the fact that he had "observed conditions and people in South Carolina" all of his life. He also admitted that his conclusion was based in part on the fact that all of his life he had believed in segregation of the races.

The judgment in this hearing, one judge dissenting, stated that neither the constitutional nor statutory provisions requiring segregation in public schools were in violation of the Fourteenth Amendment and that plaintiffs were not entitled to an injunction against the enforcement of these provisions by these defendants. The judgment also stated that the educational facilities offered infant plaintiffs were unequal to those offered to white pupils, and ordered the defendants "to furnish to plaintiffs and other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those furnished white pupils."

### First Appeal

An appeal from this judgment was allowed on July 20, 1951 and the appellees filed a motion to dismiss or affirm. On December 21, 1951 defendants filed their report in the District Court showing progress being made toward equalization of physical facilities in the public schools of Clarendon County. A copy of this report was forwarded to the Supreme Court. On January 28, 1952, the Supreme Court vacated the judgment of the District Court and remanded the case to that court in order to obtain the views of the trial court upon the additional facts in the record and to give the District Court an opportunity to take whatever action it might deem appropriate in light of the report (342 U.S. 350). Mr. Justice Black and Mr. Justice Douglass dissented on the ground that the additional facts in the report were "wholly irrelevant to the constitutional questions presented by the appeal to this court" (342 U.S. 350).

### Second Hearing

As soon as the mandate reached the District Court, plaintiffs-appellants filed a Motion for Judgment requesting an early hearing and a final judgment granting the retrial as prayed for in the complaint. Among the reasons for this motion plaintiffs alleged:

"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 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)

"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.

"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 defendants herein to exclude Negro pupils from the only schools where they can obtain an education equal to that offered white children.

The second hearing was held on March 3, 1952, at which time the defendants filed an additional report showing progress since the December report. The plaintiffs did not question the accuracy of these statements of physical changes in the making.

At the second hearing the District Court ruled that the question of the decision on the validity of segregation statutes was closed by their original judgment and could not be argued at that hearing. The District Court also refused to rule that, aside from the question of the validity of these statutes, the admitted lack of equality of facilities entitled plaintiffs to an injunction, restraining defendants from excluding them from an opportunity to share the superior schools and the inferior schools on an equal basis without regard to race and color.

On March 13, 1952, the District Court filed an opinion and a decree again finding that the educational facilities for Negroes were not substantially equal to those afforded white pupils. Despite this finding the District Court held that "plaintiffs are not entitled to an injunction forbidding segregation in the public schools of School District No. 1."

The petition for appeal was presented and allowed on May 10, 1952.

#### CONSTITUTION AND STATUTE INVOLVED

Article XI, section 7 of the Constitution of South Carolina 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 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."

#### QUESTIONS PRESENTED

1. Whether the District Court erred in denying a permanent injunction restraining appellees from enforcing the laws of South Carolina requiring racial segregation in public schools of Clarendon County?
2. Whether the District Court erred in predicating its decision upon Plessy v. Ferguson, and in disregarding McLaurin v. Board of Regents and principles serving as the basis for this and other decisions of the Supreme Court in conflict with the rationale of the Plessy case?
3. Whether the District Court erred in predicating its decision in the doctrine of Plessy v. Ferguson and in disregarding the rationale of the applicable decisions of Sweatt v. Painter and McLaurin v. Board of Regents?
4. Whether the District Court erred in refusing to grant 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?

#### PART TWO

STATEMENT OF THE GROUNDS UPON WHICH IT IS CONTENDED THE QUESTIONS INVOLVED ARE SUBSTANTIAL

#### SUMMARY

The district court has failed to apply the basic substantive teaching of the Supreme Court in McLaurin v. Oklahoma

and Sweatt v. Painter that there are factors beyond relative physical facilities and curricular offerings which established the failure of segregated public education to meet the constitutional standard of equal protection of the laws. The court erroneously restricted the doctrine of the McLaurin case to graduate education despite the fact that considerations of like character and equivalent force apply to elementary and high school education and were placed before the district court here. It is of very great importance to pupils, parents, state officers and the general public that the application of these recent decisions of the Supreme Court to education below the graduate level be made clear.

The district court affirmatively and erroneously ruled that South Carolina's absolute constitutional and statutory requirement of racial segregation in public education is valid. In so doing the court presently and for the future has debarred Negro school children from the enjoyment of equal protection of the laws. For the parties have agreed and the district court has found that the public schools maintained for white children in Clarendon County are much superior to those maintained for colored children and that present inequalities constitute a denial of equal protection. By permitting children to share the good and bad schools without regard to race, and only in this way, could Clarendon County forthwith have corrected and removed this denial of constitutional right. But the decree of the district court upholding the school segregation law actually precludes the school officials from granting such effective relief. It is as grave as it is extraordinary, and certainly calls for correction, that a court of the United States should enter a decree which by the court's own findings actually

requires that a denial of Constitutional right be continued for a time.

Beyond this, in affirmatively ordering the equalization of segregated school facilities throughout Clarendon County the district court has made itself responsible for a continuing detailed comparative evaluation of white and colored schools and their facilities. The factors to be measured are complex and variable. Relative evaluations, difficult at any time, lose validity from day to day. Federal supervision of details of state administration, rarely appropriate, is an impossible task here. Thus, serious considerations of federal-state relationships point to the importance of correcting the inappropriate remedy decreed in this case.

In larger aspect the district court, in sustaining the segregated school laws, has rejected the contention and demonstration that racial segregation in public education falls within that group of unreasonable classifications which the equal protection clause forbids. It also has rejected the related contention and demonstration that state enforced segregation of Negroes in America inevitably offends the equal protection clause because it is intended as a stigmatizing badge of inferiority and is generally so recognized. It is difficult to imagine larger or more far reaching claims of vital discrepancy between the order a state is imposing upon those within its borders and the restraints which the Constitution imposes throughout the nation. Such questions call for decisive adjudication by the highest judicial authority.

THE DISTRICT COURT ERRED IN REFUSING TO ENJOIN THE ENFORCEMENT OF THE SEGREGATION LAWS OF SOUTH CAROLINA WHICH PREVENTED APPELLANTS FROM SHARING THE PUBLIC SCHOOL FACILITIES OF CLARENDON COUNTY ON AN EQUAL BASIS WITH OTHERS WITHOUT REGARD TO RACE AND COLOR.

The issue of the validity of the provisions of the laws of South Carolina requiring racial segregation in public schools was clearly joined in the pleadings in this case and had been preserved. The District Court has twice decreed that these laws are valid and has twice refused to enjoin their enforcement.

The decision herein appealed from upheld the validity of the provisions of the constitution and laws of South Carolina requiring segregation of the races on the following grounds: (1) segregation of the races in 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." (italics supplied); (2) subject to the observance of the fundamental rights and liberties guaranteed by the Federal Constitution, each state is free to determine how it shall exercise its police power, i.e., the power to legislate with respect to the safety, morals, health and general welfare; (3) the decisions in Plessy v. Ferguson, 163 U.S. 537; Cumming v. Board of Education, 175 U.S. 528; and Gong Lum v. Rice, 275 U.S. 78, hold that as long as physical equality is furnished, segregation of the races in public schools is not unconstitutional and these cases are controlling in the instant case; (4) that neither Sweatt v. Painter, 339 U.S. 629; McLaurin v. Oklahoma State Regents, 339 U.S. 637, nor McKissick v. Carmichael, 187 F.2d 949 (CA 4th 1951) can be applied to this

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case because the Sweatt case, supra, did not overrule Plessy v. Ferguson, supra, and both the Sweatt case, supra, and the McKissick case, supra, were decided on the question of equality, and the McLaurin case, supra, "involved humiliating and embarrassing treatment of a Negro graduate student to which no one should have been required to submit. Nothing of the sort is involved here"; (5) there is a difference between education on the graduate level and on lower levels of education.

In the instant case there is no dispute that Negroes are relegated to inferior schools and denied an opportunity to share in the superior facilities because of the provisions of the constitution and laws of South Carolina requiring racial segregation in public schools.

It is obvious that a majority of the District Court at the first hearing and all three of the judges of the District Court for the second hearing<sup>3/</sup> considered their primary duty and responsibility to be to uphold the validity of the state statutes requiring segregation. They considered the limit of their jurisdiction to be an order requiring equality of facilities within the framework of rigid racial segregation.

Even after the cause was remanded to the District Court by the Supreme Court, the District Court merely adhered to its original position that: "In directing that the school facilities [meaning physical facilities] afforded Negroes within the district be equalized promptly with those afforded white persons, we are

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<sup>3/</sup> District Judge Waring who filed a vigorous dissenting opinion in the first hearing (98 F.Supp. 538-548) retired prior to the second hearing and was replaced by Circuit Judge Dobie. (Tr. 2d Hearing, pp. 1-3)

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."

In the Sweatt case, supra, and again in the McLaurin case, supra, the Supreme Court examined the record to determine in each case whether the segregation practices denied the individual involved the equality of opportunity guaranteed by the Fourteenth Amendment. This was done without regard to the "doctrine of Plessy v. Ferguson." In the Sweatt case, supra, the Supreme Court refused to either affirm or reconsider the "doctrine of Plessy v. Ferguson."

In the instant case, however, the District Court took the position that the doctrine of Plessy v. Ferguson as applied in Gong Lum v. Rice (275 U.S. 78) was controlling, and federal courts were thereby powerless to do anything more than to order equalization of physical facilities within a segregated framework. The District Court, therefore, in direct opposition to the rationale of the Sweatt and McLaurin decisions disregarded all of the expert testimony as to the unreasonableness of the classification and the injury to the children involved, including the infant appellants.

The District Court held that the Sweatt case did not apply to this case because the decision in that case was based upon the

inequality of the "educational facilities" offered the white and Negro law students. The opinion also held that "McLaurin v. Oklahoma State Regents involved humiliating and embarrassing treatment of a Negro graduate student to which no one should have been required to submit. Nothing of the sort is involved here." To the contrary, the record in this case shows that the injury to the plaintiffs in this case was not only humiliating and embarrassing but was even more harmful than in graduate education. The uncontradicted testimony in this record brings this case clearly within the rationale of McLaurin.

Dr. Kenneth Clark, an expert in the fields of social and child psychology who tested the infant plaintiffs and other Negro school children in District No. 22, testified:

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

Dr. David Krech, another psychologist, testified:

"...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 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 the 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 from whatever harmful effect racial prejudice and discrimination can wreck."

Dr. Harold McNalley, an expert in the field of Educational Psychology, testified:

"...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 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."

Dr. Louis Kesselman, a political scientist, testified:

"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 scientifically 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 electoral 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..."

Mrs. Helen Trager, a child psychologist who had conducted tests of the effects of racial segregation and racial tensions among children, testified:

"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."

Dr. Robert Redfield, an expert in the field of anthropology, testified as to the unreasonableness of racial classification in education:

"Q. As a result of your studies that you have made, the training that you have had in your specialized field over some 20 years, given a similar learning situation, what, if any difference, 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."

The opinion and decree of the lower court was based upon the assumption that equality of rights guaranteed by the Fourteenth Amendment was limited to physical equality such as facilities, equipment and curricula. Expert witnesses for plaintiffs testified not only as to the inevitable harmful effect of segregation on public school children but also as to the tests showing the irreparable harm to the plaintiffs and other Negro school children in Clarendon County. This testimony was disposed of by the District Court as follows:

"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 relationships existing between the races and the tensions likely to be produced by an attempt to educate the children 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." (Majority Opinion, First Hearing)

The testimony on behalf of the plaintiffs was by expert witnesses of unimpeachable qualifications. The record in this case presented for the first time in any case competent testimony of the permanent injury to Negro elementary and high school children forced to attend segregated schools. Testimony was introduced showing the irreparable damage done to the plaintiffs in this case solely by reason of racial segregation. The record also shows the unreasonableness of this racial classification. This is not theory or legislative argument. This is competent expert testimony from recognized scientists directed toward the factors recognized by the Supreme Court as determinative of the validity of similar statutory provisions. This testimony stands uncontradicted in the record.

In the McLaurin case, the Supreme Court looked beyond the admitted equality of physical facilities, curriculum, etc.,

and found that the State of Oklahoma "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." (339 U.S. 641) The Supreme Court, therefore, concluded: "the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws." (339 U.S. 642)

If the majority of the District Court had tested the evidence in this case by the criterion of the McLaurin case, it inevitably would have concluded that the segregation laws could not validly be enforced against the plaintiffs. Instead, it considered the "separate but equal" doctrine of Plessy v. Ferguson, supra, controlling, and limited the application of the equal protection clause exclusively to physical facilities.

In disregarding the testimony attacking the validity of the segregation laws involved, the District Court did more than reject the rationale of the McLaurin decision. It also rejected other decisions of the Supreme Court which require that clear proof of the unreasonableness of a statutory classification and of the unlawful injury resulting therefrom, as was produced in this case, must override the normal disposition of courts to uphold state legislative policy.

The Supreme Court has never sanctioned a finding of constitutional validity of legislation which was made by

disregarding facts disclosing its true operation and effect as was done in the instant case. While it has often been said that statutes are considered presumptively valid, the presumption of constitutionality is merely

"\* \* \* a presumption of fact of the existence of factual conditions supporting the legislation. As such it is a rebuttable presumption. \* \* \* It is not a conclusive presumption, or a rule of law which makes legislation invulnerable to constitutional assault. \* \* \*" Chief Justice Hughes in Borden's Farm Products Co. v. Baldwin, 293 U.S. 194

In recent years the Supreme Court has emphasized that governmental action affecting certain classes of personal rights fundamental in a democratic order must be subjected to the most rigid scrutiny. Where such action is challenged, normal presumptions of validity are at best minimal and certainly disappear in the face of clear proof of injury to the complaining party.

In United States v. Carolene Products Co., 304 U.S. 144, 152, note, Mr. Justice Stone, speaking for the Court said:

"There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See Stromberg v. California, 283 U.S. 359, 369, 370, 51 S.Ct. 532, 535, 536, 75 L.Ed. 1117, 73 A.L.R. 1484; Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 777, 82 L.Ed. 949, decided March 28, 1938. \* \* \*

"Nor need we inquire whether similar considerations enter into the review of statutes directed at particular religious...or national...or racial minorities...."

The Supreme Court has repeatedly pointed out that the scope of the presumption of constitutionality is greatly narrowed: "when legislation appeared in its face to violate a specific provision of the Constitution." Ex parte Endo, 323 U.S. 283, 299

Mr. Chief Justice Stone, concurring in Skinner v. Oklahoma,  
316 U.S. 535, 544, stated:

"There are limits to the extent to which the presumption of constitutionality can be pressed, especially when the liberty of the person is concerned (See United States v. Carolene Products Co., 304 U.S. 144, 152, note 4, 82 L.Ed. 1234, 1241, 58 S.Ct. So. 78) and where the presumption is resorted to only to dispense with a procedure which the ordinary dictates of prudence would seem to demand for the protection of the individual from arbitrary action."

Mr. Justice Rutledge, concurring in United States v. Congress of Industrial Organizations, 335 U.S. 106, 140,  
stated:

"As the Court has declared repeatedly, that judgment does not bear the same weight and is not entitled to the same presumption of validity, when the legislation on its face or in specific application restricts the rights of conscience, expression and assembly protected by the Amendment, as are given to other regulations having no such tendency. The presumption rather is against the legislative intrusion into these domains. For, while not absolute, the enforced surrender of those rights must be justified by the existence and immediate imminency of dangers to the public interest which clearly and not dubiously outweigh those involved in the restrictions upon the very foundation of democratic institutions, grounded as those institutions are in the freedoms of religion, conscience, expression and assembly. Hence doubtful intrusions cannot be allowed to stand consistently with the Amendment's command and purpose, nor therefore can the usual presumptions of constitutional validity, deriving from the weight of legislative opinion in other matters more largely within the legislative province and special competence, obtain."

Freedom from distinctions based on race, color or ancestry ranks high among the rights so safeguarded. "Distinctions between citizens solely because of their ancestry are by their

very nature odious to a free people whose institutions are founded upon the doctrine of equality."<sup>4/</sup> Indeed: "Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals."<sup>5/</sup> Other pronouncements by the Supreme Court are: "Racism is far too virulent today to permit the slightest refusal, in the light of a Constitution that abhors it, to expose and condemn." Steele v. Louisville & N.E. Co., 323 U.S. 192, 209, concurring opinion; and "All legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can." Korematsu v. United States, 323 U.S. 214, 216.<sup>5a/</sup>

The law considered, the tenderness of the District Court toward the segregation policy of the State of South Carolina is unwarranted. That tenderness alone has obscured the constitutional infirmity of the statute.

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<sup>4/</sup> Hirabayashi v. United States, 320 U.S. 81, 100

<sup>5/</sup> Hirabayashi v. United States, cited supra note 4, concurring opinion at p. 110

<sup>5a/</sup> See also: Tusman & ten Broek, The Equal Protection of the Laws, 37 Cal. L. Rev. 341 (1949); Notes 36 Col. L. Rev. 283 (1936), 40 Col. L. Rev. 531 (1940); Hamilton & Braden, The Special Competence of the Supreme Court, 50 Yale L. J. 1319, 1349-1357 (1941)

RACIAL SEGREGATION IN PUBLIC EDUCATION IS INVALID

The primary purpose and design of the equal protection clause of the Fourteenth Amendment was protection of the newly-freed Negroes -- "to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the General Government, in that enjoyment, whenever it should be denied by the States." Strauder v. West Virginia, 100 U.S. 303, 306. Its secondary purpose was to assure that all persons similarly situated would be treated alike, and that no special groups or classes would be singled out for favorable or discriminatory treatment. Maxwell v. Bugbee, 250 U.S. 525; Southern Railway Co. v. Greene, 216 U.S. 400; Connolly v. Union Sewer Pipe Co., 184 U.S. 540: The scope of its secondary objective is broader than its first since it condemns arbitrary distinctions, whether based on race or not.

The equal protection clause was not intended to forbid all classifications. Those which are reasonable, and rationally related to an end within the competency of the legislature, survive its operation. But it does invalidate those based solely on race or color. Such classifications not only are arbitrary and unreasonable, but are of the very kind the equal protection clause was specifically designed to prohibit.

A. STATUTORY CLASSIFICATIONS AND OTHER GOVERNMENTAL ACTION BASED SOLELY ON RACE OR COLOR DENY THE EQUAL PROTECTION OF THE LAWS.

The laws of South Carolina require that all Negro pupils in Clarendon County attend schools segregated for their use exclusively and prohibits them from attending other schools in

which pupils of all other racial groups are educated as a matter of course. The clear vice is that the segregated class is defined wholly in terms of race or color -- "simply that and nothing more." Buchanan v. Warley, 243 U.S. 60,73.

The Supreme Court has held that race is an impermissible basis for classification of individuals by state laws. "States may do a great deal of classifying that it is difficult to believe rational, but there are limits, and it is \* \* \* clear \* \* \* that color cannot be made the basis of a statutory classification." (Mr. Justice Holmes, speaking for the Court in Nixon v. Herndon, 273 U.S. 536,541)

In South Carolina the school which a child is permitted to attend depends solely upon his race or color. The Supreme Court, in recent decisions, has indicated that statutes which affect individuals according to their race or ancestry are, in the absence of an overwhelming public necessity, invalid. Korematsu v. United States, 323 U. S. 214; and Hirabayashi v. United States, 320 U.S. 81, wherein the Court said:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classifications . . . based on race alone has often been held to be a denial of equal protection." (p.100)

These decisions have been made without regard to the equal protection clause of the Fourteenth Amendment, thus indicating that the citizen's right to have his rights, obligations, and duties to the state determined without regard to his race or color is a fundamental right essential to our

democratic society.<sup>6/</sup> State statutes must in addition meet

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<sup>6/</sup> It might be argued by the proponents of segregated school systems that since seventeen states have laws which regulate the use of some or all of the public educational facilities on the basis of race or color, the problem is essentially one for the legislative judgment and that federal courts should not interfere. The proponents might attempt to place reliance on the Supreme Court's examination on several occasions of the practices and experiences of the forty-eight states and other jurisdictions which have adopted Anglo-American jurisprudence, to see whether a right being claimed as fundamental is generally protected by the states. See for example, Adams v. California, 332 U.S. 46; In Re Oliver, 333 U.S. 257. But such examination in the instant case is not at all relevant, and, in any event, if made, would have to exclude those states which have a history of unequal treatment to Negroes in educational facilities, political franchise, and other opportunities and rights normally available to citizens of a state.

In the first place, the Court has already indicated that governmental classifications based upon race and color are arbitrary and a denial of due process of law. Korematsu v. United States, 323 U.S. 214; Ex Parte Endo, 323 U.S. 282. These cases were under due process clause of the Fifth Amendment, but certainly "it ought not to require argument to reject the notion that due process of law meant one thing in the Fifth Amendment and another in the Fourteenth." Adams v. California, supra.

Secondly, the plaintiff claims protection under the equal protection clause of the Fourteenth Amendment and, as indicated above, the intention of this clause was to afford the same rights to Negroes as were afforded to whites by a state.

Finally, the experiences in the southern states in determining whether the right to be free of laws imposing burdens or denying privileges based upon race or ancestry is fundamental to a free society, must be discounted in determining the meaning of the Fourteenth Amendment. In the first place, those states which have traditions and practices similar to South Carolina in enforcing racial discrimination refused, in 1866 and 1867, to ratify the Fourteenth Amendment. Therefore, their practice and conduct thereunder is not valid evidence as to the meaning or scope of the Amendment which they have consistently opposed. See Fairman & Morrison, Does The Fourteenth Amendment Incorporate The Bill of Rights? 2 Stanford L. Rev. 5, 90-95 (1949) South Carolina has had a long history, culminating in the events which led to the decision in Rice v. Elmore, 165 F. (2d) 387 (CCA 4 1947), cert. denied 333 U.S. 875, in denying to its Negro citizens the right to exercise effectively their voting rights specifically guaranteed by the Fifteenth Amendment. The basis of the argument that matters are within the legislative judgment and therefore if a person wishes to change a particular legislation his arguments embodying economic, psychological and social data should be addressed to the legislature rather than to the Court necessarily presupposes that the legislature is subject to the popular will by use of the ballot. In a state such as South Carolina,

the standards of the equal protection clause of the Fourteenth Amendment. An examination of the relevant data, including the legislative history, supports plaintiffs' contention that the purpose of the framers of the Fourteenth Amendment in including therein the equal protection clause was to require state action affecting Negroes to be measured by whether white persons were being afforded the same right, privilege or advantage which the state was denying to Negroes. In other words, if a particular state affords to its white citizens a particular right or privilege, the equal protection clause requires that the same right be granted to Negro citizens on the same basis. See Fairman & Morrison, Does The Fourteenth Amendment Incorporate The Bill of Rights? 2 Stanford L.Rev. 5, 138-139 (1949) Thus, even if there is a rational basis for the racial classification used by South Carolina to determine whether children should go to one school or another in District No. 22, the statute is necessarily unconstitutional.

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this right has not been, and presently is not, freely available to Negroes, since state officials for many years have attempted to use various means, most of them already declared illegal by the Supreme Court, to prevent the free exercise of the ballot. Moreover, the only way that a group is able to persuade other groups that laws affect them unjustly or are injurious to the whole society is through discussion with the other groups. But racial segregation laws usually create conditions which tend to prevent the normal processes essential to free and democratic associations from operating and therefore those processes that ordinarily might be relied upon to protect individuals against arbitrary and unreasonable governmental action are absent. See United States v. Carolene Products, 304 U.S. 144.

The Supreme Court has invalidated racial segregation in several areas although the individual could effectively escape the impact of the segregation policy: residential segregation, whether by statute or ordinance. Buchanan v. Warley, 245 U.S. 60, City of Richmond v. Deans, 281 U.S. 704; Harmon v. Tyler, 273 U.S. 668, cf. Oyama v. California, 332 U.S. 633; See also: City of Birmingham v. Monk, 185 F.(2d) 859, (C.A.5th) certiorari denied, 341 U.S. 940; or by court-enforced covenants, Shelley v. Kraemer, 334 U.S. 1, Hurd v. Hodge, 334 U.S. 24; segregation of interstate passengers, whether by statute, Morgan v. Virginia, 328 U.S. 373, or by carrier regulation, Henderson v. United States, 339 U.S. 816; Railroad Co. v. Brown, 17 Wall. 445, see also: Atlantic Coast Line Railroad Co. v. Chance, 186 F.(2d) 879 (C.A.4th) certiorari denied, 341 U.S. 941. It has shown no greater tolerance for distinctions, based on race or color, affecting the right to vote, whether imposed by law. Lane v. Wilson, 307 U.S. 268, Nixon v. Condon, 286 U.S. 73, Nixon v. Herndon, 273 U.S. 536, Guinn v. United States, 238 U.S. 347, or by political party, Smith v. Allwright, 321 U.S. 649; the right to fair representation by a labor organization, operating under authority of law, Graham v. Brotherhood of Locomotive Firemen & Enginemen, 338 U.S. 232, Steele v. Louisville & N.R. Co., 323 U.S. 192, Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210; or the right to engage in a gainful occupation, Yick Wo. v. Hopkins, 118 U.S. 356, cf. Yu Cong Eng. v. Trinidad, 271 U.S. 500, see also: Takahashi v. Fish & Game Commission, 334 U.S. 410. Similarly, it has consistently

reversed convictions in criminal cases where there was racial discrimination in the selection of juries, Cassell v. Texas, 339 U.S. 282, Patton v. Mississippi, 332 U.S. 463; Pierre v. Louisiana, 306 U.S. 354, Hale v. Kentucky, 303 U.S. 613, or where the right to a trial by racially unbiased jurors was not assured, Aldridge v. United States, 283 U.S. 303.

The District Court was unable to distinguish between permissible personal mores and customs from proscribed governmental action. In doing so the District Court rejected the applicable decisions of the Supreme Court. "There is a vast difference--a Constitutional difference--between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar."

It is, therefore, clear that the Fourteenth Amendment has stripped the state of power to make race and color the basis for governmental action.

#### B. RACE IS UNRELATED TO ANY LAWFUL OBJECTIVE OF PUBLIC EDUCATION

A classification conformable to the requirement of equal protection must be based upon some real difference having a fair and substantial relation to a valid legislative objective. Where alleged differences upon which classification is sought to be rested do not in fact exist, or are not reasonably and rationally related to the legislative end, the classification violates the constitutional mandate of equal protection of the laws.<sup>1/</sup> This requirement, while obtaining as to all

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<sup>1/</sup> Skinner v. Oklahoma, 316 U.S. 535; Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U.S. 459; Mayflower Farms v. Ten Eyck, 297 U.S. 266; Concordia Fire Insurance Co. v. Illinois, 292 U.S. 535; Air-way Electric Appliance Corp. v. Day, 266 U.S. 71; Southern Railway Co. v. Greene, 216 U.S. 400

legislation, applies to statutory regulation of personal rights with unmistakable emphasis.

In Skinner v. Oklahoma, 316 U.S. 535, the Court declared unconstitutional an Oklahoma Statute providing for the sterilization of persons convicted two or more times of crimes amounting to felonies involving moral turpitude but expressly exempting from its operation persons convicted of embezzlement. It said (316 U.S. at 541):

"But the instant legislation runs afoul of the equal protection clause, though we give Oklahoma that large deference which the rule of the foregoing cases requires. We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race. The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty. We mention these matters not to reexamine the scope of the police power of the States. We advert to them merely in emphasis of our view that strict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws. The guaranty of 'equal protection of the laws' is a pledge of the protection of equal laws.' Yick Wo v. Hopkins, 118 U.S. 356, 369, 30 L. ed. 220, 226, 6 S. Ct. 1064. When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment. Yick Wo v. Hopkins, supra; Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 83 L. ed. 208, 59 S.Ct. 232."

South Carolina has made no showing of any educational objective that racial segregation subserves. Nor could it. Efforts to conjure up as theories of intellectual differences between races are futile. As one authority has put it:<sup>8/</sup>

"\* \* \* there is not one shred of scientific evidence for the belief that some races are biologically superior to others, even though large numbers of efforts have been made to find such evidence."

The record in this case contains the conclusion of an expert, based on exhaustive investigation, that:

"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." (Tr.p.202)

This conclusion accords with all the scientific investigations on the subject. Klineberg, Race Differences 343 (1935); Montague, Man's Most Dangerous Myth - The Fallacy of Race 188 (1945); American Teachers Association, The Black and White of Rejections for Military Service 29 (1944); Klineberg, Negro Intelligence and Selective Migration (1935); Peterson and Lanier, Studies in the Comparative Abilities of Whites and Negroes, Mental Measurement Monograph (1929); Clark, Negro Children, Educational Research Bulletin (1923).

C. STATE-IMPOSED SEGREGATION IN PUBLIC EDUCATION IS INVALID:

In many situations, the citizen usually has a choice as to whether he will encounter or avoid the situation of

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<sup>8/</sup> Rose, America Divided: Minority Group Relations in the United States, (1948)

which segregation is a part. But in the area of segregated public secondary and high school education, however, he has little freedom of choice. Private education as a legal alternative to a public school education is economically unavailable save to a few. All others are forced by compulsory school attendance laws to attend segregated schools and by segregation laws to be subjected to the indignities and harms invariably produced.

The Supreme Court has invalidated segregation in public education even where the individual was not required to attend the institution where segregation was practiced. In McLaurin v. Board of Regents, 339 U.S. 637, a Negro voluntarily sought admission to the Graduate School of the University of Oklahoma. At the time of the hearing of the case on appeal, he was assigned to a seat in the classroom in a row set apart for Negro students, and was assigned to a special table in the library on the main floor and, although permitted to eat at the same time in the cafeteria as other students, he was assigned to a special table there. This was segregation, pure and simple, was recognized as such and was struck down as a denial of equal protection of the laws.

D. STATE IMPOSED RACIAL SEGREGATION IS INCONSISTENT WITH THE EQUAL PROTECTION OF THE LAWS BECAUSE IT IMPORTS, AND IS DESIGNED TO IMPORT THE INFERIORITY OF THE NEGRO

Segregation of Negroes, as practiced in this country, is universally understood as imposing on them a badge of inferiority.<sup>2/</sup>

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<sup>2/</sup> Myrdal, I An American Dilemma 615, 640 (1944); Johnson, Patterns of Negro Segregation 3 (1943); Fraenkel, Our Civil Liberties 201 (1944); Dollard, Caste and Class in a Southern Town 349-351 (1937) Note, 56 Yale L.J. 1059, 1060 (1947); Note, 49 Columbia L.Rev. 629, 634 (1949); Note, 39 Columbia L.Rev. 986, 1003 (1939)

It "brands the Negro with the mark of inferiority and asserts that he is not fit to associate with white people."<sup>10/</sup> It is of a piece with the established rule of the law of South Carolina that it is libelous per se to call a white person a Negro. Flood v. News and Courier Co. 71 S.C. 112, 50 S.E. 637 (1905); Flood v. Evening Post Publishing Co., 71 S.C. 122, 50 S.E. 641 (1905); <sup>See also:</sup> Stokes v. Gt. A. and P. Tea Co., 202 S.C. 24, 23 S.E. 2d. 823 (1943). Forbidding this group of American citizens "to associate with other citizens in the ordinary course of daily living creates inequality by imposing a caste status on the minority group."<sup>11/</sup> This imposition of a segregation status upon the Negro is unconstitutional in that it is an unreasonable, arbitrary, unscientific classification.<sup>12/</sup>

This classification is particularly pernicious because of the harmful effect it has upon the minority group. The Negro is plagued by the concept--evidence of which he constantly sees around him in his daily life--that he and his people are regarded as inferior.<sup>13/</sup>

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<sup>10/</sup> To Secure These Rights, Report of the President's Committee on Civil Rights, 79 (1947)

<sup>11/</sup> Id., 82

<sup>12/</sup> "Without any doubt there is also in the white man's concept of the Negro 'race' an irrational element which cannot be grasped in terms of either biological or cultural differences. It is like the concept 'unclean' in primitive religion. It is invoked by the metaphor 'blood' when describing ancestry. \* \* \* The one who has got the smallest drop of 'Negro blood' is as one who is smitten by a hideous disease. It does not help if he is good and honest, educated and intelligent, a good worker, an excellent citizen and an agreeable fellow. Inside him are hidden some unknown and dangerous potentialities, something which will sooner or later crop up. This totally irrational, actually magical, belief is implied in the system of specific taboos \* \* \*." Myrdal, I An American Dilemma, 100

<sup>13/</sup> "The word 'segregation' itself has come to represent to Negroes a crucial symbol of white attitudes of superiority." Stouffer, et al., Studies in Social Psychology in World War II, I The American Soldier, 566 (1949)

It remains one of the most devastating frustrations of his life. Under its impact, he does not dare to be a person of his own distinct uniqueness and individuality.<sup>14/</sup>

It is bad enough for the Negro to have to endure the insults of individuals who look upon him as inferior. It is far worse to have to submit to a formalized or institutionalized enforcement of this concept, particularly when, as in this case, it carries the sanction of an agency of government and thus appears to have the seal of approval of the community at large. Thus such enforced racial segregation in and of itself constitutes unconstitutional inequality.<sup>15/</sup>

In this situation the phrase "separate but equal" is a

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<sup>14/</sup> Cooper, The Frustrations of Being a Member of A Minority Group: What Does It Do To The Individual And To His Relationships With Other People?, 29 Mental Hygiene 189, 190-191 (1945)

<sup>15/</sup> "No argument or rationalization can alter this basic fact: a law which forbids a group of American citizens to associate with other citizens in the ordinary course of daily living creates inequality by imposing caste status on the minority group." (Italics supplied) To Secure These Rights, Report of the President's Committee on Civil Rights, 82.

"The Court has never faced the reality that segregation necessarily implies inequality, for equals do not hesitate to mingle with each other in public places. Any traveler in lands where segregation is practiced, be it the South where the victim is the Negro, or Nazi Germany where it is the Jew, knows that segregation is a badge of one race's claim to superiority over the other." Fraenkel, Our Civil Liberties, 201

plain contradiction in terms.<sup>16/</sup> Despite the dictum in Plessy v. Ferguson that the minority race is not stigmatized as inferior by segregation, it is clear today that this Court's a priori conclusion cannot stand in the face of a wealth of evidence flatly contradicting it.<sup>17/</sup> Furthermore, the continuation of segregation not only indoctrinates both white and colored races with the caste conception but solidifies segregation existing outside the law and gives <sup>it</sup> permanence, respectability and institutional fixity.<sup>18/</sup> As the Supreme Court of California has pointedly said, the way to eradicate racial tension is not "through the perpetuation by law of

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<sup>16/</sup> "The fact that accommodations are identical in physical comfort does not make them really equal, since there is a social stigma attached to the position of the minority. To say that, since neither group can use the facilities reserved for the other, they are in an equal position is unrealistic; members of the minority know only too well the reasons for the segregation and are humiliated by it." Note, 39 Col. L. Rev. 986, 1003 (1939)

<sup>17/</sup> In addition to the materials and authorities cited elsewhere in this brief, see Myrdal, An American Dilemma, 100, 628 (1939); Dollard, Caste and Class in a Southern Town 62-63, 266; Heinrich, The Psychology of a Suppressed People 57-61 (1937); Sutherland, Color, Class, and Personality 42-59 (1942); Johnson, Patterns of Negro Segregation 270 (1943); Bond, Education of the Negro and the American Social Order 384; (1934); Moton, What the Negro Thinks 12-13, 99 (1929); Bunche, Education in Black and White, 5 Journal of Negro Education 351 (1936); To Secure These Rights, supra, 79, 82; Fraenkel, Our Civil Liberties 201 (1936)

See also McGovney, Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional, 33 Calif. L.Rev. 5, 27, note 94 (1945); Note, 39 Columbia L.Rev. 986, 1003; (1939) Note, 56 Yale L.J. 1059, 1060 (1947); Note, 49 Columbia L.Rev. 629, 634 (1949)

In Collins v. Oklahoma State Hospital, 76 Okla. 229, 231 (1919) the Court said: "In this state, where a reasonable regulation of the conduct of the races has led to the establishment of separate schools and separate coaches, and where conditions properly have erected insurmountable barriers between the races when viewed from a social and a personal standpoint, and where the habits, the disposition, and characteristics of the race denominate the colored race as inferior to the Caucasian, it is libelous per se to write of or concerning a white person that he is colored." (Italics supplied.)

<sup>18/</sup> Myrdal, I An American Dilemma 579-580. See also Berger, The Supreme Court and Group Discrimination Since 1937, 49 Col. L. 201, 204-205 (1949)

of the prejudices that give rise to the tension."<sup>18/</sup> In fields which "Jim Crow" laws do not cover there has been "a slow trend toward a breakdown of segregation"; within the fields of their operation the laws "keep the pattern rigid."<sup>20/</sup>

SEGREGATED EDUCATION RESULTS IN HARM TO THE APPELLANTS, MEMBERS OF THEIR CLASS AND TO THE COMMUNITY AS A WHOLE.

The Negro who is subjected to segregated education is segregated against his will and is forced into ostracism symbolizing inferiority which colors his thoughts and action at almost every moment.<sup>21/</sup>

Professional opinion is almost unanimous that segregation has detrimental psychological effects on those segregated. A questionnaire addressed to 849 representative social scientists was answered by 61% of those to whom it was sent. Of those replying 90.4% believed that enforced segregation has "detrimental psychological effects" on those segregated if "equal facilities" are provided, 2.3% expressed the opposite opinion, and 7.4% did not answer the question or expressed no opinion. Those who elaborated their position with comments (55% of those replying) stressed that segregation induced feelings of inferiority, insecurity, frustration, and persecution, and that it developed, on the one hand, submissive-ness, martyrdom, withdrawal tendencies, and fantasy, and on

<sup>18/</sup> continued

In Wolfe v. Georgia Railway & Electric Co., 2 Ga. App. 499, 505 (1907), the court said: "It is a matter of common knowledge, that, viewed from a social standpoint, the negro race is in mind and morals inferior to the Caucasian. The record of each from the dawn of historic time denies equality."

<sup>19/</sup>

Perez v. Sharp, 32 Calif. 2d. 711, 725 (1939)

<sup>20/</sup>

Myrdal, I An American Dilemma, 635

In the South, segregation in privately operated public services "is often less rigid than in those operated by government" (id., p.634).

<sup>21/</sup>

Cooper: The Frustrations of Being a Member of a Minority Group: What Does It Do to the Individual and to His Relationships with Other People? 29 Mental Hygiene 189,193

the other hand, aggression.<sup>22/</sup>

The resentment and hostility provoked by segregation find various means of psychological "accommodation," various forms of release.<sup>23/</sup> Mediocrity is accepted as a standard because of the absence of adequate social rewards or acceptance.<sup>24/</sup> Energy and emotion which might be constructively used are lost in the process of adjustment in the "Jim Crow" concept of the Negro's characteristics and his inferior status in society.<sup>25/</sup>

The extensive studies made of Negro troops during the recent war furnished striking example of how racism, of which segregation is the sharpest manifestation, handicaps the soldier. The most important single factor affecting integration of the Negro into Army life was that he had to carry the burden of race prejudice in addition to all of the other problems faced by the white soldier.<sup>26/</sup>

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<sup>22/</sup> Deutscher & Chein, The Psychological Effect of Enforced Segregation: A Survey of Social Science Opinion, 26 Journal of Psychology 259, 261, 262 (1948)

<sup>23/</sup> Prudhomme, The Problem of Suicide in the American Negro, 25 Psychoanalytic Review 187, 200 (1938) Dollard, Caste and Class in a Southern Town 252 ff.

<sup>24/</sup> Dollard, supra, 424  
"In order for any individual to mature, that is, to be willing to assume responsibility in work and in personal relations, he must feel that there is some hope of attaining some of the satisfactions of maturity. \* \* \* White society gives him (the Negro) little share in any of the mature gratifications of creative work, education, and citizenship. It would not be remarkable if, deprived of all mature gratifications, he lost zest for responsible action." McLean, Group Tension, 2 Journal of American Medical Women's Association 479, 482. (1937)

<sup>25/</sup> Cooper, The Frustrations of Being a Member of a Minority

For a general discussion of the effects of the caste system, which segregation supports and exemplifies, on Negro personality and behavior, see Myrdal, An American Dilemma, vol. 2, pp. 757-767.

On occasion courts have denied that enforced segregation of Negroes in American life is a badge of inferiority, thus closing their eyes as judges to what they must know as men. But, beyond the teaching of common experience, the data of social science and history herein cited and summarized make unmistakably clear the invidious purpose and signification of segregation. We believe that a recognition of this underlies the decision of the Supreme Court in the McLaurin case. Similar recognition of segregation for what it is in this case must expose fundamental error in the reasoning and conclusion of the district court.

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25/ continued

Group: What Does It Do to the Individual and to His Relationships with Other People?, 29 Mental Hygiene 189, 190-191  
See also: McLean, Psychodynamic Factors in Racial Relations, The Annals of the American Academy of Political and Social Science 159,161 (1946)

"The psychology of the Negro developed in the repressive environment in which he lives might be described as the psychology of the sick \* \* \* It is impossible to estimate what are the pathological results of the above outlook on life. It must certainly mean a reduction in that energy that characterizes healthy organisms. "Frazier, Psychological Factors in Negro Health 3 Journal of Social Forces 488 (1925)

26/

Studies in Social Psychology in World War II, vol. I, chap. 10. See particularly pp. 502,504, 507

III

APPLICABLE DECISIONS OF THE SUPREME COURT REQUIRED AN ORDER ENJOINING [POLICY OF] APPELLEES FROM EXCLUDING APPELLANTS FROM AN OPPORTUNITY TO SHARE THE PUBLIC SCHOOL FACILITIES OF CLARENDON COUNTY ON AN EQUAL BASIS WITHOUT REGARD TO RACE OR COLOR

At the beginning of the first hearing, at the time of the first judgment and at the time of the judgment here appealed from, the appellants and appellees were in agreement that the equal protection of the laws of South Carolina was being denied to the appellants herein--and the District Court made this finding.

The appellants were entitled to effective and immediate relief as of the time of the first judgment on June 23, 1951. Sipuel v. Board of Regents, 332 U.S. 631; Sweatt v. Painter, 339 U.S. 629; McLaurin v. Board of Regents, 339 U.S. 637.<sup>27/</sup>

At the second hearing on March 3, 1952, appellees admitted that, although progress was being made, the physical facilities were still unequal. The District Court ruled that the question of the validity of the segregation laws was foreclosed by their prior decision. Appellants then urged that even under this ruling, they were entitled to immediate relief by an injunction against the continuation of the policy of excluding them from an opportunity to share all of the public school facilities--good and bad--on an equal basis without regard to race and color. This the District Court refused to do even after a

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<sup>27/</sup> See also: Missouri ex rel Gaines v. Canada, 305 U.S. 337; Belton, et al. v. Gebhart, et al., \_\_\_\_\_ Del.Ch. \_\_\_\_\_, A.2d \_\_\_\_\_ decided April 1, 1952.

showing that the June, 1952, decree had failed to produce even physical equality after eight months.

We are not here dealing with private rights. We are dealing with rights guaranteed and protected by the Constitution and laws of the United States. These rights are personal and present. Appellants are entitled to immediate and affirmative relief. Board of Supervisors v. Wilson, 340 U.S. 909.

Appellees' sole defense is complete reliance on the segregation laws of South Carolina. As long as the District Court insists on declaring these laws valid and constitutional, appellees will continue to enforce them. The record in this case shows that in the past their action has discriminated against appellants and all other Negroes. Whatever they do in the future will be under the continuation of the policy of rigid racial segregation.

Under the present decree physical facilities may be equalized by September. If so, the question of whether or not the educational opportunities of the two schools are equal will remain unsettled. If the physical facilities are unequal, appellants' sole recourse will be contempt proceedings. It is, therefore, obvious that the District Court has not only refused to grant effective permanent relief, but has also denied effective immediate relief, even apart from the question of the invalidity of the statutes.

#### CONCLUSION

Following the rationale of the decision of this Court in McLaurin v. Oklahoma State Regents appellants produced testimony of expert witnesses to show that racial restrictions in public

school education in Clarendon County impaired and inhibited infant appellants' ability to study and in general to obtain an equal education. However, the majority of the District Court in the first hearing after first upholding the doctrine of Plessy v. Ferguson, decided that the McLaurin decision was inapplicable because there were differences between graduate education and elementary and high school education. The judgment after the second hearing reaffirmed this decision even in the face of the continuing inequalities.

The Supreme Court has always recognized the importance of racial segregation in public education. Although the Supreme Court has clarified the issue as to graduate and professional schools, the Court has never had the opportunity to consider the question as to elementary and high schools on the basis of a full and complete record with the issue clearly drawn and with competent expert testimony as appears in the record in this case.

Without a review of this decision there will be considerable doubt in the minds of judges, school officials, taxpayers and pupils of the extent of the principles set forth in those decisions. A clear cut decision on this issue will remove all doubts in the field of public education.

WHEREFORE, it is respectfully submitted the judgment of the court below should be reviewed by the United States

Supreme Court and reversed.

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Of Counsel

May 10, 1952

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

---

Civil Action No. 2657

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HARRY BRIGGS, JR., Et Al.,  
Plaintiffs

vs.

R. W. ELLIOTT, Chairman, ET AL.,  
Defendants

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STATEMENT AS TO JURISDICTION

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

\_\_\_\_\_  
Civil Action No. 2657  
\_\_\_\_\_

**FILED**

MAY 9 1952

WESLEY L. ALLEN  
C. D. C. U. S. E. D. S. C.

\_\_\_\_\_  
HARRY BRIGGS, JR., ET AL.,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, ET AL.,

Defendants  
\_\_\_\_\_

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

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 equal

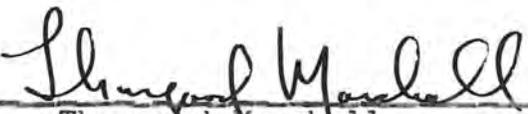
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protection clause of the Fourteenth Amendment.

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

# 2 Am.

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

CIVIL ACTION NO. 2657

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ASSIGNMENT OF ERRORS  
STATEMENT REQUIRED BY RULE 12  
PETITION FOR APPEAL  
ORDER ALLOWING APPEAL  
CITATION ON APPEAL

---

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

\_\_\_\_\_  
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**FILED**  
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THOMAS L. ALLEN  
C. D. C. U. S. E. D. S. C.

\_\_\_\_\_  
HARRY BRIGGS, JR., ET AL.,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, ET AL.,

Defendants  
\_\_\_\_\_

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, plaintiffs-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this case.

PART ONE

OPINIONS BELOW

The majority and dissenting opinions filed at the conclusion of the first hearing are reported in 98 F.Supp.529 and copies appear in the Appendix to this Statement. The

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opinion filed at the conclusion of the second hearing has not yet been officially reported. A copy of this opinion also appears in the Appendix to this Statement.

#### JURISDICTION

The judgment of the statutory three judge District Court was entered on March 13, 1952. A petition for appeal is presented to the district court herewith, to wit, on May 10, 1952. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101(b).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this case: Briggs v. Elliott, 342 U.S. 350; Wilson v. Board of Supervisors, 340 U.S. 909; McLaurin v. Board of Regents, 339 U.S. 637.

#### NATURE OF THE CASE AND RULINGS BELOW

##### The Constitutional Issue Involved

The complaint in this case was filed by Negro children of public school age residing in School District No. 22, Clarendon County, South Carolina, and their respective parents and guardians, against the public school officials of said county and school district who, as officers of the State, maintain, operate and control the public schools for children residing in said district. It was alleged that defendants maintained certain public schools for the exclusive use of white children and certain other public schools for Negro children; that the schools for Negro children were in all respects inferior to the schools for white children; that the defendants excluded the infant plaintiffs from the white schools pursuant to

Article XI, Section 7, of the Constitution of South Carolina, and section 5377 of the Code of Laws of South Carolina of 1942, which require the segregation of the races in public schools; and that it was impossible for the infant plaintiffs to obtain a public school education equal to that afforded and available to white children as long as the defendants enforced these laws.

The complaint sought a judgment declaring the invalidity of these laws as a denial of the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States, and an injunction restraining the defendants from enforcing them and from making any distinctions based upon race or color in the educational opportunities, facilities and advantages afforded public school children residing in said district.

Defendants in their answer joined issue on this question and admitted that in obedience to the constitutional and statutory mandates separate schools were provided for the children of the white and colored races; and that no child of either race was permitted to attend a school provided for children of the other race. In the Third Defense of defendants' answer they alleged that the above constitutional and statutory provisions were a valid exercise of the State's legislative power.

The jurisdiction of a three-judge District Court was invoked pursuant to Title 28, United States Code, sections 2281, 2284, for the purpose of determining the validity of the provisions of the Constitution and laws of South Carolina requiring segregation of the races in public schools. This issue was clearly raised, and was decided by upholding the validity of these provisions and by refusing to enjoin their

enforcement.

#### First Hearing

At the opening of the trial (before a three-judge District Court as required by Title 28, United States Code, sections 2281 and 2284) 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 defendants also stated that they did "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 Clarendon County now exist, and enjoining any discrimination in respect thereto."

These admissions were made part of the record being filed as an amendment to the answer. The only issue remaining to be tried was the question of the constitutionality of the laws requiring segregation of the races in public education as applied to the plaintiffs.

During the trial the plaintiffs produced testimony showing the extent of the physical inequality in the segregated schools of Clarendon County and especially School District No. 22. Over the objection of the plaintiffs<sup>1/</sup> the defendants introduced testimony that a three per cent sales tax and authorization of a \$75,000,000 bond issue for improvement of schools had recently been adopted by the State of South Carolina, and that the State Educational Finance Commission to supervise the distribution of these funds had just been organized

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<sup>1/</sup> On the grounds that equality within the meaning of the Fourteenth Amendment did not include contemplated future action.

and had not even set up rules or procedures.<sup>2/</sup> About a week before the trial Clarendon County had "inquired" about making an application for funds.

The testimony of nine expert witnesses was introduced by plaintiffs; two experts in the field of education who offered a comparison of the public schools; one expert in educational psychology, three experts in the respective fields of child and social psychology, one expert in political science, one expert in school administration, and one expert in the field of anthropology.

The uncontroverted testimony of these witnesses demonstrated that the Negro schools in question were inferior in every material aspect to the white schools, and that similarly the caliber of education offered to Negro pupils was inferior to that offered to white pupils. The testimony of these witnesses also established the fact that the segregation of Negro pupils in these schools would in and of itself preclude an equality of education offered to white pupils or pupils in a non-segregated school. These witnesses not only established their qualifications in their respective fields but also supported their conclusions by objective and scientific authorities.

One of the experts in the field of child and social psychology testified that he had made special studies of the recognized methods of testing the effects of race and segregation on children. He used a test of this type on

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<sup>2/</sup> It was admitted that although the school population of South Carolina was approximately forty to forty-five per cent Negro there were no Negroes on the Commission and no Negro employees of the Commission.

Negro school children including the infant plaintiffs in School District No. 22 a few days before the trial. From his general experience in this field and the results of his tests he testified:

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

These witnesses testified as to the unreasonableness of segregation in public education and the lack of any scientific basis for such segregation and exclusion. They testified that all scientists agreed that there are no fundamental biological differences between white and Negro school pupils which would justify segregation. An expert in anthropology testified:

"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."

Another expert witness testified:

"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 from whatever harmful effect racial prejudice and discrimination can wreck."

The defendants did not produce a single expert to contradict these witnesses. There were only two witnesses for the defendants. The Superintendent of Schools for District No. 22 testified as to the reasons for the physical inequalities between the white and Negro schools. The Director of the Educational Finance Commission testified as to the proposed operation of the Commission and the possibility of the defendants obtaining funds to improve public schools. The latter witness testified that from his experience as a school administrator in Sumter and Columbia, South Carolina, it would be "unwise" to remove segregation in public schools in South Carolina. On cross-examination, he admitted he had not made any formal study of racial tensions but based his conclusion on the fact that he had "observed conditions and people in South Carolina" all of his life. He also admitted that his conclusion was based in part on the fact that all of his life he had believed in segregation of the races.

The judgment in this hearing, one judge dissenting, stated that neither the constitutional nor statutory provisions requiring segregation in public schools were in violation of the Fourteenth Amendment and that plaintiffs were not entitled to an injunction against the enforcement of these provisions by these defendants. The judgment also stated that the educational facilities offered infant plaintiffs were unequal to those offered to white pupils, and ordered the defendants "to furnish to plaintiffs and other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those furnished white pupils."

### First Appeal

An appeal from this judgment was allowed on July 20, 1951 and the appellees filed a motion to dismiss or affirm. On December 21, 1951 defendants filed their report in the District Court showing progress being made toward equalization of physical facilities in the public schools of Clarendon County. A copy of this report was forwarded to the Supreme Court. On January 28, 1952, the Supreme Court vacated the judgment of the District Court and remanded the case to that court in order to obtain the views of the trial court upon the additional facts in the record and to give the District Court an opportunity to take whatever action it might deem appropriate in light of the report (342 U.S. 350). Mr. Justice Black and Mr. Justice Douglass dissented on the ground that the additional facts in the report were "wholly irrelevant to the constitutional questions presented by the appeal to this court" (342 U.S. 350).

### Second Hearing

As soon as the mandate reached the District Court, plaintiffs-appellants filed a Motion for Judgment requesting an early hearing and a final judgment granting the retrial as prayed for in the complaint. Among the reasons for this motion plaintiffs alleged:

"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 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)

"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.

"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 defendants herein to exclude Negro pupils from the only schools where they can obtain an education equal to that offered white children.

The second hearing was held on March 3, 1952, at which time the defendants filed an additional report showing progress since the December report. The plaintiffs did not question the accuracy of these statements of physical changes in the making.

At the second hearing the District Court ruled that the question of the decision on the validity of segregation statutes was closed by their original judgment and could not be argued at that hearing. The District Court also refused to rule that, aside from the question of the validity of these statutes, the admitted lack of equality of facilities entitled plaintiffs to an injunction, restraining defendants from excluding them from an opportunity to share the superior schools and the inferior schools on an equal basis without regard to race and color.

On March 13, 1952, the District Court filed an opinion and a decree again finding that the educational facilities for Negroes were not substantially equal to those afforded white pupils. Despite this finding the District Court held that "plaintiffs are not entitled to an injunction forbidding segregation in the public schools of School District No. 1."

The petition for appeal was presented and allowed on May 10, 1952.

#### CONSTITUTION AND STATUTE INVOLVED

Article XI, section 7 of the Constitution of South Carolina 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 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."

#### QUESTIONS PRESENTED

1. Whether the District Court erred in denying a permanent injunction restraining appellees from enforcing the laws of South Carolina requiring racial segregation in public schools of Clarendon County?
2. Whether the District Court erred in predicating its decision upon Plessy v. Ferguson, and in disregarding McLaurin v. Board of Regents and principles serving as the basis for this and other decisions of the Supreme Court in conflict with the rationale of the Plessy case?
3. Whether the District Court erred in predicating its decision in the doctrine of Plessy v. Ferguson and in disregarding the rationale of the applicable decisions of Sweatt v. Painter and McLaurin v. Board of Regents?
4. Whether the District Court erred in refusing to grant 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?

#### PART TWO

STATEMENT OF THE GROUNDS UPON WHICH IT IS CONTENDED THE QUESTIONS INVOLVED ARE SUBSTANTIAL

#### SUMMARY

The district court has failed to apply the basic substantive teaching of the Supreme Court in McLaurin v. Oklahoma

and Sweatt v. Painter that there are factors beyond relative physical facilities and curricular offerings which established the failure of segregated public education to meet the constitutional standard of equal protection of the laws. The court erroneously restricted the doctrine of the McLaurin case to graduate education despite the fact that considerations of like character and equivalent force apply to elementary and high school education and were placed before the district court here. It is of very great importance to pupils, parents, state officers and the general public that the application of these recent decisions of the Supreme Court to education below the graduate level be made clear.

The district court affirmatively and erroneously ruled that South Carolina's absolute constitutional and statutory requirement of racial segregation in public education is valid. In so doing the court presently and for the future has debarred Negro school children from the enjoyment of equal protection of the laws. For the parties have agreed and the district court has found that the public schools maintained for white children in Clarendon County are much superior to those maintained for colored children and that present inequalities constitute a denial of equal protection. By permitting children to share the good and bad schools without regard to race, and only in this way, could Clarendon County forthwith have corrected and removed this denial of constitutional right. But the decree of the district court upholding the school segregation law actually precludes the school officials from granting such effective relief. It is as grave as it is extraordinary, and certainly calls for correction, that a court of the United States should enter a decree which by the court's own findings actually

requires that a denial of Constitutional right be continued for a time.

Beyond this, in affirmatively ordering the equalization of segregated school facilities throughout Clarendon County the district court has made itself responsible for a continuing detailed comparative evaluation of white and colored schools and their facilities. The factors to be measured are complex and variable. Relative evaluations, difficult at any time, lose validity from day to day. Federal supervision of details of state administration, rarely appropriate, is an impossible task here. Thus, serious considerations of federal-state relationships point to the importance of correcting the inappropriate remedy decreed in this case.

In larger aspect the district court, in sustaining the segregated school laws, has rejected the contention and demonstration that racial segregation in public education falls within that group of unreasonable classifications which the equal protection clause forbids. It also has rejected the related contention and demonstration that state enforced segregation of Negroes in America inevitably offends the equal protection clause because it is intended as a stigmatizing badge of inferiority and is generally so recognized. It is difficult to imagine larger or more far reaching claims of vital discrepancy between the order a state is imposing upon those within its borders and the restraints which the Constitution imposes throughout the nation. Such questions call for decisive adjudication by the highest judicial authority.

I

THE DISTRICT COURT ERRED IN REFUSING TO ENJOIN THE ENFORCEMENT OF THE SEGREGATION LAWS OF SOUTH CAROLINA WHICH PREVENTED APPELLANTS FROM SHARING THE PUBLIC SCHOOL FACILITIES OF CLARENDON COUNTY ON AN EQUAL BASIS WITH OTHERS WITHOUT REGARD TO RACE AND COLOR.

The issue of the validity of the provisions of the laws of South Carolina requiring racial segregation in public schools was clearly joined in the pleadings in this case and had been preserved. The District Court has twice decreed that these laws are valid and has twice refused to enjoin their enforcement.

The decision herein appealed from upheld the validity of the provisions of the constitution and laws of South Carolina requiring segregation of the races on the following grounds: (1) segregation of the races in 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." (italics supplied); (2) subject to the observance of the fundamental rights and liberties guaranteed by the Federal Constitution, each state is free to determine how it shall exercise its police power, i.e., the power to legislate with respect to the safety, morals, health and general welfare; (3) the decisions in Plessy v. Ferguson, 163 U.S. 537; Cumming v. Board of Education, 175 U.S. 528; and Gong Lum v. Rice, 275 U.S. 78, held that as long as physical equality is furnished, segregation of the races in public schools is not unconstitutional and these cases are controlling in the instant case; (4) that neither Sweatt v. Painter, 339 U.S. 629; McLaurin v. Oklahoma State Regents, 339 U.S. 637, nor McKissick v. Carmichael, 187 F.2d 949 (CA 4th 1951) can be applied to this

case because the Sweatt case, supra, did not overrule Plessy v. Ferguson, supra, and both the Sweatt case, supra, and the McKissick case, supra, were decided on the question of equality, and the McLaurin case, supra, "involved humiliating and embarrassing treatment of a Negro graduate student to which no one should have been required to submit. Nothing of the sort is involved here"; (5) there is a difference between education on the graduate level and on lower levels of education.

In the instant case there is no dispute that Negroes are relegated to inferior schools and denied an opportunity to share in the superior facilities because of the provisions of the constitution and laws of South Carolina requiring racial segregation in public schools.

It is obvious that a majority of the District Court at the first hearing and all three of the judges of the District Court for the second hearing<sup>3/</sup> considered their primary duty and responsibility to be to uphold the validity of the state statutes requiring segregation. They considered the limit of their jurisdiction to be an order requiring equality of facilities within the framework of rigid racial segregation.

Even after the cause was remanded to the District Court by the Supreme Court, the District Court merely adhered to its original position that: "In directing that the school facilities [meaning physical facilities] afforded Negroes within the district be equalized promptly with those afforded white persons, we are

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<sup>3/</sup> District Judge Waring who filed a vigorous dissenting opinion in the first hearing (98 F.Supp. 538-548) retired prior to the second hearing and was replaced by Circuit Judge Dobie. (Tr. 2d Hearing, pp. 1-3)

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."

In the Sweatt case, supra, and again in the McLaurin case, supra, the Supreme Court examined the record to determine in each case whether the segregation practices denied the individual involved the equality of opportunity guaranteed by the Fourteenth Amendment. This was done without regard to the "doctrine of Plessy v. Ferguson." In the Sweatt case, supra, the Supreme Court refused to either affirm or reconsider the "doctrine of Plessy v. Ferguson."

In the instant case, however, the District Court took the position that the doctrine of Plessy v. Ferguson as applied in Gong Lum v. Rice (275 U.S. 78) was controlling, and federal courts were thereby powerless to do anything more than to order equalization of physical facilities within a segregated framework. The District Court, therefore, in direct opposition to the rationale of the Sweatt and McLaurin decisions disregarded all of the expert testimony as to the unreasonableness of the classification and the injury to the children involved, including the infant appellants.

The District Court held that the Sweatt case did not apply to this case because the decision in that case was based upon the

inequality of the "educational facilities" offered the white and Negro law students. The opinion also held that "McLaurin v. Oklahoma State Regents involved humiliating and embarrassing treatment of a Negro graduate student to which no one should have been required to submit. Nothing of the sort is involved here." To the contrary, the record in this case shows that the injury to the plaintiffs in this case was not only humiliating and embarrassing but was even more harmful than in graduate education. The uncontradicted testimony in this record brings this case clearly within the rationale of McLaurin.

Dr. Kenneth Clark, an expert in the fields of social and child psychology who tested the infant plaintiffs and other Negro school children in District No. 22, testified:

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

Dr. David Krech, another psychologist, testified:

"...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 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 the 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 from whatever harmful effect racial prejudice and discrimination can wreck."

Dr. Harold McNalley, an expert in the field of Educational Psychology, testified:

"...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 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."

Dr. Louis Kesselman, a political scientist, testified:

"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 scientifically 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 electoral process, our various studies indicate that these people who are low in literacy and low in experience with other groups are not likely to participate as fully as those who have..."

Mrs. Helen Trager, a child psychologist who had conducted tests of the effects of racial segregation and racial tensions among children, testified:

"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."

Dr. Robert Redfield, an expert in the field of anthropology, testified as to the unreasonableness of racial classification in education:

"Q. As a result of your studies that you have made, the training that you have had in your specialized field over some 20 years, given a similar learning situation, what, if any difference, 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."

The opinion and decree of the lower court was based upon the assumption that equality of rights guaranteed by the Fourteenth Amendment was limited to physical equality such as facilities, equipment and curricula. Expert witnesses for plaintiffs testified not only as to the inevitable harmful effect of segregation on public school children but also as to the tests showing the irreparable harm to the plaintiffs and other Negro school children in Clarendon County. This testimony was disposed of by the District Court as follows:

"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 relationships existing between the races and the tensions likely to be produced by an attempt to educate the children 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." (Majority Opinion, First Hearing)

The testimony on behalf of the plaintiffs was by expert witnesses of unimpeachable qualifications. The record in this case presented for the first time in any case competent testimony of the permanent injury to Negro elementary and high school children forced to attend segregated schools. Testimony was introduced showing the irreparable damage done to the plaintiffs in this case solely by reason of racial segregation. The record also shows the unreasonableness of this racial classification. This is not theory or legislative argument. This is competent expert testimony from recognized scientists directed toward the factors recognized by the Supreme Court as determinative of the validity of similar statutory provisions. This testimony stands uncontradicted in the record.

In the McLaurin case, the Supreme Court looked beyond the admitted equality of physical facilities, curriculum, etc.,

and found that the State of Oklahoma "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." (339 U.S. 641) The Supreme Court, therefore, concluded: "the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws." (339 U.S. 642)

If the majority of the District Court had tested the evidence in this case by the criterion of the McLaurin case, it inevitably would have concluded that the segregation laws could not validly be enforced against the plaintiffs. Instead, it considered the "separate but equal" doctrine of Plessy v. Ferguson, supra, controlling, and limited the application of the equal protection clause exclusively to physical facilities.

In disregarding the testimony attacking the validity of the segregation laws involved, the District Court did more than reject the rationale of the McLaurin decision. It also rejected other decisions of the Supreme Court which require that clear proof of the unreasonableness of a statutory classification and of the unlawful injury resulting therefrom, as was produced in this case, must override the normal disposition of courts to uphold state legislative policy.

The Supreme Court has never sanctioned a finding of constitutional validity of legislation which was made by

disregarding facts disclosing its true operation and effect as was done in the instant case. While it has often been said that statutes are considered presumptively valid, the presumption of constitutionality is merely

"\* \* \* a presumption of fact of the existence of factual conditions supporting the legislation. As such it is a rebuttable presumption. \* \* \* It is not a conclusive presumption, or a rule of law which makes legislation invulnerable to constitutional assault. \* \* \*" Chief Justice Hughes in Borden's Farm Products Co. v. Baldwin, 293 U.S. 194

In recent years the Supreme Court has emphasized that governmental action affecting certain classes of personal rights fundamental in a democratic order must be subjected to the most rigid scrutiny. Where such action is challenged, normal presumptions of validity are at best minimal and certainly disappear in the face of clear proof of injury to the complaining party.

In United States v. Carolene Products Co., 304 U.S. 144, 152, note, Mr. Justice Stone, speaking for the Court said:

"There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See Stromberg v. California, 283 U.S. 359, 369, 370, 51 S.Ct. 532, 535, 536, 75 L.Ed. 1117, 73 A.L.R. 1484; Lovell v. Griffin, 303 U.S. 444, 58 S.Ct. 777, 82 L.Ed. 949, decided March 28, 1938. \* \* \*

"Nor need we inquire whether similar considerations enter into the review of statutes directed at particular religious...or national...or racial minorities...."

The Supreme Court has repeatedly pointed out that the scope of the presumption of constitutionality is greatly narrowed:

"when legislation appeared in its face to violate a specific provision of the Constitution." Ex parte Endo, 323 U.S. 283, 299

Mr. Chief Justice Stone, concurring in Skinner v. Oklahoma,  
316 U.S. 535, 544, stated:

"There are limits to the extent to which the presumption of constitutionality can be pressed, especially when the liberty of the person is concerned (See United States v. Carolene Products Co., 304 U.S. 144, 152, note 4, 82 L.Ed. 1234, 1241, 58 S.Ct. So. 78) and where the presumption is resorted to only to dispense with a procedure which the ordinary dictates of prudence would seem to demand for the protection of the individual from arbitrary action."

Mr. Justice Rutledge, concurring in United States v. Congress of Industrial Organizations, 335 U.S. 106, 140,  
stated:

"As the Court has declared repeatedly, that judgment does not bear the same weight and is not entitled to the same presumption of validity, when the legislation on its face or in specific application restricts the rights of conscience, expression and assembly protected by the Amendment, as are given to other regulations having no such tendency. The presumption rather is against the legislative intrusion into these domains. For, while not absolute, the enforced surrender of these rights must be justified by the existence and immediate imminency of dangers to the public interest which clearly and not dubiously outweigh those involved in the restrictions upon the very foundation of democratic institutions, grounded as those institutions are in the freedoms of religion, conscience, expression and assembly. Hence doubtful intrusions cannot be allowed to stand consistently with the Amendment's command and purpose, nor therefore can the usual presumptions of constitutional validity, deriving from the weight of legislative opinion in other matters more largely within the legislative province and special competence, obtain."

Freedom from distinctions based on race, color or ancestry ranks high among the rights so safeguarded. "Distinctions between citizens solely because of their ancestry are by their

very nature odious to a free people whose institutions are founded upon the doctrine of equality."<sup>4/</sup> Indeed: "Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals."<sup>5/</sup> Other pronouncements by the Supreme Court are: "Racism is far too virulent today to permit the slightest refusal, in the light of a Constitution that abhors it, to expose and condemn." Steele v. Louisville & N.R. Co., 323 U.S. 192, 209, concurring opinion; and "All legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can." Korematsu v. United States, 323 U.S. 214, 216.<sup>5a/</sup>

The law considered, the tenderness of the District Court toward the segregation policy of the State of South Carolina is unwarranted. That tenderness alone has obscured the constitutional infirmity of the statute.

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<sup>4/</sup> Hirabayashi v. United States, 320 U.S. 81, 100

<sup>5/</sup> Hirabayashi v. United States, cited supra note 4, concurring opinion at p. 110

<sup>5a/</sup> See also: Tusman & ten Broek, The Equal Protection of the Laws, 37 Cal. L. Rev. 341 (1949); Notes 36 Col. L. Rev. 283 (1936), 40 Col. L. Rev. 531 (1940); Hamilton & Braden, The Special Competence of the Supreme Court, 50 Yale L. J. 1319, 1349-1357 (1941)

RACIAL SEGREGATION IN PUBLIC EDUCATION IS INVALID

The primary purpose and design of the equal protection clause of the Fourteenth Amendment was protection of the newly-freed Negroes -- "to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the General Government, in that enjoyment, whenever it should be denied by the States." Strauder v. West Virginia, 100 U.S. 303, 306. Its secondary purpose was to assure that all persons similarly situated would be treated alike, and that no special groups or classes would be singled out for favorable or discriminatory treatment. Maxwell v. Bugbee, 250 U.S. 525; Southern Railway Co. v. Greene, 216 U.S. 400; Connolly v. Union Sewer Pipe Co., 184 U.S. 540: The scope of its secondary objective is broader than its first since it condemns arbitrary distinctions, whether based on race or not.

The equal protection clause was not intended to forbid all classifications. Those which are reasonable, and rationally related to an end within the competency of the legislature, survive its operation. But it does invalidate those based solely on race or color. Such classifications not only are arbitrary and unreasonable, but are of the very kind the equal protection clause was specifically designed to prohibit.

A. STATUTORY CLASSIFICATIONS AND OTHER GOVERNMENTAL ACTION BASED SOLELY ON RACE OR COLOR DENY THE EQUAL PROTECTION OF THE LAWS.

The laws of South Carolina require that all Negro pupils in Clarendon County attend schools segregated for their use exclusively and prohibits them from attending other schools in

which pupils of all other racial groups are educated as a matter of course. The clear vice is that the segregated class is defined wholly in terms of race or color -- "simply that and nothing more." Buchanan v. Warley, 245 U.S. 60,73.

The Supreme Court has held that race is an impermissible basis for classification of individuals by state laws. "States may do a great deal of classifying that it is difficult to believe rational, but there are limits, and it is \* \* \* clear \* \* \* that color cannot be made the basis of a statutory classification." (Mr. Justice Holmes, speaking for the Court in Nixon v. Herndon, 273 U.S. 536,541)

In South Carolina the school which a child is permitted to attend depends solely upon his race or color. The Supreme Court, in recent decisions, has indicated that statutes which affect individuals according to their race or ancestry are, in the absence of an overwhelming public necessity, invalid. Korematsu v. United States, 323 U. S. 214; and Hirabayashi v. United States, 320 U.S. 81, wherein the Court said:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classifications . . . based on race alone has often been held to be a denial of equal protection." (p.100)

These decisions have been made without regard to the equal protection clause of the Fourteenth Amendment, thus indicating that the citizen's right to have his rights, obligations, and duties to the state determined without regard to his race or color is a fundamental right essential to our

democratic society.<sup>6/</sup> State statutes must in addition meet

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<sup>6/</sup> It might be argued by the proponents of segregated school systems that since seventeen states have laws which regulate the use of some or all of the public educational facilities on the basis of race or color, the problem is essentially one for the legislative judgment and that federal courts should not interfere. The proponents might attempt to place reliance on the Supreme Court's examination on several occasions of the practices and experiences of the forty-eight states and other jurisdictions which have adopted Anglo-American jurisprudence, to see whether a right being claimed as fundamental is generally protected by the states. See for example, Adamson v. California, 332 U.S. 46; In Re Oliver, 333 U.S. 257. But such examination in the instant case is not at all relevant, and, in any event, if made, would have to exclude those states which have a history of unequal treatment to Negroes in educational facilities, political franchise, and other opportunities and rights normally available to citizens of a state.

In the first place, the Court has already indicated that governmental classifications based upon race and color are arbitrary and a denial of due process of law. Korematsu v. United States, 323 U.S. 214; Ex Parte Endo, 323 U.S. 282. These cases were under due process clause of the Fifth Amendment, but certainly "it ought not to require argument to reject the notion that due process of law meant one thing in the Fifth Amendment and another in the Fourteenth." Adamson v. California, supra.

Secondly, the plaintiff claims protection under the equal protection clause of the Fourteenth Amendment and, as indicated above, the intention of this clause was to afford the same rights to Negroes as were afforded to whites by a state.

Finally, the experiences in the southern states in determining whether the right to be free of laws imposing burdens or denying privileges based upon race or ancestry is fundamental to a free society, must be discounted in determining the meaning of the Fourteenth Amendment. In the first place, those states which have traditions and practices similar to South Carolina in enforcing racial discrimination refused, in 1866 and 1867, to ratify the Fourteenth Amendment. Therefore, their practice and conduct thereunder is not valid evidence as to the meaning or scope of the Amendment which they have consistently opposed. See Fairman & Morrison, Does The Fourteenth Amendment Incorporate The Bill of Rights? 2 Stanford L. Rev. 5, 90-95 (1949) South Carolina has had a long history, culminating in the events which led to the decision in Rice v. Elmore, 165 F. (2d) 387 (CCA 4 1947), cert. denied 333 U.S. 875, in denying to its Negro citizens the right to exercise effectively their voting rights specifically guaranteed by the Fifteenth Amendment. The basis of the argument that matters are within the legislative judgment and therefore if a person wishes to change a particular legislation his arguments embodying economic, psychological and social data should be addressed to the legislature rather than to the Court necessarily presupposes that the legislature is subject to the popular will by use of the ballot. In a state such as South Carolina,

the standards of the equal protection clause of the Fourteenth Amendment. An examination of the relevant data, including the legislative history, supports plaintiffs' contention that the purpose of the framers of the Fourteenth Amendment in including therein the equal protection clause was to require state action affecting Negroes to be measured by whether white persons were being afforded the same right, privilege or advantage which the state was denying to Negroes. In other words, if a particular state affords to its white citizens a particular right or privilege, the equal protection clause requires that the same right be granted to Negro citizens on the same basis. See Fairman & Morrison, Does The Fourteenth Amendment Incorporate The Bill of Rights? 2 Stanford L.Rev. 5, 138-139 (1949) Thus, even if there is a rational basis for the racial classification used by South Carolina to determine whether children should go to one school or another in District No. 22, the statute is necessarily unconstitutional.

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this right has not been, and presently is not, freely available to Negroes, since state officials for many years have attempted to use various means, most of them already declared illegal by the Supreme Court, to prevent the free exercise of the ballot. Moreover, the only way that a group is able to persuade other groups that laws affect them unjustly or are injurious to the whole society is through discussion with the other groups. But racial segregation laws usually create conditions which tend to prevent the normal processes essential to free and democratic associations from operating and therefore those processes that ordinarily might be relied upon to protect individuals against arbitrary and unreasonable governmental action are absent. See United States v. Carolene Products, 304 U.S. 144.

The Supreme Court has invalidated racial segregation in several areas although the individual could effectively escape the impact of the segregation policy: residential segregation, whether by statute or ordinance. Buchanan v. Warley, 245 U.S. 60, City of Richmond v. Deans, 281 U.S. 704; Harmon v. Tyler, 273 U.S. 668, cf. Oyama v. California, 332 U.S. 633; See also: City of Birmingham v. Monk, 185 F.(2d) 859, (C.A.5th) certiorari denied, 341 U.S. 940; or by court-enforced covenants, Shelley v. Kraemer, 334 U.S. 1, Hurd v. Hodge, 334 U.S. 24; segregation of interstate passengers, whether by statute, Morgan v. Virginia, 328 U.S. 373, or by carrier regulation, Henderson v. United States, 339 U.S. 816; Railroad Co. v. Brown, 17 Wall. 445, see also: Atlantic Coast Line Railroad Co. v. Chance, 186 F.(2d) 879 (C.A.4th) certiorari denied, 341 U.S. 941. It has shown no greater tolerance for distinctions, based on race or color, affecting the right to vote, whether imposed by law. Lane v. Wilson, 307 U.S. 268, Nixon v. Condon, 286 U.S. 73, Nixon v. Herndon, 273 U.S. 536, Guinn v. United States, 238 U.S. 347, or by political party, Smith v. Allwright, 321 U.S. 649; the right to fair representation by a labor organization, operating under authority of law, Graham v. Brotherhood of Locomotive Firemen & Enginemen, 338 U.S. 232, Steele v. Louisville & N.R. Co., 323 U.S. 192, Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210; or the right to engage in a gainful occupation, Yick Wo. v. Hopkins, 118 U.S. 356, cf. Yu Cong Eng. v. Trinidad, 271 U.S. 500, see also: Takahashi v. Fish & Game Commission, 334 U.S. 410. Similarly, it has consistently

reversed convictions in criminal cases where there was racial discrimination in the selection of juries, Cassell v. Texas, 339 U.S. 282, Patton v. Mississippi, 332 U.S. 463; Pierre v. Louisiana, 306 U.S. 354, Hale v. Kentucky, 303 U.S. 613, or where the right to a trial by racially unbiased jurors was not assured, Aldridge v. United States, 283 U.S. 308.

The District Court was unable to distinguish between permissible personal mores and customs from proscribed governmental action. In doing so the District Court rejected the applicable decisions of the Supreme Court. "There is a vast difference--a Constitutional difference--between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar."

It is, therefore, clear that the Fourteenth Amendment has stripped the state of power to make race and color the basis for governmental action.

B. RACE IS UNRELATED TO ANY LAWFUL OBJECTIVE OF PUBLIC EDUCATION

A classification conformable to the requirement of equal protection must be based upon some real difference having a fair and substantial relation to a valid legislative objective. Where alleged differences upon which classification is sought to be rested do not in fact exist, or are not reasonably and rationally related to the legislative end, the classification violates the constitutional mandate of equal protection of the laws.<sup>1/</sup> This requirement, while obtaining as to all

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<sup>1/</sup> Skinner v. Oklahoma, 316 U.S. 535; Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U.S. 459; Mavflower Farms v. Ten Eyck, 297 U.S. 266; Concordia Fire Insurance Co. v. Illinois, 292 U.S. 535; Air-way Electric Appliance Corp. v. Day, 266 U.S. 71; Southern Railway Co. v. Greene, 216 U.S. 400

legislation, applies to statutory regulation of personal rights with unmistakable emphasis.

In Skinner v. Oklahoma, 316 U.S. 535, the Court declared unconstitutional an Oklahoma Statute providing for the sterilization of persons convicted two or more times of crimes amounting to felonies involving moral turpitude but expressly exempting from its operation persons convicted of embezzlement. It said (316 U.S. at 541):

"But the instant legislation runs afoul of the equal protection clause, though we give Oklahoma that large deference which the rule of the foregoing cases requires. We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race. The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty. We mention these matters not to reexamine the scope of the police power of the States. We advert to them merely in emphasis of our view that strict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws. The guaranty of 'equal protection of the laws' is a pledge of the protection of equal laws.' Yick Wo v. Hopkins, 118 U.S. 356, 369, 30 L. ed. 220, 226, 6 S. Ct. 1064. When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment. Yick Wo v. Hopkins, supra; Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 83 L. ed. 208, 59 S.Ct. 232."

South Carolina has made no showing of any educational objective that racial segregation subserves. Nor could it. Efforts to conjure up as theories of intellectual differences between races are futile. As one authority has put it:<sup>8/</sup>

"\* \* \* there is not one shred of scientific evidence for the belief that some races are biologically superior to others, even though large numbers of efforts have been made to find such evidence."

The record in this case contains the conclusion of an expert, based on exhaustive investigation, that:

"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." (Tr.p.202)

This conclusion accords with all the scientific investigations on the subject. Klineberg, Race Differences 343 (1935); Montague, Man's Most Dangerous Myth - The Fallacy of Race 188 (1945); American Teachers Association, The Black and White of Rejections for Military Service 29 (1944); Klineberg, Negro Intelligence and Selective Migration (1935); Peterson and Lanier, Studies in the Comparative Abilities of Whites and Negroes, Mental Measurement Monograph (1929); Clark, Negro Children, Educational Research Bulletin (1923).

C. STATE-IMPOSED SEGREGATION IN PUBLIC EDUCATION IS INVALID:

In many situations, the citizen usually has a choice as to whether he will encounter or avoid the situation of

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<sup>9/</sup> Rose, America Divided: Minority Group Relations in the United States, (1948)

which segregation is a part. But in the area of segregated public secondary and high school education, however, he has little freedom of choice. Private education as a legal alternative to a public school education is economically unavailable save to a few. All others are forced by compulsory school attendance laws to attend segregated schools and by segregation laws to be subjected to the indignities and harms invariably produced.

The Supreme Court has invalidated segregation in public education even where the individual was not required to attend the institution where segregation was practiced. In McLaurin v. Board of Regents, 339 U.S. 637, a Negro voluntarily sought admission to the Graduate School of the University of Oklahoma. At the time of the hearing of the case on appeal, he was assigned to a seat in the classroom in a row set apart for Negro students, and was assigned to a special table in the library on the main floor and, although permitted to eat at the same time in the cafeteria as other students, he was assigned to a special table there. This was segregation, pure and simple, was recognized as such and was struck down as a denial of equal protection of the laws.

- D. STATE IMPOSED RACIAL SEGREGATION IS INCONSISTENT WITH THE EQUAL PROTECTION OF THE LAWS BECAUSE IT IMPORTS, AND IS DESIGNED TO IMPORT THE INFERIORITY OF THE NEGRO

Segregation of Negroes, as practiced in this country, is universally understood as imposing on them a badge of inferiority.<sup>9/</sup>

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<sup>9/</sup> Myrdal, I An American Dilemma 615,640 (1944); Johnson, Patterns of Negro Segregation 3 (1943); Fraenkel, Our Civil Liberties 201 (1944); Dollard, Caste and Class in a Southern Town 349-351 (1937) Note, 56 Yale L.J. 1059, 1060 (1947); Note, 49 Columbia L.Rev. 629, 634 (1949); Note, 39 Columbia L.Rev. 986,1003 (1939)

It "brands the Negro with the mark of inferiority and asserts that he is not fit to associate with white people."<sup>10/</sup> It is of a piece with the established rule of the law of South Carolina that it is libelous per se to call a white person a Negro. Flood v. News and Courier Co. 71 S.C. 112, 50 S.E. 637 (1905); Flood v. Evening Post Publishing Co., 71 S.C. 122, 50 S.E. 641 (1905); <sup>See also:</sup> Stokes v. Gt. A. and P. Tea Co., 202 S.C. 24, 23 S.E. 2d. 823 (1943). Forbidding this group of American citizens "to associate with other citizens in the ordinary course of daily living creates inequality by imposing a caste status on the minority group."<sup>11/</sup> This imposition of a segregation status upon the Negro is unconstitutional in that it is an unreasonable, arbitrary, unscientific classification.<sup>12/</sup>

This classification is particularly pernicious because of the harmful effect it has upon the minority group. The Negro is plagued by the concept--evidence of which he constantly sees around him in his daily life--that he and his people are regarded as inferior.<sup>13/</sup>

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<sup>10/</sup> To Secure These Rights, Report of the President's Committee on Civil Rights, 79 (1947)

<sup>11/</sup> Id., 82

<sup>12/</sup> "Without any doubt there is also in the white man's concept of the Negro 'race' an irrational element which cannot be grasped in terms of either biological or cultural differences. It is like the concept 'unclean' in primitive religion. It is invoked by the metaphor 'blood' when describing ancestry. \* \* \* The one who has got the smallest drop of 'Negro blood' is as one who is smitten by a hideous disease. It does not help if he is good and honest, educated and intelligent, a good worker, an excellent citizen and an agreeable fellow. Inside him are hidden some unknown and dangerous potentialities, something which will sooner or later crop up. This totally irrational, actually magical, belief is implied in the system of specific taboos \* \* \*." Myrdal, I An American Dilemma, 100

<sup>13/</sup> "The word 'segregation' itself has come to represent to Negroes a crucial symbol of white attitudes of superiority." Stouffer, et al., Studies in Social Psychology in World War II, I The American Soldier, 566 (1949)

It remains one of the most devastating frustrations of his life. Under its impact, he does not dare to be a person of his own distinct uniqueness and individuality.<sup>14/</sup>

It is bad enough for the Negro to have to endure the insults of individuals who look upon him as inferior. It is far worse to have to submit to a formalized or institutionalized enforcement of this concept, particularly when, as in this case, it carries the sanction of an agency of government and thus appears to have the seal of approval of the community at large. Thus such enforced racial segregation in and of itself constitutes unconstitutional inequality.<sup>15/</sup>

In this situation the phrase "separate but equal" is a

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<sup>14/</sup>

Cooper, The Frustrations of Being a Member of A Minority Group: What Does It Do To The Individual And To His Relationships With Other People?, 29 Mental Hygiene 189, 190-191 (1945)

<sup>15/</sup>

"No argument or rationalization can alter this basic fact: a law which forbids a group of American citizens to associate with other citizens in the ordinary course of daily living creates inequality by imposing caste status on the minority group." (Italics supplied) To Secure These Rights, Report of the President's Committee on Civil Rights, 82.

"The Court has never faced the reality that segregation necessarily implies inequality, for equals do not hesitate to mingle with each other in public places. Any traveler in lands where segregation is practiced, be it the South where the victim is the Negro, or Nazi Germany where it is the Jew, knows that segregation is a badge of one race's claim to superiority over the other." Fraenkel, Our Civil Liberties, 201

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plain contradiction in terms.<sup>16/</sup> Despite the dictum in Plessy v. Ferguson that the minority race is not stigmatized as inferior by segregation, it is clear today that this Court's a priori conclusion cannot stand in the face of a wealth of evidence flatly contradicting it.<sup>17/</sup> Furthermore, the continuation of segregation not only indoctrinates both white and colored races with the caste conception but solidifies segregation existing outside the law and gives <sup>it</sup> permanence, respectability and institutional fixity.<sup>18/</sup> As the Supreme Court of California has pointedly said, the way to eradicate racial tension is not "through the perpetuation by law of

16/

"The fact that accommodations are identical in physical comfort does not make them really equal, since there is a social stigma attached to the position of the minority. To say that, since neither group can use the facilities reserved for the other, they are in an equal position is unrealistic; members of the minority know only too well the reasons for the segregation and are humiliated by it." Note, 39 Col. L. Rev. 986, 1003 (1939)

17/

In addition to the materials and authorities cited elsewhere in this brief, see Myrdal, An American Dilemma, 100, 628 (1939); Dollard, Caste and Class in a Southern Town 62-63, 266; Heinrich, The Psychology of a Suppressed People 57-61 (1937); Sutherland, Color, Class, and Personality 42--59 (1942); Johnson, Patterns of Negro Segregation 270 (1943); Bond, Education of the Negro and the American Social Order 384; (1934); Moton, What the Negro Thinks 12-13, 99 (1929); Bunche, Education in Black and White, 5 Journal of Negro Education 351 (1936); To Secure These Rights, supra, 79, 82; Fraenkel, Our Civil Liberties 201

See also McGovney, Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds is Unconstitutional, 33 Calif. L.Rev. 5, 27, note 94 (1945); Note, 39 Columbia L.Rev. 986, 1003; (1939) Note, 56 Yale L.J. 1059, 1060 (1947); Note, 49 Columbia L.Rev. 629, 634 (1949)

In Collins v. Oklahoma State Hospital, 76 Okla. 229, 231 (1919) the Court said: "In this state, where a reasonable regulation of the conduct of the races has led to the establishment of separate schools and separate coaches, and where conditions properly have erected insurmountable barriers between the races when viewed from a social and a personal standpoint, and where the habits, the disposition, and characteristics of the race denominate the colored race as inferior to the Caucasian, it is libelous per se to write of or concerning a white person that he is colored." (Italics supplied.)

18/

Myrdal, I An American Dilemma 579-580. See also Berger, The Supreme Court and Group Discrimination Since 1937, 49 Col. L. 201, 204-205 (1949)

of the prejudices that give rise to the tension."<sup>19/</sup> In fields which "Jim Crow" laws do not cover there has been "a slow trend toward a breakdown of segregation"; within the fields of their operation the laws "keep the pattern rigid."<sup>20/</sup>

SEGREGATED EDUCATION RESULTS IN HARM TO THE APPELLANTS, MEMBERS OF THEIR CLASS AND TO THE COMMUNITY AS A WHOLE.

The Negro who is subjected to segregated education is segregated against his will and is forced into ostracism symbolizing inferiority which colors his thoughts and action at almost every moment.<sup>21/</sup>

Professional opinion is almost unanimous that segregation has detrimental psychological effects on those segregated. A questionnaire addressed to 849 representative social scientists was answered by 61% of those to whom it was sent. Of those replying 90.4% believed that enforced segregation has "detrimental psychological effects" on those segregated if "equal facilities" are provided, 2.3% expressed the opposite opinion, and 7.4% did not answer the question or expressed no opinion. Those who elaborated their position with comments (55% of those replying) stressed that segregation induced feelings of inferiority, insecurity, frustration, and persecution, and that it developed, on the one hand, submissiveness, martyrdom, withdrawal tendencies, and fantasy, and on

<sup>18/</sup> continued

In Wolfe v. Georgia Railway & Electric Co., 2 Ga. App. 499, 505 (1907), the court said: "It is a matter of common knowledge, that, viewed from a social standpoint, the negro race is in mind and morals inferior to the Caucasian. The record of each from the dawn of historic time denies equality."

<sup>19/</sup>

Perez v. Sharp, 32 Calif. 2d. 711, 725 (1939)

<sup>20/</sup>

Myrdal, I An American Dilemma, 635

In the South, segregation in privately operated public services "is often less rigid than in those operated by government" (id., p.634).

<sup>21/</sup>

Cooper: The Frustrations of Being a Member of a Minority Group: What Does It Do to the Individual and to His Relationships with Other People? 29 Mental Hygiene 189,193

the other hand, aggression.<sup>22/</sup>

The resentment and hostility provoked by segregation find various means of psychological "accommodation," various forms of release.<sup>23/</sup> Mediocrity is accepted as a standard because of the absence of adequate social rewards or acceptance.<sup>24/</sup> Energy and emotion which might be constructively used are lost in the process of adjustment in the "Jim Crow" concept of the Negro's characteristics and his inferior status in society.<sup>25/</sup>

The extensive studies made of Negro troops during the recent war furnished striking example of how racism, of which segregation is the sharpest manifestation, handicaps the soldier. The most important single factor affecting integration of the Negro into Army life was that he had to carry the burden of race prejudice in addition to all of the other problems faced by the white soldier.<sup>26/</sup>

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22/

Deutscher & Chein, The Psychological Effect of Enforced Segregation: A Survey of Social Science Opinion, 26 Journal of Psychology 259, 261, 262 (1948)

23/

Prudhomme, The Problem of Suicide in the American Negro, 25 Psychoanalytic Review 187, 200 (1938) Dollard, Caste and Class in a Southern Town 252 ff.

24/

Dollard, supra, 424

"In order for any individual to mature, that is, to be willing to assume responsibility in work and in personal relations, he must feel that there is some hope of attaining some of the satisfactions of maturity. \* \* \* White society gives him (the Negro) little share in any of the mature gratifications of creative work, education, and citizenship. It would not be remarkable if, deprived of all mature gratifications, he lost zest for responsible action." McLean, Group Tension, 2 Journal of American Medical Women's Association 479, 482. (1937)

25/

Cooper, The Frustrations of Being a Member of a Minority

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For a general discussion of the effects of the caste system, which segregation supports and exemplifies, on Negro personality and behavior, see Myrdal, An American Dilemma, vol. 2, pp. 757-767.

On occasion courts have denied that enforced segregation of Negroes in American life is a badge of inferiority, thus closing their eyes as judges to what they must know as men. But, beyond the teaching of common experience, the data of social science and history herein cited and summarized make unmistakably clear the invidious purpose and signification of segregation. We believe that a recognition of this underlies the decision of the Supreme Court in the McLaurin case. Similar recognition of segregation for what it is in this case must expose fundamental error in the reasoning and conclusion of the district court.

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25/ continued

Group: What Does It Do to the Individual and to His Relationships with Other People?, 29 Mental Hygiene 189, 190-191  
See also: McLean, Psychodynamic Factors in Racial Relations, The Annals of the American Academy of Political and Social Science 159,161 (1946)

"The psychology of the Negro developed in the repressive environment in which he lives might be described as the psychology of the sick \* \* \* It is impossible to estimate what are the pathological results of the above outlook on life. It must certainly mean a reduction in that energy that characterizes healthy organisms. "Frazier, Psychological Factors in Negro Health 3 Journal of Social Forces 488 (1925)

26/

Studies in Social Psychology in World War II, vol. I, chap. 10. See particularly pp. 502,504, 507

III

APPLICABLE DECISIONS OF THE SUPREME COURT REQUIRED AN ORDER ENJOINING [POLICY OF] APPELLEES FROM EXCLUDING APPELLANTS FROM AN OPPORTUNITY TO SHARE THE PUBLIC SCHOOL FACILITIES OF CLARENDON COUNTY ON AN EQUAL BASIS WITHOUT REGARD TO RACE OR COLOR

At the beginning of the first hearing, at the time of the first judgment and at the time of the judgment here appealed from, the appellants and appellees were in agreement that the equal protection of the laws of South Carolina was being denied to the appellants herein--and the District Court made this finding.

The appellants were entitled to effective and immediate relief as of the time of the first judgment on June 23, 1951. Sipuel v. Board of Regents, 332 U.S. 631; Sweatt v. Painter, 339 U.S. 629; McLaurin v. Board of Regents, 339 U.S. 637.<sup>27/</sup>

At the second hearing on March 3, 1952, appellees admitted that, although progress was being made, the physical facilities were still unequal. The District Court ruled that the question of the validity of the segregation laws was foreclosed by their prior decision. Appellants then urged that even under this ruling, they were entitled to immediate relief by an injunction against the continuation of the policy of excluding them from an opportunity to share all of the public school facilities--good and bad--on an equal basis without regard to race and color. This the District Court refused to do even after a

27/

See also: Missouri ex rel Gaines v. Canada, 305 U.S. 337; Belton, et al. v. Gebhart, et al., \_\_\_\_\_ Del.Ch. \_\_\_\_\_, \_\_\_\_\_ A.2d \_\_\_\_\_ decided April 1, 1952.

showing that the June, 1952, decree had failed to produce even physical equality after eight months.

We are not here dealing with private rights. We are dealing with rights guaranteed and protected by the Constitution and laws of the United States. These rights are personal and present. Appellants are entitled to immediate and affirmative relief. Board of Supervisors v. Wilson, 340 U.S. 909.

Appellees' sole defense is complete reliance on the segregation laws of South Carolina. As long as the District Court insists on declaring these laws valid and constitutional, appellees will continue to enforce them. The record in this case shows that in the past their action has discriminated against appellants and all other Negroes. Whatever they do in the future will be under the continuation of the policy of rigid racial segregation.

Under the present decree physical facilities may be equalized by September. If so, the question of whether or not the educational opportunities of the two schools are equal will remain unsettled. If the physical facilities are unequal, appellants' sole recourse will be contempt proceedings. It is, therefore, obvious that the District Court has not only refused to grant effective permanent relief, but has also denied effective immediate relief, even apart from the question of the invalidity of the statutes.

#### CONCLUSION

Following the rationale of the decision of this Court in McLaurin v. Oklahoma State Regents appellants produced testimony of expert witnesses to show that racial restrictions in public

school education in Clarendon County impaired and inhibited infant appellants' ability to study and in general to obtain an equal education. However, the majority of the District Court in the first hearing after first upholding the doctrine of Plessy v. Ferguson, decided that the McLaurin decision was inapplicable because there were differences between graduate education and elementary and high school education. The judgment after the second hearing reaffirmed this decision even in the face of the continuing inequalities.

The Supreme Court has always recognized the importance of racial segregation in public education. Although the Supreme Court has clarified the issue as to graduate and professional schools, the Court has never had the opportunity to consider the question as to elementary and high schools on the basis of a full and complete record with the issue clearly drawn and with competent expert testimony as appears in the record in this case.

Without a review of this decision there will be considerable doubt in the minds of judges, school officials, taxpayers and pupils of the extent of the principles set forth in those decisions. A clear cut decision on this issue will remove all doubts in the field of public education.

WHEREFORE, it is respectfully submitted the judgment of the court below should be reviewed by the United States

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HRB

Supreme Court and reversed.

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Of Counsel

May 10, 1952

# 43  
HRB

OFFICE OF THE CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF SOUTH CAROLINA

CHARLESTON A

ERNEST L. ALLEN  
CLERK

June 6, 1951

Honorable John J. Parker  
Chief Judge  
United States Court of Appeals  
Charlotte, North Carolina

Honorable George Bell Timmerman  
United States District Judge  
Columbia, South Carolina

In re: Harry Briggs, Jr., et al  
vs.  
R. W. Elliott, et al  
C/A No. 2657

Dear Judge Parker and Judge Timmerman:

I am enclosing to Judge Parker the original  
Memorandum Brief for Plaintiffs received today from Robert  
L. Carter, Esq., and to Judge Timmerman a copy of the same.

A copy of the Brief is being handed to Judge  
Waring.

With my regards, I am

Most sincerely,

Ernest L. Allen, Clerk

ELA:vj

Encl.

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
Civil Action No. 2657.

----

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. W. Betcham, Superintendent of School District No. 22, Defendants.

----

D E C R E E

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 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. 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 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.

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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.

/s/ Ernest L. Allen  
Clerk of U. S. District Court  
East. Dist. So. Carolina

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

CHARLESTON DIVISION

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. E. McCord, Superintendent of Education for Clarendon County, and Chairman A. J. Flowden, W. E. Baker, Members of the County Board of Education for Clarendon County; and H. B. Betcham, Superintendent of School District No. 22, Defendants.

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On Application for Declaratory Judgment and Injunction.

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Heard May 28, 1951.

Decided

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Before Parker, Circuit Judge, and Waring and Timmerman, District Judges.

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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.

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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 provisions 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

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\* Article I<sup>1</sup> 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."

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 provision 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 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 Fulaski 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. 167 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 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 provisions 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 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 segregation 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 the 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 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 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. 196, 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. S. 609- Corv v. Carter 46 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. Luntin 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).

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 1868 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, 1868, The Fourteenth Amendment, and the Civil 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 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.*

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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).

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 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 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 edu-

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\*See also Roberts v. City of Boston 5 Cush. (Mass.) 198, decided prior to the Fourteenth Amendment.

cational process, it is difficult for the state to maintain segregated schools for Negroes in this field which will afford them 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 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 educational 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 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 as the property of the state and the wishes of his family as to his unbringing 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; *Eorden's Farm Products Co. v. Baldwin* 293 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. 147 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 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 *Flessy 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 *Flessy v. Ferguson* has been so weakened by subsequent decisions that we should no longer consider it as binding. We do 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 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 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.

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,

/s/ Ernest L. Allen  
Clerk of U.S. District Court  
East. Dist. So. Carolina

APPENDIX "A"

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

HARRY BRIGGS, JR., et al,

Civil Action No. 2657

Plaintiffs,

vs.

DISSENTING OPINION

R. W. ELLIOTT, Chairman, et al,

Defendants.

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 education. 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 admitted 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<sup>1</sup>. 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 the authority of the Constitution and laws of the State of South Carolina providing<sup>2</sup> for the creation of various school districts, 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 appeal 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 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 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<sup>3</sup>. 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 inequalities, 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 have 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 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 pater 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 and if the suggestions 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 had 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 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 over-

tones 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.

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 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 underprivileged and frightened attitude of so many of the Negroes in the southern 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 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 legislation 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."<sup>5</sup>

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.<sup>6</sup>

Frequent and repeated 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.<sup>7</sup>

Discrimination by segregation of housing facilities and attempts to control the same by covenants have also been outlawed.<sup>8</sup>

In the field of labor employment and particularly the relation of labor unions to the racial problem, discrimination has again been forbidden.<sup>9</sup>

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.<sup>10</sup>

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 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 has 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 their former masters, they were hardly looked upon as equals or as American citizens. The reasoning of the prevailing opinion<sup>in</sup> the *Plessy* case stems almost completely from a decision by Chief Justice Shaw of Massachusetts,<sup>11</sup> 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 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 accommodations might be required by a state in intra-state transportation. Now similar attempts relating to inter-state transportation have fared have been shown in the foregoing discussion and notes.<sup>12</sup> 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 accommodations. 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 accommodations 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 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 requirements 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.

"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. Charnichael*, 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 instance 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 witness, 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 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, unequivocally 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 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 religious 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.

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. WATLES WARING  
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina

Date: June 21 1951

A TRUE COPY, ATTEST

/s/ Ernest L. Allen  
Clerk of U. S. District Court  
East. Dist. So. Carolina

N O T E S

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 2261-84.
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, 326 U. S. 373; Henderson v. U. S., 330 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. 538; 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. 675; 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.

APPENDIX "B"

Arkansas: Brown v. Ramsey, 185 F. (2d) 225 (C.C.A., 8th);  
Black v. Lenderman, 156 Ark. 476, 246 S. W. 876; State ex rel.  
Black v. Board of Directors, 154 Ark. 176, 242 S. W. 545, Wesley  
v. Baker, 153 Ark. 529, 241 S. W. 14; Maddox v. Neal, 45 Ark. 121;  
County Court v. Robinson, 27 Ark. 116

Delaware: See Board of Education v. Griffin, 9 Houston 334,  
32 A. 775

District of Columbia: Carr v. Corning, 182 F. (2d) 14 (D.C.);  
Wall v. Oyster, 36 App. D. C. 50.

Georgia: Cumming v. Board of Education, 103 Ga. 641, 29 S. E.  
488, affirmed 175 U. S. 528; Reid v. Mayor of Eatonton, 80 Ga. 755,  
6 S. E. 602. See also State Board of Education v. Board of Public  
Education, 186 Ga. 783, 199 S. E. 641; Blodgett v. Board of Educa-  
tion, 105 Ga. 463, 30 S. E. 561.

Kentucky: Woodford County Board of Education v. Board of  
Education, 264 Ky. 245, 94 S. W. (2d) 687; Warren v. Board of  
Education, 258 Ky. 212, 79 S. W. (2d) 681; Board of Education v.  
Fultz, 241 Ky. 265, 43 S. W. (2d) 707; County Board of Education  
v. Bungler, 240 Ky. 155, 41 S. W. (2d) 931; State Board of Education  
v. Brown, 232 Ky. 434, 23 S. W. (2d) 948; Raley v. Board of Educa-  
tion, 224 Ky. 50, 5 S. W. (2d) 484; Louisville, H. & St. L. Ry. v.  
Powell, 213 Ky. 563, 281 S. W. 532; Commonwealth v. Sebree Deposit  
Bank, 202 Ky. 589, 260 S. W. 388; Fall v. Read, 194 Ky. 135, 238  
S. W. 137; Wright v. Lyddan, 191 Ky. 58, 229 S. W. 74; City of  
Pineville v. Moore, 190 Ky. 357, 227 S. W. 477; Shadrock v. Board  
of Trustees, 188 Ky. 345, 222 S. W. 78; Mueller v. Phillips; 186  
Ky. 657, 217 S. W. 1010; Moss v. City of Mayfield, 186 Ky. 330, 216  
S. W. 842; 181 Ky. 303, 204 S. W. 86, 181 Ky. 810, 205 S. W. 904;  
Trustees of Colored Schools v. Trustees of White Schools, 180 Ky.  
574, 203 S. W. 520; Daviess County Board of Education v. Johnson,  
179 Ky. 34, 200 S. W. 313; Miller v. Feather, 176 Ky. 268, 195 S. W.

449; Board of Trustees v. West, 163 Ky. 568, 174 S. W. 10; Thornton v. White, 162 Ky. 796, 173 S. W. 167; Grady v. Larue County Board of Education, 149 Ky. 49, 147 S. W. 928; Mullins v. Belcher, 142 Ky. 673, 134 S. W. 1151; Frowse v. Board of Education, 134 Ky. 365, 120 S. W. 307; Crosby v. City of Mayfield, 133 Ky. 215, 117 S. W. 316; Cross v. Board of Trustees, 121 Ky. 469, 89 S. W. 506; Board of Trustees v. Morris, 24 Ky. L. 1420, 71 S. W. 654; Harrodsburg District v. Colored School District, 49 S. W. 538 (Ky.) Davenport v. Cloverport, (D. C., D. Ky.) 72 F. 689 (D. Ky.) Roberts v. Louisville School Board, 16 Ky. L. 181, 26 S. W. 814; Eakins v. Eakins, 20 S. W. 285 (Ky.); Norman v. Boaz, 85 Ky. 557, 4 S. W. 316; Dawson v. Lee, 83 Ky. 49; Claybrook v. City of Owensboro, 16 F. 297 (D. Ky.) Marshall v. Donovan, 73 Ky. 681; See also Thornton v. White, 162 Ky. 796, 173 S. W. 167; Munfordville Merchantile Co. v. Board of Trustees, 155 Ky. 382, 159 S. W. 954; Commonwealth ex rel. Trustees v. Ferguson, 128 S. W. 95 (Ky.); Taylor v. Russell, 117 Ky. 539, 78 S. W. 411; Hickman College v. Trustees, 111 Ky. 944, 65 S. W. 20; Board of Education v. Trustees of Colored School District, 18 Ky. L. 103, 35 S. W. 549.

Louisiana: Bertonneau v. Board of School Directors, 3 Woods 177, 3 Fed. Cas. 294 No. 1361 (C. C., Ky.). See also State ex rel. Dellande v. School Board, 33 La. Ann. 1469.

Maryland: Williams v. Zimmerman, 172 Md. 563, 192 A. 353.

Mississippi: Bryant v. Barnes, 106 S. 113 (Miss.); Rice v. Gong Lum, 139 Miss. 760, 104 S. 105, affirmed 275 U. S. 78, Barrett v. Cedar Hill Consolidated School District, 123 Miss. 370, 85 S. 125; Trustees v. Board of Supervisors, 115 Miss. 117, 75 S. 833; Moreau v. Grandich, 114 Miss 560, 75 S. 434; McFarland v. Goins, 96 Miss. 67, 50 S. 493; Christman v. City of Brookhaven, 70 Miss. 477, 12 S. 458. See also Myers v. Board of Supervisors, 156 Miss. 251, 125 S. 718; Bond v. Tj Fung,

148 Miss. 462, 114 S. 332.

Missouri: State ex rel. Herman v. St. Louis County Court, 311 Mo. 167, 277 S. W. 934; Dehart v. School District, 214 Mo. App. 651, 263 S. W. 242; State ex rel. Logan v. Shouse, 257 S. W. 827 (Mo. App.); State ex rel. Carrollton School District v. Gordon, 231 Mo. 547, 133 S. W. 44; State ex rel. Morehead v. Cartwright, 122 Mo. App. 257, 99 S. W. 48; Lehew v. Brummell, 103 Mo. 546, 15 S. W. 765; State ex rel. Humphries v. Thompson, 64 Mo. 26.

North Carolina: Blue v. Durham Public School District, 95 F Supp. 441 (M.D.N.C.); Messer v. Smathers, 213 N. C. 183, 195 S. E. 376; Galloway v. Board of Education, 184 N. C. 245, 114 S. E. 165; Medlin v. County Board of Education, 167 N. C. 239, 83 S. E. 483; Johnson v. Board of Education, 166 N. C. 468, 82 S. E. 832; Whitford v. Board of Commissioners, 159 N. C. 160, 74 S. E. 1014; Williams v. Bradford, 158 N. C. 36, 73 S. E. 154; Bonitz v. Trustees of Ahoskie School District, 154 N. C. 375, 70 S. E. 735; Gilliland v. Board of Education, 141 N. C. 482, 54 S. E. 413; Smith v. School Trustees, 141 N. C. 143, 53 S. E. 524; Lowery v. School Trustees, 140 N. C. 33, 52 S. E. 267; Hooker v. Town of Greenville, 130 N. C. 472, 42 S. E. 141; Hare v. Board of Education, 113 N. C. 10, 18 S. E. 55; McMillan v. School Committee, 107 N. C. 609, 12 S. E. 330; Duke v. Brown, 96 N. C. 127, 1 S. E. 873; Markham v. Manning, 96 N. C. 132, 2 S. E. 40; Riggsbee v. Town of Durham, 94 N. C. 800; Puitt v. Gaston County Commissioners, 94 N. C. 709. See also Storey v. Board of Commissioners, 184 N. C. 336, 114 S. E. 493.

Oklahoma: Muskogee School District v. Hunnicutt, 51 F (2d) 528 (E. D. Okl.), affirmed 283 U. S. 810; American State Bank of Boynton v. Board of Commissioners, 143 Okl. 1, 286 P. 902; Board of Commissioners v. School District, 137 Okl. 193, 279 P. 326; Board of Commissioners v. School District, 135 Okl. 248, 275 P. 302; School District v. Board of Commissioners, 135 Okl. 1. 275 P. 302; Moore v. Porterfield, 113 Okl. 234, 241 P. 346; State ex

rel. Gumm v. Albritton, 98 Okl. 158, 224 P. 511; Jones v. Board of Education, 90 Okl. 233, 217 P. 400; Jelsma v. Butler, 80 Okl. 46, 194 P. 436; Jumper v. Lyles, 77 Okl. 57, 185 P. 1084; Cole v. District School Board, 32 Okl. 692, 123 P. 426; Olson v. Logan County Bank, 29 Okl. 391, 118 P. 572; School District v. Overholser, 17 Okl. 147, 87 P. 665; Board of Education v. Board of Commissioners, 14 Okl. 322, 78 P. 455; School District v. Cap. Nat. Bank, 7 Okl. 45, 54 P. 309; Porter v. County Commissioners, 6 Okl. 550. See Also School District v. Crack County Commissioners, 135 Okl. 1, 275 P. 292; Board of Education of Sapulpa v. Board of Commissioners, 127 Okl. 132, 260 P. 22; Board of Education v. Excise Board, 86 Okla. 24, 206 P. 517; Lusk v. White, 68 Okl. 316, 173 P. 1128; Cotteral v. Barker, 34 Okl. 533, 126 P. 211.

South Carolina: Powell v. Hargrove, 136 S. C. 345, 134 S. E. 380; Tucker v. Blease, 97 S. C. 303, 81 S. E. 668.

Tennessee: Greenwood v. Rickmann, 145 Tenn. 361, 235 S. W. 425.

Virginia: Carter v. School Board of Arlington County, 182 F. (2d) 531 (C. C. A., 4th) reversing 87 F. Supp. 745; Corbin v. County School Board of Pulaski County, 177 F. (2d) 924 (C. C. A. 4th), reversing 84 F. Supp. 253; Smith v. School Board of King George County, 82 F. Supp. 167 (E. D. Va.); Ashley v. School Board of Gloucester County, 82 F. Supp. 167 (E. D. Va.); Eubank v. Boughton, 98 Va. 499, 36 S. E. 529; Kinnaird v. Miller's Exor., 25 Grat. 107.

West Virginia: Williams v. Board of Education, 45 W. Va. 199, 31 S. E. 985; Martin v. Board of Education 42 W. Va. 514, 26 S. E. 348.

*Concern:*  
*Wm Timmerman*  
*5th Dist. Judge*  
*Somerville*  
*John J. Parker*  
*Chief Judge 4th Circuit*

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

**FILED**

JUN 23 1951

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

VOL 68 PAGE 39

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.

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. Gallison, Attorney General of  
South Carolina, S. E. Rogers and Robert McC. Figg, Jr.,  
for Defendants.

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 guardians. 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

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\* 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."

pursuant to the provisions 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 provision 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 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 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 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 *Gumming 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 segregation 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 the 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 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. Gurnes 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; Lebew 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).

Only a little over a year ago, the question was before the Court of Appeals of the District of Columbia in *Garr 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 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 validity of legislatively

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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).

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 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 rely upon expressions contained in opinions relating to professional education such as *Sweatt v. Painter* 339 U.S. 629,

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\*See also *Roberts v. City of Boston* 5 Cush. (Mass.) 198, decided prior to the Fourteenth Amendment.

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 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-

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 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 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'." \*

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

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\*See also, *Rast v. Van Deman & Lewis Co.* 240 U. S. 342, 357; *Borden's Farm Products Co. v. Baldwin* 293 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.

their children. As Chief 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 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 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 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.

Form No. 680

No. \_\_\_\_\_

IN THE \_\_\_\_\_ COURT  
OF THE UNITED STATES

FOR THE

of \_\_\_\_\_

U.S.

Filed \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.

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

**FILED**

JUN 23 1951

VOL 68 PAGE 59

ERNEST L. ALLEN  
C. C. U. S. E. D. S. C.

HARRY BRIGGS, JR., et al,

Civil Action No. 2657

Plaintiffs,

vs.

DISSENTING OPINION

R. W. ELLIOTT, Chairman, et al,

Defendants.

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 education. 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 admitted 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<sup>1</sup>. 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."

If it is further shown that the Defendants are acting under the

*J.W.A.*  
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authority of the Constitution and laws of the State of South Carolina providing for the creation of various school districts<sup>2</sup>, 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 appeal 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 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 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<sup>3</sup>. 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 inequalities,

*J. W. W.*  
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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.

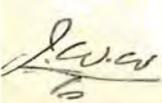
This statement was allowed to be filed and considered as an amendment to the Answer.

By this maneuver, the Defendants have 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

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



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 had 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 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.

*Law*  
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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

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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 southern 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

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*<sup>4</sup>, 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 legislation 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".<sup>5</sup>

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<sup>6</sup>.

Frequent and repated 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<sup>7</sup>.

Discrimination by segregation of housing facilities and attempts to control the same by covenants have also been outlawed<sup>8</sup>.

In the field of labor employment and particularly the relation of labor unions to the racial problem, discrimination has again been forbidden<sup>9</sup>.

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<sup>10</sup>.

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

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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 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<sup>11</sup>, 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

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 accommodations 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.<sup>12</sup> 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 accommodations. 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 accommodations 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 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 requirements 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.

"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."

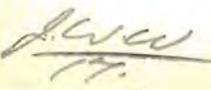
The recent case of *McKissick v. Charmichael*, 187 F. 2nd 949 wherein the question of admission to the law school of the University of North Carolina was decided follows and amplifies the reasoning of the *Sweatt* and *McLaurin* cases. In the *McKissick* case, officials of the State of North Carolina 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 witness, 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 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, unequivocally 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

*Review*  
18.

effect 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 religious 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.

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 intentment 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.

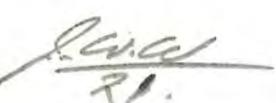
Charleston, South Carolina

*Robert Warren*  
UNITED STATES DISTRICT JUDGE

Date: June 21, 1951

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.



FILED

JUN 23 1951

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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

CHARLESTON DIVISION

Civil Action No. 2657.

VOL 68 PAGE 37

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. N. Betcham,  
Superintendent of School District No. 22, Defendants.

DE C R E E

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 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. 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 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.

*John J. Parker*  
 Chief Judge, Fourth Circuit.

~~\_\_\_\_\_~~  
 U. S. District Judge, Eastern District  
 of South Carolina.

*W. H. Zimmerman*  
 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.*

*W. H. Zimmerman*  
 U. S. District Judge  
 Eastern District of South Carolina

No. \_\_\_\_\_

IN THE \_\_\_\_\_ COURT  
OF THE UNITED STATES

FOR THE

of \_\_\_\_\_

vs.

Filed \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.

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

CIVIL ACTION No. 2657

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HARRY BRIGGS, JR., et al,  
Plaintiffs,  
vs.  
R. W. ELLIOTT, Chairman, et al,  
Defendants.

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FILED

JUL 20 1951

ERNEST L. ALLEN  
C. D. U. S. E. D. S. C.

PETITION FOR APPEAL

Considering themselves aggrieved by the final decree and judgment of this court entered on June 21, 1951, 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 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; 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 Gabriel 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

authenticated be sent to the Supreme Court of the United States  
in accordance with the rules in such case made and provided.

Respectfully submitted,

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Harold R. Boulware  
1109 $\frac{1}{2}$  Washington Street  
Columbia, South Carolina

*Spottswood W. Robinson III*

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Of Counsel

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STATEMENT AS TO JURISDICTION

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In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, plaintiffs-appellants submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this case.

OPINION BELOW

The opinions of the District Court for the Eastern District of South Carolina, Charleston Division, have not yet been reported. A copy of each of the two opinions and of the judgment are attached hereto as Appendix A.

JURISDICTION

The judgment of the District Court was entered on June 21, 1951. A petition for appeal is presented to the District Court herewith, to-wit, on July 20, 1951. The jurisdiction of the Supreme Court to review this decision is conferred by Title 28,

United States Code, sections 1253 and 2101(b)

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The complaint in this case was filed by Negro children of public school age residing in School District No.22, Clarendon County, South Carolina, and their respective parents and guardians, against the public school officials of said county and school district who, as officers of the State, maintain, operate and control the public schools for children residing in said district. It was alleged that defendants maintained certain public schools for the exclusive use of white children and certain other public schools for Negro children; that the schools for Negro children were in all respects inferior to the schools for white children; that the defendants excluded the infant plaintiffs from the white schools pursuant to Article <sup>XI</sup>XI, section 7, of the Constitution of South Carolina, and section 5377 of the Code of Laws of South Carolina of 1942, which require the segregation of the races in public schools; and that it was impossible for the infant plaintiffs to obtain a public school education equal to that afforded and available to white children as long as the defendants enforced these laws.

The complaint sought a judgment declaring the invalidity of these laws as a denial of the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States, and an injunction restraining the defendants from enforcing them and from making any distinction based upon race or color in the educational opportunities, facilities and advantages afforded public school children residing in said district.

Defendants in their answer joined issue on this question and admitted that in obedience to the constitutional and statutory mandates separate schools were provided for the children of the white and colored races; and that no child of either race was permitted to attend a school provided for children of the other race. In the Third Defense of defendants' answer they alleged

that the above constitutional and statutory provisions were a valid exercise of State's legislative power.

The jurisdiction of a three-judge District Court was invoked pursuant to Title 28, United States Code, sections 2281, 2284, for the purpose of determining the validity of the provisions of the Constitution and laws of South Carolina requiring segregation of the races in public schools. This issue was clearly raised, and was decided by upholding the validity of these provisions and by refusing to enjoin their enforcement.

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The judgment in this case, one judge dissenting, stated that neither the constitutional nor statutory provisions requiring segregation in public schools were in violation of the Fourteenth Amendment and that plaintiffs were not entitled to an injunction against the enforcement of these provisions by these defendants. The judgment also stated that the educational facilities offered infant plaintiffs were unequal to those offered to white pupils<sup>1/</sup> and ordered the defendants "to furnish to plaintiffs and other Negro pupils of said district educational facilities, equipment, curricula and opportunities equal to those furnished white pupils."

The decree herein is the type of order which entitles the plaintiffs-appellants to a direct appeal to the Supreme Court within the meaning of Title 28, United States Code, sections 1253 and 2101(b). Eichholz v. Public Service Commission, 306 U.S. 268

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment in this case: McLaurin v. Board of Regents, 339 U.S. 637; Wilson v. Board of Supervisors, 340 U.S. 909.

1/ This was admitted in open court by the defendants at the outset of the trial.

STATEMENT

At the opening of the trial, before a three-judge District Court as required by Title 28, United States Code, sections 2281 and 2284, 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 defendants also stated that they did "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 Clarendon County now exist, and enjoining any discrimination in respect thereto."

These admissions were made part of the record being filed as an amendment to the answer. The only issue remaining to be tried was the question of the constitutionality of the laws requiring segregation of the races in public education as applied to the plaintiffs.

During the trial the plaintiffs produced testimony showing the extent of the physical inequality in the segregated schools of Clarendon County and especially School District No. 22. Over the objection of the plaintiffs<sup>2/</sup> the defendants introduced testimony that a three per cent sales tax and authorization of a \$75,000,000 bond issue for improvement of schools had recently been adopted by the State of South Carolina, and that the State Educational Finance Commission<sup>3/</sup> to supervise the

<sup>2/</sup>

On the grounds that equality within the meaning of the Fourteenth Amendment did not include contemplated future action

<sup>3/</sup>

It was admitted that although the school population of South Carolina was approximately forty to forty-five per cent Negro there were no Negroes on the Commission and no Negro employees of the Commission.

distribution of these funds had just been organized and had not even set up rules or procedures. About a week before the trial Clarendon County had "inquired" about making an application for funds.

The testimony of nine expert witnesses was introduced by plaintiffs: two experts in the field of education who offered a comparison of the public schools; one expert in educational psychology, three experts in the respective fields of child and social psychology, one expert in political science, one expert in school administration, and one expert in the field of anthropology.

The uncontroverted testimony of these witnesses demonstrated that the Negro schools in question were inferior in every material aspect to the white schools, and that similarly the caliber of education offered to Negro pupils was inferior to that offered to white pupils. The testimony of these witnesses also established the fact that the segregation of Negro pupils in these schools would in and of itself preclude an equality of education offered to white pupils or pupils in a non-segregated school. These witnesses not only established their qualifications in their respective fields but also supported their conclusions by objective and scientific authorities.

One of the experts in the field of child and social psychology testified that he had made special studies of the recognized methods of testing the effects of race and segregation on children. He used a test of this type on Negro school children including the infant plaintiffs in School District No. 22 a few days before the trial. From his general experience

in this field and the results of his tests he testified:

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

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These witnesses testified as to the unreasonableness of segregation in public education and the lack of scientific support for such segregation and exclusion. They testified that all scientists agreed that there are no fundamental biological differences between white and Negro school pupils which would justify segregation. An expert in anthropology testified:

"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."

Another expert witness testified:

"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 from whatever harmful effect racial prejudice and discrimination can wreck."

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The defendants did not produce a single expert to contradict these witnesses. There were only two witnesses for the defendants. The Superintendent of Schools for District No. 22 testified as to the reasons for the physical inequalities between the white and Negro schools. The Director of the Educational Finance Commission testified as to the proposed operation of the Commission and the possibility of the defendants obtaining funds to improve public schools. The latter witness testified that from his experience as a school administrator in Sumter and Columbia, South Carolina, it would be "unwise" to remove segregation in public schools in South Carolina. On cross-examination, he admitted he had not made any formal study of racial tensions but based his conclusion on the fact that he had "observed conditions and people in South Carolina" all of his life. He also admitted that his conclusion was based in part on the fact that all of his life he had believed in segregation of the races.

#### CONSTITUTION AND STATUTE INVOLVED

Article XI, section 7 of the Constitution of South Carolina 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 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."

## QUESTIONS PRESENTED

1. Whether a State which undertakes to provide a public education for its citizens can satisfy the requirements of the equal protection clause of the Fourteen Amendment of the Constitution of the United States by providing a system of separate public elementary and high schools for Negroes and excluding all Negroes from the schools it provides for all other persons?
2. Whether the District Court erred in predicating its decision upon Plessy v. Ferguson, and in disregarding McLaurin v. Board of Regents and principles serving as the basis for this and other decisions of the Supreme Court in conflict with the rationale of the Plessy case?

### STATEMENT OF THE GROUNDS UPON WHICH IT IS CONTENDED THE QUESTIONS INVOLVED ARE SUBSTANTIAL.

#### SUMMARY

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The defendants having conceded the physical inequalities of the segregated schools, the only question remaining in the case was the validity of the laws requiring the segregation and exclusion of the infant plaintiffs from the only schools where they could obtain an education equal to that offered all other children. This was the only question which required the convening of the three-judge court.

The Supreme Court has always recognized the importance of racial segregation in public education. Although the Supreme Court has clarified the issue as to graduate and professional schools, the Court has never had the opportunity to consider the question as to elementary and high schools on the basis of a full and complete record with the issue clearly drawn and with competent expert testimony as appears in the record in this case. A clear cut decision on this issue will remove all doubts in the field of public education.

The majority opinion of the lower court subordinated the individual rights of the plaintiffs to the state's segregation policy. It was held that the Federal courts were powerless to interfere with the statutes of a state segregating Negroes in public education as long as equality of physical equipment was ordered.

The majority opinion held that the rationale of the decisions in Sweatt v. Painter, 339 U.S. 629 and McLaurin v. Board of Regents, 339 U.S. 637 could not be applied to elementary and highschool pupils. Thus, without a review of this decision there will be considerable doubt in the minds of judges, school officials, taxpayers and pupils of the extent of the principles set forth in those decisions.

## ARGUMENT

### I

THE QUESTION WHETHER A STATE WHICH UNDERTAKES TO PROVIDE A PUBLIC EDUCATION FOR ITS CITIZENS CAN SATISFY THE REQUIREMENTS OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT BY PROVIDING A SYSTEM OF SEPARATE PUBLIC ELEMENTARY AND HIGH SCHOOLS FOR NEGROES AND EXCLUDING ALL NEGROES FROM THE SCHOOLS IT PROVIDES FOR ALL OTHER PERSONS IS OF GREAT PUBLIC IMPORTANCE AND SHOULD BE DECIDED BY THE SUPREME COURT IN THIS CASE.

One of the firmly recognized and established functions of government is the education of its citizens. In the United States this function has been undertaken and is discharged by the individual states which have established and maintain public educational facilities from the elementary through the graduate and professional school levels, and require all citizens during the greater period of their minority to either attend the public schools or obtain an education privately.

Although this responsibility has been assumed by the states individually, the educational development of the youth of the Nation is nevertheless a matter of great national concern which becomes increasingly important. So also is the practice, current in a broad section of the country, of affording a dual system of schools and a double standard of public education based wholly upon the race or color of the pupils attending.

Racially segregated public schools are legally required in seventeen southern states<sup>4/</sup> and the District of

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<sup>4/</sup> ALA. CONST., Art. XIV, sec. 256; ALA. CODE (1940), Title 52, sec. 93; ARK. STAT. ANN. (1947), sec. 80-509; DEL. CONST., Art. X, sec. 2; DEL. REV. CODE (1935), Ch. 71, Art. 1, sec. 2631, Art. V, sec. 2684; FLA. CONST., Art. 12, sec. 12; FLA. STAT. ANN., sec. 228.09, 230.23; GA. CONST., Art. VIII, sec. 1; GA. CODE ANN. (1947 Cum. Supp.) sec. 32-909, 32-937; KY. CONST., sec. 187; KY. REV. STAT. (1948), sec. 158.020; LA. CONST. ANN. (Dart 1947 Supp.), Art. 12, sec. 1; MD. CODE ANN. (1939), Art. 77, sec. 111, 192 to 193; MISS. CONST., Art. 8, sec. 207; MISS. CODE ANN. (1942)

Columbia.<sup>5/</sup> In all but a few of the remaining thirty-one states, segregated schools are either unauthorized or are prohibited.<sup>6/</sup>

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The Supreme Court has recognized the importance of the issue of racial segregation in the area of public education in cases involving educational opportunities at the graduate and professional school levels.<sup>7/</sup> The same basic questions arising at the elementary and secondary levels are no less important. In fact, the elementary and secondary schools, and racial segregation obtaining in them, exert a far greater effect on a far larger number of persons at a far more important stage of the person's life.

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sec. 6276; MO. CONST., Art. IX, sec. 1; MO. REV. STAT. (1939) sec. 10349, 10488; N.C. CONST., Art. IX, sec. 2; N.C. GEN. STAT. (1943), sec. 115-2, 115-3, 115-30, 115-66, 115-97; OKL. CONST., Art. XIII, sec. 3; OKL. STAT. (Supp. 1949), Title 70, sec. 5-1 to 5-15; S. C. CONST., Art. 11, sec. 7; S. C. CODE (1942), sec. 5377; TENN. CONST., Art. 11, sec. 12; TENN. CODE ANN. (Williams 1934) sec. 2377, 2393.9, 11395 to 11397; TEX. CONST., Art. VII, sec. 7; TEX. ANN. CIV. STAT. (Vernon 1947), Art. 2755, 2900, 2719, 2819; VA. CONST., Art. IX, sec. 140; VA. CODE (1950), sec. 22-221; W. VA. CONST., Art. XII, sec. 8; W. VA. CODE ANN. (1943), sec. 1775, 1777.

5/ D. C. CODE (1940), Title 31, Sec. 1110 to 1113.

6/ Reddick, L. D., The Education of Negroes in States Where Separate Schools Are Not Legal, The Journal of Negro Education, Summer 1947, Vol. XVI, No. 3, p. 296.

7/ Wilson v. Board of Supervisors, 340 U.S. 909, and McLaurin v. Board of Regents, 339 U.S. 637, were reviewed on direct appeal. Sweatt v. Painter, 339 U.S. 629, was reviewed on certiorari. Cf. Sipuel v. Board of Regents, 332 U.S. 631, and Missouri ex rel. Gaines v. Canada, 305 U.S. 337

This case and Carr v. Corning, 182 F.(2d) 14 (D.C.), are the only two cases decided in several decades in which a direct attack was made upon the constitutional validity of racial segregation in public education at the elementary and secondary school levels. The importance of the issues here presented is emphasized by the fact that each of these two cases was decided by a Federal Court and in each the validity of such segregation was sustained by the bare majority of a single vote.

The course of decision taken by the Supreme Court in recent cases involving segregated public education at the professional and graduate school levels,<sup>8/</sup> the strong dissents registered in this case<sup>9/</sup> and in Carr v. Corning,<sup>10/</sup> the Supreme Court's refusal in Sweatt v. Painter<sup>11/</sup> to reaffirm the doctrine of Plessy v. Ferguson, 163 U.S. 537, and the weakening and disappearance of that doctrine in other areas, combine to create serious and widespread question as to the legality and the duration of

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<sup>8/</sup> Wilson v. Board of Supervisors, 307 U.S. 909; McLaurin v. Board of Regents, 339 U.S. 637; Sweatt v. Painter, 339 U.S. 629. Cf. Sipuel v. Board of Regents, 332 U.S. 631; Missouri ex rel. Gaines v. Canada, 305 U.S. 337.

<sup>9/</sup> Appendix A

<sup>10/</sup> 182 F. (2d) at 22-35

<sup>11/</sup> 339 U.S. at 335-336

segregated public elementary and high schools. This doubt the Supreme Court should settle by a definitive decision as to whether racial separation in public elementary and secondary schools is a constitutionally permissible pattern which may serve to guide the future endeavors of scholars and school officials.<sup>12/</sup>

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Approximately 10,000,000 Negroes, or 77% of all Negroes in the United States, live in the southern region where a pattern of educational segregation is sanctioned and enforced by law. Admittedly, this is the poorest section of the country. This condition is overwhelmingly due to the maintenance of segregation and a caste system which relegates all Negroes to a position lower than the lowest white. This is the area of the country least able to afford either the financial or the educational hazards created by a dual system of education. As a result, Negroes have been victimized throughout the years by grossly discriminatory practices designed to conserve for whites the maximum possible benefit of educational resources. The courts in this area have been faced with a variety of litigation as to the constitutional validity of such segregation, the definition and determination of the segregated group, the apportionment of public funds between the separated school systems, the provision of facilities, curricula and teachers, and the numerous other complex problems which such segregation has created.<sup>13/</sup> After

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<sup>12/</sup> 8 Wash. and Lee L.Rev. 54 (1951); 13 Ga. Bar. J. 357 (1951); 4 Van. L. Rev. 555 (1951); 24 Temple L.Q. 222 (1950); 3 U. Fla. L. Rev. 358 (1950); 13 Ga. Bar J. 88 (1950); 36 Va. L. Rev. 797 (1950); 3 So. Car. L. Q. 71 (1950); 30 B. U. L.Rev. 565 (1950); 1950 Washington U. L. Q. 594 (1950); 24 So. Cal. L. Rev. 74 (1950); 17 Brooklyn L. Rev. 134 (1950); 30 Neb. L. R.v. 69 (1950); 5 Miami L.Rev. 150 (1950); 39 Ga. L.J. 145 (1950); 26 Notre Dame Law. 81 (1950); 26 Notre Dame Law. 134 (1950); 3 Ala. L. Rev. 181 (1950).

<sup>13/</sup> See the cases collected in Appendix B

more than three-quarters of a century of judicial effort to attain an equality of educational opportunity within the framework of racial segregation, the widespread inequalities and discriminations yet existent demonstrate the futility of such a course.

During the 1944-45 school session, the value of elementary school property in eight southern states<sup>14/</sup> was \$867,960,280. Of this sum, \$786,662,302 was invested in schools for 3,510,540 white children and \$81,297,978 in schools for 1,551,279 Negro children. The per capita value of school property was \$224.08 for white pupils and \$52.40 for Negro pupils. The investment for white pupils was 427.6% more than the investment for Negro pupils.<sup>15/</sup> For the same school session, the average current expenditure in seven southern states<sup>16/</sup> was \$73.67 per white pupil enrolled and \$32.46 per Negro pupil enrolled. The average expenditure per white pupil was 227% greater than the average expenditure per Negro pupil.<sup>17/</sup>

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<sup>14/</sup> The eight states: Alabama, Florida, Georgia, Maryland, Mississippi, North Carolina, South Carolina and Texas.

<sup>15/</sup> Washington, Availability of Education for Negroes in the Elementary School, The Journal of Negro Education, Howard University Press, Summer Issue, Vol. XVI, 1947, p. 446.

<sup>16/</sup> The seven states: Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, and South Carolina.

<sup>17/</sup> Washington, op. cit. supra note 15, at 447.

For the 1943-44 school session, ten southern states<sup>18/</sup> spent \$43,448,777 for public school transportation, of which only \$1,349,834, or 3.1%, was spent for Negro pupils. The expenditure was \$6.11 per white pupil and only \$0.59 per Negro pupil.<sup>19/</sup> For the 1944-45 school session, the average salary paid white teachers in the seventeen southern states and the District of Columbia was \$1,513, and the average paid Negro teachers was \$1,187.28, a differential of \$326.29. The average salary paid white teachers was 127.5% greater than the average salary paid Negro teachers.<sup>20/</sup>

Other consequences of public school segregation are similarly manifested:<sup>21/</sup>

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"In the 17 states and the District of Columbia where separate schools are maintained by law, some 494,207 (2.8%) of the native whites, and 569,378 (11.7%) of the Negroes in this age group had not attended school for even one year; and 2,078,998 (11.6%) of the native whites and 1,802,770 (37.0%) of the Negroes were functional illiterates. In other words, there were four times as many Negroes as native whites in proportion to population who had not had at least a year of schooling; and three times as many Negroes who were functional illiterates.

\* \* \* \* \*

"In the 17 states and the District of Columbia the median years of schooling for the white population was 8.4; for Negroes the median was 5.1; with a range for the whites running from 7.9 in Kentucky to 12.1 in the District of Columbia; and for Negroes from 3.9 in Louisiana to 7.6 in the District of Columbia. Some 13.2 per cent of the white population had completed four years of high school as compared with only 2.9 per cent of the Negroes; 12.1 per cent of the whites had had some college education, as compared with only 2.5 per cent of the Negroes; and 4.7 per cent of the white population had had four or more years of

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The ten states: Alabama, Arkansas, Florida, Georgia, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina and Texas.

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Statistics of State School Systems, 1943-44, Department of Education, Government Printing Office, passim

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Statistics of State School Systems, 1943-1944, Department of Education, Government Printing Office, passim; "The Journal of Negro Education, Howard University Press, Vol. XVI, Summer 1947, passim

"college as contrasted with only 1.1 per cent of the Negroes. There were, therefore, four times as many whites as Negroes with a high school or college education in these states which require racial segregation by law."

Though in much smaller degree, whites as well as Negroes suffer from lowered educational standards. As it has been authoritatively reported:<sup>22/</sup>

"Segregation lessens the quality of education for the whites as well. To maintain two school systems side by side -- duplicating even inadequately the buildings, equipment, and teaching personnel -- means that neither can be of the quality that would be possible if all the available resources were devoted to one system, especially when the States least able financially to support an adequate educational program for their youth are the very ones that are trying to carry a double load."

The adverse effects of racial segregation in public education are not confined to the minority group or to the local community. The whole nation suffers from the under-development of a vast segment of its human resources. In the most critical period of June-July, 1943, when the nation was crying for manpower, 34.5% of the rejections of Negroes from the armed forces were for educational deficiency. Only 8% of the white selectees rejected for military service failed to meet the educational standards.<sup>23/</sup> The official War Department report on the utilization of Negro manpower in the postwar Army says

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<sup>21/</sup> Thompson, The Availability of Education in the Negro Separate School, The Journal of Negro Education, Howard University Press, Vol. XIV, Summer 1947, p. 264

<sup>22/</sup> Higher Education for American Democracy, Report of the President's Commission on Higher Education, Government Printing Office, Washington, D.C., 1947, Vol. I, p.34

<sup>23/</sup> The Black and White of Rejections for Military Service, Montgomery, Ala., American Teachers Association, 1944, p.5.

that "in the placement of men who were accepted, the Army encountered considerable difficulty. Leadership qualities had not been developed among the Negroes, due principally to environment and lack of opportunity. These factors had also affected development in the various skills and crafts."<sup>24/</sup>

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The record in this case incontrovertibly demonstrates that the segregated school irreparably harms the pupil. Unlike many forms of racial segregation, where the citizen may by exercise of his own will either encounter or avoid the situation of which segregation is a part, he has little freedom of choice in this area. The legal alternatives to a public school education usually being economically unavailable, he is forced by compulsory school attendance laws to go to the segregated schools and there be subjected to the evils which segregation invariably produces.

State ordained segregation is a particularly invidious policy which needlessly penalizes Negroes, demoralizes whites and tends to disrupt our democratic institutions.

Segregation prevents both the Negro and white pupil from obtaining a full knowledge and understanding of the group from which he is separated. It has been scientifically established that no child at birth possesses either an instinct or even a propensity toward feelings of prejudice or superiority. These prejudices, when and if they do appear, are but reflections of the attitudes and institutional ideas evidenced by the adults about him.<sup>25/</sup> The very act of segregation tends to crystallize and perpetuate group isolation, and therefore serves as a

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<sup>24/</sup> Report of Board of Officers on Utilization of Negro Manpower in the Post-War Army (February, 1946), p.2

<sup>25/</sup> Park, The Basis of Prejudice, The American Negro, the Annals, Vol. 140, pages 11-20 as cited by Frazier, The Negro in the United States (1949), at 668; Faris, The Nature of Human Nature,

breeding ground for unhealthy attitudes.<sup>26/</sup>

A feeling of distrust for the minority group is fostered in the community at large -- a psychological atmosphere which is most unfavorable to the acquisition of a proper education. This atmosphere, in turn, tends to accentuate imagined differences between Negroes and whites.<sup>27/</sup>

Qualified educators, social scientists, and other experts have expressed their realization of the fact that "separate" is irreconcilable with "equality."<sup>28/</sup> There can be no equality since the very fact of segregation establishes a feeling of humiliation and deprivation to the group considered inferior.<sup>29/</sup>

Probably the most irrevocable and deleterious effect of segregation upon the minority group is that it imposes a badge of inferior status upon the segregated group.<sup>30/</sup> This badge

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354, chapter on The Natural History of Race Prejudice (1937)

26/ Laster, Race Attitudes in Children, 48 (1949); Ware, The Role of the Schools in Education for Racial Understanding, 13, The Journal of Negro Education (1944); Moton, What the Negro Thinks (1929); Long, Psychogenic Hazards of Segregated Education of Negroes, 4 The Journal of Negro Education, 343 (1935). For an exhaustive study relating to the reaction, of Negroes to discrimination and how their reactions affect their relations with whites, see Rose, The Negro's Morale: Group Identification and Protest (1949); Johnson, Patterns of Segregation, II, Behavior Response of Negroes to Segregation and Discrimination (1943).

27/ Murdal, An American Delemma, 625 (1944); "But they are isolated from the main body of whites, and mutual ignorance helps reinforce segregative attitudes and other forms of race prejudice."

28/ Id. at page 580; Johnson, op. cit. supra note 26, at 4, 318; Mangum, The Legal Status of the Negro (1947); Report of the President's Committee on Civil Rights, To Secure These Rights (1947); Report of the President's Commission on Higher Education, Higher Education for American Democracy, (1947); Deucher and Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Opinion, 26 Journal of Psychology 259-287 (1948).

of inferior status is recognized not only by the minority group, but by society at large.<sup>31/</sup> A definitive study of the scientific works of contemporary sociologists, historians and anthropologists conclusively documents the proposition that the intent and result of segregation are the establishment of an inferiority status. And a necessary corollary to the establishment

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29/ McWilliams, Race Discrimination and the Law, 9 Science and Society No. 1 (1945); 56 Yale L.J. 1051, 1052, 1059 (1947); Bond, Education, Education of the Negro in the American Social Order, 385 (1934); Moton, op. cit. supra note 26, at 99; Bunche, Education in Black and White, 5 Journal of Negro Education 351 (1936); Long, op. cit. supra note 26, at 336-343; Henrich, The Psychology of Suppressed People, 52 (1937); Dollard, Caste and Color in a Southern Town, 269 441 (1937); Young, America's Minority Peoples, 585 (1932).

30/ Smythe, The Concept of "Jim Crow", 27 Social Forces 48 (1948): "Jim Crow" as used in a sociological context thus indicates for a specific social group the Negro's awareness of his badge of inequality which he learns through the operation of a 'Jim Crow' concept in his every day living. This pattern of existence has become so much a part of the nation's social structure that it has become synonymous with the words 'segregation' and 'discrimination' and at times when 'Jim Crow' is indexed some authors have indexed it as a cross reference for these terms."

31/ Myrdal, op. cit. supra note 27, at 643. "Segregation and discrimination have had material and moral effects on whites, too. Booker T. Washington's famous remark, that the white man could not hold the Negro in the gutter without getting in there himself, has been corroborated by many white Southern and Northern observers. Throughout this book we have been forced to notice the low economic, political, legal and moral standards of Southern whites -- kept low because of discrimination against Negroes and because of obsession with the Negro problem. Even the ambition of Southern whites is stifled partly because, without rising far, it is so easy to remain 'superior' to the held-down Negroes \* \* \*"

of this value judgment is the deprivation suffered by both the minority and majority groups.<sup>32/</sup>

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Baruch, Glass House of Prejudice 66-76 (1946); Gallagher, American Caste and the Negro College 94 (1938); Wherever possible, the caste line is to keep all Negroes below the level of the lowest whites. This is the first and deepest meaning of "separate but equal". Page 105: "Not the least important aspect of the caste system is its results in seriously malconditioning the individuals whose psychological growth is strongly affected by a caste divided society. These influences are not limited to the Negro caste. They stamp themselves upon the dominant caste as well"; La Farge, The Race Question and the Negro 159 (1945): "Segregation, as a compulsory measure based on race, imputes essential inferiority to the segregated group. Segregation, since it creates a ghetto, brings in the majority of instances, for the segregated group, a diminished degree of participation in those matters which are ordinary human rights, such as proper housing, educational facilities, police protection, legal justice, employment, \* \* \* Hence it works objective injustice. So normal is the result for the individual that the result is rightly termed inevitable for the group at large"; James, The Philosophy of William James 128 (1925); "Properly speaking, a man has as many social selves as there are individuals who recognize him and carry an image of him in their mind. To wound any one of these images is to wound him"; Loescher, The Protestant Church and the Negro (1948); "Segregation) is, in itself, an implication of inferiority, an inferiority not only of status but of essence, of being"; Thompson, "Mis-Education for Americans": 36 Survey Graphic 119 (1947): "Education for segregation, if it is to be effective must perpetuate beliefs which define the Negro's status as inferior, which emphasize superficial differences, or which in any way suggest that the Negro is a lower order of being and therefore should not be expected to be treated like a white person." Page 120: "Mis-education for segregation has deleterious effects on both Negroes and whites. It requires mental and emotional gymnastics on both sides to adjust (or attempt to adjust) to the many logical and ethical contradictions of segregation. The situation is crippling to the personalities of both Negro and white Americans."

D

The unanimous conclusion of scholars and students who have studied the problem is that racial segregation in public education must be eliminated

Recognizing that segregation constitutes a menace to American freedom and is indefensible, the President's Committee on Civil Rights unequivocally recommended its elimination from American life:<sup>33/</sup>

"The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together."

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Likewise, the President's Commission on Higher Education, in its report on education in the United States, said:<sup>34/</sup>

"The time has come to make public education at all levels equally accessible to all, without regard to race, creed, sex or national origin."

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<sup>33/</sup> Report of the President's Commission on Civil Rights, To Secure These Rights, U.S. Government Printing Office, 1947, p. 166.

<sup>34/</sup> Report of the President's Commission on Higher Education, Higher Education for American Democracy, U.S. Government Printing Office, 1947, p. 38.

II

STATUTORY CLASSIFICATIONS BASED SOLELY ON RACE  
OR COLOR VIOLATE THE FEDERAL CONSTITUTION.

A

Race or Color Cannot Be Made the Basis of a  
Statutory Classification

In South Carolina, the school in District No. 22 which a child is permitted to attend depends solely upon his race or color. The <sup>Supreme</sup> Court, in recent decisions, has indicated that statutes which affect individuals according to their race or ancestry are, in the absence of an overwhelming public necessity, invalid. Takahashi v. Fish & Game Commission, 334 U.S. 410; Korematsu v. United States, 323 U.S. 214; and Hirabayashi v. United States, 320 U.S. 81, wherein the Court said:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification... based on race alone has often been held to be a denial of equal protection." (p. 100)

In Nixon v. Herndon, 273 U.S. 536, Mr. Justice Holmes stated for the Court that statutory classifications can never be based on color:

"States may do a great deal of classifying that it is difficult to believe rational, but there are limits, and it is...clear... that color cannot be made the basis of a statutory classification." (p. 541)

The above decisions have been made without regard to the equal protection clause of the Fourteenth Amendment, thus indicating that the citizen's right to have his rights, obligations, and duties to the state determined without regard to his

race or color is a fundamental right essential to our democratic society.<sup>35/</sup> State statutes must in addition meet the standards of the equal protection clause of the Fourteenth Amendment. An

<sup>35/</sup> It might be argued by the proponents of segregated school systems that since seventeen states have laws which regulate the use of some or all of the public educational facilities on the basis of race or color, the problem is essentially one for the legislative judgment and that federal courts should not interfere. The proponents might attempt to place reliance on the Supreme Court's examination on several occasions of the practices and experiences of the forty-eight states and other jurisdictions which have adopted Anglo-American jurisprudence, to see whether a right being claimed as fundamental is generally protected by the states. See for example, Adamson v. California, 332 U.S. 46; In Re Oliver, 333 U.S. 257. But such examination in the instant case is not at all relevant, and, in any event, if made, would have to exclude those states which have a history of unequal treatment to Negroes in educational facilities, political franchise, and other opportunities and rights normally available to citizens of a state.

In the first place, the Court has already indicated that governmental classifications based upon race and color are arbitrary and a denial of due process of law. Korematsu v. United States, 323 U.S. 214; Ex Parte Endo, 323 U.S. 282. These cases were under due process clause of the Fifth Amendment, but certainly "it ought not to require argument to reject the notion that due process of law meant one thing in the Fifth Amendment and another in the Fourteenth." Adamson v. California, supra, at 59, 66.

Secondly, the plaintiff claims protection under the equal protection clause of the Fourteenth Amendment and, as indicated above, the intention of this clause was to afford the same rights to Negroes as were afforded to whites by a state.

Finally, the experiences in the southern states in determining whether the right to be free of laws imposing burdens or denying privileges based upon race or ancestry is fundamental to a free society, must be discounted in determining the meaning of the Fourteenth Amendment. In the first place, those states which have traditions and practices similar to South Carolina in enforcing racial discrimination refused, in 1866 and 1867, to ratify the Fourteenth Amendment. Therefore, their practice and conduct thereunder is not valid evidence as to the meaning or scope of the Amendment which they have consistently opposed. See Fairman & Morrison, Does The Fourteenth Amendment Incorporate The Bill of Rights? 2 Stanford L. Rev. 5, 90-95 (1949) South Carolina has had a long history, culminating in the events which led to the

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examination of the relevant data, including the legislative history, supports plaintiffs' contention that the purpose of the framers of the Fourteenth Amendment in including therein the equal protection clause was to require state action affecting Negroes to be measured by whether white persons were being afforded the same right, privilege or advantage which the state was denying to Negroes. In other words, if a particular state affords to its white citizens a particular right or privilege, the equal protection clause requires that the same right be granted to Negro citizens on the same basis. See Fairman & Morrison, Does The Fourteenth Amendment Incorporate The Bill of Rights? 2 Stanford L. Rev. 5, 138-139 (1949). Thus, even if there is a rational basis for the racial classification used by South Carolina to determine whether children should go to one school or another in District No. 22, the statute is necessarily unconstitutional.

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decision in Rice v. Elmore, 165 F.2d 387 (CCA 4 1947), cert. denied 333 U.S. 875, in denying to its Negro citizens the right to exercise effectively their voting rights specifically guaranteed by the Fifteenth Amendment. The basis of the argument that matters are within the legislative judgment and therefore if a person wishes to change a particular legislation his arguments embodying economic, psychological and social data should be addressed to the legislature rather than to the Court necessarily presupposes that the legislature is subject to the popular will by use of the ballot. In a state such as South Carolina, this right has not been, and presently is not, freely available to Negroes, since state officials for many years have attempted to use various means, most of them already declared illegal by the Supreme Court, to prevent the free exercise of the ballot. Moreover, the only way that a group is able to persuade other groups that laws affect them unjustly or are injurious to the whole society is through discussion with the other groups. But racial segregation laws usually create conditions which tend to prevent the normal processes essential to free and democratic associations from operating and therefore those processes that ordinarily might be relied upon to protect individuals against arbitrary and unreasonable governmental action are absent. See United States v. Carolene Products, 304 U.S. 144, footnote 4.

B

There Is No Reasonable Basis For Allocating  
Educational Facilities On The Basis of Race

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The South Carolina statute prohibiting Negro children from attending the schools set aside for white children has no rational basis, and in fact has injurious effects and prevents the accomplishments of the very end of public education. Even when dealing with legislation involving economic matters, where the Court has permitted certain classifications resulting in distinctions and burdens on one group and benefits to another, the Court has demanded that there be some cognate relationship between the classification and the end sought to be accomplished, and where the differences are not reasonably perceptible, or are irrelevant to the legislative end, the classifications, even in economic matters, have been held to violate the equal protection clause. Quaker City Cab Co. v. Penn., 277 U.S. 389; Southern Railroad Co. v. Green, 216 U.S. 400; Mayflower Farms v. Ten eyck, 297 U.S. 266. Where the legislation attempts to regulate personal rights, the test applied by the Court has been more stringent. See Truax v. Raich, 229 U.S. 33; Skinner v. Oklahoma, 316 U.S. 735.

The South Carolina segregation statute is invalid even under the more lenient standard, since there is no reasonable connection between race and the educational aims sought to be achieved by a state in providing public education. The purpose of public education is to bring about a more intelligent citizenry and to develop individuals for democratic living. Laws which attempt to divide groups for public school purposes, according to race, religion or ancestry are at odds with the democratic ideals to which

this nation is committed.

"The public school is at once the symbol of our democracy and the most persuasive means for promoting our common destiny. In no activity of the State is it more vital to keep out diversive forces than in the schools ...." Mr. Justice Frankfurter concurring in McCullum v. Board of Education, 332 U.S. 203, 212, 231.

Moreover, there is testimony in the record, not controverted by South Carolina, that the effect of a segregated school system is to make the white children feel superior and the Negro children feel inferior. The rigid pattern of segregation also prevents the voluntary association fostering intellectual commingling of people, which the Court has held is a constitutional right. In McLaurin v. State Board of Regents, 339 U.S. 637, speaking for a unanimous court, Mr. Chief Justice Vinson stated:

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"There is a vast difference--a Constitutional difference--between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar."

South Carolina did not and cannot defend its legislation on the basis that race somehow affected the ability to receive education, or to achieve any of the ends of education. Indeed, the plaintiffs introduced evidence to show that race and color of skin were completely irrelevant. The evidence is in accordance with all the scientific investigations on the subject. Rose, America Divided: Minority Group Relations in the United States (1948); Montague, Man's Most Dangerous Myth--The Fallacy of Race, 188 (1945); American Teachers Association, The Black & White of Rejections for Military Service 5 (1944) at 29; Klineberg, Negro Intelligence and Selective Migration (1935); Peterson & Lanier, Studies in the Comparative Abilities of Whites and Negroes, Mental Measurement Monograph (1929); Clark, Negro Children, Educational Research Bulletin (1923); Klineberg, Race Differences, 343 (1935).

Segregation Statutes Cannot Be Upheld On The  
Basis That They Are Necessary to Preserve  
Public Peace and Order.

The court below attempted to justify the South Carolina segregated school system on the basis that otherwise there might be breaches of public order and that the segregated pattern had been existing in South Carolina for over one hundred years. The fact that for one hundred years or more constitutional rights of a large part of the citizens of South Carolina have been violated is no basis for defending the continuance of the violation. It has been repeatedly held by the <sup>Supreme</sup> Court that the other reason offered by the lower court -- preservation of public order -- does not afford a justification for the application of segregation statutes. In Buchanan v. Warley, 245 U.S. 60, the State of Kentucky attempted to define the ordinance segregating whites and Negroes into separate racial areas on the ground that otherwise riots and disorder might result. The Supreme Court summarily dismissed such an argument with this statement:

"It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." (p. 81)

The Supreme Court recently reaffirmed the principle that the preservation of public peace and good order does not suffice to clothe with constitutionality government action which results in classification based upon race. Shelley v. Kraemer, 334 U.S. 1.

III

THE MAJORITY OF THE LOWER COURT ERRED IN REFUSING  
TO FOLLOW THE APPLICABLE DECISIONS OF THE SUPREME  
COURT

Judicial expositions sustaining the constitutional validity of the "separate but equal" theory of public education rest principally upon the decision of the Supreme Court in Plessy v. Ferguson, 163 U.S. 537, and cases which without critical analysis have applied its doctrine in the area of public education.

In Plessy v. Ferguson, supra, the majority of the Supreme Court held that the application to an intrastate passenger of a Louisiana statute requiring the segregation of white and Negro passengers did not violate the Fourteenth Amendment. The case was decided upon pleadings which assumed the possibility of attainment of a theoretical equality within the framework of racial segregation rather than on a full hearing and evidence which would have established the inevitability of discrimination under a system of segregation. The majority opinion discussed and relied on Roberts v. City of Boston, 5 Cush. (Mass.) 158, which was decided almost twenty years before the adoption of the Fourteenth Amendment. This Amendment was designed and intended to settle the very diversity of opinion,--so pronounced in 1849 when the Roberts case, supra, was decided--as to the reasonableness of legal distinctions based on race or color. The famous dissenting opinion of Mr. Justice Harlan in the Plessy case, supra, stood as a challenge to the majority conclusion even when its position in the law seemed firmly secure, and time and experience have demonstrated the falsity of the antebellum justifications urged in the Roberts case, supra, and of the bases suggested by the majority of the Court in the Plessy case, supra.

In neither of the two decisions of the Supreme Court relating to racial segregation in public elementary or high schools has the holding in Plessy v. Ferguson, supra, been reexamined or seriously challenged. In Cummings v. Board of Education, 175 U.S. 528, suit was brought principally to obtain an injunction against continued operation of a white high school on the ground that no school was being operated for Negroes similarly situated. The Court's decision established the impropriety of the remedy invoked and denied the relief sought. The validity of segregation was not in issue; plaintiffs not only did not raise such issue, but acquiesced in the use of taxes levied to support segregated schools at the elementary and intermediate grammar school levels. In Gong Lum v. Rice, 275 U.S. 78, the plaintiff, a child of Chinese descent, asserted a right not to be classified for school purposes as a colored person and required to attend the Negro school. The validity of racial segregation in the public schools there involved was not raised by the plaintiff who, rather, affirmed its validity and insisted upon being classified as white and admitted to a white school.<sup>36/</sup>

The decisions of the Supreme Court in the area of graduate and professional education have not supported the doctrine of the

<sup>36/</sup> It is true that Mr. Chief Justice Taft, in discussing the issue, said: "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." (275 U.S. at 85) Therefore, even if this decision is construed as raising the issue of the validity of school segregation statutes, it is clear that the doctrine was not examined and that Plessy v. Ferguson, supra, was relied upon without question.

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Plessy case, supra. In Missouri ex rel Gaines v. Canada, 305 U.S. 337, the only question involved was whether a qualified Negro applicant could be excluded from the only state-supported law school and exiled to another state to receive a legal education. In holding in the negative, the Court, while repeating the doctrine of Plessy v. Ferguson, supra, neither examined nor applied it. In Sipuel v. Board of Regents, supra, where the Court held that a Negro applicant was entitled to receive a legal education within the state as soon as it was afforded to applicants of any other group, the doctrine of Plessy v. Ferguson, supra, was neither raised, examined, repeated nor applied. In Fisher v. Hurst, 333 U.S. 147, the same case, supra, the Court denied an original writ of mandamus to compel compliance with its mandate by admission to the state's law school on the grounds that the original Sipuel case had specifically not raised the issue of the validity of the segregation statutes and that procedurally the question could not be considered on the petition for writ of mandamus.

The majority opinion of the District Court in this case upheld the validity of the provisions of the Constitution and Laws of South Carolina requiring segregation of the races on the following grounds: (1) segregation of the races in 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." (italics ours); (2) subject to the observance of the fundamental rights and liberties guaranteed by the Federal Constitution, each state is free to determine how it shall exercise its police power, i.e., the power to legislate with respect to the safety, morale, health and general welfare; (3) the decisions in Plessy v. Ferguson, supra, Cummings v. Board of Education, supra, and Gong Lum v. Rice, supra, hold

that as long as equality is furnished, segregation of the races in public schools is not unconstitutional and these cases are controlling in the instant case; (4) that neither Sweatt v. Painter, 339 U.S. 629, McLaurin v. Oklahoma State Regents, supra, nor McKissick v. Carmichael, 187 F.2d 949, can be applied to this case because the Sweatt case, supra, did not overrule Plessy v. Ferguson, supra, and both the Sweatt case, supra, and the McKissick case, supra, were decided on the question of equality, and the McLaurin case, supra, "involved humiliating and embarrassing treatment of a Negro ~~law~~<sup>graduate</sup> student to which no one should have been required to submit. Nothing of the sort is involved here"; (5) there is a difference between education on the graduate level and on lower levels of education.

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The majority opinion held that the Sweatt case, supra, did not apply to this case because the decision in the Sweatt case, supra, was based upon the inequality of the "educational facilities" offered the white and Negro law students. The opinion also held that: "McLaurin v. Oklahoma State Regents involved humiliating and embarrassing treatment of a Negro ~~law~~<sup>graduate</sup> student to which no one should have been required to submit. Nothing of the sort is involved here." To the contrary, the record in this case shows that the injury to the plaintiffs in this case was not only humiliating and embarrassing but was even more harmful than in graduate education. The uncontradicted testimony in this record brings this case clearly within the rationale of the McLaurin case, supra.

Dr. Kenneth Clark, an expert in the fields of social and child psychology who tested the infant plaintiffs and other Negro school children in District No. 22, testified:

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

Dr. David Krech, another psychologist, testified:

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"...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 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 the 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 from whatever harmful effect racial prejudice and discrimination can wreck."

Dr. Harold McNalley, an expert in the field of Educational Psychology, testified:

"...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 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."

Dr. Louis Kesselman, a political scientist, testified:

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"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 scientifically 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 electoral 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 . . ."

Mrs. Helen Trager, a child psychologist who had conducted tests of the effects of racial segregation and racial tensions among children, testified:

"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."

Dr. Robert Redfield, an expert in the field of anthropology, testified as to the unreasonableness of racial classification in education:

"Q. As a result of your studies that you have made, the 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."

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The opinion and decree of the majority of the lower court was based upon the assumption that equality of rights guaranteed by the Fourteenth Amendment was limited to physical equality such as facilities, equipment and curricula. Expert witnesses for plaintiffs testified not only as to the inevitable harmful effect of segregation on public school children but also of the tests showing the irreparable harm to the plaintiffs and other Negro school children in Clarendon County. This testimony was disposed of in the majority opinion as follows:

"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 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."

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The testimony on behalf of the plaintiffs was by expert witnesses of unimpeachable qualifications. The record in this case presents for the first time in any case competent testimony of the permanent injury to Negro elementary and high school children forced to attend segregated schools. Testimony was introduced showing the irreparable damage done to the plaintiffs in this case solely by reason of racial segregation. The record also shows the unreasonableness of this racial classification. This is not theory or legislative argument. This is competent expert testimony from recognized scientists directed toward the factors recognized by the Supreme Court as determinative of the validity of similar statutory provisions. This testimony stands uncontradicted in the record.

The Supreme Court in the McLaurin case, supra, refused to apply the separate but equal doctrine to a case where, despite complete equality of physical facilities for education, the State of Oklahoma "sets McLaurin apart from the other students." (339 U.S. 641) On the other hand the Supreme Court stated: "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."

(339 U.S. 641) The Supreme Court, therefore, concluded: "the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws." (339 U.S. 642)

If the majority of the District Court had tested the evidence in this case by the criterion of the McLaurin case, it inevitably would have concluded that the segregation laws could not validly be enforced against the plaintiffs. Instead, it considered the "separate but equal" doctrine of Plessy v. Ferguson, supra, controlling, and limited the application of the equal protection clause exclusively to physical facilities.

This case should be reviewed on appeal for determination as to whether this conclusion is in conflict with the applicable decision of the Supreme Court.

July 30

#### CONCLUSION

For many years Negroes in the South have sought educational facilities equal to those offered other citizens. Blind adherence to the separate but equal doctrine has produced increasing inequality within a segregated system. Great progress has been made in graduate and professional education during the year since the Sweatt and McLaurin decisions. None of the harmful effects predicted in the brief filed in these cases by the attorneys general of the Southern States has materialized.

In the decision in this case, as in the McLaurin case, plaintiffs' individual rights have been lost in the racial group classification required by the laws of South Carolina. Expert witnesses testified as to the harmful effects of this enforced

racial segregation, i.e., the resulting injury is even more effective and harmful than in graduate education. The questions here involved are substantial and important to the interest of public education, today and in the future, to the individual's right to complete equality before the law, and to our government.

Respectfully submitted,

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HARRY BRIGGS, JR., et al.

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al.

Defendants

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JURISDICTIONAL STATEMENT

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Harold R. Boulware  
1109½ Washington St.  
Columbia, S. C.

Spotttswood W. Robinson, III  
623 N. Third St.  
Richmond, Va.

Robert L. Carter  
Thurgood Marshall  
20 West 40th St.  
New York 18, N.Y.

Counsel for Plaintiffs-Appellants

Arthur D. Shores  
A. T. Walden

Of Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

**FILED**

JUL 20 1951

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

---

HARRY BRIGGS, JR., et al,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, Et al,

Defendants

---

ACKNOWLEDGMENT  
OF SERVICE

The undersigned, attorney for the defendants in the above entitled case hereby acknowledges service of the following papers this twentieth day of July, 1951:

1. Petition for allowance of appeal
2. Order allowing appeal
3. Assignment of errors
4. Citation
5. Jurisdictional statement
6. Statement calling attention to Rule 12 (3)

  
Attorney for Defendants

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

CIVIL ACTION NO. 2657

---

HARRY BRIGGS, Jr., et al  
Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al.  
Defendants

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ACKNOWLEDGMENT OF SERVICE

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Counsel for Plaintiffs-Appellant

Arthur D. Shores  
A. T. Walden

Of Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED:

*July 20,* 1951  
Ernest L. Allen,  
C.D.C.U.S., E.D.S.C.

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HARRY BRIGGS, JR., et al, :  
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Plaintiffs, :  
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vs. :  
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R. W. ELLIOTT, Chairman, Et al, :  
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Defendants :  
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ACKNOWLEDGMENT  
OF SERVICE

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1. Petition for allowance of appeal
2. Order allowing appeal
3. Assignment of errors
4. Citation
5. Jurisdictional statement
6. Statement calling attention to Rule 12 (3)

/s/ Robert McC. Figg, Jr.  
Attorney for Defendants.

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

CIVIL ACTION NO. 2657

VOL 68 PAGE 285

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HARRY BRIGGS, JR., et al,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al,

Defendants

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FILED

JUL 20 1951

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

ORDER ALLOWING APPEAL

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 Luchriser 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; 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 Gabriel 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 June 21, 1951, and from each and every part thereof, and having presented their assignment 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.

IT IS FURTHER ORDERED THAT the amount of the appeal bond be and the same is hereby fixed in the sum of \$ 500<sup>00</sup> with good and sufficient surety, and shall be conditioned as may be required by law.

IT IS FURTHER ORDERED that citation shall issue in accordance with law.

*John J. Parker*  
\_\_\_\_\_  
Judge

Dated: *July 20, 1957*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

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HARRY BRIGGS, JR., et al, :  
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 Plaintiffs, :  
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 vs. :  
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 R. W. ELLIOTT, Chairman, et al, :  
 :  
 Defendants :  
 :

---

**FILED**  
JUL 20 1951  
ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

TO: R. W. Elliott, Chairman, J. D. 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

*JM*  
Pursuant to paragraph 2, Rule 12, of the Rules of the Supreme Court of the United States, you are hereby served with copies of the petition for appeal, for a stay of the judgment and decree of June 21, 1951, the issuance of citation and for the fixing of the amount of the appeal bond; order allowing appeal directing the issuance of citation and fixing the amount of the appeal bond; assignment of errors and prayer for reversal, statement of jurisdiction, and citation.

Your attention is directed to the provisions of Rule 12, paragraph 3, which read as follows:

Within 15 days after such service the appellee may file with the Clerk of the Court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this Court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3.

*Harold R. Boulware*

Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

*Spottswood W. Robinson III*

Spottswood W. Robinson, III  
623 North Third Street  
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*Robert L. Carter*

*Thurgood Marshall*

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, N.Y.

Counsel for Plaintiffs

Arthur D. Shores

A. T. Walden,

Of Counsel

July 20, 1951



3. In holding that a state which undertakes to provide a public education for its citizens can satisfy the requirements of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States by providing a system of separate public elementary and high schools for Negroes and excluding all Negroes from the schools it provides for all other persons.

4. In predicating its decision upon Plessy v. Ferguson, 163 U.S. 537, and in disregarding McLaurin v. Board of Regents, 339 U.S. 637, and principles serving as the basis for this and other decisions of the Supreme Court in conflict with the rationale of the Plessy case.

WHEREFORE, plaintiffs pray that the final decree of the District Court be reversed, and for such other relief as the Court may deem fit and proper.

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New York 18, New York

Counsel for Plaintiffs

Arthur D. Shores

A. T. Walden

Of Counsel

July 20, 1951

*July 2*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED

JUL 20 1951

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HARRY BRIGGS, JR., et al,  
Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al,  
Defendants

---

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

BOND FOR COST  
ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, That We, Harry Briggs Edward Ragin, Mary Oliver, G. H. Henry and William Ragin, as principals, are held and firmly bound unto R. W. Elliott, J. D. Carson, L. B. McCord, George Kennedy, A. J. Plowden, N. E. Baker and H. B. Betchman, in the full amount of five hundred (\$500.00) dollars, to be paid to the said R. W. Elliott, J. D. Carson, George Kennedy, A. J. Plowden, L. B. McCord, W. E. Baker and H. B. Betchman, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our Seals and dated this 20th day of July, in the year of our Lord one thousand nine hundred fifty-one.

WHEREAS, lately a decree was entered against Harry Briggs, Edward Ragin, Mary Oliver, G. H. Henry and William Ragin and the said Harry Briggs, Edward Ragin, Mary Oliver, G. H. Henry and William Ragin having obtained an order granting an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said R. W. Elliott, J. A. Carson, George Kennedy, L. B. McCord, A. J. Plowden, W. E. Baker and H. B. Betchman, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within forty (40) days from the date thereof.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Harry Briggs, Edward Ragin, Mary Oliver, G. H. Henry and William Ragin shall prosecute their appeal to effect, and

answer all damages and costs if they fail to make their plea good,  
then the above obligations to be void; else to remain in full  
force and virtue.

Harry Briggs (L. S.)

Edward Ragin (L.S.)

Mary Oliver. (L. S.)

Jeff Henry (L. S.)

William Ragin (L. S.)

Sealed and delivered

in the presence of:

Harold B. Bunker

Richard E. Fields

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

CIVIL ACTION No. 2657

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HARRY BRIGGS, JR., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chairman et al

Defendants

---

ASSIGNMENT OF ERRORS

---

Harold R. Boulware  
1109 $\frac{1}{2}$  Washington Street  
Columbia, S. Carolina

Spottswood W. Robinson, III  
623 N. Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs

Arthur D. Shores  
A. T. Walden,

Of Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED

JUL 20 1951

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HARRY BRIGGS, JR., et al,  
Plaintiffs,  
vs.  
R. W. ELLIOTT, Chairman, et al,  
Defendants

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ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

BOND FOR COST  
ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, That We, Harry Briggs Edward Ragin, Mary Oliver, G. H. Henry and William Ragin, as principals, are held and firmly bound unto R. W. Elliott, J. D. Carson, George Kennedy, A. J. Plowden, L. B. McCord, N. E. Baker and H. B. Betchman, in the full amount of five hundred (\$500.00) dollars, to be paid to the said R. W. Elliott, J. D. Carson, George Kennedy, A. J. Plowden, L. B. McCORD, W. E. Baker and H. B. Betchman, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our Seals and dated this 20th day of July, in the year of our Lord one thousand nine hundred fifty-one.

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NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Harry Briggs, Edward Ragin, Mary Oliver, G. H. Henry and William Ragin shall prosecute their appeal to effect, and

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then the above obligations to be void; else to remain in full  
force and virtue.

Harry Briggs (L. S.)

Edward Ragin (L.S.)

Mary Oliver (L. S.)

J. H. Henry (L. S.)

William Ragin (L. S.)

Sealed and delivered

in the presence of:

Harold A. Boulware

Richard E. Fields

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

CIVIL ACTION No. 2657

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HARRY BRIGGS, JR., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chariman, et al.

Defendants

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BOND FOR COST ON APPEAL

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Harold R. Boulware  
1109½ Washington St.  
Columbia, South Carolina

Spottswood W. Robinson, III  
623 N. Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs-Appellant

Arthur D. Shores  
A. T. Walden,

Of Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

VOL 68 PAGE 288

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HARRY BRIGGS, Jr., et al, :  
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 Plaintiffs :  
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 vs. :  
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 R. W. ELLIOTT, Chairman, et al, :  
 :  
 Defendants :  
 :  
 :

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FILED  
JUL 20 1951  
ERNEST L. ALLEN  
G.D.G.U.S.E.D.S.C.

CITATION ON APPEAL

TO: R. W. Elliott, Chairman, J.D. 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

Greetings:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States in the City of Washington, District of Columbia, within forty (40) days from the date hereof,

fly

pursuant to an order allowing an appeal from the final decree made and entered in the above-entitled cause on June 21, 1951 to show cause, if any there be, why said decree rendered against appellants should not be reversed and set aside.

John J. Parker  
Judge

74  
2

Dated:

July 20, 1951

Civil Action 2657

No. \_\_\_\_\_

**IN THE \_\_\_\_\_ COURT  
OF THE UNITED STATES**

FOR THE

of \_\_\_\_\_

vs.

Filed \_\_\_\_\_, 19\_\_\_\_\_

\_\_\_\_\_, Clerk.

By \_\_\_\_\_, Deputy.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED:

July 20 1951  
E. Allen,  
U.S. D.C., E.D.S.C.

---

HARRY BRIGGS, JR., et al, :  
Plaintiffs, :  
vs. :  
R. W. ELLIOTT, Chairman, et al. :  
Defendants :  
:

---

ASSIGNMENT OF ERRORS

Plaintiffs file the following assignment of errors on which they will rely in their appeal to the Supreme Court of the United States from the judgment of this court entered on June 21, 1950.

The Court erred:

1. In refusing to issue a declaratory judgment that Article XI, section 7 of the Constitution of South Carolina, and section 5377 of the Code of Laws of South Carolina of 1942, are unconstitutional as applied to the plaintiffs herein being a denial to them of the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States.
2. In refusing to issue an injunction restraining the defendants from enforcing Article XI, section 7, of the Constitution of South Carolina, and section 5377 of the Code of Laws of South Carolina of 1942, from excluding infant plaintiffs from all schools under their jurisdiction except those set apart for Negroes.
3. In holding that a state which undertakes to provide a

public education for its citizens can satisfy the requirements of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States by providing a system of separate public elementary and high schools for Negroes and excluding all Negroes from the schools it provides for all other persons.

4. In predicating its decision upon Plessy v. Ferguson, 163 U. S. 537, and in disregarding McLaurin v. Board of Regents, 339 U. S. 637, and principles serving as the basis for this and other decisions of the Supreme Court in conflict with the rationale of the Plessy case.

WHEREFORE, plaintiffs pray that the final decree of the District Court be reversed, and for such other relief as the Court may deem fit and proper.

/s/ Harold R. Boulware  
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1109½ Washington Street  
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/s/ Spottswood W. Robinson, III  
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623 North Third Street  
Richmond, Virginia

/s/ Robert L. Carter  
/s/ Thurgood Marshall  
Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs

Arthur D. Shores

A. T. Walden

Of Counsel

July 20, 1951



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/s/ Robert L. Carter  
/s/ Thurgood Marshall  
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Counsel for Plaintiffs

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A. T. Walden

Of Counsel

July 20, 1951

IN THE  
UNITED STATES DISTRICT COURT FOR  
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CIVIL ACTION No. 2657

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HARRY BRIGGS, JR., et al

Plaintiffs

vs.

R. W. ELLIOTT, CHAIRMAN, et al

Defendants

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ASSIGNMENT OF ERRORS

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CHARLESTON DIVISION  
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FILED

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HARRY BRIGGS, JR., et al,  
Plaintiffs,

Vs.

R. W. ELLIOTT, Chairman, et al,  
Defendants

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ERNEST L. ALLEN  
CLERK U.S.D.C.

BOND FOR COURT  
ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, That We, Harry Briggs Edward Ragin, Mary Oliver, G. H. Henry and William Ragin, as principals, are held and firmly bound unto R. W. Elliott, J. D. Carson, George Kennedy, A. J. Flowden, <sup>L. B. McCord,</sup> W. E. Baker and H. B. Betchman, in the full amount of five hundred (\$500.00) dollars, to be paid to the said R. W. Elliott, J. D. Carson, George Kennedy, A. J. Flowden, <sup>L. B. McCord,</sup> W. E. Baker and H. B. Betchman, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our Seals and dated this 20th day of July, in the year of our Lord one thousand nine hundred fifty-one.

WHEREAS, lately a decree was entered against Harry Briggs, Edward Ragin, Mary Oliver, G. H. Henry and William Ragin and the said Harry Briggs, Edward Ragin, Mary Oliver, G. H. Henry and William Ragin having obtained an order granting an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said R. W. Elliott, J. A. Carson, George Kennedy, L. B. McCord, A. J. Flowden, W. E. Baker and H. B. Betchman, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within forty (40) days from the date thereof.

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Harry Briggs (L. S.)

Edward Regin (L.S.)

Mary Oliver (L. S.)

G. H. Hervey (L. S.)

William Regin (L. S.)

Sealed and delivered

in the presence of:

Harold R. Boulware

Richard E. Fields

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

CIVIL ACTION No. 2657

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HARRY BRIGGS, JR., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al.

Defendants.

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BOND FOR COST ON APPEAL

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Counsel for Plaintiffs-Appellant

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A. T. Walden, Of Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED

JUL 20 1951

HARRY BRIGGS, JR., et al,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al,

Defendants

ERNEST L. ALLAN  
CLERK

BOND FOR COST  
ON APPEAL

KNOW ALL MEN BY THESE PRESENTS, That We, Harry Briggs Edward Ragin, Mary Oliver, G. H. Henry and William Ragin, as principals, are held and firmly bound unto R. W. Elliott, J. D. Carson, L. B. McCord, George Kennedy, A. J. Flowden, W. E. Baker and H. B. Betchman, in the full amount of five hundred (\$500.00) dollars, to be paid to the said R. W. Elliott, J. D. Carson, George Kennedy, A. J. Flowden, L. B. McCord, W. E. Baker and H. B. Betchman, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our Seals and dated this 20th day of July, in the year of our Lord one thousand nine hundred fifty-one.

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force and virtue.

Garry Briggs (L. S.)

Edward Page (L.S.)

Mary Oliver (L. S.)

G. H. Henry (L. S.)

William Page (L. S.)

Sealed and delivered

in the presence of:

Harold R. Boulware

Richard E. Fields

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

CIVIL ACTION No. 2657

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HARRY BRIGGS, JR., et al

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al.

Defendants

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BOND FOR COST ON APPEAL

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Counsel for Plaintiffs-Appellant

Arthur D. Shores  
A. T. Walden

Of Counsel

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED:

*July 20* 1951  
Ernest G. Allen,  
U.S. J., E.D.S.C.

---

HARRY BRIGGS, JR., et al, :  
Plaintiffs :  
vs. :  
R. W. ELLIOTT, Chairman, et al. :  
Defendants :  
:

---

ASSIGNMENT OF ERRORS

Plaintiffs file the following assignment of errors on which they will rely in their appeal to the Supreme Court of the United States from the judgment of this court entered on June 21, 1950.

The Court erred:

1. In refusing to issue a declaratory judgment that Article XI, section 7 of the Constitution of South Carolina, and section 5377 of the Code of Laws of South Carolina of 1942, are unconstitutional as applied to the plaintiffs herein being a denial to them of the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States.
2. In refusing to issue an injunction restraining the defendants from enforcing Article XI, section 7, of the Constitution of South Carolina, and section 5377 of the Code of Laws of South Carolina of 1942, from excluding infant plaintiffs from all schools under their jurisdiction except those set apart for Negroes.
3. In holding that a state which undertakes to provide a

public education for its citizens can satisfy the requirements of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States by providing a system of separate public elementary and high schools for Negroes and excluding all Negroes from the schools it provides for all other persons.

4. In predicating its decision upon Plessy v. Ferguson, 163 U. S. 537, and in disregarding McLaurin v. Board of Regents, 339 U. S. 637, and principles serving as the basis for this and other decisions of the Supreme Court in conflict with the rationale of the Plessy case.

WHEREFORE, plaintiffs pray that the final decree of the District Court be reversed, and for such other relief as the Court may deem fit and proper.

/s/ Harold R. Boulware  
Harold R. Boulware  
1109½ Washington Street  
Columbia, South Carolina

/s/ Spottswood W. Robinson, III  
Spottswood W. Robinson, III  
623 North Third Street  
Richmond, Virginia

/s/ Robert L. Carter  
/s/ Thurgood Marshall  
Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, New York

Counsel for Plaintiffs

Arthur D. Shores

A. T. Walden

Of Counsel

July 20, 1951

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED:

July 20 1951  
Ernest L. Allen,  
S.S., E.D.S.C.

---

HARRY BRIGGS, JR., et al,  
Plaintiffs,  
vs.  
R. W. ELLIOTT, Chairman, Et al,  
Defendants

---

ACKNOWLEDGMENT  
OF SERVICE

The undersigned, attorney for the defendants in the above entitled case hereby acknowledges service of the following papers this twentieth day of July, 1951:

1. Petition for allowance of appeal
2. Order allowing appeal
3. Assignment of errors
4. Citation
5. Jurisdictional statement
6. Statement calling attention to Rule 12 (3)

/s/ Robert McC. Figg, Jr.  
Attorney for Defendants.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2657

FILED:

*July 20,* 1951  
Ernest L. Allen,  
G.D.C.U.S., E.D.S.C.

---

HARRY BRIGGS, JR., et al,  
Plaintiffs,  
vs.  
R. W. ELLIOTT, Chairman, Et al,  
Defendants

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ACKNOWLEDGMENT  
OF SERVICE

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6. Statement calling attention to Rule 12 (3)

/s/ Robert McC. Figg, Jr.  
Attorney for Defendants.

COPY

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

---

Civil Action No. 2657

---

HARRY BRIGGS, JR., et al.,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al.,

Defendants.

---

STIPULATION AS TO PRINTING  
ACKNOWLEDGMENT OF SERVICE

---

Harold R. Boulware  
1109½ Washington Street  
Columbia, S. Carolina

Spottswood W. Robinson, III  
623 N. Third Street  
Richmond, Virginia

Robert L. Carter  
Thurgood Marshall  
20 West 40th Street  
New York 18, N.Y.

Counsel for Plaintiffs-Appellants

July 25, 1951

Thurgood Marshall, Esq.  
Attorney at Law  
20 West 40th Street  
New York 18, New York

In re: Civil Action No. 2657  
Harry Briggs, et al vs.  
R. W. Elliott, et al

Dear Mr. Marshall:

Thank you so much for your letter of July 23 which was received today, and with which you forwarded the original transcript of testimony in the above-entitled cause. I am pleased to advise that the same is being filed as of today.

With reference to the corrections to be made in the transcript, I have delivered these volumes to Mrs. Appleby for that purpose and have also called her attention to the corrections to be made on page 273 at lines 13 and 16.

I am Thanking you for your attention in this,

Most sincerely,

Ernest L. Allen,  
Clerk

TAC:vj

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CHARLESTOWN DIVISION  
CIVIL ACTION NO. 2657

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs  
vs  
R. W. ELLIOTT, Chairman, et al.,  
Defendants

---

**FILED**

**AUG 6 1951**

**ERNEST L. ALLEN**  
C. L. CLERK

PRAECIPE

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 colloquy between counsel and the Court at the close of the testimony and 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.
5. Final decree
6. Petition for Appeal
7. Order allowing Appeal

8. Citation on Appeal
9. Assignment of Errors
10. Statement of Jurisdiction to the Supreme Court
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.
12. Acknowledgment of Service of Notice of Appeal and other papers.
13. This Praecipe as to the Record.

Dated: August 3, 1951



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Thurgood Marshall  
Counsel for Appellant

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

CIVIL ACTION NO. 2657

---

HARRY BRIGGS, JR., et al.,

Plaintiffs

vs.

R. W. ELLIOTT, Chairman, et al.,

Defendants

---

PRAECIPE

---

Thurgood Marshall  
Counsel for Appellants

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

CIVIL ACTION FILE NO. 2657.

**FILED**

AUG 9 1951

ERNEST L. ALLEN  
C. D. C. U. S. E. D. S. C.

HARRY BRIGGS, JR., et al.,  
Plaintiffs,  
versus  
R. W. ELLIOTT, Chairman, et al.,  
Defendants.

DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD  
DESIRED TO BE INCLUDED IN TRANSCRIPT.

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 trial;
2. The entire Transcript of Record at the 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  
S. E. Rogers, Summerton, S. C.

Robert McC. Figg, Jr.  
Robert McC. Figg, Jr.  
18 Broad Street, Charleston, S. C.  
Counsel for Appellees.

Dated August 8, 1951.

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

CHARLESTON DIVISION.

---

CIVIL ACTION FILE NO. 2657.

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,  
Defendants.

---

DESIGNATION OF ADDITIONAL  
PORTIONS OF THE RECORD DESIRED  
TO BE INCLUDED IN TRANSCRIPT.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

CLERK'S CERTIFICATE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA  
CIVIL ACTION

I, Ernest L. Allen, Clerk of the United States District Court for the Eastern District of South Carolina, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of HARRY BRIGGS, JR., et al vs. R. W. ELLIOTT, Chairman, et al, together with Final Decree and all papers relating to the same, and as designated by counsel to constitute the record on appeal, and as appears by the original record now on file in my office.

Given under my hand and seal of said Court, at Charleston, S. C., this 13<sup>th</sup> day of August, 1951.

(Seal)

Ernest L. Allen  
Clerk, U. S. D. C., E. D. S. C.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

CIVIL ACTION FILE NO. 2657.

**FILED**

**AUG 17 1951**

**ERNEST L. ALLEN**  
C. D. C. U. S. E. D. S. C.

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

versus

R. W. ELLIOTT, Chairman, et al.,  
Defendants.

ACKNOWLEDGMENT OF SERVICE.

SERVICE of Designation of Additional Portions of the  
Record Desired To Be Included In Transcript in the above entitled  
cause is hereby acknowledged, and copy thereof received, this  
10<sup>th</sup> day of August, 1951.

*Shuyal Marshall*

Counsel for Appellants.

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

CHARLESTON DIVISION.

---

CIVIL ACTION FILE NO. 2657.

---

HARRY BRIGGS, JR., et al.,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,

Defendants.

---

ACKNOWLEDGMENT OF SERVICE.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

CIVIL ACTION FILE NO. 2657.

**FILED**

AUG 17 1951

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

HARRY BRIGGS, JR., et al.,

Plaintiffs,

VERSUS

R. W. ELLIOTT, Chairman, et al.,

Defendants.

ACKNOWLEDGMENT OF SERVICE.

SERVICE of Designation of Additional Portions of the  
Record Desired To Be Included In Transcript in the above entitled  
cause is hereby acknowledged, and copy thereof received, this  
10<sup>th</sup> day of August, 1951.

Thurgood Marshall  
Counsel for Appellants.

IN THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE EASTERN DISTRICT  
OF SOUTH CAROLINA.

CHARLESTON DIVISION.

---

CIVIL ACTION FILE NO. 2657.

---

HARRY BRIGGS, JR., et al.,  
Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al.,  
Defendants.

---

ACKNOWLEDGMENT OF SERVICE.

---

S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.

DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

Civil Action No. 2657.

FILED

DEC 20 1951

ERNEST L. ALLEN  
C.D.C.U.S.E.D.S.C.

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.

REPORT OF DEFENDANTS  
PURSUANT TO DECREE DATED JUNE 21, 1951.

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

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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 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

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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."

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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 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 enrollment 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 cause the required building survey to be made in the district,

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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 remodelling 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 remodelling 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 Superintendent of the district was informed by the Office of Education, Federal

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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
- (3) Sites acquired for Negro elementary schools:

Davis station....	\$1,500.00	
St. Paul's.....	3,000.00	<u>4,500.00</u>
		\$278,550.00

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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

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approved the recommendations 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. Phillip's, 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 remodeling, 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

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intend 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

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have the financial 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 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. [Signature] Sumner 30  
Robert M. [Signature] Charleston  
Attorneys for Defendants.

SEE  
DINER  
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STATE OF SOUTH CAROLINA, )  
COUNTY OF CLARENDON. )

PERSONALLY Appeared before me R. M. Elliott,  
who, being duly sworn, said that he is one of the Defendants in  
this action, that he has read the foregoing Report and that the  
same is true of his own knowledge, except as to those matters and  
things therein stated on information and belief, and that as to  
those he believes it to be true.

SWORN to and subscribed before me, R. M. Elliott  
this 17<sup>th</sup> day of December, 1951.

Donald T. Waring (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA.

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RWG  
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DISTRICT COURT OF THE  
UNITED STATES FOR THE EASTERN  
DISTRICT OF SOUTH CAROLINA.

CHARLESTON DIVISION.

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Civil Action No. 2657.

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Harry Briggs, Jr., et al.,  
Plaintiffs,

vs.

R. W. Elliott, Chairman, et al.,  
Defendants.

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REPORT OF DEFENDANTS PURSUANT  
TO DECREE DATED JUNE 21, 1951.

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S. E. Rogers,  
Summerton, S. C.

Robert McC. Figg, Jr.,  
18 Broad Street,  
Charleston, S. C.