

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

FILED

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ERNEST L. ALLEN
C.A.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 statutes¹. 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

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authority of the Constitution and laws of the State of South Carolina providing for the creation of various school districts², 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 court³. 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,

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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 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 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

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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.

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, Asiatic, 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 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*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".⁵

In the field of transportation the court has now, in effect declared that common carriers engaged in interstate travel must not and cannot segregate and discriminate against passengers by reason of their race or color⁶.

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 cases⁷.

Discrimination by segregation of housing facilities and attempts to control the same by covenants have also been outlawed⁸.

In the field of labor employment and particularly the relation of labor unions to the racial problem, discrimination has again been forbidden⁹.

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 clubs¹⁰.

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 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 Massachusetts¹¹, 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.¹² It has been said and repeated here in argument that the Supreme Court has refused to review the Plessy case in the Sweatt, McLaurin and other cases and this has been pointed to as proof that the Supreme Court retains and approves the validity of Plessy. It is astonishing that such an argument should be presented or used in this or any other court. The Supreme Court in Sweatt and McLaurin was not considering railroad 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

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.

Charleston, South Carolina

Robert Warren
UNITED STATES DISTRICT JUDGE

Date: June 21, 1951

Garner
70.

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.