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ABSTRACT

On May 17, 1954, U.S. Supreme Court Justice Earl Warren delivered the unanimous ruling in the landmark civil rights case "Brown v. Board of Education of Topeka, Kansas." State-sanctioned segregation of public schools was declared a violation of the 14th Amendment and was unconstitutional. This historic decision marked the end of the "separate but equal" precedent set earlier by the Supreme Court and served as a catalyst for the expanding civil rights movement during the decade of the 1960s. This lesson deals with this landmark legal decision, and the opposition to it, using the original court documents and presidential correspondence as primary source material. The lesson relates to the 14th Amendment, primarily the equal protection clause, and the powers of the Supreme Court under Article III of the U.S. Constitution. It correlates to the National History Standards and to the National Standards for Civics and Government. The lesson provides a historical background for the Supreme Court decision and gives an overview of slavery in the United States (with five resources). It suggests diverse teaching activities for classroom implementation, including prior knowledge, document analysis, civil rights timeline creation, poetry connection, editorial writing, book jacket design, and chief justice nomination. Appended are a written document analysis worksheet and the primary source documents. (BT)

National Archives and Records Administration

THE CONSTITUTION COMMUNITY

Postwar United States (1945 to early 1970s)

Documents Related to *Brown v. Board of Education*

By Mary Frances Greene

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2000

The Constitution Community is a partnership between classroom teachers and education specialists from the National Archives and Records Administration. We are developing lessons and activities that address constitutional issues, correlate to national academic standards, and encourage the analysis of primary source documents. The lessons that have been developed are arranged according to historical era.

Documents Related to *Brown v. Board of Education*

Supreme Court of the United States

No. 1 ——, October Term, 19 54

Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emmanuel et al.,

Appellants,

vs.

Board of Education of Topeka, Shawnee County, Kansas, et al.

Constitutional Connection

This lesson relates to the 14th Amendment , primarily the equal protection clause, as well as to the powers of the Supreme Court under Article III of the U.S. Constitution.

This lesson correlates to the National History Standards.

Era 9 -Postwar United States (1945 to early 1970s)

- **Standard 4C** -Demonstrate understanding of the Warren Court's role in addressing civil liberties and equal rights.

This lesson correlates to the National Standards for Civics and Government.

Standard II.A.2 .-Explain the extent to which Americans have internalized the values and principles of the Constitution and attempted to make its ideals realities.

Standard III.B.1. -Evaluate, take, and defend positions on issues regarding the purposes, organization, and functions of the institutions of the national government.

Cross-curricular Connections

Share these documents and teaching suggestions with your history, government, and language arts colleagues.

List of Documents

Historical Background

On May 17, 1954, U.S. Supreme Court Justice Earl Warren delivered the unanimous ruling in the landmark civil rights case *Brown v. Board of Education of Topeka, Kansas* . State-sanctioned segregation of public schools was a violation of the 14th Amendment and was therefore unconstitutional. This historic decision marked the end of the "separate but equal" precedent set by the Supreme Court nearly 60 years earlier and served as a catalyst for the expanding civil rights movement during the decade of the 1950s.

While the 13th Amendment to the United States Constitution outlawed slavery, it wasn't until three years later, in 1868, that the 14th Amendment guaranteed the rights of citizenship to all persons born or naturalized in the United States, including due process and equal protection of the laws. These two amendments, as well as the 15th Amendment protecting voting rights, were intended to eliminate the last remnants of slavery and to protect the citizenship of black Americans. In 1875, Congress also passed the first Civil Rights Act, which held the "equality of all men before the law" and called for fines and penalties for anyone found denying patronage of public places, such as theaters and inns, on the basis of race. However, a reactionary Supreme Court reasoned that this act was beyond the scope of the 13th and 14th Amendments, as these amendments only concerned the actions of the government, not those of private citizens. With this ruling, the Supreme Court narrowed the field of legislation that could be supported by the Constitution and at the same time turned the tide against the civil rights movement.

By the late 1800s, segregation laws became almost universal in the South where previous legislation and amendments were, for all practical purposes, ignored. The races were separated in schools, in restaurants, in restrooms, on public transportation, and even in voting and holding office. In 1896 the Supreme Court upheld the lower courts' decision in the case of *Plessy v. Ferguson* . Homer Plessy, a black man from Louisiana, challenged the constitutionality of segregated railroad coaches, first in the state courts and then in the

U. S. Supreme Court. The high court upheld the lower courts noting that since the separate cars provided equal services, the equal protection clause of the 14th Amendment was not violated. Thus, the "separate but equal" doctrine became the constitutional basis for segregation. One dissenter on the Court, Justice John Marshall Harlan, declared the Constitution "color blind" and accurately predicted that this decision would become as baneful as the infamous Dred Scott decision of 1857.

In 1909 the National Association for the Advancement of Colored People (NAACP) was officially formed to champion the modern black civil rights movement. In its early years its primary goals were to eliminate lynching and to obtain fair trials for blacks. By the 1930s, however, the activities of the NAACP began focusing on the complete integration of American society. One of their strategies was to force admission of blacks into universities at the graduate level where establishing separate but equal facilities would be difficult and expensive for the states. At the forefront of this movement was Thurgood Marshall, a young black lawyer who, in 1938, became general counsel for the NAACP's Legal Defense and Education Fund. Their significant victories at this level included *Gaines* v. *University of Missouri* in 1938, *Sipuel* v. *Board of Regents of University of Oklahoma* in 1948, and *Sweatt* v. *Painter* in 1950. In each of these cases, the goal of the NAACP defense team was to attack the "equal" standard so that the "separate" standard would in turn become susceptible.

By the 1950s, the NAACP was beginning to support challenges to segregation at the elementary school level. Five separate cases were filed in Kansas, South Carolina, Virginia, the District of Columbia, and Delaware: *Oliver Brown et al. v. Board of Education of Topeka, Shawnee County, Kansas, et al.; Harry Briggs, Jr., et al. v. R.W. Elliott, et al.; Dorothy E. Davis et al. v. County School Board of Prince Edward County, Virginia, et al.; Spottswood Thomas Bolling et al. v. C. Melvin Sharpe et al.; Francis B. Gebhart et al. v. Ethel Louise Belton et al.* While each case had its unique elements, all were brought on the behalf of elementary school children, and all involved black schools that were inferior to white schools. Most important, rather than just challenging the inferiority of the separate schools, each case claimed that the "separate but equal" ruling violated the equal protection clause of the 14th Amendment. The lower courts ruled against the plaintiffs in each case, noting the *Plessy v. Ferguson* ruling of the United States Supreme Court as precedent. In the case of *Brown v. Board of Education* , the federal district court even cited the injurious effects of segregation on black children, but held that "separate but equal" was still not a violation of the Constitution. It was clear to those involved that the only effective route to terminating segregation in public schools was going to be through the United States Supreme Court.

In 1952 the Supreme Court agreed to hear all five cases collectively. This grouping was significant because it represented school segregation as a national issue, not just a southern one. Thurgood Marshall, one of the lead attorneys for the plaintiffs (he argued the Briggs case), and his fellow lawyers provided testimony from more than 30 social scientists affirming the deleterious effects of segregation on blacks and whites. These arguments were similar to those alluded to on pages 18 and 19 in the first featured document, the Dissenting Opinion of Judge Waites Waring in *Harry Briggs, Jr., et al. v.*

R. W. Elliott, Chairman, et al . The lawyers for the school boards based their defense primarily on precedent, such as the *Plessy v. Ferguson* ruling, as well as on the importance of states' rights in matters relating to education. Realizing the significance of their decision and being divided among themselves, the Supreme Court took until June 1953 to decide they would rehear arguments for all five cases. The arguments were scheduled for the following term, at which time the Court wanted to hear both sides' opinions of what Congress had in mind regarding school segregation when the 14th Amendment was originally passed.

In September 1953, President Eisenhower appointed Earl Warren, governor of California, the new Supreme Court chief justice. Eisenhower believed Warren would follow a moderate course of action toward desegregation; his feelings regarding the appointment are detailed in the closing paragraphs of the second featured document, Letter from President Eisenhower to E. E. "Swede" Hazlett. In his brief to the Warren Court that December, Thurgood Marshall described the separate but equal ruling as erroneous and called for an immediate reversal under the 14th Amendment. He argued that it allowed the government to prohibit any state action based on race, including segregation in public schools. The defense countered this interpretation pointing to several states that were practicing segregation at the time they ratified the 14th Amendment. Surely they would not have done so if they had believed the 14th Amendment applied to segregation laws. The U.S. Department of Justice also filed a brief; it was in favor of desegregation but asked for a gradual changeover.

Over the next few months, the new chief justice worked to bring the splintered Court together. He knew that clear guidelines and gradual implementation were going to be important considerations, as the largest concern remaining among the justices was the racial unrest that would doubtless follow their ruling. Finally, on May 17, 1954, Chief Justice Earl Warren read the unanimous opinion; school segregation by law was unconstitutional. Arguments were to be heard during the next term to determine just how the ruling would be imposed. Just over one year later, on May 31, 1955, Warren read the Court's unanimous decision, now referred to as *Brown II* , instructing the states to begin desegregation plans "with all deliberate speed." The third featured document, Judgment, *Brown v. Board of Education* , shows the careful wording Warren employed in order to ensure backing of the full Court.

Despite two unanimous decisions and careful, if not vague, wording, there was considerable resistance to the Supreme Court's ruling in *Brown v. Board of Education* . In addition to the obvious disapproving segregationists were some constitutional scholars who felt that the decision went against legal tradition by relying heavily on data supplied by social scientists rather than precedent or established law. Supporters of judicial restraint believed the Court had overstepped its constitutional powers by essentially writing new law.

However, minority groups and members of the civil rights movement were buoyed by the *Brown* decision even without specific directions for implementation. Proponents of judicial activism believed the Supreme Court had appropriately used its position to adapt

the basis of the Constitution to address new problems in new times. The Warren Court stayed this course for the next 15 years, deciding cases that significantly affected not only race relations, but also the administration of criminal justice, the operation of the political process, and the separation of church and state.

Resources

Dudley, M. E. *Brown v. Board of Education (1954)* . New York: Twenty-First Century Books, 1994.

Forman, J. A. *Law and Disorder* . New York: Thomas Nelson, Inc., 1972.

Goode, S. *The Controversial Court, Supreme Court Influences on American Life* . New York: Julian Messner, 1982.

Koch, Kenneth. *Wishes, Lies, and Dreams: Teaching Children to Write Poetry* . New York: Vintage, 1970.

Lawson, D. *The Changing Face of the Constitution* . New York: Franklin Watts, 1979.

Teaching Activities

Tapping into Prior Knowledge

1. Explain to students that this lesson focuses on a Supreme Court decision made in 1955, one that was written by Chief Justice Earl Warren. Further explain that in the following lessons, they will learn about this landmark decision, including the opposition to it, from original court documents and presidential correspondence. Begin by directing students in a brainstorming activity to assess the extent of their prior knowledge concerning the United States Supreme Court. Instruct students to record everything they think they know about the United States Supreme Court in list form or another appropriate graphic organizer. Lead a class discussion about what they included without making any corrections or clarifications. Collect the brainstorming sheets for later use (see Activity 7). Depending upon the depth of their prior knowledge, lead an introduction or a review of how the Supreme Court works, being sure to examine how the Court decides what cases it will hear.

Analyzing the Documents

2. Document 1: The Dissenting Opinion of Judge Waites Waring in *Harry Briggs, Jr., et al. v. R. W. Elliott, Chairman, et al.* is 20 pages in length, but for purposes of this lesson, the focus is on the final 3 pages. The Briggs case originated in Clarendon County, South Carolina, and was argued by Thurgood Marshall, counsel for the NAACP. Pages 18-20 of the dissenting opinion describe some of the social scientists' testimony later used by the Supreme Court in the *Brown* decision. Before reading pages 18-20 together as a class, provide students with background information about the policy of "separate but equal,"

specifically the *Plessy v. Ferguson* decision, which *Brown v. Board of Education* helped to make obsolete. Prompt a class discussion of the document with the following questions: Upon what evidence did the witnesses base their testimony? What was the judge's conclusion about the acquisition of racial prejudice? What was his opinion?

If time permits, a more complete understanding of the opinion may be gleaned by dividing the remainder of the document among small groups of students. Direct each group to read and summarize the main point of its assigned section and share its findings with the class. The following page breakdowns are suggested:
pages 1-5 background information
pages 5-7 rationale for hearing the case
pages 7-8 slavery and the Constitution
pages 8-9 13th, 14th, 15th Amendments
pages 9-10 South Carolina laws
pages 10-12 litigation in other areas
pages 12-13 litigation in higher education
pages 13-14 *Plessy v. Ferguson*
pages 14-16 higher education decisions
pages 16-18 defendants' two witnesses

3. Document 2: The Letter from President Eisenhower to E. E. "Swede" Hazlett touches on several significant topics of the Eisenhower presidency, from the election campaign to Indo-China to the appointment of Supreme Court Chief Justice Earl Warren. Instruct students to read the letter and, while doing so, to compose a list of the various topics Eisenhower responded to in each of the 10 paragraphs. Focus students on the last topic, the appointment of Earl Warren, by asking the following questions. Lead a class discussion of their findings. What seemed to be "Swede's" implication about the appointment of Earl Warren? What was Eisenhower's response? What factors did Eisenhower consider important when making his nomination decision? Why was age a significant determinant? How did Eisenhower characterize the segregation issue? What were his expectations of the Court? Of Warren? Do you think they were met? To extend the lesson, refer to the list of additional topics compiled earlier in the activity. Challenge students to research the context of one of the subjects and to fashion a paragraph out of "Swede's" original correspondence that might have prompted Eisenhower's reply.

4. Document 3: Judgment, *Brown v. Board of Education* , was issued on May 31, 1955, and has come to be known as *Brown II* . Using the Written Document Analysis Worksheet as a starting point, instruct students to study the document and to prepare answers to the following questions. Who was to be responsible for overseeing the decision? What guidelines, if any, were given? Why do you think the language was worded this way? Why would the Supreme Court direct a lower court to enforce its decision rather than handle it directly? Encourage students to share their answers with the class.

Putting the Pieces Together

5. *Brown v. Board of Education* is the collective title for five separate cases heard concurrently by the United States Supreme Court from 1952 to1955.
Oliver Brown et al. v. Board of Education of Topeka, Shawnee County, Kansas, et al.
Harry Briggs, Jr., et al. v. R.W. Elliott, et al.
Dorothy E. Davis et al. v. County School Board of Prince Edward County, Virginia, et al.
Spottswood Thomas Bolling et al. v. C. Melvin Sharpe et al.
Francis B. Gebhart et al. v. Ethel Louise Belton et al.
While their goals were the same, each case had unique elements and followed separate paths prior to reaching the Supreme Court. Divide students into five groups. Assign each group one of the five cases and instruct them to independently research the facts for their assigned cases. After research is completed, regroup students so that each group includes at least one student from each of the five original groups. Direct each new group to compile a graphic representation of the main points of the five cases highlighting their similarities and their unique characteristics, as well as their paths to the Supreme Court. Require that each group present its finished product to the class so that the various approaches and findings may be compared.

Creating a Civil Rights Timeline

6. While *Brown v. Board of Education* is considered a landmark case of the 20th century, it was not the first nor the last in a series of cases that addressed civil liberties and equal rights. Construct a classroom timeline of the civil rights movement after the *Brown* decision. Divide students into teams, assigning each team a specific decade (or some other appropriate breakdown depending upon class size). Instruct the teams to research the Supreme Court decisions from 1955 onward that impacted civil rights, the key players, as well as the events, and legislation that followed in the wake of these decisions. Direct them to creatively present their findings on poster boards, one board per team. Encourage students to research NAIL [http://www.nara.gov/nara/nail.html] for photos and other primary documents to display on their posters. Construct the timeline from the finished posters and require each group to explain its piece.

Connecting with Poetry

7. Redistribute students' brainstorming lists collected after the first activity. Direct students to read over what they thought they knew about the U.S. Supreme Court at the onset of this lesson and to make corrections or additions to their lists based on what they have learned. Write the following format on the board for students to copy:

I used to think...
But now I know...
I used to think...
But now I know...

Instruct students first to reflect on what ideas they might have had about the Supreme Court that have now changed and then to write a poem following the format on the board.

Encourage them to write as many pairs of statements as necessary to demonstrate how much their knowledge of the Supreme Court has grown.

Writing an Editorial

8. Explain to students that the debate over judicial restraint versus judicial activism has existed since the days of Thomas Jefferson and John Marshall. In fact the Warren Court was condemned more than once for "making law" rather than just "interpreting it." Display the editorial pages of several newspapers on a bulletin board or wall and discuss the manner in which the press can address such issues as the powers of the Supreme Court. Divide the class into four sections. Assign students in section 1 to write editorials supporting judicial restraint; students in section 2 should write editorials supporting judicial activism. (Encourage students to use examples of decisions made by the Warren Court in support of their positions.) Explain to the remaining groups that their eventual task will be to respond individually to one of the finished articles in the form of a letter-to-the-editor. Assign students in one of the remaining two sections to respond to the judicial restraint articles, while students in the last section reply to the judicial activism articles. (Another option would be to form a fifth group of students and direct them to create editorial cartoons depicting one or both points of view.) Display the letters alongside the articles.

Designing a Book Jacket

9. The names Thurgood Marshall and Earl Warren will always be associated with the landmark *Brown v. Board of Education* decision and the issue of school segregation. However, each man had a prominent career that spanned decades before and after the historic *Brown* ruling. Explain to students that a local publisher is compiling a new series of biographies of notable 20th-century Americans and is soliciting students' ideas for book jacket designs. Challenge students to work in pairs and design a book jacket for a biography of Thurgood Marshall or Earl Warren. The design should include the following elements:

a. Series title
b. Individual book title
c. Front and back cover designs
d. Summary for inside flap (front)
e. Author information for inside flap (back)

Nominating a New Chief Justice

10. In his October 1954, letter to E. E. "Swede" Hazlett, President Eisenhower expressed his beliefs about the important qualifications for a Supreme Court chief justice. Review Eisenhower's considerations as outlined in the letter with the class. Ask students to privately brainstorm the qualifications they would consider most important for a chief justice in the next millennium. Encourage volunteers to share their ideas and record them on the overhead projector. Lead a discussion of some possible issues before the Supreme Court in the near future. Next, direct students to pretend it is 2001 and to assume the role

of president of the United States. An unexpected retirement has created an opening on the Supreme Court, and the Senate is awaiting a nomination from the president. Citing the second featured document as a model, instruct students to write a letter to a close friend outlining the qualifications they feel the nominee must possess.

The documents included in this project are from Record Group 267, Records of the Supreme Court; the Eisenhower Library; and the Records of the United States District Court, Eastern District of South Carolina. They are available online through the National Archives Information Locator (NAIL) [http://www.nara.gov/nara/nail.html] database, control numbers NRCA-21-SCECVCA-2657-DSSNTGOPN, NLE-EPRES-DDEDIARY-OCT54(1)-LTREEH, NRCA-21-SCECVCA-2657-DSSNTGOPN. NAIL is a searchable database that contains information about a wide variety of NARA holdings across the country. You can use NAIL to search record descriptions by keywords or topics and retrieve digital copies of selected textual documents, photographs, maps, and sound recordings related to thousands of topics.

This article was written by Mary Frances Greene, a teacher at Marie Murphy School, Avoca District 37, Wilmette, IL.


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Written Document Analysis Worksheet

1. TYPE OF DOCUMENT (Check one):

___ Newspaper	___ Map	___ Advertisement
___ Letter	___ Telegram	___ Congressional record
___ Patent	___ Press release	___ Census report
___ Memorandum	___ Report	___ Other

2. UNIQUE PHYSICAL QUALITIES OF THE DOCUMENT (Check one or more):

___ Interesting letterhead	___ Notations
___ Handwritten	___ "RECEIVED" stamp
___ Typed	___ Other
___ Seals	

3. DATE(S) OF DOCUMENT: _____

4. AUTHOR (OR CREATOR) OF THE DOCUMENT: _____

POSITION (TITLE): _____

5. FOR WHAT AUDIENCE WAS THE DOCUMENT WRITTEN? _____

_____

6. DOCUMENT INFORMATION (There are many possible ways to answer A-E.)

A. List three things the author said that you think are important:

1. _____
2. _____
3. _____

B. Why do you think this document was written?

_____

_____

C. What evidence in the document helps you know why it was written? Quote from the document.

_____

_____

D. List two things the document tells you about life in the United States at the time it was written:

_____

_____

E. Write a question to the author that is left unanswered by the document:

_____

_____

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

FILED

JUN 23 1951

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

VOL 68 PAGE 59

HARRY BRIGGS, JR., et al,

Plaintiffs,

vs.

R. W. ELLIOTT, Chairman, et al,

Defendants.

Civil Action No. 2657

DISSENTING OPINION

This case has been brought for the express and declared purpose of determining the right of the State of South Carolina, in its public schools, to practice segregation according to race.

The Plaintiffs are all residents of Clarendon County, South Carolina which is situated within the Eastern District of South Carolina and within the jurisdiction of this court. The Plaintiffs consist of minors and adults there being forty-six minors who are qualified to attend and are attending the public schools in School District 22 of Clarendon County; and twenty adults who are taxpayers and are either guardians or parents of the minor Plaintiffs. The Defendants are members of the Board of Trustees of School District 22 and other officials of the educational system of Clarendon County including the superintendent of 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

Document 1: Dissenting Opinion of Judge Waites Waring in *Harry Briggs, Jr., et al. v. R. W. Elliott, Chairman, et al.*, page 1.

the State of South Carolina) sets up two classes of schools; one for people said to belong to the white race and the other for people of other races but primarily for those said to belong to the Negro race or of mixed races and either wholly, partially, or faintly alleged to be of African or Negro descent. These Plaintiffs bring this action for the enforcement of the rights to which they claim they are entitled and on behalf of many others who are in like plight and condition and the suit is denominated a class suit for the purpose of abrogation of what is claimed to be the enforcement of unfair and discriminatory laws by the Defendants. Plaintiffs claim that they are entitled to bring this case and that this court has jurisdiction under the Fourteenth Amendment of the Constitution of the United States and of a number of statutes of the United States, commonly referred to as civil rights statutes[1]. The Plaintiffs demand relief under the above referred to sections of the laws of the United States by way of a Declaratory Judgment and Permanent Injunction.

It is alleged that the Defendants are acting under the authority granted them by the Constitution and laws of the State of South Carolina and that all of these are in contravention of the Constitution and laws of the United States. The particular portions of the laws of South Carolina are as follows:

Article XI, Section 5 is as follows:

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

Article XI, Section 7 is as follows:

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

Section 5377 of the Code of Laws of South Carolina is as follows:

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

If is further shown that the Defendants are acting under the

Document 1: Dissenting Opinion of Judge Waites Waring in *Harry Briggs, Jr., et al. v. R. W. Elliott, Chairman, et al*, Page 2.

authority of the Constitution and laws of the State of South Carolina providing for the creation of various school districts[2], and they have strictly separated and segregated the school facilities, both elementary and high school, according to race. There are, in said school district, three schools which are used exclusively by Negroes: to wit, Rambay Elementary School, Liberty Hill Elementary School, and Scotts Branch Union (a combination of elementary and high school). There are in the same school district, two schools maintained for whites, namely, Summerton Elementary School and Summerton High School. The last named serves some of the other school districts in Clarendon County as well as No. 22.

It appears that the Plaintiffs filed a petition with the Defendants requesting that the Defendants cease discrimination against the Negro children of public school age; and the situation complained of not having been remedied or changed, the Plaintiffs now ask this court to require the Defendants to grant them their rights guaranteed under the Fourteenth Amendment of the Constitution of the United States and they 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

3.

Document 1: Dissenting Opinion of Judge Waites Waring in *Harry Briggs, Jr., et al. v. R. W. Elliott, Chairman, et al,* Page 3.

afforded the pupils of different races are adqquate 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,

Document 1: Dissenting Opinion of Judge Waites Waring in *Harry Briggs, Jr., et al. v. R. W. Elliott, Chairman, et al,* Page 4.

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

Document 1: Dissenting Opinion of Judge Waites Waring in *Harry Briggs, Jr., et al. v. R. W. Elliott, Chairman, et al,* Page 5.

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

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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 medioval 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.

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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 those 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

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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 color[6].

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Frequent and repated instances of projudico in criminal cases because of the brutal treatment of dofondants because of their color have been passed upon in a largo number of cases[7].

Discrimination by segregation of housing facilities and attempts to control the same by covenants have also been outlawed[8].

In the field of labor employment and particularly the relation of labor unions to the racial problem, discrimination has again been forbidden[9].

Perhaps the most serious battle for oquality of rights has been in the field of exercise of suffrage. For years, certain of the southern states have attempted to prevent the Negro from taking part in elections by various devices. It is unnecessary to enumerate the long list of cases, but from time to time, courts have stricken down all of these various devices classed as the "grandfather clause", educational tests and white private clubs[10].

The foregoing are but a few brief references to some of the major landmarks in the fight by Negroes for equality. We now come to the more specific question, namely, the field of education. The question of the right of the state to practice segregation by race in certain educational facilities has only recently been tested in the courts. The cases of Gaines v. Canada, 305 U.S. 337 and Sipuel v. Board of Regents, 332 U.S. 631 decided that Negroes were entitled to the same type of legal education that whites were given. It was further decided that the equal facilites 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. Paintor, 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[11], which decision was made many years before the Civil War and when, of course, the Fourteenth Amendment had not even been dreamed of.

But these arguments are beside the point in the present

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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 accomodations might be required by a state in intra-state transportation. How similar attempts relating to inter-state transportation have fared have been shown in the foregoing discussion and notes.[12] It has been said and repeated here in argument that the Supreme Court has refused to review the Plessy case in the Sweatt, McLaurin and other cases and this has been pointed to as proof that the Supreme Court retains and approves the validity of Plessy. It is astonishing that such an argument should be presented or used in this or any other court. The Supreme Court in Sweatt and McLaurin was not considering railroad accomodations. It was considering education just as we are considering it here and the Supreme Court distinctly and unequivocally hold 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 accomodations 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

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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.

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> "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 Sopor, 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

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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

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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

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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.

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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.

Waites Waring

Charleston, South Carolina — UNITED STATES DISTRICT JUDGE

Date: June 21, 1951

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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. 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.

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October 23, 1954

Dear Swede:

Your judgment on the spinning reel coincides exactly with mine. Since 1944 when I first encountered these gadgets in France, I have been the recipient of various types of spinners -- I should say one arrives about every sixty days. I leave them to those who like them. For my own fishing, I keep half a dozen fly rods ranging from about 1-1/2 ounces to 4-1/2, and I keep three favorite casting rods. I think this combination ought to see me through the fishing seasons left to me.

I skip over your comments on the election campaign. I have appeared before a number of audiences, but I strive to deal only with substantive matters -- with fact and logical deduction -- while staying out of political bickering.

When you mention Adlai, I again find myself in complete agreement with you, except that I doubt that he is a very dangerous opponent. However, if he should slip into a position of real responsibility, he would represent a great risk for the country.

As to "four-headed" foreign policy, the Democrats never succeeded in keeping people like McCarran from sounding off when they so chose. So if a Republican Senator lets go once in a while, I don't know what we can do about it, even though I deplore the misunderstandings they create.

So far as Dulles is concerned, he has never made a serious pronouncement, agreement or proposal without complete and exhaustive consultation with me in advance and, of course, my approval. If your friend Senator Ervin would take the trouble to look up the record, he would see that Nixon belonged in the same school, although he admittedly tries to put his pronouncements into more colorful language.

Document 2: Letter from President Dwight D. Eisenhower to E. E. "Swede" Hazlett, October 23, 1954, page 1

Captain Swede Hazlett - 2

You are somewhat wrong in your statement, "I know that at one time you contemplated some really drastic action in Indo-China." What I really attempted to do was to get established in that region the conditions under which I felt the United States could properly intervene to protect its own interests. A proper political foundation for any military action was essential. Since we could not bring it about (though we prodded and argued for almost two years), I gave not even a tentative approval to any plan for massive intervention.

You are right in your conclusion that the European situation looks somewhat better. By no means have I made up my mind finally on Mendes-France. For the moment, I accept your instinctive impression as my own.

As to appointments on the Supreme Court, I think one or two observations are applicable. Your implication seems to be that Governor Warren was a "political" appointment. It was most emphatically not.

That particular vacancy occurred most unexpectedly, and the particular qualifications in the individual that should fill it were something that I studied and lived with for a number of weeks. The Chief Justice has a great many administrative tasks, as well as obvious responsibilities involving personal leadership. Along with this, he must be a statesman and, in my opinion (since I have my share of egotism), I could not do my duty unless I appointed a man whose philosophy of government was somewhat along the lines of my own. All this finally brought me down to Warren, especially as I refused to appoint anyone to the Supreme Court who was over 62 years of age. It seems to me completely futile to try to use a Supreme Court vacancy as a mere reward for long and brilliant service. If I should be succeeded by a New Deal President, a judge who is now 69 or 70 would probably create a vacancy very soon to be

Document 2: Letter from President Dwight D. Eisenhower to E. E. "Swede" Hazlett, October 23, 1954, page 2.

filled by the left-wingers. So -- it seems to me that prudence demands that I secure relatively young men for any vacancies that may occur. I wish that I could find a number of outstanding jurists in the low 50's.

The segregation issue will, I think, become acute or tend to die out according to the character of the procedure orders that the Court will probably issue this winter. My own guess is that they will be very moderate and accord a maximum of initiative to local courts.

Give my love to the family.

As ever,

Captain E. E. Hazlett, Jr., U.S.N. (Ret.)
Forest Hills
Chapel Hill, North Carolina

Document 2: Letter from President Dwight D. Eisenhower to E. E. "Swede" Hazlett, October 23, 1954, page 3.

Supreme Court of the United States

No. 1 ——, October Term, 19 54

Oliver Brown, Mrs. Richard Lawton, Mrs. Sadie Emmanuel et al.,
Appellants,

vs.

Board of Education of Topeka, Shawnee County, Kansas, et al.

Appeal from the United States District Court for the ——————
District of Kansas.

This cause came on to be heard on the transcript of the record from the United States District Court for the —————— District of Kansas, ——————
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 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.

Per Mr. Chief Justice Warren,
May 31, 1955.

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Document 3: Judgment, *Brown v. Board of Education*

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