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Analysis of
Mills v Board of Ed of Anne Arundel Co.
Mills v Lowndes, et al.

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Case Analysis
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Introduction

In the 1930's, there were approximately forty schools in Anne Arundel County (AAC) and the salaries for black teachers were not equal to the salary for white teachers.[1] Mills v Board Of Ed. of Anne Arundel County (AAC), 1939, is a case about a colored school teacher, Walter Mills, who was the principal of Parole Elementary School located in AAC, Maryland. Walter Mills sued the State Board of Education in federal court in Baltimore to get equal pay for black teachers. Thurgood Marshall, acting as special counsel for the National Association for the Advancement of Colored People (NAACP), was one of the attorneys who represented Mills in this case. Ultimately, the presiding U.S. District Court Judge W. Calvin Chesnut, ruled that paying black teachers less than white teachers was a breach of their constitutional rights.[2] In order to provide a better understanding of Mills v Board of Ed of AAC, I will first address the predecessor case, Mills v Lowndes et al., March 1, 1939.

The defendants involved in the first case were Tasker G. Lowndes, Mrs. A. Thalheimer, Thomas H. Chambers, J.E.T. Finney, Charles A. Weagly, Wendell D. Allen, and Edward H. Sharpe who represented the State Board of Education of Maryland; Albert S. Cook as the State Superintendent of Schools; William Gordy, Jr. as the State Comptroller and Hooper S. Miles as the State Treasurer. William C. Walsh as the

Attorney General and Charles T. LeViness as Assistant Attorney General acted as Counsel for the defendants.

The plaintiff, Walter Mills was represented by Thurgood Marshall, Charles Houston, Leon A. Ransom and Edward P. Lovett. In the second suit, (Mills v The Board of Ed of AAC, November 22, 1939) the defendants named in the Mills complaint were the Board of Education of Anne Arundel County and George Fox as County Superintendent of the Schools of Anne Arundel County. Noah Hillman acted as the Counsel for the defendants while Thurgood Marshall, Charles Houston, Leon A. Ransom and Edward P. Lovett acted as Counsel for the plaintiff, Walter Mills.

Mills v Lowndes, et al.

Mills v Lowndes, 1939, lays the foundation behind the legal life of the "crusade" to equalize teachers' salaries. Lowndes was pivotal in bringing about the necessary changes to ensure the future equal protection in education for all students, black or colored. The arguments of Thurgood Marshall and Charles H. Houston for the plaintiff in Lowndes portray many instances of Maryland's failure to extend the equal protection of it State laws (Art 77 of Md. Code) to the colored youth.[3] Thus, the inequalities not only involve the unequal pay between the white and colored teachers, but also the inequalities between the white and colored school systems in general. Plaintiff's argued that this inequality became a federal issue with the 1896 Supreme Court decision in Plessy v Ferguson,[4] which mandated that the separate schools for colored be equal to those of white students.

In an effort to maintain the required minimum program in its public schools, Maryland broadened its legal protection of teachers with statutes containing the minimum salary schedule. Whether this 1922 salary schedule raised the duty for Maryland to provide equal protection to all teachers and principals became a major area of dispute in this case.

The Lowndes case was brought against the State Board of Education, the State Superintendent of Education, and the Treasurer and the Comptroller of the State rather then against the Anne Arundel County Board, which employed Walter Mills.[5] In this first lawsuit, Walter Mills sought to accomplish an "equalization of the salaries paid to white and colored teachers in the public schools of Maryland."[6] Mills' contended that colored teachers were paid significantly less white teachers despite the fact that colored teachers had the same teaching qualifications. To support his contention, plaintiff's counsel compared a Maryland statute that set the minimum salary rate of white teachers (containing the necessary education and experience) with a separate statute that provided a lower salary for colored teachers (containing the same education and experience.) Thus, he argued that a practical application of the statutes resulted in colored teachers being paid less then the white teachers solely based on their race or color and this act was unconstitutional discrimination under the equal protection clause of § 1 of the 14'th Amendment to the Federal Constitution, U.S.C.A. Furthermore, Mills sought to obtain an injunction against the enforcement of this unjust state statute.[7]

The following points were at issue in Lowndes:

"1. whether the statutes either on their face or in their practical application are contrary to the 14'th amendment; 2. whether the plaintiff has a sufficient status to raise this question; 3. whether the relief prayed for, an injunction against the enforcement of the law or practice thereunder by the general state officers, can be maintained in the

absence from the record of the local County Board as defendant, and 4. if so, is the remedy by injunction, which is the only relief sought, proper in this case."[8]

The third issue (above) questioned whether the Court could grant an injunction against the enforcement of the minimum wage statute in Anne Arundel County when Mills failed to name this local County Board as the defendant. The complaint was ultimately dismissed, in part, due to the court finding the Anne Arundel County Board of Ed was a "necessary and indispensable party."

Whether the MD Statutes are Unconstitutional as to the Plaintiff in Lowndes

All colored schools were taught by colored teachers, who were required to perform the same duties and meet the same qualifications as the white teachers, yet these colored teachers were paid significantly less.[9] When considering the issue of minimum salary, the court examined the Maryland Act of 1904, which set the minimum pay for white teachers (Ch. 584, § 53). The Court found that on its face, the statute did not appear discriminatory for the following reasons. First, Maryland was the only state with a statute that set the minimum salary for teachers in colored schools (white or black) lower than the minimum salary for white teachers when there were no State Normal Schools for the training of colored teachers. Thus, on its face, the statute did not appear discriminatory because the statutory difference indicated the unequal professional training of teachers in the colored schools results in an inequality of the student benefits there. Therefore, the inequality of the pay scale appeared to be based on the unequal qualifications between the teachers.

However, the Act of 1908 in Maryland provided for the Normal School for training colored teachers, under the supervision of the State Board of Education (Art 77, § 152, Md. Code.) Furthermore, the Act of 1908 (Ch. 599) stated that the State of Maryland set aside funding for the free education of colored students to facilitate the improvement of the State by "fitting them for work and responsibilities of citizens."[10] Unfortunately, this objective ran into difficulties, allegedly, due to the lack of competent colored teachers. However, the existence of the Normal School indicated the colored teachers had been receiving proper training to meet teaching qualifications. Thus, the court accepted as true that colored teachers possessed the same qualifications as white teachers for purposes of this case and to examine the inequality of the teachers' salary rate.[11]

Anne Arundel County participated in the "Equalization Fund" as set forth in § 204 of MD Code, Art. 77 of 1922. Pursuant to this statute and § 195, 202 and 203 of said Article 77, Mills received less salary than the minimum salary that the statute required for white principals of elementary schools in the State of Maryland.[12] Mills contended that the enforcement of this statute was discriminatory under the equal protection clause of the Fourteenth Amendment.

The Fourteenth Amendment states in part, "No State shall...deny to any person within its jurisdiction the equal protection of the laws." In Lowndes, the Court found that the Fourteenth Amendment's primary purpose was to prevent discriminatory legislation against the colored race regarding their civil and personal rights as national and state citizens. (U.S.C.A. Amend. 14, § 1.) However, the Court also stated that this Amendment did not grant additional rights for its citizens, rather it prevents the state

from refusing the equal protection of the laws, "with respect to both burdens and benefits, to any citizen or class of citizens. And, that the power of Congress to pass legislation to enforce the Amendment was limited to laws of a nature adapted to correct wrongful state action."[13]

In considering whether the statute was unconstitutional, the District Court looked at the practical application of the statute as alleged in the compliant. In the complaint, plaintiff stated, "The case involves the enforcement of unconstitutional statutes by state officers acting pursuant to these statutes."

The facts stated that the plaintiff (Mills) acquired his first grade teacher's certificate as well as his principal's certificate from the State Board of Education.[14] Furthermore, Mills had been teaching for ten years and was, at the time of this case, the principal of a public elementary school for colored children. Thus, it was deduced that he was subject to the regulations and the control of State Board of Education and the State Superintendent of Schools who were the defendants in this case.[15] Furthermore, plaintiff established jurisdiction under Claybrook v City of Owensboro and Davenport v Cloverport, 1897, where state officers enforced statutes that established taxation for school expenses which distributed against Negroes in its distribution.

There appeared to be little judicial authority to guide the Court in determining whether or not a public employee such as Mills could invoke the constitutionally provided equal protection clause of the Fourteenth Amendment to attack a statute as unconstitutional and unequal legislation. Additionally, prior to the case at hand, it had been generally accepted that the equal protection clause did not apply to this issue and "in

legal theory at least, schools are maintained for the benefit of school children and not for the benefit of teachers." [16]

Thurgood Marshall argued for the plaintiff that when Maryland accepted public education as a state function, this education required equal provisions for all students under the Constitution. Historically, political subdivisions of a state financed public education, but now the state assumed this financing. Plaintiff's Counsel suggested that this was an, "equality of educational opportunities," issue and contended that the Supreme Court requirement of equality in the treatment of the white and colored schools meant more than the number of grades and kind of school.[17]

"Equality includes school term, buildings, equipment, bus-transportation, consolidation, supervision and equally trained teaching staff guaranteed by equal salaries for identical qualifications and experience."[18]

Thus, the equalization of teacher salaries appears to play a pivotal role in ensuring the colored students that their teachers possessed the same skills and training as the white teachers and ultimately protected their constitutional rights to obtain an equal education. The minimum salary schedule for Maryland teachers was explained in Maryland statutes § 90, 195, 202 and 203 of Bagby's Annotated Code of Maryland. This minimum salary schedule provided white teachers with a higher minimum than the minimum provided for colored teachers with the same qualifications and experience. Furthermore, this schedule provided minimum salary protection for the white principals while providing absolutely none for the colored principals.[19] Thus, Marshall argued that financing the public education based on this minimum salary schedule denied the colored teachers the equal protection of Maryland laws.

Additionally, Counsel for the plaintiff argued under Strauder v West Virginia, 1879, that the State laws must be the same for black as well as for whites and that § 1 of the Fourteenth Amendment, although it speaks in general terms, guarantees the equal protection of the laws to all U.S. citizens.[20] Additionally, in Yick Wo v Hopkins, 1886, (a leading case on discrimination by a sub-division of the state,) the City of San Francisco passed an ordinance making it illegal for any person to maintain a laundry in the city unless they obtained the consent of the Board of Advisors or unless their laundry building was constructed of stone or brick. At this time, 310 of the 320 laundries were made of wood and 240 of these were owned by Chinese. Additionally, all Chinese who applied for the license from the Board of Advisors were refused and one Chinese was arrested because he violated the ordinance. The Supreme Court held that the imprisonment of this man was invalid and stated that although the law on its face appeared "impartial," it was unequal in its application. Furthermore, in Yick Wo, the Court found that the enforcement of this statute was illegal discrimination and the public administration that enforced the law denied equal protection of the laws. Thus, this was held a violation of the Fourteenth Amendment.[21]

Marshall framed his argument around numerous cases in which the protection of the Fourteenth Amendment had been applied in his opposition to the motion to dismiss in Lowndes. In Claybrook v City of Owensboro, 1883, the Kentucky General Assembly passed an Act, which authorized a municipal corporation to levy taxes for school funding. Under this Act, the taxes from white people were to be distributed to white schools while the taxes from colored people to colored schools. The residents of Owensboro filed for

and were granted an injunction in Federal Court restraining the distribution of the taxes.[22] The Federal Court held:

"The equal protection of the law guaranteed by this Amendment means and can only mean that the laws of the states must be equal in their benefit as well as equal in their burdens and that less would not be 'equal protection of the laws.' This does not mean absolute equality in distributing the benefits of taxation. This is impractical; but it does mean the distribution of the benefits upon some fair and equal classification or basis."[23]

Likewise, Marshall contended that the protection of the Fourteenth Amendment applied and the statutes establishing the salary schedules were discriminatorily unconstitutional and void. Furthermore, these statutes as enforced by the defendants deny Mills and other colored teachers and principals the equal protection of the laws.[24]

Conversely, to bolster the opinion that the equal protection clause was inapplicable in this case, the Court referenced the following cases. First, under Thomas v Field, 1923, in a suit brought by the citizens and taxpayers to equalize teacher salaries between white and colored teachers, the School Board of Baltimore City voluntarily equalized the salaries of white and colored teachers. They were not legally obligated to do so. Likewise, this city ordinance controlled education in Baltimore City and gave power and authority to the School Board of Baltimore City to set the pay rates of teachers in much the same way as the county statute, at issue here, gave authority to the County Board of Ed to set teacher pay rates. Additionally, in Mills v Lowndes, the court emphasized the fact that the City School Board in Thomas was not required to equalize these salaries.[25]

Similarly, in Carrithers v Shelbyville, the advocates for equal pay between the sexes did not rely on the Fourteenth Amendment equal protection clause to support their case.[26] Also, in Herbert v Baltimore County, the MD Court of Appeals rejected the

proposition that an employee or officer of the State of MD may invoke the Fourteenth Amendment to attack a state statute as unconstitutional unequal legislation.[27]

Perhaps more significantly, the Court in Herbert also found it within the power of the state Legislature to prescribe the plaintiff's (who was the Baltimore County Justice of the Peace) duties and compensation and that the plaintiff, as well as others holding the state's commission to act as a justice, must accept the compensation provided by the Legislature. In essence, the Court in Herbert stated that the plaintiff, as the Baltimore County Justice of the Peace, did not have the right to object to a "reduced salary or fee schedule of Justices of the Peace in Baltimore County in certain classes of cases, as compared with the compensation of Justices of the Peace in other counties."[28]

Similarly, the Court in Mills v Lowndes upheld the right of the State to determine the qualifications for and the pay rate affixed to a public office of employment and found that this right is generally unrestricted. Furthermore, an employee of the state such as Mills, who has accepted his employment at a stated salary, cannot contend that he had been denied a civil right under the Fourteenth Amendment's equal protection clause. Ultimately, the Mill's Court found it unnecessary to address the equal protection issue because the plaintiff was entitled to attack the Maryland Legislation in its "practical application."[29]

Judge Chesnut determined that Mills had the civil right as a qualified school teacher to "pursue his occupation without discriminatory legislature on account of his race or color." Although the state had the right to freely choose its employees and set their rate of salary, the state could not impose "discriminatory burdens" on colored teachers with regard to qualifications nor could the state set their pay rate less based only

on race or color. The Court held that the statutes had no discriminatory effect on their face, but focused on the practical application of the statutes.

More specifically, Judge Chesnut stated that if the state laws "prescribed that colored teachers of equal qualifications with white teachers should receive less compensation on account of their color, such a law would be unconstitutional." Furthermore, when a state law arbitrarily discriminates against the equal rights of some class of citizens within its jurisdiction solely based on race or color, the person's civil rights are invaded and that person has the right to invoke the equal protection clause of the Fourteenth Amendment.[30]

However, in Lowndes, the court found that Mills failed to state a good cause of action against the State officials named as defendants and without the County Board of Education as defendants, the complaint was dismissed. Furthermore, the Court found the true purpose of the complaint was to interfere with the Equalization Fund by stopping the distribution of the fund to the Counties which went against the State Treasury that was protected by the Eleventh Amendment Sovereign Immunity Clause.

The Equalization Fund in Lowndes

The state funding for public schools was apportioned based on the school census and the days of attendance. Apparently, due to the fact that some counties have low tax assessment base, these counties could not maintain a "minimum program of educational requirements, including the minimum salary schedule provided by statute even with the state funding." Thus, in 1922, the General Assembly established the Equalization Fund

in § 204 of Art. 77 of the Md. Code to assist these poorer counties in meeting the minimum salary schedule and educational standards requirement. It is important to note that the distribution of the Equalization Fund appeared to be based on the minimum salary schedule.[31]

Thurgood Marshall argued (in his opposition to motion to dismiss) in the Lowndes case that since AAC participated in the Equalization Fund, Mills as a principal in AAC had a personal interest in the Fund and therefore a right to participate in the distribution of this Fund. Likewise, other teachers and principals in AAC as well as those in other Counties that participated in this Fund have a right to participate in the distribution of the Funds.[32] Additionally, plaintiff contended that this fund was enforced by the defendants by statute and in order to share in the Equalization Fund, Counties were required to maintain the minimum program that mandates the minimum salaries to the teachers and principals. Thus, the plaintiff argued that the defendants were wrong to say (in effect) to AAC,

"If you want to share in this fund you must pay your white principals of elementary schools a certain minimum salary but you do not have to pay your principals of colored elementary schools any stated minimum salary. You must pay your white elementary and high school teachers a certain minimum salary which is higher than the minimum salary we require you to pay Negro teachers."[33]

Marshall argued that although the County can pay the Negro teachers a higher salary, the,

"Defendant State Board of Education requires to send into the state Board a list of all of their teachers, their years of experience, and the salaries they are actually paid. The statistician takes those lists, and if they are paid more than the minimum required by law, that is put out in an outside column and that is deducted from the amount the State will give under their equalization fund. All that they pay over the minimum salary they have to bear themselves."[34]

Thus, the statute appears to penalizes such Counties by refusing to give them more then the "discriminatory salary schedule." Furthermore, the plaintiff alleges in effect that the schedule states that the defendants, the State Board of Education, will assist in the financing of the discriminatory salary unless Counties elect to pay more or follow the Fourteenth Amendment and pay equal salaries for equal work, then those Counties must pay the difference. This argument is supported by the fact that the poorer Counties cannot even pay the minimum salaries unless they receive assistance from the state. Thus, these Counties are not able to equalize their salaries and the defendants enforce the discriminatory salary.[35]

Most of the funding to maintain the school systems in the counties and the City of Baltimore are derived from property taxes in the Counties and the City that are specifically set aside for that purpose. Additionally, funding from state taxes are set aside for education and distributed among the counties according to § 204, Art. 77 to supplement public education.[36] Art. 77 § 204 (amended before this case, in 1933) details the manner that the Equalization Fund works. In essence,

> "if the amount of County School taxes at the rate of forty-seven cents per one hundred dollars of assessable county property, together with the apportionments of the general school fund on the basis of census and school attendance, is not sufficient to meet the county schools expenses, including the minimum salary schedules, then the deficiency therein to that extent shall be paid to such counties from the Equalization Fund."[37]

The Mills Court found no equal protection denial regarding the Equalization Fund and that the basis of the appropriation of funding under this fund was not questionable under the federal law. In § 204 of Article 77 of the Md. Code, it appears that the funds are distributed based on the wealth of the Counties and that the fund will meet a deficit

only if the county tax rate of forty-seven cents plus general school funds does not produce sufficient funds to maintain a minimum standard of schooling. More importantly, there is no federal or state duty to grant funding at all and the proportion of funding to the Counties is left to the discretion of the Legislature. "Each County Board in co-operation with the County Commissioners as to the tax rate is free to determine the amount and quality of its educational facilities, and has power to select its teachers and determine compensation." Furthermore, whether to hire white or colored teachers is under the lawful discretion of these County entities as long as such teachers are properly qualified.[38]

The Court stated that nine Counties including Baltimore City had voluntarily equalized the salary of white and colored teachers while four of these Counties still used the Equalization Fund and it would be unfair to require all Counties to do away with the Equalization Fund.[39] The Court determined that the Equalization Fund to be a valuable asset that assisted public education of the poorer counties.

Status to Raise the Fourteenth Amendment

In Mills v Lowndes, the Court held that the plaintiff had status to raise the constitutional question not as a state employee, but as a teacher.[40] Additionally, Judge Chesnut found if the complaint (alleging the unjust discrimination between equally qualified white and black teachers solely based on race or color) were filed against the County Board of Education, such a complaint required an answer from the court.

However, the Court found that Mills failed to state a proper cause of action, partly because his employer, the County Board of Education, was not included in the complaint.

Additionally, the responsibility for the alleged discriminatory enforcement of the Maryland minimum salary statute for teachers in the public school system is within the County where such enforcement occurred. Conversely, "the defendants are all general state officials who are sued in their representative capacity." Furthermore, the Court stated that the remedy requested was an injunction against the state official's enforcement of unconstitutional laws, but such an injunction would "tie up the Equalization Fund, and prevent its distribution to the Counties who are beneficiaries of the fund."[41]

Thus, the Court concluded that this suit went directly against the State Treasury distribution of money and the Eleventh Amendment proscribed such a suit against the State. In order to succeed in this case, Mills must not only prove the law unconstitutional but also prove that the defendants have the authority to enforce the law. Additionally, Mills must show that the defendants enforced this law out of prejudice.

Counsel for plaintiff's cited Ex parte Young, 1923, which involved a suit to enjoin the prosecuting officers of the State from the enforcement of an unconstitutional law that carried criminal penalties, which were determined to be irreparable injuries. However, Judge Chesnut distinguished the doctrine of Ex parte Young by stating that Mills failed to show irreparable injury as a basis for the injunction to prevent the enforcement of the Maryland statute. Additionally, Mills had tenure that was not threatened. Thus, Judge Chesnut found that Mills appeared to request that the court grant "an added benefit" rather then to avoid a new burden. (Note: Fourteenth Amendment did not grant additional rights for its citizens' rather it prevents the state from refusing the equal protection of the laws, "with respect to both burdens and benefits, to any citizen or class of citizens.)[42]

The Court held that Mills' action could not be properly maintained against the general State officers that he named as defendants. Furthermore, without the County officials, who were deemed indispensable parties to this action, the Court held it was contrary to due process of law principles to proceed without such parties.[43]

Whether Requested Injunction Would be Proper

The Mills Court stated the following reasons as to why an injunction against the enforcement of the Maryland Statute would not be proper:

1. Such an injunction would be futile as to the plaintiff's ultimate objective to equalize the salary rate between white and colored teachers.
2. Such an injunction would cause an unnecessary embarrassment in the handling of the State's money.
3. Such an injunction would deprive the Counties, who are beneficiaries of the Equalization Fund and who are not parties to the case, and deprive those who have equalized their teachers' salaries of school funds without due process of law to them.[44]

Ultimately, Judge Chesnut dismissed Walter Mills' request for a permanent injunction and stated that the suit should not have been filed against the State Board of Education but against the Anne Arundel County Board of education, which employed Mills. The plaintiff's NAACP lawyers were given ten days to file an amended petition.

Mills v Board of Education of AAC

Judge Chesnut dismissed the Mills' complaint in Lowndes primarily because plaintiff failed to include his employer, the County Board of Education and the County Superintendent in his complaint. Additionally, in Lowndes, the Court found that it was wrong to sue the State under the Eleventh Amendment and that the Equalization Fund was a legal instrument to appropriate funding in AAC.[45]

In Mills v Board of Ed of AAC, 1939, (this second case,) the same plaintiff, Walter Mills, was unsuccessful in securing the equalization of salaries paid to white and colored teachers in the public schools located in Anne Arundel County, Maryland. This was caused in part by the entitlement of the Board of Education to maintain its discretion regarding the salary paid to specific teachers. However, the Court held that the discrimination between white and colored teachers in the County minimum salary schedule was largely based on race or color. Thus, Mills was entitled to a declaratory decree that this was unconstitutional discrimination and an injunction against the continuation of the discrimination was granted.[46]

History of Mills v Board of Ed of AAC

In Mills v Board of Ed, 1939, the plaintiff filed suit against the County Board of Education and its Superintendent alone. Subsequently, the defendants filed third-party complaints against the State Board of Education and the County Commissioners of AAC as third party defendants.

In his second suit, Mills contended that the Maryland statute providing a minimum salary for white qualified teachers and a separate statute providing a lower minimum salary for qualified teachers (white or black) in colored schools was

unconstitutional discrimination in its practical application under the Fourteenth Amendment equal protection clause. The plaintiff reasoned that only white teachers taught in the white schools whereas colored teachers taught in colored schools. Thus, when the statute was enforced, the colored teachers of AAC were paid less solely because of their race or color.[47]

Unjust Discrimination

In this case, Mills amended his complaint from Lowndes to seek a declaratory decree that the policy used by the defendants, the County Board of Education and its Superintendent, was enforced without a controlling statute. Thus, he argued that it violated the due process and equal protection clause of the Fourteenth Amendment to the Constitution as well as sections 41 & 43 of Title 8 of the U.S. Code.[48] After Lowndes, the Act of 1939, Ch. 502 (approved on May 11, 1939 and effective September 1, 1939,) established a new minimum salary rate for white teachers, which was based on preparation and experience. This Act replaced the old rate that was based on position-experience. However, the new Act raised the minimum salary for white teachers while it provided no such increase for teachers (black or white) who taught in colored schools.[49]

The salary schedules were somewhat complicated, therefore, the Court found it sufficient to compare a sample salary schedule where the white and colored teachers had achieved a grade certificate of 1 and had nine or more years of experience.[50] For example, in appendix 2A, which is a colored teacher salary schedule, Arletta H. Taylor had 10 years teaching experience, a grade certificate of 1 and received $991.10 annual salary for teaching grades 4-7 at a colored elementary school. Whereas in appendix #2D, which is a white teacher salary schedule, Margaret T. Smith had 11 years experience, a

grade certificate of 1 and received a $1250.00 annual salary for teaching grades 1-2 at a white elementary school.[51] Additionally, in Appendix 2B, which is a colored teacher salary schedule, Gertrude Flippen with 26 years experience and a grade certificate of 1 received $941.10 annual salary for teaching grade 6 at a colored school.[52] Whereas on appendix 2G, which is a white teacher salary schedule, Elizabeth W. Bassford with 26 years of experience and a grade certificate of 1, received $1450.0 annual salary for teaching grades 5-7 at a white school.[53]

The salary schedules revealed that despite rating colored and white teachers on a uniform basis, the minimum salary for colored teachers was significantly lower than the minimum salary for white teachers. This discrepancy was partly due to the fact that the colored teacher salaries were fixed by statute on a monthly basis whereas the white teacher salaries were fixed on a yearly bases.[54]

Mills argued that the statutes were invalid and unconstitutionally discriminatory on their face. Conversely, the defense countered that the statutes provided the minimum and not the maximum salary rate. Furthermore, the defense contended that the statute applied to teachers in colored schools whether white or colored, therefore, a white teacher could also earn less. Additionally, the defense argued under Lowndes that the County Boards of Education in cooperation with the County Commissions have liberty and authority for discretion regarding what salary is paid to both white and black teachers and a salary higher then the minimum may be paid. Furthermore, the defense showed that twenty-three counties of Maryland and Baltimore City pay white and colored teachers equal rates.[55] Thus, the defense contended that in practical application the statutes did

not require discrimination in practice on a basis of race or color, therefore they were not unconstitutional.

However, the Court found that the statutes allowed discrimination in practical application and that there was amply proof that most of the counties including AAC always had a substantial difference between the salary of white and colored teachers in the elementary schools, which favored the white teachers at a two to one ratio.[56]

Although the defense contended that the disparity had lessened gradually, the inequality pertaining to teacher salaries remained. The Court in Bopp v Clark, 1914, held a nondiscriminating minimum salary rate for teachers was constitutional.[57] However, the Mills Court maintained its focus on whether the statutes as they were practically applied (not on their face) constituted unconstitutional discrimination based on race and color and thus, unconstitutional.

Furthermore, the facts of the case revealed that if Mills were a white principal, he would receive $1550.00 per the county scale instead of the $1058.00 salary, which he currently received. However, the defendants contended that in the judgment of the Board, the three white principals mentioned in the case who receive a higher salary possessed "superior professional attainments and efficiency" to that of Mills.[58] They further justify the white principals salary of $1800.00 (which is $250 more then the minimum salary rate) based on the fact that these principals teach at consolidated schools and the different times that the student arrive and depart from the schools requires these principals to remain at the school an extra 1and 3/4 hours daily, unlike Mills. It was noted, however, the teachers who remain longer are not compensated.[59]

Mills filed suit individually as well as on behalf of other colored teachers in AAC and contended that the AAC salary for teachers and principals of white schools was higher then the salary for black elementary school teachers and both are higher then colored teachers. For example, A colored principal of Bates High in Annapolis, Frank E. Butler who possessed an B.A. degree from Morgan College and had been employed as a teacher or principal of a colored school in AAC for twenty-nine years received a yearly salary of $1600.00, whereas a white principal possessing the same qualifications would receive a minimum salary of $2600.00.[60]

At the time this case was filed, there were 243 white teachers in AAC and 91 colored teachers, out of which no colored teacher received as great a salary as any white teacher possessing the same qualifications.[61]

Whether the Difference Between White and Colored Teacher Salaries in AAC was Due to Discrimination Based on Race or Color

Defense argued the lower grades received by colored students indicated the inefficiency of the colored teachers. However, the Court found that the lower grade in examinations (which colored students appeared to receive) could be explained by factors other then the inefficiency of the colored teachers. This coupled with testimony given in this case, convinced Judge Chesnut that the unequal pay rates in AAC were due to discrimination. Furthermore, the Court found that the testimony of Superintendent Fox and that of the financial secretary of the board, Mrs. McNelly, substantially admitted that

this differential in salaries was due to discrimination based on race or color.[62] Judge Chesnut concluded from the pleadings and testimony that Mills:

"established that he as a colored teacher is unconstitutionally discriminated against in the practice of his profession by the discrimination made between white and colored teachers by the County Board of AAC; and that he is entitled to an injunction against the continuation of such discrimination to the extent that it is based solely on the grounds of race or color, and that he is also entitled to a declaratory degree to the effect that such unlawful discrimination exists; but I do not think the plaintiff is entitled to an injunction to the extent prayed for in the concluding clause of the prayer for an injunction reading; 'and from payment to the plaintiff or any other colored teacher or principal employed by them a less salary then they pay any white teacher or principal employed by them and filling an equivalent position in the public schools of AAC.'"[63]

In the above statement, the Judge emphasized that the Board of Education had discretion to determine the actual salary of teachers because an equivalent position did not necessary mean the teachers have equal qualification.[64] He reasoned that it would be difficult for the Board to rationalize paying less then the minimum salary to colored teachers', however, the Board would maintain discretion to pay a teacher, white or colored, more then the minimum salary.

The court did not deem it necessary to address whether or not the state minimum salary statute was unconstitutional on its face because it was the application of said statute that prejudiced Mills. Additionally, Judge Chesnut listed the practical advantages for the County School Board to follow the state statute in a non-discriminatory manner. One such advantage was that by following the statute, they become qualified for the Equalization Fund provided by the State of Maryland and it would be cheaper to raise the pay for colored teachers to the minimum salary specified for white teachers than not to qualify for this fund. For example, raising the colored teacher salary to meet the minimum would cost the County 45,000.00 and the County receives $100,000.00 from the Equalization Fund. Furthermore, the Judge viewed the funding system as beneficial

for education purposes, despite the fact that the tax would need to be raised 7-8 cents for the increased cost of $45,000.00. Additionally, he considered the current rate of county tax high at $2.30 per $100.00 of assessed valuation of property.[65]

Judge Chesnut emphasized that the Court had not been indifferent to the inequality in teacher salary and pointed to action taken to improve the discrepancy. More specifically, in January of 1939, there was a ten per cent pay increase for black teachers, however such an increase was not made the following year. Additionally, pay increases for colored teachers had lagged behind in the past. For example, in 1918 the minimum salary for colored teachers was $280 per year and increased in 1920 to $455 per year and to $595 per year in 1922 and in 1939 to $765 per year. At present time (1939,) the white teacher minimum was $1250 per year while $765 per year for colored teachers with comparable qualifications and experience.[66]

In an effort to reduce the salary discrepancy, the Board of Education proposed a voluntary increase in the salaries of colored teachers to equalize the pay on the gradual basis of 10% a year. However, this equalization would take about 4-5 years and required the plaintiff to drop this lawsuit. Thus, Mills denied the proposition.[67] The County further objected that if Mills was entitled to relief, the State Board of Education along with the County commissioners of AAC ought to remedy such relief. Ultimately, Judge Chesnut did not find judicial relief distinct from legislative amendments "to which the defendants are entitled against the State Board of Education and the state officers in charge of the Equalization Fund, or any present remedy over against the County Commissioners of Anne Arundel County."[68]

In conclusion, the third party complaint filed by the defendants was dismissed for failing to state a cause of action against the third parties and for failing to show that the defendants were entitled to any relief against the third parties.[69] Thus, Court held that the County Board of Education will plan a new budget and to the extent required by law, the County Commissioners of AAC will adjust the county rate for taxes.

Controlling Issues of Fact

The following finding of facts in this case were:

1. There had been unlawful discrimination by the defendants in the determination of salaries of white and colored teachers in AAC largely on account of race or color.
2. Plaintiff is entitled to injunction against the continuance of this unlawful discrimination.

However, the court emphasized that it was not determining what particular amounts of salaries needed to be paid by AAC either to white or colored teachers. Furthermore, the Board was not to be prohibited by the injunction granted in this case from exercising its judgment regarding the specific amount of salaries paid to individual teachers based on qualification unique to them. The Board was, however, enjoined from discriminating in salaries on basis of race or color.[70]

Analysis to Relate Mills Case to Crusade Era

Dismissal of Mills v Lowndes Complaint

To establish a relationship between Judge Chesnut's dismissal of the Mills v Lowndes Case with the subsequent Mills v AAC case, I will explore the reasoning behind his holding, which required that the Lowndes complaint be amended to include the County Board of Education and the County Commissioner. Whether this dismissal was an effort to end the salary dispute altogether or merely an issue of following the proper legal protocol seems to be unclear. At first glance, Judge Chesnut's holding appears to be an effort to wear down the NAACP lawyers by dismissing the complaint, based on legal technicalities in order not to reach the merits of the case. But for Marshall's perseverance, such a dismissal would likely have forced the NAACP legal team to sue in every county to accomplish the goal of equalization of teacher salary. However, I believe that Judge Chesnut merely wanted to protect the county school funding mechanism known as the Equalization Fund and that he firmly believed the Anne Arundel County School Board and the County Superintendent were necessary and indispensable parties to the Mills action. The following facts from the Mills case support my belief.

The Responsibility of the County Board of Education

The responsibility for the alleged discriminatory enforcement of the Maryland minimum salary statute, regarding teachers in the public school system, is within the county where such a discriminatory enforcement occurred. The Court in Lowndes held that Mills' action could not be properly maintained against the general state officers named as defendants because the county determined the specific salary and it did not

depend on the established state minimums to do so. Furthermore, without the county officials, who were deemed "necessary and indispensable" parties to this action, the Court held it was contrary to due process of law principles to proceed without such parties.[71]

> " A colored school teacher seeking to enjoin enforcement of allegedly discriminatory Maryland statutes providing a minimum scale of salaries for white teachers and a lower minimum for teachers in colored schools could not maintain suit against general state officials; but county board education was a "necessary and indispensable party," where real objective of suit was to tie up equalization fund and prevent its distribution to counties as beneficiaries." [72]

Thus, in Lowndes, Mills failed to state a proper cause of action because the Anne Arundel County Board of Education was not included in the complaint. Conversely, Judge Chesnut stated that "the defendants are all general state officials who are sued in their representative capacity."[73]

Judge Chesnut's Objective was to Preserve the Equalization Fund

A. Distribution of Fund

The Lowndes Court found that the remedy requested was an injunction against the state official's enforcement of unconstitutional laws, but such an injunction would "tie up the Equalization Fund, and prevent its distribution to the Counties who are beneficiaries of the fund."[74]

Furthermore, the Court reasoned that such an injunction would deprive the counties, who are beneficiaries of the Fund and who are not parties to the case, of the benefits of the fund. Additionally, such an action would unjustly deprive those who have equalized their teachers' salaries of school funds without due process of law to them.[75]

The court determined that only the county boards had the power to enforce the statutes and make contracts with teachers and the named defendants had no power or authority in this respect because they are powerless to prevent the county from either deciding to equalize the salaries or pay more then the minimum.

"As it is the counties that alone are enforcing the discriminatory schedule relief should be had against them, and not against those that have no authority in the premises. But the complaint neither makes the county a party nor does it even allege that demand has been made upon the county to desist from the alleged unconstitutional practice." [76]

B. Advantages of the Fund

Judge Chesnut listed the practical advantages for the Anne Arundel County School Board to follow the state statute in a non-discriminatory manner. I believe this listing further indicated that the Lowndes dismissal was geared toward protecting the Equalization Funding system to maintain the schools in the poorer counties. For example, one such advantage given by Judge Chesnut was that by following the statute, the county become qualified for the Equalization Fund provided by the State of Maryland, and it would be cheaper to raise the pay for colored teachers to the minimum salary specified for white teachers than not to qualify for this fund. Additionally, raising the colored teacher salary to meet the minimum would cost the County $45,000.00 and the County receives $100,000.00 from the Equalization Fund. Furthermore, the Judge viewed the funding system as beneficial for education purposes, despite the fact that the tax would need to be raised 7-8 cents for the increased cost of $45,000.00.[77] Thus, it appears that the Judge believed the benefits of the fund far outweighed the increased cost because the poorer counties would not be able to provide the minimum school standards without it.

The Role of Mills in the Crusade Against Inequality & Segregation

An attempt by Judge Chesnut to halt the equalization crusade seems futile when the Mills cases are examined within the overall NAACP strategy to eradicate inequality and segregation within the public school system. Personally, I believe that the Judge merely wanted to preserve the equalization funding system because he felt this was the only manner to adequately provide for education in the poorer counties.

The NAACP strategy to end inequality and segregation focused on creating legal precedent through gradual changes in the following areas:

"different pay scales for black and white teachers, disparity in transportation provided for black and white students and inequality in opportunity for graduate study at state-supported segregated institutions."[78]

In order to accomplish its goal of equalizing education, the NAACP challenged the Supreme Court decision in Plessy v Fergusion, 1896[79], which found segregation was valid if "separate but equal." By proving that the state created schools were not in fact equal systems and "separate was inherently unequal," the legal counsel for the NAACP sought to end this practice altogether. The strategy encompassed using "test cases" to create legal precedents against racial discrimination and segregation. These precedent cases were carefully crafted to possess a "sharply defined legal issue" which could be "supported by demonstrable evidence."[80] Furthermore, the NAACP legal team sought plaintiffs who were upstanding citizens and who were carefully chosen to ensure the best possible legal outcomes.[81]

One such case was Mills v Board of Education, 1939, in which Charles H. Houston and Marshall fought against the inequality between salaries of black and white teachers. The victory in Mills successfully created the principal that salary discrepancies could not be based solely on race.[82]

The Strategy Behind the Crusade

Thurgood Marshall was Houston's protégé and succeeded him as the chief counsel of the NAACP in mid 1938 when Houston's illness necessitated his stepping down. Houston was known as a powerful leader in the war to end segregation and according to Historian Richard Klugen, Houston transformed the Howard University Law School into a "living laboratory where civil-rights law was invented."[83] At Houston's 1950 memorial service, Marshall stated that Houston was the "engineer of it all," referring to the crusade to end discriminatory segregation.[84]

Houston had graduated from Harvard Law School and started to teach at the Howard University Law School in 1929. While at Howard, he focused the curriculum on "litigation against racism." This work to end racial inequality led to Houston becoming the chief counsel of the NAACP in 1935.[85]

After Houston became ill, Marshall picked up Houston's "torch" in 1939 and continued the fight for teacher salary equalization in the Mills cases as well as in similar cases that followed. Marshall began to operate on his own and he became chief counsel at NAACP in October 1938 when Houston went back to New York. Additionally, in

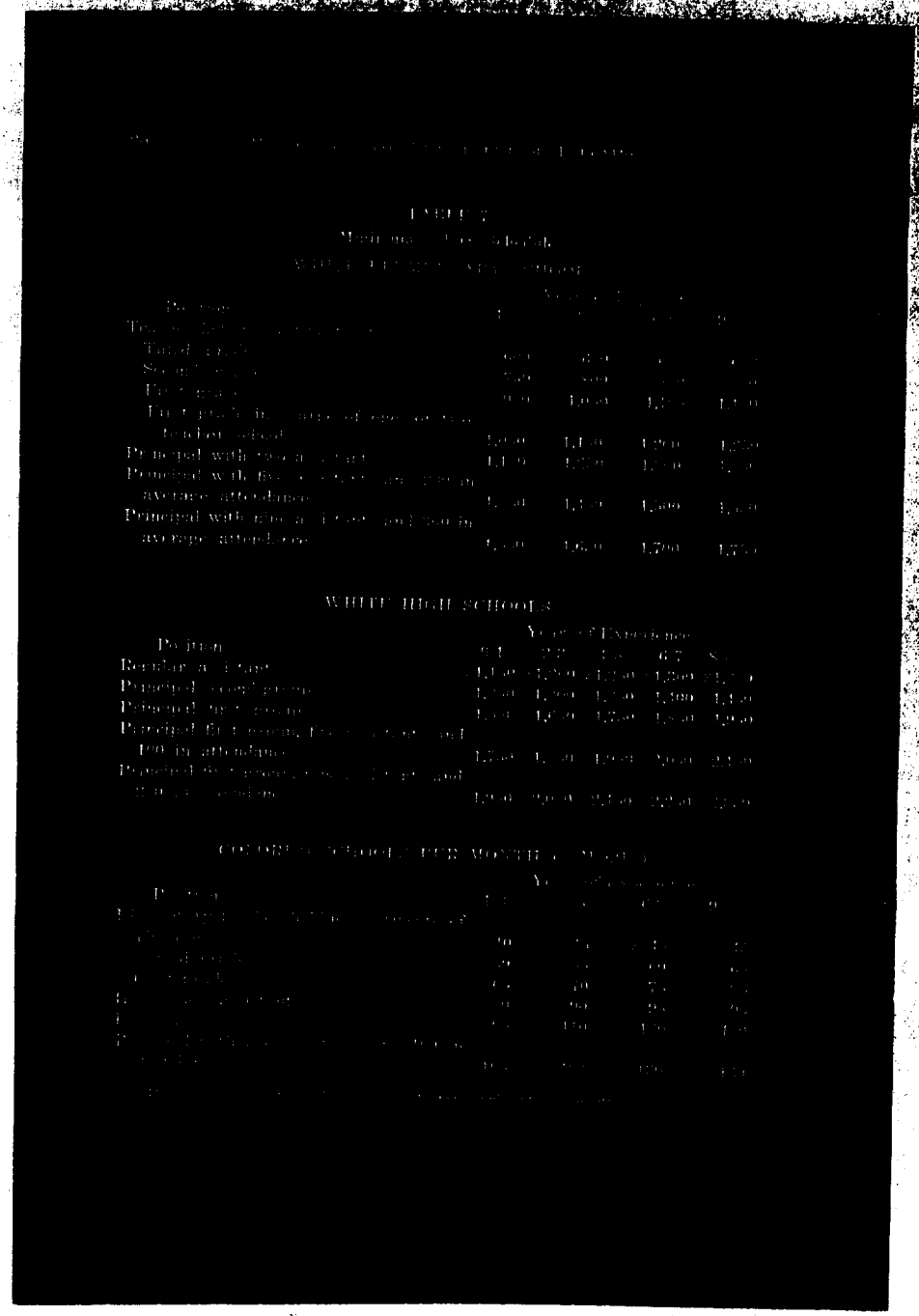
Table of Contents of Appendix

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE

DISTRICT OF MARYLAND

ALTER MILLS)
vs.)
TASKER G. LOWNDES, et al) No. _____

PLAINTIFF'S EXHIBIT



Lowndes Tl's Exhibit "A"
Minimum Salary Schedule
Appendix #1

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE

DISTRICT OF MARYLAND

WALTER MILLS)
vs.)
TASKER G. LOWNDES, et al) No. _____

PEAINTIFF'S EXHIBIT "A"

TABLE 7
Minimum Salary Schedule

WHITE ELEMENTARY SCHOOLS

Position	Years of Experience 1-3	4-5	6-8	9+
Teacher holding certificate of				
Third grade*	$ 600	$ 650	$ 650	$ 650
Second grade*	750	800	850	850
First grade	950	1,050	1,100	1,150
First grade in charge of one- or two-teacher school	1,050	1,150	1,200	1,250
Principal with two assistants	1,150	1,250	1,300	1,350
Principal with five assistants and 200 in average attendance	1,350	1,450	1,500	1,550
Principal with nine assistants and 360 in average attendance	1,550	1,650	1,700	1,750

WHITE HIGH SCHOOLS

Position	Years of Experience 0-1	2-3	4-5	6-7	8+
Regular assistant	$1,150	$1,200	$1,250	$1,300	$1,350
Principal second group	1,250	1,300	1,350	1,400	1,450
Principal first group	1,550	1,650	1,750	1,850	1,950
Principal first group, five assistants and 100 in attendance	1,750	1,850	1,950	2,050	2,150
Principal first group, nine assistants and 200 in attendance	1,950	2,050	2,150	2,250	2,350

COLORED SCHOOLS PER MONTH (8 Months)

Position	Years of Experience 1-3	4-5	6-8	9+
Elementary teacher holding certificate of				
Third grade*	$ 40	$ 45	$ 45	$ 45
Second grade*	50	55	60	60
First grade	65	70	75	85
High school assistant	80	90	95	95
Principal	95	110	120	120
Principal with five assistants and 100 in attendance	105	120	130	130

* These certificates are no longer issued to new applicants for positions.

Minimum Salary Schedu
Appendix # 1A

FORM 7

DEPARTMENT OF EDUCATION
STATE OF MARYLAND

No. 524

Class

Elementary School Principal's Certificate
Valid to teach in Colored Schools

This is to certify that WALTER SATTERLEE MILLS *has satisfied the requirements of law necessary to make* him *eligible for appointment, in the State of Maryland, to the position of*

Principal of an Elementary School of Three or more Teachers

This certificate is valid for three years from date and renewable for four-year periods on evidence of successful experience and professional spirit and summer school credits earned within the last period for which the certificate has been valid.

Given at Baltimore, August 1, 1934.

STATE SUPERINTENDENT OF SCHOOLS.

Mills Principal's Cert.
Appendix #18

NAME TRIMBLE COUNTY TEACHER'S RECORD 524

EDUCATION AND PROFESSIONAL PREPARATION							CERTIFICATION RECORD				
KIND OF SCHOOL	NAME AND LOCATION OF SCHOOL	No. Full Years Attend.	Parts of Years in Months	Summer Sessions in Weeks	Dates of Attendance	Degree Year of Graduation	Grade	Class	Date of Issue	Term	Preparation Required for Renewal
High School							EP	1	1934	5,4	Ex.1937
Normal Training School							Renewals:		1937	to	1942
College University or Other School	Hampton Institute			6	1932						
	Hampton Institute			6	1934						
	Hampton Institute			6	1937						
	Hampton Institute			6	1938						
	Hampton Institute			6	1939						

LXO

YRS. OF EXPERIENCE 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35

EXPIRATION DATE 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48

NAME Mills, Walter L. ADDRESS TEACHING ADDRESS

START TYPEWRITING AT 1; USE OTHER POINTS ON SCALE TO START OTHER DIVISIONS OF VISIBLE TITLE TO INSURE PERFECT ALIGNMENT OF EACH DIVISION OF INFORMATION FOR SPEEDY REFERENCE; THEN REMOVE THIS STUB. USE NEW TYPEWRITER RIBBON

KARDEX-RAND CO., INC., TONAWANDA, N.Y., U. S. A. PAT. IN U.S.A. & FOREIGN COUNTRIES

240—C680

Record of Mills Teaching Experience
Appendix 1C

Record of Mills Salary Appendix 1D

Mills, Walter L.
Retirement #8819

ANNE ARUNDEL COUNTY TEACHER'S RECORD

TEACHING EXPERIENCE

YEAR	SCHOOL NAME	SCHOOL NO.	SCHOOL DIST.	GRADE OR SUBJ.	ANNUAL SALARY	DAYS ABSENT	SUP'TS. ESTIMATE OF: SCHOLARSHIP	SUP'TS. ESTIMATE OF: EX. ABILITY	SUP'TS. ESTIMATE OF: TEACHING POWER
1933		1	2		646				
1934		1	2		754.12				
1935		1	2		754.12	From 1/1/36 $785.00			
1936		1	2		835.				
1937		1	2		900				
1938		1	2		900	From 1/1/39 $990.00			
1939		1	2		1058.70	(ten months)			

YEAR	SCHOOL NAME	SCHOOL NO.	SCHOOL DIST.	GRADE OR SUBJ.	ANNUAL SALARY	DAYS ABSENT	SUP'TS. ESTIMATE OF: SCHOLARSHIP	SUP'TS. ESTIMATE OF: EX. ABILITY	SUP'TS. ESTIMATE OF: TEACHING POWER

PERM. HOME ADDRESS | PHONE | BIRTH DATE 8/20/1908 | PLACE OF BIRTH | NATIONALITY | GRADE OR SUBJECT

LAST NAME | FIRST AND MIDDLE NAME IN FULL | TEACHING ADDRESS

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color COLORED Type of School[a] TWO ROOM

School	Dist.	Name of Teacher	*Grades or Subjects Taught	Years of Experience[b]	Grade of Certificate[c]	Degree[d]	Reg. Prov.[e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No.[f] Att.	Sept., 1939 Av. No.[f] Bel.	Remarks[g]
9	4	Arletta H. Taylor	4-7	10	1		R	1	$991.10		61.4	64.1	
9	4	Pearl Brown Plattenburg	1-3	6	1		R	1	$882.30				
4	5	H. Lota Howard	4-7	12	A1		R	1	$991.10		50.9	52.	
4	5	Vesta B. Copeland	1-3	8	1		R	1	$941.10				
1	8	Mary V. Wiseman	4-7	10	BS		R	1	$991.10		62.1	63.	
1	8	Lilyan Burrel	1-3	6	1		R	1	$882.30				
4	8	Julia E. Madden	4-7	10	1		R	1	$991.10		53.5	56.5	
4	8	Cornelia Brown	1-3	2					$823.50				
5	8	Mary Brown Queen	4-6	8	1		R	1	$991.10		47.9	48.6	
5	8	Margaret Thomas	1-3	7	1		R	1	$882.30				

* For junior high school teachers, show the range of grades taught, in addition to subject.
a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.
b Including present year.
c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.
d For elementary school principals and high school teachers indicate possession of a degree.
e Use the following abbreviations: R., P.
f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.
g Indicate whether teacher is on part-time—p. t.

Colored Salary Rates & Cert. & Experience Chart Appendix # 2A

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color COLORED Type of School[a] GRADED

School	Dist.	Name of Teacher	* Grades or Subjects Taught	Years of Experience [b]	Grade of Certificate [c]	Degree [d]	Reg. Prov. [e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No. [f] Att.	Sept., 1939 Av. No. [f] Bel.	Remarks [g]
1	6	Annie S. Henry	7	13	EP		R	1	$1176.70		486.3	500.5	
1	6	Gertrude Flippen	6	26	1		R	1	$ 941.10				
1	6	Eliz. T. Marshall	7	17	1		R	1	$ 991.10				
1	6	Ernestine Smith	4-5	22	1		R	1	$ 941.10				
1	6	Martha C. Alsop	4-5	13	1		R	1	$ 941.10				
1	6	Mary C. Baden	2	11	1		R	1	$941.10				
1	6	Philip Brown	5-6	12	1		R	1	$ 941.10				
1	6	Marie Thomas	5-6	11	1		R	1	$ 941.10				
1	6	Jennie L. Clark	3	22	1		R	1	$ 941.10				
1	6	Eleanor E. Trabue	3	10	1		R	1	$ 941.10				
1	6	Cecelia B. Green	2	13	1		R	1	$ 941.10				
1	6	Lula C. Hardesty	1	18	1		R	1	$ 941.10				
1	6	Mary C. Townes	1	13	1		R	1	$ 941.10				

* For junior high school teachers, show the range of grades taught, in addition to subject.

a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.

b Including present year.

c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.

d For elementary school principals and high school teachers indicate possession of a degree.

e Use the following abbreviations: R., P.

f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.

g Indicate whether teacher is on part-time—p. t.

Colored Salary Rates Appendix #28

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color COLORED Type of School[a] ONE ROOM

School	Dist.	Name of Teacher	*Grades or Subjects Taught	Years of Experience[b]	Grade of Certificate[c]	Degree[d]	Reg. Prov.[e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No.[f] Att.	Sept., 1939 Av. No.[f] Bel.	Remarks[g]
2	1	Alice M. Thomas	1-7	24	1		R	1	$941.10		22.1	23.2	
3	1	Alice C. Brown	1-7	6	1		R	1	$882.30		22.1	23.6	
6	1	Helen G. Smothers	1-7	2					$823.50				
7	1	Joseph Hobbs	1-7	5	A1		R	1	$852.90		41.6	44.2	
8	1	Mary Turner	1-7	1	A1		R	1	$823.50		36.3	37.	
5	2	Sarah Carroll	1-7	1	A1		R	1	$823.50		16.9	21.7	
6	2	Henry Holland	1-7	5	A1		R	1	$852.90				
2	3	Clive H. Bolling	1-7	17	1		R	1	$941.10		47.8	49.9	
6	3	Helen G. Johnson	1-7	24	1		R	1	$941.10		30.1	30.7	
2	4	Florence Gwynn	1-7	28	1		R	1	$941.10		19.7	20.9	
4	4	Nora G. Jones	1-7	17	A1		R	1	$941.10		14.2	17.5	
5	4	Alice B. Pumphrey	1-7	13	1		R	1	$941.10		17.5	18.3	
8	4	Emma W. Thompson	1-7	16	A1		R	1	$941.10		22.	25.7	
1	5	Margaret D. Burrelle	1-7	17	1		R	1	$941.10		29.5	31.9	
2	8	Joseph Duvall	1-7	11	EP		R	1	$941.10		29.2	31.	

* For junior high school teachers, show the range of grades taught, in addition to subject.
a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.
b Including present year.
c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.
d For elementary school principals and high school teachers indicate possession of a degree.
e Use the following abbreviations: R., P.
f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.
g Indicate whether teacher is on part-time—p. t.

Colored Salary Chart Appendix #2C

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color WHITE Type of School[a] GRADED

School	Dist.	Name of Teacher	*Grades or Subjects Taught	Years of Experience[b]	Grade of Certificate[c]	Degree[d]	Reg. Prov.[e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No.[f] Att.	Sept., 1939 Av. No.[f] Bel.	Remarks[g]
7	1	V. Mildred Kolb	5-7	28	EP		R	1	$1500		83.3	86.7	
7	1	Emily Cullen	1-3	6	1		R	1	$1200				
7	1	Helen M. Dawson	3-5	24	2		R	1	$1100				
3	3	Wm. B. Evans Jr.	6-7	5	EP		R	1	$1300		110.	115.6	
3	3	Lona Dryden	3-5	1	BS		R	1	$1200				
3	3	Margaret T. Smith	1-2	11	1		R	1	$1250				
1	4	M.Helen Harman	6-7	21	EP		R	1	$1500		85.5	88.8	
1	4	G. Marie Biggs	1-3	23	1		R	1	$1350				
1	4	Doris Owens	4-5	18	1		R	1	$1350				
2	5	Alma Blandford	6-7	23	EP		R	1	$1500		96.4	99.	
2	5	Pauline G. Matthews	4-5	17	1		R	1	$1350				
	5	M. Alice Trice	1-3	28	1		R	1	$1350				
11	2	Estelle B. Carter	5-6	31	EP		R	1	$1550		143.2	146.6	
11	2	Hazel L. Fogle	2-3	23	1		R	1	$1350				
11	2	Dorothea Stinchomb	3-4	5	A1		R	1	$1150				
11	2	Frieda B. Frazier	1-2	7	1		R	1	$1200				
8	3	Paul D. Cooper	6-7	9	EP	BS	R	1	$1800		159.8	165.6	
8	3	Delma B. Duerbeck	3-4	17	1		R	1	$1350				
8	3	Gladys Kadle	4-5	3	BS		R	1	$1250				
8	3	Virginia Lederhos	1-2	7	1		R	1	$1200				
4	5	Anna W. Morton	7	28	EP		R	1	$1800		148.5	151.	
4	5	Elizabeth F. Gunderloy	5-6	11	1		R	1	$1300				
4	5	Violet Hofferbert	3-4	11	1		R	1	$1300				
4	5	Ethel Cole	1-2	40	1		R	1	$1350				

* [illegible] junior high school teachers, show the range of grades taught, in addition to subject.

a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.

b Including present year.

c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.

d For elementary school principals and high school teachers indicate possession of a degree.

e Use the following abbreviations: R., P.

f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.

g Indicate whether teacher is on part-time—p. t.

White Salary Chart, Appendix 2

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color WHITE Type of School[a] GRADED

School	Dist.	Name of Teacher	*Grades or Subjects Taught	Years of Experience[b]	Grade of Certificate[c]	Degree[d]	Reg. Prov.[e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No.[f] Att.	Sept., 1939 Av. No.[f] Bel.	Remarks[g]
11	4	Marguerite L. Hopkins	7	26	EP	BS	R	1	$1900		285.3	297.9	
11	4	John T. Stone	6	13	A1	BS	R	1	$1450				
11	4	Mabala Wilson	5	26	A1		R	1	$1350				
11	4	Virginia Holsinger	4	3	A1		R	1	$1100				
11	4	Amy L. Hopkins	3	37	1		R	1	$1350				
11	4	Elizabeth Y. Stone	2	14	1		R	1	$1350				
11	4	Madalyn R. Carey	1	3	A1		R	1	$1250				
9	2	Elizabeth A. Waring	6	17	EP		P		$1900		332.9	340.1	
9	2	Jeannette Russell	5-6	19	1		R	1	$1350				
9	2	Aline V. Adkins	5	10	1		R	1	$1300				
9	2	Dorothy B. Grau	3	14	1		R	1	$1350				
9	2	Anna Z. Stinchcomb	4	26	1		R	1	$1350				
9	2	Monterey Jones	3-4	12	1		R	1	$1350				
	2	Elizabeth V. Harmon	2	23	1		R	1	$1350				
9	2	Mabel C. Sullivan	1-2	9	1		R	1	$1250				
9	2	Margaret Beavin	1	15	1		R	1	$1350				
4	3	H. Madeline Gibson	7	21	EP		R	1	$2000		353.9	369.6	
4	3	Nellie Cherrix	4	9	1		R	1	$1250				
4	3	Robert B. Norris	6	6	A1		R	1	$1200				
4	3	Sadie Cooper	5-6	4	BS		R	1	$1250				
4	3	Emily B. Asplen	3	12	1		R	1	$1350				
4	3	Virginia D. Moore	2	10	1		R	1	$1300				
4	3	Esther B. Long	4-5	8	1		R	1	$1250				
4	3	Dorothy Wilkins	6	1	BS		R	1	$1200				
4	3	Sylvia G. Brock	1	4	BS		R	1	$1250				

* For junior high school teachers, show the range of grades taught, in addition to subject.
a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.
b Including present year.
c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.
d For elementary school principals and high school teachers indicate possession of a degree.
e Use the following abbreviations: R., P.
f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.
g Indicate whether teacher is on part-time—p. t.

White Salary Chart, Appendix 2E

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color WHITE Type of School[a] JUNIOR HIGH

School	Dist.	Name of Teacher	Grades or Subjects Taught*	Years of Experience[b]	Grade of Certificate[c]	Degree[d]	Reg. Prov.[e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No.[f] Att.	Sept., 1939 Av. No.[f] Bel.	Remarks[g]
LINTHICUM HEIGHTS JUNIOR HIGH													
		J. Edward Armstrong	Fr Civics	12	HA	BS MA	R	1	$2050		135.1	139.7	
		Edward B. Dexter	I.Art Math	4	HS HA		R	1	$1500				
		Dorothy Storrs	H.Ec. Sci.	6	HS	BS	R	1	$1600				
		Anna K. Bowman Sci	Math Eng	1	HA		R	1	$1200				
		Elizabeth Crisp Hist	Eng Music	1					$1200				
BROOKLYN PARK JUNIOR HIGH													
		Maudre Willis	Eng Hist Civics Sci Math	5	HA	AB	R	1	$1500		52.6	54.	
		Lorena Strohm	Alg.	2	HA	AB	R	1	$1400				

* For junior high school teachers, show the range of grades taught, in addition to subject.
a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.
b Including present year.
c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.
d For elementary school principals and high school teachers indicate possession of a degree.
e Use the following abbreviations: R., P.
f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.
g Indicate whether teacher is on part-time—p. t.

White Salary Chart, Appendix 2F

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color WHITE Type of School[a] TWO ROOM

School	Dist.	Name of Teacher	*Grades or Subjects Taught	Years of Experience[b]	Grade of Certificate[c]	Degree[d]	Reg. Prov.[e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No.[f] Att.	Sept., 1939 Av. No.[f] Bel.	Remarks[g]
1	1	Elizabeth W. Bassford	5-7	26	1		R	1	$1450		43.9	45.	
1	1	Elizabeth Catterton	1-4	10	1		R	1	$1300				
4	1	Mildred R. Watkins	4-7	16	EP		R	1	$1450		79.6	83.9	
4	1	Alma K. Beck	1-3	21	1		R	1	$1350				
1	8	Ethel F. Andrews	5-7	31	1		R	1	$1450		60.4	61.9	
1	8	Ethel L. Wickman	1-4	5	1		P	1	$1000				
11	8	Robert E. Tyler	5-7	3	1	BA	P	1	$1250		44.2	46.	
11	8	Veturia Ireland	1-4	9	1		R	1	$1250				

* For junior high school teachers, show the range of grades taught, in addition to subject.
a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.
b Including present year.
c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.
d For elementary school principals and high school teachers indicate possession of a degree.
e Use the following abbreviations: R., P.
f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.
g Indicate whether teacher is on part-time—p. t.

White Salary Chart, Appendix 2G

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color WHITE Type of School[a] HIGH

School	Dist.	Name of Teacher	*Grades or Subjects Taught	Years of Experience[b]	Grade of Certificate[c]	Degree[d]	Reg. Prov.[e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No.[f] Att.	Sept., 1939 Av. No.[f] Bel.	Remarks[g]
GLENBURNIE HIGH continued													
		F. Markham Wingate	Sci Math	2	HA	BS	R	1	$1400				
		Nancy C. Ridout	Lib.	28	1		R	1	$ 700				
		Drusilla Chairs	Clerk						$ 750				
		Mary G. Shannon	Com	2	HA	BS	R	1	$1400				
		Dorothy Anderson	Biol.	2	HA	AB	R	1	$1400				
		Beverly Harrison	Hist Phy Ed	2	HS	AB	R	1	$1250				
		Edwin S. McDaa	Phy Ed	14	HS	BPE	R	1	$1925				
		Ellen M. Mittler	Art	1		BS			$1200				

* For junior high school teachers, show the range of grades taught, in addition to subject.
a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.
b Including present year.
c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.
d For elementary school principals and high school teachers indicate possession of a degree.
e Use the following abbreviations: R., P.
f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.
g Indicate whether teacher is on part-time—p. t.

White Salary Chart Appendix 21

650—7-39

SALARY, CERTIFICATION, AND EXPERIENCE, OCTOBER, 1939, OF TEACHING STAFF IN

ANNE ARUNDEL County Color COLORED Type of School[a] HIGH

School	Dist.	Name of Teacher	*Grades or Subjects Taught	Years of Experience[b]	Grade of Certificate[c]	Degree[d]	Reg. Prov.[e]	Class of Certificate	Annual Salary		Sept., 1939 Av. No.[f] Att.	Sept., 1939 Av. No.[f] Bel.	Remarks[g]
WILEY H. BATES HIGH											417.1	433.9	
		Frank B. Butler	Sci.	29	HP		R	1	$1600				
		Lottie Y. Ruddock	H Ec	26	HS		R	1	$1050				
		Rachel C. Smith	Biol. Eng.	13	HA		R	1	$1050				
		Cynthia Brown	Math	9	HA		R	1	$1050				
		Madeline W. Tate	Hist Lat	22	HA		R	1	$1050				
		Weldon J. Irvine	Eng Music	4	HA		R	1	$ 950				
		Eunice Le Cesne	Math	3	HA		R	1	$ 900				
		Ruth Brannum	Soc St	3	HA		R	1	$ 900				
		James E. Early	Sci	9	HA		R	1	$1050				
		Virginia L. Williams	H Ec	2	VOC		R	1	$ 900				
		James Marchand	Shop	8	VOC		R	1	$1200				
		Albert J. Baxter	Shop	2					$1100				
		Thirkield Drummond	Eng	3	HS		R	1	$ 900				

* For junior high school teachers, show the range of grades taught, in addition to subject.
a Use a separate sheet for white one-teacher, two-teacher, graded, junior, senior-junior, senior, and regular high schools, and for colored elementary and high schools.
b Including present year.
c Use the following abbreviations: 3, 2, 1, A1, B.S., E.P., H.A., H.P., Sub.
d For elementary school principals and high school teachers indicate possession of a degree.
e Use the following abbreviations: R., P.
f Indicate, opposite name of principal, average number attending and belonging in September, 1939, for elementary school as a whole, and for junior, senior-junior, senior, or regular high school as a whole showing separately enrollment in grade 7 or 7-8 from that in high school years.
g Indicate whether teacher is on part-time—p. t.

High School Colored Salary Chart, Appendix 2I

1927-1928

OFFICE OF THE
BOARD OF EDUCATION
OF ANNE ARUNDEL COUNTY

ANNAPOLIS, MARYLAND

MILLERSVILLE Bramdford G. Lynch,	42 years,	First	$1700.00	Five Busses
EASTPORT Lillian Baker, ✓	33 years,	First	1600.00	8 assts
BROOKLYN Jessie B. Suitt,	11 years,	First	1800.00	Bus, 8 ASSTS
LINTHICUM Nancy P. Hopkins,	15 years,	First	1800.00,	2 Busses 8 assts.
GLEN BURNIE(Elem) R. Leroy Corkran,	19 years,	First	1900.00	7 Bus trips 11 assts
ANNA GRAM. SCHOOL Josephine Riordan,	38 years,	First	2004.00,	21 assts 2 busses

2 yrs x 3

Bd. of Ed Busses + Assts. Chart, Appendix #3

In getting the children off in the afternoon, it is necessary that the children be ready when the bus arrives and that the bus leave promptly. You must remember that these buses make several trips and when teachers are careless in getting the children on the bus on the first trip, someone else's children are after dark getting home. I consider negligence of this kind Mark No. 1 against the principal as an administrator. The orders are for the buses to wait two minutes, then go off. If the children are left, it is the responsibility of the teachers to get them home. However, we have never enforced this and I hope it will not be necessary to do so. What I wish to emphasize is that you must see that these buses leave on time.

I shall call a meeting of all principals, of high and elementary schools, in a few weeks and shall then be glad to have your suggestions and re-actions to this suggested program.. It originated with the people and is coming to us through the Board of Education. It is our problem and I trust you all will cooperate in solving it to the advantage of all concerned.

Sincerely yours,

GEORGE FOX
County Superintendent

GF:kmb

Fox Superintendent Letter, Appendix #4

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MARYLAND

WALTER MILLS	:	
	:	CIVIL ACTION
v	:	
TASKER G. LOWNDES, MRS. A. THALHEIMER, THOMAS H. CHAMBERS, J. M. T. FINNEY, CHARLES A. WEAGLEY, WENDELL D. ALLEN, and EDWARD H. SHARPE, constituting the State Board of Education of Maryland, ALBERT S. COOK, State Superintendent of Schools, WILLIAM S. GORDY, Jr., State Comptroller; and HOOPER S. MILES, State Treasurer	:	NO. 56

Chesnut, District Judge,

The object of this action is to accomplish, if possible, an equalization of the salaries paid to white and colored teachers in the public schools of Maryland. The plaintiff is a colored school teacher who is employed and paid by the County School Board of Anne Arundel County, Maryland. His complaint alleges that for many years past in this State only white teachers are employed to teach in schools for white children and only colored teachers in the schools for colored children; and that in most of the Counties of the State, including Anne Arundel County, the salaries paid colored teachers in colored schools are materially less than the amounts paid white teachers in white schools although having equal professional qualifications. He calls attention to a Maryland statute which provides the minimum scale of salaries for white teachers, graduated to professional qualifications and years of experience, and a separate statute providing a lower minimum for teachers in colored schools; and alleges that in practical application colored school teachers are paid less than white teachers solely

Lowndes Chesnut Opinion, Appendix #5

on account of their race and color. He contends that this constitutes an unconstitutionsl discrimination which is prohibited by the equal protection clause of section 1 of the Fourteenth Amendment to the Federal Constitution.

To redress this grievance on behalf of himself and others of his race in the same class he has filed this suit, not against the County Board by which he is employed, but against the State Board of Education, the State Superintendent of Education and the Treasurer and Comptroller of the State, all general State officers. In Maryland since 1865 the County has been the unit for most local governmental functions including that of public education. The principal questions - and they are important ones - which arise in the case are (1) whether the statutes either on their face or in their practical application are contrary to the Fourteenth Amendment; (2) whether the plaintiff has a sufficient status to raise the question; (3) whether the relief prayed for, an injunction against the enforcement of the law or practice thereunder by the general state officers, can be maintained in the absence from the record of the local County Board as a defendant, and (4) if so, is the remedy by injunction, which is the only relief sought, proper in this case.[1]

The defendants have appeared by the Attorney General

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[1] As the plaintiff has not prayed for an interlocutory injunction a three-judge court was not authorized by United States Code, Title 28, s. 380. Stratton v. St.Louis Southwestern Rwy.Co. 282 U.S. 10; McCart v. Indianapolis Water Co. 302 U.S. 419.

The jurisdiction of the court in this case is based on United States Code, Title 28, s. 41(1) and (14). No objection to the jurisdiction has been raised by the defendants except insofar as the general ground of the motion to dismiss can properly include the immunity of the State from suit under

of the State and moved to dismiss the complaint on the general ground that it does not state a sufficient cause of action to justify the relief sought. Ordinarily it is not advisable to determine constitutional and procedural questions of such gravity without a full hearing on the facts; (Borden's Co. v. Baldwin, 293 U.S. 194, 211-213; Polk Co. v. Glover, U. S. Sup. Ct. Nov. 7, 1938) but the factual situation is very fully developed in the plaintiff's complaint and the case has been very fully argued by counsel, and in addition to the allegations of the complaint there has been developed in argument other facts and conditions which are not in dispute and

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1 continued:

the Eleventh Amendment, if that defense has not been waived by the mere general grounds of the motion.

which therefore may be taken as conceded in connection with the averments of the complaint. As it is apparent that both parties desire a prompt disposition of the case on its legal merits, I will therefore now proceed to state my conclusions arising on the motion to dismiss.

It is essential to a considered opinion on the questions presented to first have a precise understanding of the Maryland statutory scheme of elementary education. It is sufficient in this case to state the controlling fundamentals without the unimportant details. The State Constitution of 1867, Art. 8,s.1, provides: "The General Assembly, in its first session after the adoption of this Constitution, shall by law establish throughout the State a thorough and efficient system of free public schools; and shall provide by taxation or otherwise for their maintenance." The statutes of the State passed pursuant thereto and now in force are to be found in Article 77, of the Maryland Code of 1924, and supplement thereto of 1935,s.1 of which provides: "There shall be throughout the State of Maryland a general system of free public schools, according to the provisions of this Article." Since 1865 it has been the uniform policy and practice of the State to provide separate schools for white and colored children. The governmental subdivisions of the State consist of twenty-three counties and Baltimore City. These sub-divisions are respectively made the units for providing and maintaining free public education. In each County and in Baltimore City there is a local Board of Education sometimes called School Commissioners, on whom the statutes confer the authority and the duty to provide and maintain the schools and, in conjunction with the County Commissioners, to raise the necessary public funds by taxation to pay the expenses thereof, supplemented to some extent by general state school funds. Successive statutes up to and including the one now in force provide that the salaries of teachers in the City and Counties shall be fixed by the Board

of School Commissioners of the City and the several Counties. Section 3 of Article 77 provides that "educationsl matters affecting a County shall be under the control of a County Board of Education".[2] Sections 1 and 9 to 26, inclusive, also provide for and outline the duties of the State Board of Eduation for which the State Superintendent of Schools shall act as the chief executive officer. The State Board is authorized to determine the educational policy of the State, including the establishment of standards and determination and certification of the qualifications of teachers and conditions for the hygienic and sanitary ~~protection~~ construction of school buildings; but it has no power to select or employ or fix the salaries of the teachers,

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[2] See Act of 1865, Ch. 160, Title II, Ch.4, s.5; Act of 1872, Ch. 377, Ch. 8, s. 6; Ch. 4, s. 4; Act of 1904, Ch. 584, s. 53. The present statute is to be found in Art.77 of the Maryland Code, s. 56.

The earliest statutory provision for schools for colored children appeared in the Act of 1865, Ch. 160, Title 4, Ch. 1, ss.1,2. See also the following Acts of Assembly: 1870, Ch. 311, s. 18; 1872, Ch. 377, Ch. 18, ss. 1-4; 1904, Ch. 584, ss. 96 & 98; 1916, Ch. 506, s. 131; 1922, Ch. 382, s. 131. The present statutes are to be found in Article 77, ss.200 to 203, and the Act of 1937, Ch. 552.

One of the first Maryland statutes providing for a minimum salary for white school teachers was the Act of 1908, Ch.635, s. 122½(e). The County Commissioners of Worcester County refused to levy the necessary additional taxes to pay these minimum salaries and thereupon the County School Board filed a mandamus petition to require them to do so. Judge Urner for the Maryland Court of Appeals in the case of Worcester County v. School Commissioners, 113 Md. 305, 312, said: "The Board of County School Commissioners, who are charged with the control of all educational matters affecting their County (Code, Art. 77, secs. 3 and 24) and to whom the proceeds of school taxes are payable (Ib., Art.77, sec. 25) are the proper parties to demand the performance by the County Commissioners of their duty under the law in this connection."

The control of education in Baltimore City is similar to that in the Counties. As to the power and authority of the School Board of Baltimore City with respect to fixing salaries of teachers, see Thomas v. Field, 143 Md. 129 (where an effort was made to require the Board to equalize the salaries of white and colored teachers); and Graham v. Joyce, 151 Md. 298.

which function is committed solely to the County Boards.

The primary fund necessary for the maintenance of the schools in the several Counties and Baltimore City is raised by specific taxation of property in the City and Counties for that purpose but supplemental appropriations are made from state taxes levied for education, and distributed to the several Counties in accordance with section 204 of Art. 77.

The major portion of the State school funds are apportioned among the Counties on the basis of school census and aggregate days of attendance; but experience demonstrated that even with this State aid, many of the Counties, by reason of their comparatively low tax assessable basis, were unable to meet the minimum program of educational requirements, including the minimum salary schedule provided for by statute; and to enable these poorer counties to comply with this minimum program a special additional state fund was provided for the first time in 1922, called the Equalization Fund. It is with respect to the distribution of this fund to the several Counties that counsel for the plaintiff submit their principal contention for the maintenance of this suit without making the County Board of Education of Anne Arundel County a party hereto, and for the propriety of granting the injunctive relief asked for.

The nature and operation of this special fund is disclosed by Sec. 204 of Art. 77 as amended by the Act of 1933, Ch. 261, to be found in the 1935 Supp. to the Maryland Code. It is provided that from the general state school fund (when biennially appropriated by the General Assembly) the Comptroller shall distribute to certain Counties:

> "such special appropriation to be known as an equalization fund as may from time to time be made by Budget Bill or Supplementary Appropriations Bill, to the County Boards of Education of certain Counties to enable them to pay the minimum salaries prescribed in this Article for county superintendents, supervising teachers and helping teachers, high school and elementary school teachers, and teachers in colored schools * * *; provided, that said board of county commissioners of each of the several counties sharing

in the Equalization Fund shall levy and collect an annual tax for the schools of not less than forty-seven (47) cents on each one hundred dollars ($100) of assessable property * * *; and provided, further, that the county board of education in each of the several counties sharing in the Equalization Fund shall expend no less than twenty-four per centum (24 %) of the total budget, not including costs of transportation as authorized in this section, debt service and capital outlay, for purposes other than teachers ' salaries."

The effect is that if the amount of County School taxes at the rate of forty-seven cents per one hundred dollars of assessable county property, together with the apportionments of the general school fund on the basis of census and school attendance, is not sufficient to meet the county school expenses, including the minimum salary schedules, then the deficiency therein to that extent shall be paid to such counties from the Equalization Fund.[3] There is no restriction on the counties to fix salaries /at rates higher than the minimum, and to pay them from an

[3] The nature and function of the Equalization Fund in the Maryland system of public education is described at length in the Maryland School Bulletin for September 1930, issued by the State Department of Education, Baltimore, Maryland entitled "Equalizing Educational Opportunities in Maryland through a Minimum Program and an Equalization Fund". The Bulletin of 77 printed pages explains fully the purpose of the Equalization Fund and the results of its operation over a period of about eight years. It is stated that the result of the functioning of the Fund has been to materially increase the efficiency of both teachers and pupils as demonstrated by the included statistics. In the foreword to the Bulletin there is quoted from the United States Bureau of Education Bulletin, 1928, No. 28, p. 158 (by Fletcher Harper Smith and Bruce Lewis Zimmerman) the following:

"Maryland enjoys the distinction of being one of the few States in the Union which has worked out a scheme of financing public schools which, in a sound and relatively satisfactory way, equalizes school burdens, revenues and consequently, educational opportunities. It will be helpful to summarize at the outset the outstanding features of the Maryland system of school support. These include the following: (1) The organization of the school system on the basis of the county unit; (2) requiring from every county the submission of a budget showing the cost of providing a minimum school program; (3) an assured fund from State and county sources sufficient to meet the costs submitted by the county and approved by State authorities; (4) a State minimum-salary scale graduated to professional qualifications and experience of teachers; (5) liberal State appropriations available to all counties regardless of wealth; (6) the apportionment of the major portion of State funds upon the

additional tax rate, and some of the Counties have equalized the salaries of all teachers of the same grade. Prior to 1904 there was no restriction on the absolute discretion of the County Boards in fixing the amount of salaries for teachers. By the Act of 1904, Ch. 584, a.$300 per year minimum was set for white teachers. For teachers in the colored schools a minimum of $210. was first provided by the Act of 1918, Ch. 81. By amendatory statutes these minima have been successively raised until at the present time the minimum amount for teachers in white elementary schools, graduated in accordance with professional qualifications and years of experience, ranges from $600 for a teacher holding a third grade certificate of one to three years' experience, to $1750 for a school principal with nine assistants, of more than nine years' experience; and for teachers in colored schools the range is from $360 to $1170.[4]

From this outline of the relevant statutes it is, for the purposes of this case, importantly to be noted (1) that the County is the unit for educational purposes; (2) that the County Boards have full authority and discretion in

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3 continued:
basis of school census and aggregate days of attendance; (7) provision of a State equalization fund available to every county which levies a county school tax of a minimum rate fixed by law (6.7 mills) and is unable to finance from all other State and County funds its minimum State-approved program; (8) the computation of the total county school budget on the theory that teachers' salaries should constitute not more than 76 per cent of the total current costs."

It appears in the 71st Annual Report of the State Board of Education for the year ending July 31, 1937 (pages 298,218) that for that year the total Equalization Fund for all Counties amounted to $490,871.43, of which amount $31,143.10 was distributed to Anne Arundel County, where the plaintiff is employed. In the same year that County raised for current school expenses from the County levy and other County sources, $354,484. The total State funds received by it for that year amounted to $217,987.28.

4 See Plaintiff's Exhibit "A", and Act of 1937, Ch. 552.

the selection of teachers and the determination of the amount of salary to be paid them, subject only to the minimum requirements of the statutes; (3) that the Equalization Fund is apportioned among the Counties on the basis of County wealth and for the purpose of enabling the poorer counties to meet at least the minimum educational requirements and thus to make it possible for them to maintain approximately the same minimum standards for elementary education that prevail in the richer counties; (4) that each County Board of Education is at liberty, in co-operation with the County Commissioners, to pay to its school teachers salaries in excess of the minimum if the county rate of school taxation is increased above forty-seven cents per hundred dollars of assessable property, and (5) that the apportionment of the Equalization Fund is not made on any condition to the contrary. It was also agreed upon the argument of the case that in Baltimore City and in nine of the twenty-three counties, the salary schedule for white and colored teachers had in recent years been equalized; and that four of these nine counties also participate in the distribution of the Equalization Fund. In other words, it is clear that the Equalization Fund tends to help and not to deter the counties in equalizing the salaries of white and colored teachers.

Are the Maryland statutes unconstitutional as to the plaintiff? Counsel for the plaintiff forcibly argues that the statutes on their face, or at least in their practical application, are so clearly unconstitutional that the matter is hardly debatable, and for the defendants, the Attorney General, while asserting generally the validity of the statutes, has put the emphasis of his argument on the propositions that the plaintiff's status is not sufficient to entitle him to maintain the suit, and that the relief prayed for should not be granted because it would be futile and ineffective to

benefit him, and would constitute an unnecessary and unwarrantable interference with the activities of the State regarding the distribution of its own school funds among the counties.

The plaintiff takes his stand on the last clause of section 1 of the Fourteenth Amendment to the Federal Constitution which reads :

> "No State shall - - - deny to any person within its jurisdiction the equal protection of the laws."

It is well known history that the Thirteenth, Fourteenth and Fifteenth Amendments emerged from the crucible of a civil war as a result of which the former slavery of the Negro race in the United States was abolished; and the primary purpose, although not the whole result, of the Fourteenth Amendment was to protect the members of this race from hostile and discriminatory legislation with respect to their civil and personal rights as national and state citizens. The broad language of the Amendment, which includes "any person within the jurisdiction of the State" from the denial of equal protection of the laws, necessarily includes others than the members of this race within its protection, but with that aspect of the Amendment we are not here concerned. The Amendment did not of itself create any additional rights in citizens of a state, but by its negative force precludes the state from denying the equal protection of the laws, with respect to both burdens and benefits, to any citizen or class of citizens. And the power of Congress to pass legislation to enforce the Amendment was limited to laws of a nature adapted to correct wrongful state action. The Slaughter-house Cases, 16 Wall. 36; Strauder v. West Virginia, 100 U.S. 303; Virginia v. Rives, 100 U.S. 313; Ex parte Virginia, 100 U.S. 339; Civil Rights Cases, 109 U.S. 3; Plessy v. Ferguson, 163 U.S. 537; Buchanan v. Warley, 245 U.S. 60, 76. The effect of the Amendment as particularly applicable to this case is well summarized by Mr. Justice Harlan for

the Supreme Court in Gibson v. Mississippi, 162 U.S. 565,591, as follows:

> "Underlying all of those decisions is the principle that the Constitution of the United States, in its present form, forbids so far as civil and political rights are concerned, discrimination by the General Government, or by the States, against any citizen because of his race. All citizens are equal before the law. The guarantees of life, liberty and property are for all persons, within the jurisdiction of the United States, or of any State, without discrimination against any because of their race. Those guarantees, when their violation is properly presented in the regular course of proceedings, must be enforced in the courts, both of the Nation and of the State without reference to considerations based upon race."

The application of the Amendment in the matter of free public education by the State with respect to the white and colored races was soon made by judicial decisions, both federal and state. It shortly became the established law that where the State adopts the policy of free education, with the segregation of the races in separate schools, the facilities afforded each race therefor must be equal. And this principle has been uniformly adhered to by all federal and state courts, and has been conspicuously illustrated in two recent cases involving the admission of Negro law students to state conducted law schools, In University of Maryland v. Murray, 169 Md. 478, it was said for the Court of Appeals of Maryland by Chief Judge Bond, at page 483:

> "As a result of the adoption of the Fourteenth Amendment to the United States Constitution, a state is required to extend to its citizens of the two races substantially equal treatment in the facilities it provides from the public funds. 'It is justly held by the authorities that 'to single out a certain portion of the people by the arbitrary standard of color, and say that these shall not have rights, which are possessed by others, denies them the equal protection of the laws.' * * * Such a course would be manifestly in violation of the fourteenth amendment, because it would deprive a class of persons of a right which the constitution of the state had declared that they should possess.' Clark v. Maryland Institute, 87 Md. 643, 661, 41 A. 126, 129."

And in Missouri v. Canada, United States Sup.Ct. December 12, 1938, Chief Justice Hughes said :

"The admissibility of laws separating the races in the enjoyment of privileges by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State.[5]

We are, however, not concerned in this case with an alleged inequality of the white and colored schools of the State, because no such issue is raised by the plaintiff's complaint, which, on the contrary, alleges that the qualifications of the colored school teachers are equal to those of white teachers of the same grade. The case presented here is not inequality of the Maryland schools for the scholars but inequality of pay for the teachers. In this respect it is said that the Maryland statutes are unique in that while there is prevailing inequality of pay between white and colored teachers in nineteen States, Maryland is the only State which has a statute containing a minimum salary scale for white teachers, with a lower minimum for teachers in colored schools. The statutory discrimination is not expressly made between white and colored teachers, but between white teachers and teachers (whether white or colored) in colored schools. On the face of the statute the discrimination is thus based not on the race or color of the teachers but on the color of the scholars. The definite statutory difference suggests the possibility of two alternatives; either the inequality of the schools for the scholars, resulting from the inequality of professional attainments of the teachers, or the inequality of the pay for the teachers, if of equal qualifications. The historical development of the statutes affords some indication

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[5] See also Williams v. Zimmerman, 172 Md. 563; Plessy v. Ferguson, 163 U.S. 537, 544; 2 Cooley on Torts, p.215; 45 Yale Law Journal 1296. Early cases announcing the principle are United States v. Buntin, 10 F. 730, and extensive annotations beginning at page 746; Claybrook v. City of Owensboro, 16 F. 297; 23 F. 634; Davenport v. Cloverport, 72 F. 689; Ward v. Flood, 48 Calif. 36; State v. Duffy, 7 Nev. 342; Hall v. DeCuir, 95 U.S. 504.

that in origin the difference was attributable to inequality of pedagogical qualifications of the colored teachers.[6] But for many years now there has been a State Normal School for training colored teachers under the supervision of the State Board of Education (see Art.77,s.152); and for the purposes of this case, on the motion to dismiss the complaint, its averment that the qualifications of the teachers of the same grade are equal must be accepted as true; and on this postulate the great disparity in the salaries is strikingly suggestive of unjust discrimination.

In considering the question of constitutionality we must also look beyond the face of the statutes themselves to the practical application thereof as alleged in the complaint. Yick Wo v. Hopkins, 118 U. S. 356. It is alleged not only that the teachers are in fact equal, but that the discrimination in pay is solely on account of race and color. This must also be accepted as true for the purposes of the present motion. If the County Board of Education, which has the responsibility for determining the teachers ' pay, were a party to the case,

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[6] Apparently the first Maryland statute prescribing a minimum salary for white teachers was the Act of 1904, Ch. 584, s. 53. At that time there seems to have been no State Normal School for the instruction and practice of colored teachers in the science of education. In the Act of 1908, Ch. 599, it was recited: "Whereas, the State of Maryland has for many years appropriated large sums of money for the free education of colored children with a view to improving the condition of the State by fitting them for the work and responsibilities of citizens; and Whereas, this endeavor of the State has not met with entire success, largely because of the inability of the school authorities of the State to secure the services of a sufficient number of trained and competent colored teachers". Thereupon the Act established a State Normal School for colored teachers.
The length of the scholastic year for colored schools has until recently been less than that for white schools. See Acts of 1904, Ch. 584, ss. 96; [illegible]; 1916, Ch. 506, s. 131; 1922, Ch. 382, s. 131; 1937, Ch. 552.

it, of course, would have the opportunity, if desired, to answer these allegations and submit the matter for determination on the facts.

The Attorney General contends that the plaintiff does not have a proper status to raise the question of constitutionality because he is an employe of the County Board who has voluntarily accepted employment on stated terms. In his complaint the plaintiff has described his status as follows:

> "Plaintiff, Walter Mills, is colored, a person of African descent and of Negro blood. Plaintiff has completed the course of instruction offered at Bowie State Normal School, a state normal school maintained and operated by the defendant State Board of Education for the instruction of Negro teachers for the public schools of Maryland. He holds a first grade teacher's certificate issued by the State Board of Education of Maryland and also a principal 's certificate issued by said State Board of Education of Maryland. He is now in his tenth year of teaching experience in the public schools of the State of Maryland. Plaintiff at the present time is employed as a principal of a public elementary school for colored children in Anne Arundel County in the State of Maryland subject to the rules, regulations and control of the defendants, the State Board of Education and the State Superintendent of Schools as will be set forth more fully hereafter. Anne Arundel County participates in the "Equalization Fund" of the State of Maryland provided by Section 204 of Article 77 of the Code of Laws of Maryland and pursuant to this Statute and Sections, 90, 195, 202 and 203 of said Article 77 plaintiff is paid less salary than the minimum salary required to be paid and actually paid to white principals of elementary schools in the State of Maryland as will hereinafter more fully appear."

Whether a public employe as such is entitled to invoke the equal protection clause of the Fourteenth Amendment is a question on which there is little available judicial authority, and there seems to be no reported case in which a public school teacher of any class has heretofore invoked this federal constitutional provision. In legal theory at least schools are maintained for the benefit of school children and not for the benefit of teachers. Counsel stated that they

have been unable to find any authority on the point and an independent search has met with no greater success. In view of the fact that the Amendment has been in force for 75 years, the absence of authority on the point is itself rather significant in its indication that it has not heretofore been thought the Amendment applied to such a case. In 1923 before the School Board of Baltimore City had voluntarily equalized the pay of white and colored teachers, an unsuccessful effort was made to require them to do so, by a mandamus petition. Thomas v. Field. 143 Md. 128. The suit was brought not by school teachers but by citizens and taxpayers. The plaintiffs in that case based their contention on a provision in the ordinance of estimates, and not on the Fourteenth Amendment. The equal protection clause include s women as well as men. Carrithers v. Shelbyville, 126 Ky.769. It is well known in this State that for many years there was an unequal salary schedule for school teachers unfavorable to women as compared with men, until the Act of 1924, Ch. 233 (Art.77,s.91) prohibited such discrimination on account of sex. It was, however, apparently never contended by the advocates of equal pay for women school teachers that they were entitled thereto by the equal protection clause of the Fourteenth Amendment. That a State officer or employe as such is entitled to invoke the Amendment seems to have been rejected in principle by the Maryland Court of Appeals in the case of Herbert v. Baltimore County, 97 Md. 639,643, where a state statute had materially reduced the salary or fee schedule of Justices of the Peace in Baltimore County in certain classes of cases, as compared with the official compensation of Justices of the Peace in other counties. The Act was attacked as unequal legislation under the Fourteenth Amendment. In rejecting the proposition the Court said :

"The plaintiff surely has no right to complain so long as he receives such compensation as the State chooses to prescribe. While his office is one which existed at common law, yet our Constitution places it within the power of the Legislature to prescribe his duties and compensation. It would certainly be an extreme and unheard of acceptation of the Fourteenth Amendment to hold that by it the State is deprived of the power to say whether a Justice of the Peace shall receive $10 or $100 per month in criminal cases. It is one thing to prescribe what salary a public officer shall receive for services to be performed and a different thing to undertake by lesiglation to deprive him of legal compensation for services already rendered. This Actprovides only for the former, and so long as the plaintiff and those who like him hold the State 's commission and authority to ast as a Justice, he and they must be satisfied with the compensation provided by the Legislature."

The right of the State to prescribe the qualifications for and the salary annexed to a public office of employment is ordinarily free from restriction; and it would not seem that a state employe who has accepted employment at a stated salary could complain that he has been denied a civil right under the equal protection clause of the Fourteenth Amendment. However, it is not necessary in this case to decide this precise question because in my opinion there is another aspect of the plaintiff 's situation which entitles him to attack the legislation in its practical application. The plaintiff is a qualified school teacher and has the civil right as such to pursue his occupation without discriminatory legislation on account of his race or color. While the State may freely select its employes and determine their compensation it would, in my opinion, be clearly unconstitutional for a state to pass legislation which imposed discriminatory burdens on the colored race with respect to their qualifications for office or prescribe a rate of pay less than that for other classes solely on account of race or color. If therefore the state laws prescribed that colored teachers of equal qualifications with white teachers should receive less compensation on account of their color, such a law would clearly be unconstitutional. It is true the statutes on their face do not

have this effect but the complaint alleges that this is the practical application given to the statutes throughout many of the Counties of the State. If so, the discrimination is clearly unlawful. In Simpson v. Geary, 204 F. 507,512, Circuit Judge Morrow said :

> "The right to contract for an retain employment in a given occupation or calling is not a right secured by the Constitution of the United States, nor of any Constitution. It is primarily a natural right, and it is only when a state law regulating such employment discriminates arbitrarily against the equal rights of some class of citizens of the United States, or some class of persons within its jurisdiction, as, for example, on account of race or color, that the civil rights of such persons are invaded, and the protection of the federal Constitution can be invoked to protect the individual in his employment or calling."

I conclude therefore that the plaintiff does have a status, not as a public employe, but as a teacher by occupation, which entitles him to raise the constitutional question; and if the complaint were made against the County Board of Education, which, it is alleged, is making the unjust discrimination between equally qualified white and colored teachers solely on account of their race and color, it wouldmstate a case requiring an answer.

But it does not follow that the plaintiff has stated a good cause of action against the defendants named in this case, in the absence of the County Board of Education.

The defendants are all general state officials who are sued in their representative capacity. The relief prayed is an injunction against their enforcement of unconstitutional laws, but the only definite effect of this (and it clearly appeared from the argument that it is the real objective) would be to tie up the Equalization Fund, and prevent its distribution to the Counties who are beneficiaries of the fund. This suit is aimed directly at the moneys of the State now in its treasury. It is therefore in substantial effect a suit against the State prohibited by the Eleventh Amendment. To

avoid this the plaintiff has sought to pattern the procedure on Ex parte Young, 209 U.S. 123, and Truax v. Raich, 239 U.S. 35. But on comparison this case bears faint resemblence to those. The principle of Ex parte Young as stated for the Court by Mr. Justice Peckham at pages 155 and 157, is:

> "The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal Court of equity from such action.
> * * * * * *
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> "In making an officer of the State a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the State, and thereby attempting to make the State a party."

See also Fitts v. Mc Ghee, 172 U.S. 516, 530; 43 A.L.R. 408.

Therefore to succeed against the defendants herethe plaintiff must show not only that the law is unconstitutional but that the defendants have power and authority to enforce it, and are doing so or have threatened to do so to his prejudice. Typical of the doctrine of Ex parte Young is a suit to enjoin the enforcement of an unconstitutional law, carrying criminal sanctions, by the prosecuting officers of the State. But there is nothing like that here. The complaint doesnnot show a case/even threatened irreparable injury to the plaintiff as a reason for the injunction sought. The plaintiff has a valid written contract with the County. His tenure of office is threatened by no one. He seeks an added benefit rather than the avoidance of a new burden. As to the Equalization Fund, I find nothing that denies to the plaintiff the equal protection of the laws. No question is, or could be of itself in this case raised under the State law as to the basis of its apportionment among the Counties. The State is under no obligation, either state or federal, to grant it at all, and when appropriated it may be distributed to the Counties as the

is not required by any federal law. It is argued that it is distributed on a discriminatory basis, as between white and colored teachers, but as appears in section 204 of Article 77 it is distributed on the basis of county wealth. The provision is only that if the county tax rate of forty-seven cents does not produce a certain sum the fund will meet the deficit. There is no other condition. None of the defendants have any authority with respect to the fund ex cept to pay it over to the Counties in accordance with the statute. Their power ends there. Nor does the fund when paid to the county operate to the prejudice of the plaintiff. It is an aid and not a hindrance to him. It is argued that when the counties receive the fund they apply it with other school funds to perpetuate the discriminatory minimum salary schedule. But this is the result of the alleged practice and not the command of the statute. The counties have local self government with respect to the teachers, and if their practice denies the equal protection of the laws, their's is the responsibility, and not the defendants'. Before the fund can properly be withheld from the counties as beneficiaries, they are entitled to be heard as a party to the case. As to the statutes themselves it is clear that it is only the County Boards that have power to enforce them in making the contracts with the teachers. The defendants have no power or authority in this respect. If the counties decide to equalize the teachers' salaries, or pay to either class more than the statutory minimum, the defendants are powerless to restrain them, by suit or otherwise. Possibly if the county should pay less than the statutory minimum the State Board might have power to sue in mandamus under the provision of Art.77, s.11, in pursuance of its general supervisory duties. But the complaint

does not allege any such action is contemplated or threatened. As it is the counties that alone are enforcing the discriminatory schedule relief should be had against them, and not against those who have no authority in the premises. But the complaint neither makes the county a party, nor does it even allege that demand has been made upon the county to desist from the alleged unconstitutional practice.[7]

There is still another reason why this action against general State officers only cannot be maintained in the absence of the County Board of Education. The County is a self-governing unit for elementary education. Subject only to the standard as to minimum efficiency, uniformity is not required in the separate counties. Each County Board in co-operation with the County Commissioners as to

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7 The complaint alleges in paragraph 10 that the defendants are enforcing by administrative ruling the discriminatory salary schedule, but the only instance alleged is with respect to a uniform standard form of teachers contract which expressly states that the salary is to be fixed by the County Board of Education "not less than the minimum salary provided by law." And it is clear from the statutes themselves that the defendants have no duty or authority to enforce the statutes against the plaintiffs, as the matter is committed to the County Boards.

the tax rate is free to determine the amount and quality of its educational facilities, and has power to select its teachers and determine their compensation. It may in the exercise of its lawful discretion decide whether to employ white or colored teachers for the colored schools; nor is it required to employ any particular teacher, whether white or colored, although duly qualified. And it may be observed that if the minimum salary schedules are written out of the law as unconstitutional, the local Boards will have unlimited discretion as to the amount to be paid the teachers. In that event doubtless the problem would be handled differently in the respective counties. As has been stated, salaries have been equalized in Baltimore City and nine Counties, four of which still participate in the Equalization Fund. It may also be that some of the Counties have a good defense to the charged discriminatory practice while others have not. To withhold the Equalization Fund from all alike would be to punish the innocent along with the guilty. From every point of view it is evident that the problem is local and not statewide, and that the remedy of the plaintiff and others

of his class is properly against their respective County Boards. Quite possibly the present case has been conceived in the view that one general suit would dispense with the necessity of many separate cases. Doubtless this would be desirable if the problem at present were general and not local. But to make it general would require further affirmative legislation, as in the case of the equalization by law of teachers' pay without regard to sex. But clearly the court has no power to order or even authoritatively advise legislation. From a realistic point of view it may be that the embarrassment to the Counties by withholding the Equalization Fund would result in political pressure on the Legislature now in session to increase the amount of the Fund sufficiently to enable the Counties, without cost to themselves, to equalize salaries; but this is a political consideration which the court is not at liberty to entertain. I conclude therefore that the County Board of Education of Anne Arundel County is a necessary and indispensable party to the plaintiff's ultimate objective.

But even if this suit could be maintained in the absence of the County Board of Education, there are other reasons why the injunctive relief prayed for with respect to the Equalization Fund should not be granted. The right to the writ of injunction is not absolute but lies in sound judicial discretion, and it may properly be withheld where it will do the plaintiff relatively little good and the defendant great harm. DiGiovanni v. Camden Ins.Ass'n. 296 U.S. 64,70; Petroleum Exploration Inc. v. Public Serv. Comm. 304 U.S. 209, 218; 32 C.J. 81; Vol.2,Lawrence Equity Jurisprudence, ss.1095,1096; Cumming v. Board of Education, 175 U.S. 528, 544. The issuance of the injunction in this case would be futile for any direct legal benefit to the plaintiff, and it would be very detrimental to elementary school education in those Counties which participate in the fund.

The plaintiff contends that he is entitled to an injunction because he has no other available legal remedy. He points to the well known fact that Congress has not empowered

the district courts to issue the writ of mandamus generally as an original writ.[8] But the intentional withholding of that power from this court furnishes no proper reason for the exercise of another power not otherwise appropriate/ Di Giovanni v. Camden Ins.Ass'n. 296 U.S. 94. Nor is it correct to say that the plaintiff has no other available legal remedy. On the contrary it is very clear that he has a full, adequate and complete legal remedy by a petition for mandamus in the Circuit Court for Anne Arundel County against the County Board of Education. This is the customary Maryland practice and procedure in the type of case we are here dealing with. Thomas v. Field, 143 Md. 128; Clark v. Maryland Institute, 87 Md. 643; Graham v. Joyce, 151 Md. 298; University of Maryland v. Murray, 169 Md. 478.[9] In such a suit, if the

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[8] The reason for this withholding from the district courts of general jurisdiction to issue writs of mandamus (except when used as a writ of execution) has been well expressed by Judge Rose in his text book on Federal Jurisdiction and Procedure, 5th Ed. s. 192, p. 197:

"Under our dual system of government, there are many opportunities for collision between State and Federal authorities. It is not to the public interest that private litigants should be in a position to force them. If a citizen of one State conceived that he had the right to the exercise of some purely ministerial function by a public official of another, he might go into the Federal Courts and apply for a writ of mandamus to compel that State officials todo his duty. In the long run it is probably better that he be forced to seek relief of this kind from a State tribunal. Doubtless prejudice or partiality sometimes there stands in the way of his getting what he should have. If it does it is a lesser evil than to arouse the antagonisms always so easily stirred up when a Federal Court undertakes to order a State officer to do anything."

[9] It appears that mandamus suits are now pending in Montgomery and Calvert Counties of the State wherein colored school teachers are seeking to require the respective Counties to equalize the salaries of white and colored teachers. See International Juridical Association Monthly Bulletin, September 1937, p. 32 as to the case of Wm.B.Gibbs,Jr., v. Bromme, et al, in Montgomery County; and Elizabeth Brown v. Board of Education of Calvert County, same publication for February 1938, p. 101. It is stated pending judicial decision in each of these cases the parties are in process of reaching a mutually satisfactory agreement.

federal constitutional question is ruled adversely to the plaintiff, he has the right of ultimate appeal to the Supreme Court of the United States.[10]

The plaintiff contends that he has an interest in the Equalization Fund which gives him the proper status to maintain this suit against those who have the control of the fund under state laws. But it seems obvious that the plaintiff has no direct proprietary interest in the fund. He is interested in it only to the extent that when received by Anne Arundel County it will facilitate payment of salaries of school teachers in that County. Enjoining distribution of the fund would certainly not aid the plaintiff in this respect. No facts are alleged by the plaintiff to show that he will sustain any injury by the distribution of the fund. His sufficient status to sue here as a citizen who is by occupation a teacher, relates to the challenged constitutionality of the minimum salary statutes as allegedly applied in actual practice in the Counties. But with respect to the Equalization Fund, as he has no proprietary interest therein, the case presents only a bare naked question of the alleged unconstitutionality of a State statute, and in such a case the plaintiff does not have an interest entitling him to invoke the power of the court. In Massachusetts v. Mellon, 262 U.S. 447, 488, in applying this principle it was said:

> "The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained, or is immediately in danger of sustaining, some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.[11]

There is another important consideration to be borne

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[10] Ordinarily the adequate legal remedy which defeats the equitable one must be one that is available in the federal court; but this principle seems not applicable to the situation here where the legal remedy of mandamus has been withheld by Congress from the federal courts on grounds of policy peculiarly applicable to this case. See DiGiovanni v. Camden Ins.Ass'n.296 U.S.64; Petroleum Exploration Inc. v. Public Serv.Com.304 U.S. 209.

[11] See also Demmert v. Smith, 9th Cir. 82 F.2d. 950, where the court refused to enjoin the distribution of an appropriation of the Territory of Alaska alleged to be discriminatory in respect to civil rights under the Fourteenth Amendment.

in mind in exercising discretion as to the issuance of the injunction sought. It would cause a serious embarrassment in the administration of the minimum program of education. The Equalization Fund constitutes moneys belonging to the State, and the only defendants in this case are general State officers represented by the Attorney General of the State. In substance, the action itself is against the State and would seem to be within the prohibition of the Eleventh Amendment if the State's immunity has not been waived by the general ground assigned in the motion to dismiss. See Rule 12 (b)(h) of the new federal rules of civil procedure. This immunity is a personal privilege which may be waived. Missouri v. Fiske, 290 U.S. 18,24. But even if it has technically been waived, nevertheless in dealing with the subject matter it must be borne in mind that interference by injunction by federal courts with important state activities should be avoided except where clearly required to give effect to supreme federal law. This was well expressed by Mr. Justice Cardozo in Hawks v. Hamill, 288 U.S. 52,60:

> "Caution and reluctance there must be in any case where there is the threat of opposition, in respect of local controversies, between state and federal courts. Caution and reluctance there must be in special measure where relief, if granted, is an interference by the process of injunction with the activities of state officers discharging in good faith their supposed official duties. In such circumstances this court has said that an injunction ought not to issue 'unless in a case reasonably free from doubt'. Massachusetts State Grange v. Benton, 272 U.S. 525,527. This rule has been characterized as an 'important' one, to be 'very strictly observed'. 272 U.S. at 527,529. Compare Gilchrist v. Interborough Rapid Transit Co. 279 U.S. 159; Cavanaugh v. Looney, 247 U.S. 453,456."

In Petroleum Exploration Inc. v. Comm. 304 U.S. 209,222, it was said by Mr. Justice Reed:

> "The extraordinary powers of injunction should be employed to interfere with the action of the state or the depositaries of its delegated powers, only when it clearly appears that the weight of convenience is upon the side of the protestant. Only a case of manifest oppression will justify a federal court in laying such a check upon administrative officers colore officii in a conscientious endeavor to fulfill their duty to the state."

The same principle was announced by Mr. Justice Harlan in Cumming v. Board of Education, 175 U.S. 528,545 (a school case) where he said :

> "We may add that while we all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by State taxation is a matter belonging to the respective States, and any interference on the part of federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

The importance of the subject matter and the novelty of the contention now first made under the equal protection clause of the Fourteenth Amendment has seemed to warrant the full discussion which has been submitted.

To summarize, the conclusions are:

1. The allegations of the complaint that the Maryland minimum salary statutes for teachers in public schools are practically administered in many of the Counties in such a way that there is discrimination against colored teachers solely on account of race and color charges an unlawful denial of the equal protection of the laws to colored school teachers in Counties, if any, where such conditions prevail; but

2. As the responsibility for this alleged wrongful and discriminatory action lies with those Counties, if any, where such conditions prevail, and as there is no denial of equal protection of the laws with respect to the distribution of the State moneys called the Equalization Fund among the Counties, this action cannot properly be maintained against the defendants who are general State officers and not County officials, in the absence from the record of the latter who are indispensable parties to the case. It would be contrary to the elementary principles of due process of law to determine

the rights of an absent indispensable party.

3. The plaintiff as a qualified school teacher, rather than as a public employe, has sufficient status to have the question determined in a suit against the proper party.

4. An injunction against these defendants to prohibit the distribution of the Equalization Fund is not a proper remedy in this case because (a) it would be futile as to the plaintiff's ultimate objective; (b) it would be an unnecessary embarrassment in the handling of the State's moneys, and (c) it would deprive the Counties, who are the beneficiaries of the Fund and who are not parties to this case, and especially those who have equalized their teachers ' salaries, of school funds without due process of law as to them.

For these reasons the complaint in this action as now presented must be dismissed unless counsel for the plaintiff desire to amend the complaint, in which case a motion for a desired amendment will be considered when submitted. If, in ten days no such amendment is requested, counsel may submit the appropriate order for dismissal.

William Chesnut
U. S. District Judge

Dated:

March 1st, 1939.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND

Walter Mills

vs

Tasker G. Lowndes, Mrs. A. Thalheimer Thomas H. Chambers, J. E. T. Finney, Charles A. Weagly, Wendell D. Allen, and Edward H. Sharpe, constituting the State Board of Education of Maryland, Albert S. Cook, William S. Gordy, Jr., State Comptroller and Hooper S. Miles, State Treasurer	)	CIVIL DOCKET No. 56

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

THURGOOD MARSHALL
CHARLES H. HOUSTON
LEON A. RANSOM
EDWARD P. LOVETT

Counsel for Plaintiff.

Appendix 5A

Mills Memo in Opposition to Dismiss

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND

Walter Mills vs Tasker G. Lowndes, Mrs. A. Thalheimer Thomas H. Chambers, J. E. T. Finney, Charles A. Weagly, Wendell D. Allen, and Edward H. Sharpe, constituting the State Board of Education of Maryland, Albert S. Cook, State Superintendent of Schools, William S. Gordy, Jr., State Comptroller and Hooper S. Miles, State Treasurer	CIVIL DOCKET No. 56

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS

STATEMENT OF PROCEDURE

The complaint filed herein sets forth a civil action on behalf of a Negro teacher in the public schools of Maryland who is a citizen of the United States and a citizen and resident of the State of Maryland seeking injunctive relief against the State Board of Education, the State Superintendent of Education, the Comptroller and the Treasurer of the State of Maryland. The complaint is a representative action in which plaintiff acts on behalf of other Negro teachers and principals similarly situated.

Plaintiff seeks to enjoin the enforcement of certain unconstitutional statutes by defendants as officers of the State of Maryland.

This cause of action arises under the Constitution and laws of the United States.

STATEMENT OF FACTS

Briefly summarized, the basic facts set out in the

complaint are as follows: Plaintiff, a Negro, is a qualified principal of a public elementary school in Anne Arundel County, Maryland. He holds a first grade teacher's certificate and also a principal's certificate issued by the defendant State Board of Education. He is now in his tenth year in teaching experience in the public schools of the State of Maryland.

The State of Maryland has declared public education a State function and has provided for the establishing and maintenance of a free public school system in Maryland financed by local and state taxes. Provisions have been made for separate schools for white and Negro youth. The general care and supervision of public education in Maryland is entrusted to the State Department of Education, at the head of which is the defendant State Board of Education.

In 1922 the General Assembly of Maryland established a minimum program throughout the State of Maryland by providing a minimum salary schedule for teachers in Maryland. These statutes are set out in Sections 90, 195, 202 and 203 of Bagby's Annotated Code of Maryland set out in the appendix to plaintiff's amended complaint.

The General Assembly of Maryland realized that the basis of an adequate public school system was a staff of qualified teachers and undertook to extend the protection of its laws to these teachers by establishing a minimum salary schedule. However, in doing so the General Assembly denied to plaintiff and others of his race the equal protection of these laws. The minimum salary schedule provides for a higher minimum salary for white teachers in the public elementary and high schools of Maryland than for teachers in colored elementary and high schools with identical qualifications and experience and performing essentially the same duties. While the said

schedule provides protection of its laws to white principals of elementary schools by establishing a minimum salary schedule absolutely no provision is made for a minimum salary for principals in colored elementary schools.

All teachers and principals in colored schools are Negroes. Plaintiff and other teachers and principals of his race are required by law to meet the same requirements as other teachers and principals in the public schools of Maryland. Plaintiff and other teachers and principals of his race perform essentially the same duties as other teachers and principals in the public schools of Maryland. (The only basis of discrimination and the only reason for denying the equal protection of laws to plaintiff and others of his race similarly situated is their race or color.

The defendant State Board of Education has been and is enforcing the statutes setting out the said minimum salary schedule.

In order to assist the poorer counties of Maryland to maintain the minimum salary and at the same time to enforce this minimum salary schedule the general assembly in 1922 also provided for an "Equalization Fund" in Section 204 of Article 77 of the Maryland Code. By Statute the sole basis of distribution of this public fund is the minimum salary schedule set out above. By said Statute this fund is actually administered by the defendants pursuant to this minimum salary schedule.

Anne Arundel County, in which plaintiff is principal, participates in this Equalization Fund and as a principal in such a County, he and other teachers and principals in this County and other Counties sharing in the fund, on whose behalf he brings this suit, have a personal interest in said Equalization Fund and a right to participate in the distribution thereof.

As a result of the inequality in said statutes and the distribution of said fund, plaintiff actually receives less salary than the minimum required to be paid and actually paid to white principals of elementary schools in Anne Arundel County and throughout the State of Maryland with identical qualifications, similar experience and performing essentially the same duties.

THESIS

The right of the citizen to an education at the hands of the sovereign is one that is now universally recognized in the American political system. Originally not a right, but a mere privilege available only to the sons of the rich or to the fortunate few who were recipients of individual charities, education has been assumed as a burden by the state and made the common right of every person within its boundaries. All authorities agree that the basis of an adequate educational system is a qualified teaching staff.

The purpose behind the assumption of this burden by the sovereign is easily recognizable. Long since it has been understood that the perpetuation, as well as the successful functioning, of the democratic system of government must depend upon an enlightened, intelligent citizenry and that this citizenry can derive only from properly educated youth.

The moment a state undertakes public education as a state function the guarantees of the Fourteenth Amendment to the United States Constitution require equal provisions for all youth of the particular state. The constitutionality of all subsequent provisions by the several states for public education depends wholly upon the equality of said provisions.

Originally the duty of financing public education rested with the political subdivision of a state. Recently the states have assumed the duty of financing public education.

In order to assist poorer counties to maintain minimum programs equal to the richer counties, the states have assisted these poorer counties. Now a movement has been started to provide federal funds to assist poorer states. The modern trend can be summed up in the words "equality of educational opportunities". Today the state has extended its dominion over the function of public free education until, at least in theory, the poorest child in the poorest county of the state has equal opportunity to achieve the elements of a complete education with the richest son in the richest county.

However, the nineteen states and the District of Columbia maintaining separate schools for the races have failed to integrate the Negro youth in this modern trend of "equality of educational opportunities". This is true even in spite of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, and in spite of the fact that democracy itself depends upon an intelligent citizenry <u>both white and Negro</u>.

Maryland, along with the other states maintaining separate schools, instead of including the Negro in its efforts to equalize educational opportunities, has denied to the Negro the equal protection of its laws.

The requirement of equality in treatment of the two races in public education, recently re-established by the Supreme Court of the United States, goes beyond the mere establishment of the same number of grades or types of school. Equality includes school term, buildings, equipment, bus-transportation, consolidation, supervision, and an equally trained teaching staff guaranteed by equal salaries for identical qualifications and experience.

The State of Maryland based its minimum educational

program upon a minimum salary schedule but in doing so denied to Negro teachers the equal protection of its laws. In doing so the State of Maryland has defied the constitution of the United States and all such provisions being enforced by the defendants are unconstitutional and void.

We shall show in Part One of this brief the historical background of these unconstitutional statutes. In Part Two we shall show that these statutes are unconstitutional; that plaintiff and others on whose behalf he sues have a personal interest in these statutes; that they are being enforced by the defendants and that the defendants should therefore be enjoined from enforcing them. In Part Three we shall address ourselves to matters touching the jurisdiction and power of the Court to grant the relief prayed for.

PART ONE

LEGISLATIVE BACKGROUND OF PLAINTIFF'S CASE

I

MARYLAND HAS UNDERTAKEN THE DUTY OF PROVIDING FREE PUBLIC EDUCATION AS A STATE FUNCTION

The State of Maryland realizing that free public education was an essential function of government insured the establishment of an adequate educational system by placing the following mandate in the Constitution of 1867:

> "Section 1. The General Assembly, at its first session after the adoption of this constitution, shall by law establish throughout the State a thorough and efficient system of free public schools; and shall provide by taxation, or otherwise, for their maintenance."
> Article VIII, Maryland Constitution of 1867.

Constitutional provisions and legislative enactments show that in Maryland a system of public education is a state responsibility.

A recognition of the state's obligation is found in the following quotation from the Maryland State Bulletin, Volume 12, No. 11, issued by the State Department of Education, September 1930:

> "It has come to be a fixed American policy to hold the wealth of a state responsible for the education of the children of the state, regardless of who has the wealth and who has the children. A unit of the state that does not have sufficient wealth to educate its children must be helped by the wealthier communities through a state school fund. The purpose of a state school fund is to equalize the burden of taxation for schools, and to secure, in a measure, equality of educational opportunity for all the children of the state. Education is a state function and a system of free public schools is provided for in every state constitution." (Page 6)

A. THE GENERAL ASSEMBLY OF MARYLAND HAS PROVIDED FOR THE ESTABLISHMENT AND MAINTENANCE OF A FREE PUBLIC SCHOOL SYSTEM AS A STATE FUNCTION.

Starting with the meeting of the General Assembly in 1872 and extending to the last meeting of the General Assembly the State of Maryland has made elaborate provisions for its free public school system. These statutes have been codified and now appear in Article 77 of Bagby's Annotated Code of Maryland.

Matter of education affecting the State and the General care and supervision of public education is by Statute entrusted to a State Department of Education, at the head of which is the defendant State Board of Education.

B. THE PUBLIC SCHOOL SYSTEM OF MARYLAND IS FINANCED BY LOCAL AND STATE TAXES.

The Constitution of 1867 ordered the General Assembly to provide by taxation, or otherwise, for the maintenance of a system of free public schools. It also provided that the school fund of the State shall be kept inviolate.

The General Assembly has provided for the establishment of a General State School Fund from all public school taxes levied by the State to aid in the support of public schools. The Boards of County Commissioners of the several counties and the City of Baltimore are also authorized to levy and collect taxes for the support of public schools.

At the present time the free public schools of the State of Maryland are maintained by funds secured from local and state taxes.

C. THE POLICY OF THE PUBLIC SCHOOL SYSTEM OF MARYLAND HAS BEEN TO EXTEND THE FACILITIES OF THE PUBLIC SCHOOL SYSTEM.

The history of the development of free public education in Maryland demonstrates very clearly a plan of continued expansion. The State of Maryland has extended its system from a few scattered one-room schools to a system of well equipped consolidated schools, high schools, teacher's colleges, and the University of Maryland.

D. PROVISIONS FOR NEGRO SCHOOLS HAVE ALWAYS BEEN INFERIOR TO PROVISIONS FOR WHITE SCHOOLS IN MARYLAND.

The State of Maryland, however, has failed to integrate the Negro in its broad program of expansion. Although all the public schools of Maryland are under a single system, provisions for similar types of education for white youth have always been

made earlier than provisions for Negroes. Provisions for the education of Negroes have also been inferior in quality and quantity to that for whites.

In 1916 the General Assembly realized the necessity of a minimum school term and established a minimum term of 180 days free to all white youths between the ages of six and twenty. It was not until 1922 that the General Assembly provided for a minimum school term for Negroes and this was established at 160 days for Negroes.

In 1916 provision was made for the establishment and maintenance of high schools for white youth to be open 180 days. It was not until 1922 that provision was made for the establishment of high schools for Negroes and then only for 160 days.

Article 77 of the Maryland Code contains many more instances of the failure of Maryland to extend the equal protection of its laws to Negro youth. The annual reports of the State Department of Education demonstrate glaring inequalities in the provisions for white and Negro youth.

II

HAVING UNDERTAKEN THE FUNCTION OF PUBLIC EDUCATION, THE STATE OF MARYLAND, BY REASON OF THE FOURTEENTH AMENDMENT, IS REQUIRED TO FURNISH EQUALITY OF TREATMENT TO ALL RACES IN THE FACILITIES IT PROVIDES FROM PUBLIC FUNDS.

It has been established by a long line of cases that as a result of the adoption of the Fourteenth Amendment to the United States Constitution the states are required to extend to its citizens of the two races equal treatment in the facilities it provides from public funds.

This rule has been definitely established by the Supreme Court of the United States in many cases.

See: PLESSY v. FERGUSON 163 U.S. 537 (1896)

CUMMUNG v. COUNTY BOARD OF EDUCATION
175 U.S. 528,44 L. Ed. 262 (1899)

McCABE v. ATCHINSON, TOPEKA & SANTA FE RWY. CO.
235 U. S. 151, 59 L. Ed 169 (1914)

GONG LUM v. RICE 275 U.S. 78, 72 L. Ed. 172 (1927)

MISSOURI EX REL. GAINES v. CANADA ET AL.
83 L. Ed. 207 (December 12, 1938)

III

THE CONSTITUTIONALITY OF ALL PROVISIONS FOR SEPARATE SCHOOLS FOR THE RACES IN MARYLAND DEPENDS UPON THE EQUALITY OF THE PROVISIONS:

The most recent case involving the necessity of equal provisions for the public education of both races is the case of Missouri ex rel. Gaines v. Canada (supra). The question in that case was whether a state may furnish law school facilities in a state university to white students while denying them to colored students. Mr. Chief Justice Hughes in granting relief to the Negro petitioner for mandanus stated:

> " The admissibility of law separating the races in the enjoyment of privileges afforded by the state rests wholly upon the equality of the privileges which the laws give to the separated groups within the State. "
> (Underscoring ours).

This decision establishes the yard-stick by which all provisions for public education in Maryland must be measured.

PART TWO

PLAINTIFF'S SUBSTANTIVE CASE

I

THE STATUTES ESTABLISHING A MINIMUM SALARY SCHEDULE FOR TEACHERS AND PRINCIPALS IN THE PUBLIC SCHOOLS OF MARYLAND ARE CONTRARY TO THE FOURTEENTH AMENDMENT AND THEREFORE UNCONSTITUTIONAL.

The State of Maryland in an effort to establish a minimum program of public education extended the protection of its laws to the teachers in the public schools by establishing a minimum salary schedule in 1922.

The statutes setting out the minimum salary schedule are too long to be included in this brief. They are attached to plaintiff's Amended Complaint as an appendix and are prayed to be read as a part of this brief.

The questions involved herein is not a question of the duty of Maryland to provide a minimum salary schedule for teachers but of its duty when it undertakes to do so to insure equal protection to all teachers and principals. Again referring to the recent decision of State of Missouri ex rel. Gaines v. Canada (Supra), Mr. Chief Justice Hughes in the majority opinion stated:

> " The question is not of a duty of the State to supply legal training ... but of its duty when it provides such training to furnish it to the residents of the State upon the basis of an equality of right."

The gross inequality and direct discrimination against Negro teachers and principals can be readily discovered by reference to "Plaintiff's Exhibit A" filed with the Amended Complaint.

The State of Maryland while extending the protection of its laws to white principals in elementary schools by providing for a minimum salary for them, denied the equal protection of its laws to plaintiff and other principals in colored elementary schools by making no provision for a minimum salary for principals in colored elementary schools. As a result of the denial by Maryland of the equal protection of its laws to plaintiff he actually receives a salary less than the minimum salary guaranteed to white principals of elementary schools with iden-

tical qualifications and experience and performing essentially the same duties.

The same schedule guarantees a higher minimum salary for white teachers in elementary and high schools than for teachers in elementary and high schools with identical qualifications and experience and performing essentially the same duties.

Although there appears to be no case directly in point there are numerous cases construing the Fourteenth Amendment which clearly form a basis for the relief prayed for in this case.

A. THE FOURTEENTH AMENDMENT GUARANTEES THE EQUAL PROTECTION OF THE LAWS TO ALL UNITED STATES CITIZENS.

Section 1 of the Fourteenth Amendment to the Constitution provides:

> "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; or deny to any person within its jurisdiction the equal protection of the law."

The purpose of the enactment of the Fourteenth Amendment has been clearly set out by Mr. Justice Strong of the Supreme Court of the United States in the case of Strauder v. West Virginia, 100 U. S. 303, 25 L. Ed. 664 (1879).

> "If this is the spirit and meaning of the Amendment, whether it means more or not, it is to be construed liberally, to carry out the purposes of its framers. .... 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; ---
>
> .....

B. THE FOURTEENTH AMENDMENT IS IN GENERAL TERMS AND DOES NOT ENUMERATE THE RIGHTS IT PROTECTS.

> "The Fourteenth Amendment makes no attempt to enumerate the rights it is designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection either for life, liberty or property. Any state action that denies this immunity to a colored man is in conflict with the Constitution."
>
> Strauder v. West Virginia. (Supra)

One of the leading cases on the question of discrimination by a sub-division of a state is the case of Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed., 220 (1886). The City of San Francisco in 1880 passed an ordinance making it unlawful for any person or persons to maintain a laundry within the City of San Francisco without having first obtained the consent of the Board of Advisors unless the building was constructed either of brick or stone. Of the 320 laundries in the City, 240 were owned by Chinese--of the 320 laundries about 310 were constructed of wood. All Chinese applicants for licenses from the Board of Advisors were refused and all others were accepted except one. One Chinese was arrested for violation of the ordinance and applied for a writ of habeas corpus. The Supreme Court of the United States in declaring the imprisonment of the petitioner invalid stated:

"....Though the law itself be fair on its face and impartial in appearance yet, if it is applied and administered by public authority with an evil eye and unequal hand so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to and rights, the denial of equal justice is still within the prohibition of the Constitution."

"....The fact of this discrimination is admitted. No reason for it is shown, and the conclusion cannot be resisted, that no reason for it exists except hostility to the race and nationality to which the petitioner belong, and which in the eye of the law is not justified. The discrimination is therefore illegal and the public administration which enforces it is a denial of the equal protection of the laws and violation of the Fourteenth Amendment of the Constitution. The imprisonment of the petitioner is, therefore illegal and he must be discharged."

C. THE PROTECTION OF THE FOURTEENTH AMENDMENT HAS BEEN APPLIED IN NUMEROUS TYPES OF CASES.

(1.) A statute providing a different mode of taxation for persons and railroad corporations has been held to deny the equal protection of the laws.

"The fourteenth amendment to the Constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the state which cannot touch the individual or his property, including among them that of taxation. Whatever the state may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws is meant equal security under them to every one on similar terms,--in his life, his liberty, his property, and in the pursuit of happiness. It not only implies the right of each to resort, on the same terms with others, to the Courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also his exemption from any greater burden or charges than such as are equally imposed upon all others under like circumstances.

"Unequal exactions in every form, or under any pretense, are absolutely forbidden; and of course unequal taxation, for it is in that

form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where, for instance, one may be taxed at 1 percent on the value of his property, another at 2 or 5 percent; or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property."

Railroad Tax Cases 13 Fed. 722, 733 (1882)

(2.) A franchise tax against foreign corporations but not placed against domestic corporations is invalid.

"The inhibitions of the amendment that no State shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation."

Southern Railway Co. v. Greene, 216 U. S. 400, 412 (1910)

(3.) A statute of Texas which provided that railroad corporations which did not pay claims within a certain time would be assessed an attorney's fee was declared to be a violation of the equal protection clause of the Fourteenth Amendment.

"But it is said that it is not within the scope of the fourteenth amendment to withhold from states the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of denial of equal protection. While, as a general proposition, this is undoubtedly true ....yet it is equally true that such a classification cannot be made arbitrarily. The state may not say that all white men shall be subjected to the payment of the attorney's fees of parties successfully suing them, and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must rest upon some

difference which bears a reasonable and just relation to the act in respect to which the classification is proposed...."

Gulf C. and S. F. R. Co. v. Ellis 165 U. S. 150. 41 L. Ed. 666 (1896)

(4.) A Pennsylvania statute which taxed each employer three cents per day for each foreign born unnaturalized employee was declared to be in violation of the Fourteenth Amendment.

"....The tax is an arbitrary deduction from the daily wages of a particular class of persons. Now the equal protection of the laws declared by the Fourteenth Amendment to the Constitution secures to each person within the jurisdiction of a state exemption from any burden or charges other than such as are equally laid upon all others under like circumstances."

Juanita Limestone Co. v. Fagley 187 Pa. 193, 42 L R A 442 (1898)

(5.) A Philippine statute which prohibited merchants from keeping account books except in English or Spanish language, or in a local dialect was held to deny the equal protection of the laws to Chinese keeping their books in Chinese.

"Of course, the Philippine government may make every reasonable requirement of its taxpayers to keep proper records of their business transactions in English or Spanish or Filipino dialect by which an adequate measure of what is due from them in meeting the cost of the government can be had. How detailed these records should be, we need not now discuss, for it is not before us. But we are clearly of the opinion that it is not within the police power of the Philippine legislature, because it would be oppressive and arbitrary to prohibit all Chinese merchants from maintaining a set of books in the Chinese language, and in the Chinese characters and thus prevent them from keeping advised of the status of their business and directing its conduct... Without them such merchants would be a prey to all kinds of fraud and without possibility of adopting any safe policy."

Yo Cong Eng v. Trinidad 271 U. S. 507, 525, 46 S. Ct. 620, 70 L. Ed. 1063 (1925)

D. THE INHIBITIONS OF THE FOURTEENTH AMENDMENT PREVENT A DENIAL OF THE EQUAL PROTECTION OF THE LAWS TO NEGROES.

The Supreme Court of the United States in the case of Ex parte Virginia 100 U. S. 339 (1879) declared:

> "One great purpose of the Amendment was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood into perfect equality of civil rights with all other persons within the jurisdiction of all the States. They were intended to take away all possibility of oppression by law because of race or color...."

(1.) The protection of the Fourteenth Amendment has been held to prevent the unlawful exclusion of Negroes from grand and petit juries.

Where a discrimination has been made against persons because of race or color in a state statute or in any action of officials thereunder, in selecting, summoning or empaneling jurors, any person of the race so discriminated against who is to be tried on a criminal charge by such jurors may by proper proceedings duly taken for that purpose have the statute or the action taken thereunder annulled by the Court as being a denial by the state to the person so being tried of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. This rule is the law of the land as determined by the Supreme Court of the United States. See:

Montgomery v. State 55 Fla. 97, 45 So. 879 (1908)

See also:

Strauder v. West Virginia, Supra.
Ex parte Virginia, Supra.
Neal v. Delaware 103 U. S. 389, 26 L. Ed. 467, (1880)
Norris v. Alabama 294 U. S. 587, 55 S. Ct. 579, 79 L Ed. 1074 (1935)
Hollins v. Oklahoma 295 U. S. 394, 55 S. Ct. 784, 79 L. Ed. 1500 (1935)
Hale v. Kentucky 58 Sup. Ct. 753 (1938)

" An actual discrimination against a Negro, on account of his race, by officers intrusted with the duty of carrying out the law, is as potential in creating a denial of equality of rights as a discrimination by law."

Tarrance v. Florida 188 U. S. 520, 23 S. Ct. 402, 47 L. Ed. 572 (1903)

(2.) A statute banning Negroes from participation in primary elections held in the state for the nomination of candidates for senator and representatives in Congress, and state and other offices, violates the Fourteenth Amendment.

A statute of Texas provided:

" Every political party in the state through its executive committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party....."

Acting under this statute, and not under any authorization from the convention of their party, the executive committee of the Democratic Party in Texas adopted a resolution that only white Democrats should participate in the primary elections, thereby excluding Negroes. It was held that the power exercised by the executive committee in this instance was not the power of the party as a voluntary organization but came from the statute. The committee's action was therefore state action within the meaning of the Fourteenth Amendment. The resulting discrimination was held to violate that amendment.

Nixon v. Herndon 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759 (1926)

Nixon v. Condon 286 U. S. 73, 52 S. Ct. 484, 76 L. Ed. 984 (1931)

(3). A City ordinance prohibiting the occupancy of a lot by a colored person in a block where a majority of the residences were occupied by white persons, thereby preventing

white persons in such block from selling property therein to Negroes has been held to violate the Fourteenth Amendment.

> " As we have seen this court has held laws valid which separated the races on the basis of equal accomodations in public conveyances, and courts of high authority have held enactments lawful which provide for separation in the public schools of white and colored pupils where equal privileges are given. But in view of the rights secured by the Fourteenth Amendment to the Federal Constitution such legislation must have its limitations, and cannot be sustained where the exercise of authority exceeds the restraints of the Constitution. We think these limitations are exceeded in laws and ordinances of the character before us."

Buchanan v. Warley, 245 U. S. 60 (1917)

See also:

Allen v. Oklahoma City 52 P. (2d) 1054 (Okla.--1936)

(4.) A state homestead law was held to be unconstitutional in so far as it excluded Negroes from its benefits.

See:

Custard v. Poston 1 S. W. 434 (Ky.--1886)

(5.) An ordinance prohibiting colored barbers serving white children has been held to violate the Fourteenth Amendment:

See:

Chaires v. City of Atlanta 164 Ga. 755, 139 S. E. 559 (1927)

(6.) A denial to Negroes of Pullman accomodations on a train pursuant to a state statute has been held to be a violation of the Fourteenth Amendment.

A statute of Oklahoma provided for separate but equal accomodations on trains and further provided that nothing contained in the act should be construed to prevent railway companies from hauling sleeping cars, dining and chair cars attached to their trains to be used exclusively by either white or Negro

passengers, separately but not jointly. Five Negroes brought suit in equity to restrain the companies from making any distinction in service on account of race. The railroad Company demurred and contended they were not obliged to furnish separate but equal accomodations where there were only a few Negroes who desired pullman service. The Supreme Court held:

> "This argument with respect to volume of traffic seems to us to be without merit. It makes the Constitutional right depend upon the number of persons who may be discriminated against, whereas the essence of the Constitutional right is a personal one. Whether or not particular facilities shall be provided may doubtless be conditioned upon there being a reasonable demand therefor, but, if facilities are provided, substantially equality of treatment of persons travelling under like conditions cannot be refused it is the individual who is entitled to the equal protection of the laws, and if he is denied by a common carrier, acting in the matter under the authority of a state law, a facility or convenience in the course of his journey which under substantially the same circumstances is furnished to another traveler, he may properly complain that his Constitutional privilege has been invaded."
>
> McCabe v. Atchinson, Topeka and Santa Fe Ry. Co. 235 U. S. 151, 160, 35 S. Ct. 69, 59 L. Ed.

E. THE FOURTEENTH AMENDMENT GUARANTEES TO NEGROES THE EQUAL PROTECTION OF THE LAWS IN THE ADMINISTRATION OF PUBLIC SCHOOLS.

In the case of Williams v. Board of Education, 45 W. Va. 199 (1898), the Board of Education of Fairfax County, West Virginia ruled that the white schools should be open eight months and the colored schools for five months. A colored teacher refused to close her school at the end of five months but taught the full eight months. She filed suit for the three months' salary. The Supreme Court of Appeals of West Virginia upheld the right of this teacher to her full salary for eight months.

It has been uniformly held by Courts throughout the

United States that educational opportunities offered by the public school system must be equal.

See:

Piper v. Big Pine School District 193 Cal. 664 (1924)

Ward v. Flood 48 Cal. 36, 17 Am. R. 405, (1874)

State v. Duffy 7 Nev. 342, 8 Am. R. 713 (1872)

U. S. v. Buntin 10 Fed. 730 (C. C. Ohio) (1882)

Corey v. Carter 48 Ind. 327 (1874)

Williams v. Bradford 158 N. C. 36, 73 S.E. 154 (1911)

Clark v. Board 24 Iowa 266, (1868)

S. Ruling Case Law 596 Sec. 20

11 C. J. Civil Rights, Sec. 10. p. 805

Cooley on Torts (Penn. Ed.) Sec. 236

The Court of Appeals of Maryland in the case of Pearson v. Murray, 169 Md. 478, 182A 590, 103 A.L.R. 706 (1936) held that:

> "As a result of the adoption of the Fourteenth Amendment to the United States Constitution, a state is required to extend to its citizens of the two races substantially equal treatment in the facilities it provides from public funds...."

Where separate schools are maintained Negroes are entitled to have a fair share of the funds raised by taxation applied to the maintenance of the Negro schools. In the case of Claybrook v. City of Owensboro, 16 Fed. 297 (D. C. Ky.) (1883) the General Assembly of Kentucky passed an act authorizing a municipal corporation to levy taxes for school purposes and to distribute taxes from white people to the white schools and taxes from the colored people to colored schools. Residents of the City of Owensboro filed a petition for an injunction in the Federal Court restraining the distribution of the taxes. The Federal Court in granting the injunction held that:

> "The equal protection of the laws guaranteed by this Amendment means and can only mean that

the laws of the states must be equal in their benefit as well as equal in their burdens, and that less would not be 'equal protection of the laws.' This does not mean absolute equality in distributing the benefits of taxation. This is impracticable; but it does mean the distribution of the benefits upon some fair and equal classification or basis."

(16 Fed. 297, 302)

See also: Davenport v. Cloverport, 72 Fed. 689, (D. C. Ky.) 1896)

Puitt v. Commissioner Gaston County, 94 N.C. 709, 55 Am. R. 638 (1886)

III

THE STATUTES HAVE BEEN SO APPLIED TO AND ENFORCED AGAINST PLAINTIFF AS TO VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

The statutes establishing the discriminatory salary schedules are not only unconstitutional and void but are being administered and enforced by defendants in such a manner as to deny to plaintiff and others of his race similarly situated the equal protection of the laws.

A. DEFENDANT STATE BOARD OF EDUCATION REQUIRES ALL CONTRACTS FOR TEACHERS AND PRINCIPALS TO BE BASED ON THE MINIMUM SALARY SCHEDULE.

The defendant State Board of Education and the defendant Albert S. Cook, State Superintendent of Schools are enforcing the discriminatory salary schedule by making it a part of every teacher's and principal's contract in the public schools of Maryland. The uniform teacher's contract provided for by By-law 13 of the State Board of Education includes the proviso: "..... The salary of said teacher shall be fixed by the County Board of Education, which shall be not less than the minimum salary required by law."

Pursuant to the enforcement of these statutes, the State of Maryland acting through its officers requires the sever-

al County Boards of Education to pay all white principals of elementary schools at least a stated minimum salary. Since there is no provision in these statutes for a minimum salary for principals in colored elementary schools the State of Maryland is denying the equal protection of its laws to plaintiff and other Negro principals in elementary schools. Similarly, by not providing for as high a salary for Negro teachers in elementary and high schools as for white teachers the State of Maryland is denying the equal protection of its laws to these Negro teachers in the public schools of Maryland.

B. THE EQUALIZATION FUND ENFORCED AND DISTRIBUTED BY DEFENDANTS PERPETUATES THE DISCRIMINATORY SALARY SCHEDULE.

The State of Maryland in 1920 established a minimum program of education in the public schools. In order to assist poorer counties to maintain adequate schools the General Assembly in 1922 established the "Equalization Fund," consisting of State funds to be distributed among the poorer counties. In doing so the General Assembly provided by law that this fund was to be distributed solely on the basis of the minimum salary schedules provided by law.

The purpose of the fund has been declared to be:

> "Any county which cannot carry the minimum program of salaries of teachers and other costs of instruction set up by the State with the State aid available from other sources and the proceeds of a county tax rate of 67 cents on the assessable property taxable at the full rate taxable for county purposes, shall receive sufficient aid from the State Equalization Fund to make it possible to do so."
> (Maryland School Bulletin "Equalizing Educational Opportunities in Maryland" P 73 (1930) issued by State Department of Education)

Following this theory the General Assembly made the said discriminatory salary schedule the basis of distributing the

Equalization Fund. Article 77, Chapter 19, Section 204 provides:

> "....The Comptroller shall charge against and pay as hereinbefore or hereinafter provided from the General State School Fund...; such special appropriations to be known as an Equalization fund, as may from time to time be made by Budget Bill or Supplementary Appropriation Bill to the county boards of education of certain counties to enable them to pay the minimum salaries prescribed in this Article for county superintendents, supervising teachers and helping teachers, high school and elementary school teachers, and teachers in colored schools; provided, that the board of county commissioners of each of the several counties sharing in the Equalization Fund shall levy and collect an annual tax for the schools of not less than sixty-seven (67) cents on each one hundred dollars ($100) of assessable property, exclusive of the amount levied for debt service and capital outlay for the schools; provided further, that in any county, all funds which the county board of education may be authorized to expend for the schools, other than State appropriations, and exclusive of the amount authorized to be expended for debt service and capital outlay, may, for the purposes of the above proviso, be considered as levied by the board of county commissioners, irrespective of the source or sources from which such funds may be derived; and provided, further, that the county board of education in each of the several counties sharing the Equalization Fund shall expend no less than twenty-four per centum (24%) of the total budget, not including debt service and capital outlay for purposes other than teachers' salaries...."

By statute this fund is enforced by the defendants. No county can share in the Equalization Fund unless it maintains the minimum program which requires the payment of minimum salaries to its teachers and principals. Thus, the defendants, say in effect, to Anne Arundel County: "If you want to share in this fund you must pay your white principals of elementary schools a certain minimum salary but you do not have to pay your principals of colored elementary schools any stated minimum salary." and further: "You must pay your white elementary and high school teachers a certain minimum salary which is higher than the minimum salary we require you to pay Negro teachers."

Of course, the county can pay the Negro and white

teacher more than the minimum or to equalize the salaries, then the defendants penalize these counties by refusing to give to them more than the amount for the discriminatory salary schedule. The defendants in effect say that: "We will help you to finance this discriminatory salary schedule but if you undertake to pay more or to follow the Fourteenth Amendment and pay equal salaries for equal work we will not pay the difference; You will have to make up the difference yourselves." Since the counties sharing in the Equalization Fund are too poor to even pay the minimum salaries without help from the State, they are unable to equalize salaries. Thus, the defendants effectively enforce this discriminatory salary schedule set out above.

IV

THE ENFORCEMENT OF THESE STATUTES BY DEFENDANTS IS STATE ACTION WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT

These statutes are by law administered by the following defendants.

A - MEMBERS OF STATE BOARD OF EDUCATION - By statute the State Board of Education operates as an administrative department of the State of Maryland. (Chapter 1, Section 2, Article 77, Maryland Code.)

B - ALBERT S. COOK - State Superintendent of Schools is by law chief executive, the secretary and treasurer of the State Board of Education. (Chapter 3, section 10, Article 77, Maryland Code)

C - WALTER S. GORDY, JR. - Is the State Comptroller duly elected pursuant to Article 6 of the Constitution of Maryland.

D - HOOPER S. MILES - Is the State Treasurer duly appointed pursuant to Article 6 of the Constitution of Maryland.

All the defendants are sued in their official capacities as officers of the State of Maryland. The Fourteenth Amendment applies to all of their official acts.

The Fourteenth Amendment applies to the acts of all State officers including the acts by the legislative, executive,

and judicial authorities.

> "We have said the prohibitions of the Fourteenth Amendment are addressed to the States. They are, 'No state shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States, ...Nor deny to any person within its jurisdiction the equal protection of the laws.' They have reference to actions or the political body denominated a state, by whatever instruments or in whatever modes that action may have taken. A state acts by its legislative, its executive or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the state or of the officers or agents by whom its powers are asserted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power his act is that of the state. This must be so, or the constitutional prohibition has no meaning then the state has clothed one of its agents with power to annul or to evade it."
>
> Ex parte Virginia 100 U. S. 303, 25 L. Ed. 664 (1879)

V

PLAINTIFF HAS A PERSONAL INTEREST IN THE MATTER OF THIS ACTION

Plaintiff is principal of a public elementary school in Anne Arundel County which shares in the Equalization Fund. As a principal in a county participating in the Equalization Fund, he and other Negro teachers and principals, similarly situated, on whose behalf he brings this action, have a personal interest in said Equalization Fund and a right to participate in the distribution thereof.

A. THE RIGHT TO THE EQUAL PROTECTION OF THE LAWS IS A PERSONAL RIGHT.

The Supreme Court of the United States has established and re-affirmed the rule that the guarantees of the Fourteenth Amendment present personal rights. Mr. Chief Justice Hughes in the case of Missouri ex Rel. Gaines v. Canada, et al. (Supra) held:

> " Here, petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the law, and the State was bound to furnish him within its borders facilities for legal education substantially equal to those which the State there afforded for persons of the white race, whether or not other Negroes sought the same opportunity."

See also: McCabe v. Atchison, Topeka and Santa Fe Rwy. Co. (Supra)

PART THREE

JURISDICTION OVER THE CAUSE

I

EXISTENCE OF REQUISITES OF FEDERAL JURISDICTION

The scope of the jurisdiction conferred upon this court by the various sections of the Judicial Code will be made clear by first collating the sources, constitutional and statutory, of the substantive Federal rights of which the plaintiff and others on whose behalf he sues by the enforcement of these statutes by these defendants.

A. FEDERAL RIGHTS ARE INVOLVED.

1. THE CONSTITUTION -- The basic constitutional guarantee here involved is the equal protection clause of the Fourteenth Amendment (quoted Supra, P.).

2. FEDERAL STATUTES -- This cause of action set forth in the Amended Complaint falls within Section 41 of Title 8 of the United States Code which provides:

"EQUAL RIGHTS UNDER THE LAW. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

See also:

"CIVIL ACTION FOR DEPRIVATION OF RIGHTS. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceedings for redress." (Undersocoring ours)

It is clear without further discussion that the plaintiff has "under color of ... statute" been deprived of "rights, privileges or immunities secured by the constitution," i. e. the Fourteenth Amendment. He is therefore entitled to maintain a "suit in equity" against "every person" (here State officers) privy to the deprivation. The entire cause may be predicated upon Section 43 without more.

B. GROUNDS OF FEDERAL JURISDICTION

1. JURISDICTION TO ENFORCE THE SUBSTANTIVE PROVISIONS OF SECTION 41 and 43 of Title 8.

To implement the declaration of liability at law or in equity in Sections 41 and 43 of Title 8 for deprivation of rights secured by the Federal Constitution and laws, Congress conferred upon the Federal District Courts jurisdiction to grant relief in such civil rights cases. The general grant of jurisdiction over civil suits between citizens of different States

or arising under the Constitution or laws of the United States contained in the Judicial Code, Section 24 (1) (28 U.S.C. Section 41 (1)), is followed by a series of specific grounds for jurisdiction. One of these exceptions is contained in the 14th subdivision:

> "SUITS TO REDRESS DEPRIVATION OF CIVIL RIGHTS. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." (Underscoring ours)

V

PLAINTIFF HAS A PERSONAL INTEREST IN THE SUBJECT MATTER OF THIS ACTION

Plaintiff is principal of a Public elementary school in Anne Arundel County which shares in the Equalization Fund. As a principal in a county participating in the Equalization Fund, he and other Negro teachers and principals, similarly situated, on whose behalf he brings this action, have a personal interest in said Equalization Fund and a right to participate in the distribution thereof.

A. THE RIGHT TO THE EQUAL PROTECTION OF THE LAWS IS A PERSONAL RIGHT.

The Supreme Court of the United States has established and re-affirmed the rule that the guarantees of the Fourteenth Amendment present personal rights. Mr. Chief Justice Hughes in the case of Missouri ex rel. Gaines v. Canada, et al. (supra)

held:

> "Here, petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the law, and the State was bound to furnish him within its borders facilities for the legal education substantially equal to those which the State there afforded for persons of the white race, whether or not other Negroes sought the same opportunity."

II

JURISDICTION IN EQUITY TO GRANT RELIEF

The case involves the enforcement of unconstitutional statutes by state officers acting pursuant to these statutes. The jurisdiction of a Federal Court to enjoin the enforcement of unconstitutional statutes has been established in cases where state officers were enforcing statutes providing for taxation for school purposes which discriminated against Negroes in its distribution. These cases Claybrook v City of Owensboro (supra) and Davenport v. Cloverport (Supra), are almost directly in point with the case at bar.

CONCLUSION

The motion to dismiss should be denied.

Respectfully submitted:

THURGOOD MARSHALL
CHARLES H. HOUSTON
LEON A. RANSOM
EDWARD P. LOVETT

Counsel for Plaintiff.

Baltimore, Md.,
January 5, 1939.

Hon. William C. Walsh,
Attorney General,
1901 Baltimore Trust Building,
Baltimore, Maryland.

Dear Sir:

In accordance with the instructions of the Court, you are hereby notified that the Defendants' motion to dismiss the action in re Walter Mills vs. Tasker G. Lowndes, et al, constituting the State Board of Education of Maryland and others, No. 56 Civil Docket, has been set for hearing Saturday, January 14, 1939, at ten o'clock A. M.

An acknowledgement of the receipt of this notice will be appreciated.

Yours very truly,

Clerk.

CWZ/ceh

— Walsh Notification L
Lowndes
re: Motion to Dismiss Appendix 5B1 —

Baltimore, Md.,
January 5, 1938.

Thurgood Marshall, Esq.,
Attorney at Law,
1838 Druid Hill Avenue,
Baltimore, Maryland.

Dear Sir:

In accordance with the instructions of the Court, you are hereby notified that the Defendants' motion to dismiss the action in re Walter Mills vs. Tasker G. Lowndes, et al, constituting the State Board of Education of Maryland and others, No. 56 Civil Docket, has been set for hearing Saturday, January 14, 1939, at ten o'clock A. M.

An acknowledgement of the receipt of this notice will be appreciated.

Yours very truly,

Clerk.

CWZ/ceh

(Lowndes) Marshall Letter re: Δ's Motion to Dismiss, Appendix #583

Baltimore, Md.,
January 5, 1939.

Charles H. Houston, Esq.,
Attorney at Law,
615 "F" Street, N. W.,
Washington, D. C.

Dear Sir:

In accordance with the instructions of the Court, you are hereby notified that the Defendants' motion to dismiss the action in re Walter Mills vs. Tasker G. Lowndes, et al, constituting the State Board of Education of Maryland and others, No. 56 Civil Docket, has been set for hearing Saturday, January 14, 1939, at ten o'clock A. M.

An acknowledgement of the receipt of this notice will be appreciated.

Yours very truly,

Clerk.

CWZ/ceh

(Lowndes) Notification Letter RE Δ's Motion to Dismiss, Houston, Appendix 5B

Baltimore, Md.,
January 5, 1939.

Leon A. Ransom, Esq.,
Attorney at Law,
615 "F" Street, N. W.,
Washington, D. C.

Dear Sir:

In accordance with the instructions of the Court, you are hereby notified that the Defendants' motion to dismiss the action in re Walter Mills vs. Tasker G. Lowndes, et al, constituting the State Board of Education of Maryland and others, No. 56 Civil Docket, has been set for hearing Saturday, January 14, 1939, at ten o'clock A. M.

An acknowledgement of the receipt of this notice will be appreciated.

Yours very truly,

Clerk.

CWZ/ceh

(Lowndes) Ransom Letter Re: Δ's Motion to Dismiss, Appendix 585

Baltimore, Md.,
January 5, 1939.

Edward P. Lovett, Esq.,
Attorney at Law,
615 "F" Street, N. W.,
Washington, D. C.

Dear Sir:

In accordance with the instructions of the Court, you are hereby notified that the Defendants' motion to dismiss the action in re Walter Mills vs. Tasker G. Lowndes, et al, constituting the State Board of Education of Maryland and others, No. 56 Civil Docket, has been set for hearing Saturday, January 14, 1939, at ten o'clock A. M.

An acknowledgement of the receipt of this notice will be appreciated.

Yours very truly,

Clerk.

CWZ/ceh

Lovett Letter Re: Δ's (Lowndes) Motion to Dismiss, Appendix 586

Baltimore, Md.,
January 5, 1939.

Hon. Charles T. LeViness,
Assistant Attorney General,
1901 Baltimore Trust Building,
Baltimore, Maryland.

Dear Sir:

In accordance with the instructions of the Court, you are hereby notified that the Defendants' motion to dismiss the action in re Walter Mills vs. Tasker G. Lowndes, et al, constituting the State Board of Education of Maryland and others, No. 56 Civil Docket, has been set for hearing Saturday, January 14, 1939, at ten o'clock A. M.

An acknowledgement of the receipt of this notice will be appreciated.

Yours very truly,

Clerk.

CWZ/ceh

LeViness Letter Re: Δ's (Lowndes) Motion to Dismiss, Appendix 582

SUMMONS IN A CIVIL ACTION D. C. Form No. 45 Rev.

District Court of the United States

FOR THE

DISTRICT OF Maryland.

DIVISION

CIVIL ACTION FILE NO. 56

Walter Mills,

Plaintiff,

vs.

Tasker G. Lowndes, Mrs. A. Thalheimer, Thomas H. Chambers, J. M. T. Finney, Charles A. Weagly, Wendell D. Allen, and Edward H. Sharpe, constituting the State Board of Education of Maryland, Albert S. Cook, State Superintendent of Schools, William S. Gordy, Jr., State Comptroller and Hooper S. Miles, State Treasurer.

Defendants

SUMMONS

To the above named Defendants

You are hereby summoned and required to serve upon Thurgood Marshall,

plaintiff's attorney, whose address 1838 Druid Hill Avenue, Baltimore, Md.,

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

Arthur L. Garner
Clerk of Court.

By Chas. M. Janney
Deputy Clerk.

Date: December 10, 1938.

[Seal of Court]

Marshall Summons, Lowndes

NOTE.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure. 7—1615

Appendix #5C

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND

WALTER MILLS,	:	
Plaintiff,	:	CIVIL DOCKET
v.	:	
BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, a corporation, and GEORGE FOX, as County Superintendent of Schools of Anne Arundel County,	:	NO. 170
Defendants.	:	

Chesnut, District Judge,

This case is a natural sequel to that of Mills v. Lowndes, et al, in this court, 26 F.S. 792. In that case the same plaintiff, who is a colored school teacher employed by the Board of Education of Anne Arundel County, of the State of Maryland, sued the State Board of Education to secure an equalization of salaries paid to white and colored teachers in the public schools of Maryland. On motion of the defendants after extended argument, the complaint was dismissed for various reasons stated in the opinion, importantly including the absence from the record as a defendant of the County Board of Education. In the present suit the plaintiff has sued the County Board and its superintendent alone. Under the practice recently established by the new federal rules of civil procedure the defendants have filed third-party complaints against the State Board of Education and the County Commissioners of Anne Arundel County as third party defendants, and the latter have moved to dismiss these third party complaints.

The complaint in this case calls attention to the

Bd of Ed Chesnut Opn. Annot. #1.

Maryland statute which provides a minimum scale of salaries for white teachers, graduated to professional qualifications and years of experience, and a separate statute providing a lower minimum for teachers in colored schools; and alleges that in practical application only white teachers are employed in white schools and colored teachers in colored schools, and that the latter are paid less in Anne Arundel County than white teachers solely on account of their race or color. The plaintiff contends that this constitutes an unconstitutional discrimination which is prohibited by the equal protection clause of section 1 of the 14th Amendment to the Federal Constitution. The prayer for specific relief is that "the court issue a permanen injunction forever restraining and enjoining the defendants and each of them from making any distinction solely on the grounds of race or color in the fixing of salaries paid white and colored teachers and principals employed for the public schools of Anne Arundel County, and from paying to the plaintiff or any other colored teacher or principal employed by them a less salary than they pay any white teacher or principal employed by them and filling an equivalent position in the public schools of Anne Arundel County". By an amendment to the original complaint the plaintiff also seeks a declaratory decree (under 28 USC, s. 400) "that this court adjudge and declare that defendants' policy complained of herein, in the respects it is maintained and enforced pursuant to state statutes as well as in the respects it is maintained and enforced in the absence of controlling statutes, violates the due process and equal protection clauses of the 14th Amendment of the Constitution of the United States; and sections 41 and 43 of Title 8 of the

United States Code.[1] "

A precise understanding of the Maryland statutory scheme of public education is essential to a considered opinion on the question presented by the pleadings and testimony in this case. The statutory provisions were discussed at length in the former case, 26 F.S. 792 (to which reference is hereby made) and need not now be repeated. The opinion in the former case was filed on March 1, 1939. The only subsequent legislation upon the subject is the Maryland Act of 1939, Ch. 502, approved May 11, 1939 and effective September 1, 1939, which established a new state minimum salary schedule for white teachers, setting up therein a single salary schedule based on preparation and experience, to replace the former position-experience schedule. The general effect of the Act was to somewhat increase the minimum salary schedule for white teachers, but without any increase in the previously established minimum salary for teachers in colored schools.[2] Attention should also be called to the Maryland Act of 1937, Ch. 552, effective September 1, 1939, which made the school term for colored children of equal duration

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1 As plaintiff has not prayed for an interlocutory injunction a three-judge court was not authorized by USC, Title 28, s. 380. Stratton v. St.Louis, S.W.Ry.Co. 282 U.S. 10; McCart v. Indianapolis Water Co. 302 U.S. 410.

The jurisdiction of the court in this case is based on 28 USC, s. 41(1) and (14).

2 See also Act of 1939, Ch. 514, increasing from 47 cents to 51 cents the county tax levy for school purposes as a condition to the benefit of the "Equalization Fund" discussed in the former case, and hereinafter also mentioned.

to that for white children, there previously having been some disparity in the respective terms, those for colored children being generally a month or two shorter than those for white children. Hereafter for both it is required that the schools be kept open not less than 180 actual school days, or nine months in each year.

The historical development of Maryland legislation with respect to the comparative salaries for white and colored teachers is important in this case. The legislation is said to be unique in that while no maximum salary is prescribed for payment by the several County Boards of Education, there is a difference which has existed for many years in the minimum requirements with respect to white and colored teachers' salaries, by virtue of which the minimum for white teachers has always been very materially higher than the minimum for colored teachers. The rating of all teachers both white and colored is determined and certified to the County Boards by the State Board, and is based on uniform requirements. The salaries for white teachers (and to lesser extent for colored teachers) are graduated to professional qualifications and years of experience, so that the schedules are somewhat complex; but for simplicity of statement and for purposes of comparison it will be sufficient to take the case of white and colored teachers respectively who have a first grade rating and nine years or more experience. In 1904 the first minimum salary act for white teachers (there being none at all for colored teachers prior to 1918) prescribed a minimum for white teachers of $300 per annum; in 1908 and 1910 this was increased (for a teacher in white elementary schools having a first class rating and more than eight years' experience) to $450; in 1916 to $550; in 1918 to $600; in 1920 to $750; in 1922 to $1150; and in 1939, (on a slightly different basis as to professional qualifications and experience) to $1250, and, if the teacher held an

academic decree, to $1450. By comparison the minimum for colored elementary teachers of similar rating has been much less. Their salaries have been fixed by statute not on a yearly but a monthly basis, and for ~~most~~ some of the time heretofore, for seven months of the year. In 1918 the minimum was $280 per year, increased in 1920 to $425 per year; in 1922 to $595; and in 1939, (by reason of increase in the duration of the school year) to $765 per year. At the present time, therefore, the respective minima are $1250 for white teachers and $765 for colored teachers, with comparable professional qualifications and experience.

The plaintiff contends that the statutes are unconstitutionally discriminatory on their face and should be held generally invalid. On the other hand it is pointed out in defence of the statutes that they constitute minimum, not maximum, salaries, and that, while the minimum for white teachers is higher than the minimum for teachers in colored schools, the statutes affecting the latter do not expressly apply to colored teachers as such but only to all teachers in colored schools whether white or colored. It is also to be noted, as was pointed out in the opinion in the former case, that the County is the unit for public education in the State; that the County Boards of Education have full authority for discretion as to the actual amount to be paid to their teachers both white and colored, and are entirely at liberty, in co-operation with the County Commissioners of the Counties respectively, to pay higher salaries than the minimum fixed by law; and that in fact several ~~nine~~ of the twenty-three counties of the State, and Baltimore City, do pay equal salaries to white and colored teachers of equal professional qualifications and experience. It is clear enough, therefore, that in practical application the statutes of themselves do not necessarily require actual discrimination in practice between white and colored teachers on account only of their race or color. It is, however, equally clear that the

statutes do permit the County Boards to make such discrimination, and there is ample evidence that in most of the counties of the State (including Anne Arundel County) a very substantial difference between the pay schedules of white and colored teachers has always existed. Thus it is shown that the annual average salary for white and colored teachers in elementary schools in the Maryland Counties for the period of 1921 to 1939 is in the ratio of nearly two to one in favor of the white teachers. In 1921 the comparative figures were $881 for white teachers and $442 for colored; in 1930 the respective figures were $1199 and $635, and in 1931, $1314 and $848. It is, however, fairly to be noted that in recent years the disparity has gradually been reduced. The average increase in salary over the nineteen-year period has been $433 for white teachers and $406 for colored teachers, or a percentage of increase of 49% for the white teachers and 92% for the colored teachers.

The controlling question in the case, however, is not whether the statutes are unconstitutional on their face, but whether in their practical application they constitute an unconstitutional discrimination on account of race and color prejudicial to the plaintiff. We must therefore look to the testimony in this case to see how the statutes have been applied in Anne Arundel County. In the first place we find that for some years past at least the County Board of Education of Anne Arundel County, in fixing the salaries of white and colored teachers, has paid to both classes more than the minima required by the general statutes. In 1937 the County Board of Education fixed the scale of salaries for white teachers, in the case of a teacher who has the qualifications and experience above men-

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3 A non discriminating minimum salary scale for teachers was held constitutional in Bopp v. Clark, 165 Iowa, 697; see also School City of Evansville v. Hickman, 47 Ind.App. 500, At least 20 states have some form of minimum salary laws for teachers. See "Minimum Salary Laws for Teachers",Nat.Ed.Assoc.Wash.D.C. Jan. 1937.

tioned, at $1250 (the comparable statutory minimum being then $1150); and for colored teachers at $700, the general minimum being $680. These figures are for teachers in elementary schools. The plaintiff, however, is the principal of a colored elementary school at Camp Parole, Anne Arundel County, Maryland, with ~~three~~ four teacher assistants and he is now in his eleventh year of teaching experience. The state minimum statutes do not prescribe the salary for the position of a principal of a colored elementary school but do for white principals of elementary schools, the minimum for the latter (where the principal has the same qualifications as the plaintiff, and has two to four assistants) being $1550. The county scale fixes the minimum salary of a white principal of a comparable school at $1550, and for a colored principal at $955; but in practice the County Board in many cases actually pays higher salaries to the principals of schools, in consideration of particular conditions and capacities of the respective principals. Thus the plaintiff's salary for the current year has been fixed at $1058, or $103 more than the minimum, and in the case of three white principals, mentioned in the evidence, the salary is $1800 per year, or $250 more than the minimum. The defendants contend that the materially higher salaries of these three white ~~teachers~~ principals of schools comparable in size to that of which the plaintiff is a principal is due to the judgment of the Board that the three white principals have superior professional attainments and efficiency to that of Mills;[4] but it is to be importantly noted that these personal qualities, while explaining greater compensation to the particular individuals than the minimum county saale for the particular position, do not account for the

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4 The defendants also contend that the $1800 compensation of these three white principals (that is $250 more than the minimum county scale) is in part justified by the fact that their particular schools are what are called consolidated schools and that the bus transportation of pupils to the school, the busses arriving and leaving at different times, requires the principals of these schools to have approximately 1 3/4 hours additional

difference between $1058 only received by Mills and the minimum of $1550 which by the County scale would have to be paid to any white principal of a comparable school. Or, in other words, if Mills were a white principal he would necessarily receive according to the County scale not less than $1550 as compared with his actual salary of $1058.

The plaintiff has filed this suit not only individually but on behalf of other colored teachers in Anne Arundel County including those teaching in colored high schools. By the Anne Arundel scale the salaries of teachers and principals of white high schools is somewhat higher than that for the white elementary schools, the difference ranging from $300 to $400; and there is also a differential in favor of high school teachers in the scale for the colored schools, the difference in favor of the high school teacher being about $300. There is also a salary differential between elementary and high school teachers in colored schools by the state minimum statute. It is not necessary to state further details of the high school schedules in this respect, but the case of Frank E. Butler, a colored principal of the Bates High School at Annapolis may be taken for illustration. He received an A.B. degree from Morgan College in 1920 and has been continuously employed as a teacher in or principal of a colored school in Anne Arundel County for 29 years. He now receives an annual salary of $1600. A white principal of a comparable white high school would receive a minimum of $2600.

I also find from the evidence that in Anne Arundel

4 contd: attendance per day at school over and above the time required for Mills. It appears, however, that what is required in this respect is additional time from the teachers of the school to receive and discharge pupils rather than from the principal alone, The teachers receive no additional compensation for their extra time which seems to be substantially merely an incident of their general duties.

County there are 243 white teachers and 91 colored teachers; but no one colored teacher receives so much salary as any white teacher of similar qualifications and experience.

The crucial question in the case is whether the very substantial differential between the salaries of white and colored teachers in Anne Arundel County is due to discrimination on account of race or color. I find as a fact from the testimony that it is. Some effort has been made by counsel for the defendants to justify the difference in salaries on other grounds. Thus it is said that until recently the school term was s o m e - w h a t longer in the white schools than in the colored schools; and it is also said that the colored teachers are less efficient than the white teachers because the results of examinations in the white and colored schools in Anne Arundel County, when the papers are marked by outside impartial educators, show a substantially lower average for colored pupils than for white pupils. But in opposition to these contentions it is to be noted that the school term has now been made equal for white and colored schools; and the lower grade in examinations attained by colored pupils is readily explainable on other grounds than the alleged inefficiency of colored teachers.[5] The contentions of the defendants in this respect seem really unsubstantial when the whole problem is viewed historically in the light of the Maryland law and general state practice on the subject, and particularly in the light of the actual practical application of the Maryland statutes in Anne Arundel County. And indeed any controversy over the fact would seem to be ended by the testimony of the defendant, Fox, who is Superintendent of Education in Anne Arundel County and an executive officer of the County School

5 See "Special Problems of Negro Education", by Doxey A. Wilkerson, Staff Study No. 12, prepared for the Advisory Committee of Education, published by the Government Printing Office, Washington, 1939, pages, 8, 14, 22, 24.

well

Board, and that of ~~Miss McNeely~~ Mrs McNeely, the financial secretary of the Board, both of whom substantially admitted that the discrimination in the county schedule of minimum salaries for white and colored teachers respectively was at least largely influenced by the fact of race or color.

I conclude therefore from the pleadings and testimony that the plaintiff has established that he as a colored teacher is unconstitutionally discriminated against in the practice of his profession by the discrimination made between white and colored teachers by the County School Board of Anne Arundel County; and that he is entitled to an injunction against the continuation of such discrimination to the extent that it is based solely on the grounds of race or color, and that he is also entitled to a declaratory decree to the effect that such unlawful discrimination exists; but I do not think the plaintiff is entitled to an injunction to the extent prayed for in the concluding clause of the prayer for an injunction reading: "and from payment to the plaintiff or any other colored teacher or principal employed by them a less salary than they pay any white teacher or principal employed by them and filling an equivalent position in the public schools of Anne Arundel County". It does not follow that because the positions are equivalent the particular persons filling them are necessarily equal in all respects in professional attainments and efficiency; and some range of discretion in determining actual salaries for particular teachers is entirely permissible to the County Board of Education. If the County Board continues to observe the minimum state statute for salaries for white teachers, it is difficult to see how it would have legal justification for paying colored teachers less than the <u>minimum</u> required for white teachers of similar standard professional qualifications and experience, as such discrimination would seem to be clearly

based solely on race or color. But the Board has full discretion in its judgment to pay more than the minimum to any white or colored teacher who merits it, provided the discrimination is not solely on account of race or color.

I do not find it necessary in this case to expressly decide that the state minimum statute for white teachers is necessarily on its face unconstitutional, because it is the county practice rather than the mere terms of the statute which prejudices the plaintiff. There are practical advantages to the County School Board in observing the state statute, as it thereby becomes entitled to participate in the so-called Equalization Fund provided by the State as fully explained in the opinion in the former case. That is to say, it will be less expensive to Anne Arundel County to raise the colored teachers' pay to the minimum of the state statute for white teachers than to fail to comply therewith and lose the benefit of the Equalization Fund. The evidense shows that, to bring the colored teachers' pay up to the statutory minimum for the white teachers, will cost the County only $45,000, while at the present time it is receiving about $100,000 from the Equalization Fund. To raise this extra $45,000 will mean seven or eight cents additional on the general County tax rate for school purposes. I am not unmindful of the difficult financial position which is thus created for the County, as has been so forcibly urged by counsel. The County has a present very high tax rate of about $2.30 per $100 of assessed valuation of property. It is also true that the problem presented by this case is not peculiar alone to Anne Arundel County, but exists to a more or less extent in many other counties of the state; and indeed the problem is not limited to the State of Maryland, but exists in many southern states.[6]

6 See Special Problems of Negro Education by Doxey A.Wilkerson, Staff Study No.12,prepared for Advisory Committee on Education, Government Printing Office,Washington, 1939; also Progress and Problems for Equal Pay for Equal Work,published by the National

Nor has Anne Arundel County been unmindful of or indifferent to its problem. As previously noted, it does not limit the pay of its teachers either white or colored to the minima of the state statutes. In January 1938 the Board passed a resolution expressing sympathy with the proposition that the salaries of white and colored teachers should be equalized by state law, and expressing regret that no immediate action could be taken by the Board toward that result in view of the county's finances, but indicating an intention to soon make some increase in the rate of pay for the colored teachers. For the scholastic year 1939-40 it has increased its budget for colored teachers' salaries from $66,000 to $74,000, which is a much larger proportionate increase for colored teachers than for white teachers, the increase for the latter being from $210,000 to $218,000. In January 1939 it voluntarily increased by ten per cent. the salaries of colored school teachers for the remaining months of the scholastic year 1938-39. That percentage increase was not continued for the current year; but in October of this year the Board proposed to a representative delegation of county colored school teachers that it would for the succeeding scholastic year and for each year thereafter increase their salaries by an additional ten per cent. until they approximated the state minimum for white teachers, it being estimated that it would require four or five years to bring about such equalization, on the condition that the present suit be withdrawn; but this proposition was declined by the plaintiff whose action in the matter had the support of all the colored teachers of the county. But these financial considerations cannot control the supreme law of the land as expressed in the 14th Amendment, and the implementing Acts of Congress which must be controlling here.

6 contd: Education Association, 1201 16th St.,N.W., Washington, D.C. June 1939, p. 24; and Minimum Salary Laws for Teachers, published by the same Association January 1937.

Some objections by the defendants to the relief asked by the plaintiff were considered in the former case. Thus it is argued that the plaintiff is not entitled to complain because he is a public employe; in the former opinion the view was taken that he has a sufficient status as a qualified school teacher by profession and occupation to have the question determined. Again it is argued that an injunction should not be granted because there is an adequate remedy at law by mandamus in the state court. This also was discussed in the former case, but in a somewhat different connection. The objections to an injunction which were there held valid, do not exist here; and Title 8, s. 43 of the United States Code, expressly authorizes an injunction as a possibly appropriate remedy in this class of cases.

The County Board of Education also contends that if the plaintiff is entitled to the relief prayed for in this case, it has a remedy over against the State Board of Education and the County Commissioners of Anne Arundel County. But for the reasons fully stated in the opinion in the former case, I do not find or conclude that there is any judicial remedy, as distinct from legislative amendments, to which the defendants are entitled against the State Board of Education and the state officers in charge of the Equalization Fund, or any present remedy over against the County Commissioners of Anne Arundel County. The applicable legal procedure is that the County Board of Education will have to prepare a new budget for the next scholastic year, and the County Commissioners, to the extent required by the statutes, will thereafter have to fix the necessary county rate for taxation. I conclude therefore that the third party complaints must be dismissed.

Counsel for the plaintiff are also not unmindful of the financial problems which will necessarily be faced by the County Board of Education and County Commissioners of Anne

Arundel County by reason of the injunction to be issued in this case, and have expressed willingness to have the operative effect of the injunction postponed until the preparation of the next annual budget by the County School Board; and therefore the judgment to be entered will conform to this agreement.

The findings of fact and conclusions of law expressed in this opinion are intended to be in compliance with Rule 52 of the Federal Rules of Civil Procedure; but if counsel on either side desire separate and more explicit findings of fact they can be prepared and submitted for consideration. As already stated, the controlling issue of fact is whether there has been unlawful discrimination by the defendants in determining the salaries of white and colored teachers in Anne Arundel County solely on account of race or color, and my finding frommthe testimony is that this question must be answered in the affirmative, and the conclusion of law is that the plaintiff is therefore entitled to an injunction against the continuance of this unlawful discrimination. I wish to make it plain, however, that the court is not determining what particular amounts of salaries must be paid in Anne Arundel County either to white or colored teachers individually; nor is the Board in any way to be prohibited by the injunction in this case from exercising its judgment as to the respective amounts to be paid to individual teachers baaed on their individual qualifications, capacities and abilities, but is only enjoined from discrimination in salaries on account of race or color.

Counsel, after conference between themselves, can submit the appropriate form of judgment.

Walter Chesnut
U. S. District Judge

Dated:
November 22 1939.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND

WALTER MILLS, Plaintiff, v. BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, a corporation, and GEORGE FOX, as County Superintendent of Schools of Anne Arundel County, Defendants.	Civil Docket No. 170

The Court makes the following

FINDINGS OF FACT

1. Plaintiff Walter Mills is a Negro, a citizen of the United States, and a resident of Anne Arundel County, State of Maryland. Plaintiff is a teacher by profession and occupation, and is employed by the defendants herein as teacher-principal of the Parole Elementary School, a public elementary schoolfor colored children located in Anne Arundel County.

2. Plaintiff brings this suit on his own behalf and also on behalf of all other teachers and principals in the colored public schools of Anne Arundel County similarly circumstanced.

3. Defendant Board of Education of Anne Arundel County is a corporation existing pursuant to the laws of the State of Maryland as an administrative department of the State of Maryland discharging governmental functions. Defendant George Fox is County Superintendent of Schools of Anne Arundel County and the executive officer and the secretary and treasurer of defendant Board of Education of Anne Arundel County, and is sued in his official capacity.

4. Plaintiff is a graduate of Bowie State Normal School, a normal school maintained by the State of Maryland under the supervision of the State Board of Education for the instruction and preparation of Negroes as teachers in the public schools of the State. He is in his twelfth year of teaching experience in the Maryland public schools, and holds a first-grade teacher's certificate and an elementary principal's certificate issued by the State Board of Education.

Bd of Ed Findings of Fact Appendix #7

5. The certification and rating of all teachers and principals in the public schools of Maryland, both white and colored, is determined by the State Board of Education, based upon uniform requirements and standards, and is certified by said State Board of Education to the County Boards of Education, including the defendant Board of Education of Anne Arundel County.

6. At the present time and for many years last past all teachers and principals in the white public schools of Maryland are and have been white, and all teachers and principals in the colored public schools of Maryland are and have been Negroes.

7. The State of Maryland has by its statutes provided a minimum salary schedule for white teachers and principals; and also a minimum salary schedule for teachers in colored schools. Each of these schedules is graduated to professional qualifications and years of experience. While provision is made for a minimum salary for white elementary school principals, no provision is made for a minimum salary for colored elementary school principals.

8. There is a difference which has existed for many years in the State minimum salary schedules in that the minima for white teachers have been uniformly higher than the minima for colored teachers of comparable qualifications and experience.

9. Taking, for simplicity of statement and for purposes of comparison, the case of white and colored teachers respectively who have a first grade certificate and nine years or more of experience: In 1904 the first minimum salary act for white teachers (there being none at all for colored teachers prior to 1918) prescribed a minimum for white teachers of $300 per annum; in 1908 and 1910 this was increased (for a teacher in white elementary schools having a first class rating and more than eight years' experience) to $450; in 1916 to $550; in 1918 to $600;

in 1920 to $750; in 1922 to $1150; and in 1939, (on a slightly different basis as to professional qualifications and experience) to $1250, and, if the teacher held an academic degree, to $1450. By comparison the minimum for colored elementary teachers of similar professional qualifications and experience has been uniformly less. Their salaries have been fixed by statute not on a yearly but a monthly basis, and for some of the time heretofore, colored schools have been in session and colored teachers have been paid for seven months of the year only. In 1918 the minimum was $280 per year, increased in 1920 to $445 per year; in 1922 to $595, and in 1939, (by reason of increase in the duration of the school year) to $765 per year. At the present time, therefore, the respective minima are $1250 for white teachers and $765 for colored teachers with comparable professional qualifications and experience.

10. The County Boards of Education, including the defendant Board of Education of Anne Arundel County, have general supervisory control of the public schools within their respective jurisdictions, and employ and pay the salaries of teachers and principals within their respective jurisdictions. Said Boards are required by State statutes to pay not less than the statutory minimum salaries.

11. The County is the unit for public education in Maryland and the County Boards of Education, including the defendant Board of Education of Anne Arundel County have authority and discretion as to the actual amount to be paid to their teachers, both white and colored, and are at liberty to pay higher salaries than the minima fixed by State statute.

12. In practice most of the counties of Maryland (including Anne Arundel County) have maintained for many years a differential in the salaries actually paid white and colored teachers by which the salaries paid white teachers have been uniformly higher than those paid comparable colored teachers. The annual average salary for white and colored elementary teachers in Maryland counties for the period of 1921 to 1939 is in the ratio of nearly two to one in favor of the white teachers.

13. However, ~~nine~~ several of the twenty-three counties of Maryland, and Baltimore City, now pay equal salaries to white and colored teachers of equal professional qualifications and experience.

14. For some years past the defendant Board of Education of Anne Arundel County has paid to both white and colored teachers more than the respective minima prescribed by State statutes.

15. The scales of salaries for teachers and principals in Anne Arundel County established by the defendants in 1937 are still in force. The scales provide, for white elementary school teachers with more than nine years experience, $1250 per year, (the comparable State statutory minimum being then $1150); and for colored elementary school teachers, $700, (the comparable State statutory minimum being then $680).

16. The Anne Arundel County scale for white teachers and principals provides a minimum salary of $1550 annually for white principals of elementary schools with the same qualifications and experience as plaintiff and with two to four assistants, (the comparable State statutory minimum being $1550). The county's scale for colored teachers and principals provides a minimum yearly salary of $995 for colored elementary school principals with plaintiff's qualifications and experience and with two to four assistants, (there being no State statutory minimum for colored principals of elementary schools.)

17. In practice the defendant Board of Education of Anne Arundel County in many cases actually pays higher salaries than the county scale to the principals of schools, in consideration of particular conditions and capacities of the respective principals.

18. Plaintiff Mills is employed by the defendants under a written contract which provides in part that: "The salary of said teacher shall be fixed by the County Board of Education, which salary shall be not less than the minimum salary provided by law." The annual salary for plaintiff for the present year has been set at $1058, or $103 more than the minimum provided by the county scale; and in the case of the three white principals of elementary schools with comparable professional qualifications

and experience, the salary is set at $1800 per year, or $250 more than the county scale.

19. The materially higher salaries of the three white principals mentioned in the evidence, with comparable professional qualifications and experience with the plaintiff, are not due solely to their superior professional attainments and efficiency; while these personal qualifications might explain greater compensation to the particular individuals than the minimum county scale for the particular position, they do not account for the difference between the $1058 received by plaintiff and the minimum of $1550 which would, according to the County scale, have to be paid any white principal of a comparable school. If plaintiff were a white principal he would necessarily receive, according to the county scale, not less than $1550 as compared with his actual salary of $1058.

20. By the Anne Arundel County scale the salaries of teachers and principals of white high schools is somewhat higher than the salaries for the white elementary schools, the differences ranging from $300 to $400. There is also a differential in favor of high school teachers as against elementary school teachers in the County scale for colored teachers, the difference in favor of the high school teacher being about $300. There is also a salary differential between elementary and high school teachers in colored schools in the State statutory minimum schedule. The case of Frank Butler, a colored principal of the Bates High School at Annapolis may be taken for illustration. He receives an annual salary of $1600. A white principal of a comparable white high school would receive a minimum of $2600.

21. In Anne Arundel County there are 243 white teachers and 91 colored teachers; but no one colored teacher receives as much salary as any white teacher of similar qualifications and experience.

22. The very substantial differential between the salaries of white teachers and principals and colored teachers and principals of Anne Arundel County is due to discrimination on account of race or color.

23. The amount needed to raise the colored teachers' pay to the minimum schedules for white teachers is $45,000 annually.

24. There is an existing, actual controversy herein.

January 11, 1940.

W. Calvin Chesnut
U. S. District Judge

Thurgood Marshall
Attorney for plaintiff

Attorney for defendants

Attorney for third party defendants

Attorney for third party defendants

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND

WALTER MILLS, Plaintiff,	)	
v.	)	Civil Docket
	)	No. 170
BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, a corporation, and GOERGE FOX, as County Superintendent of Schools of Anne Arundel County, Defendants.	)	

FINAL JUDGMENT AND DECREE

It is this 11th day of ~~December, 1939~~ January, 1940, ORDERED, DECREED AND ADJUDGED as follows:

Pursuant to Section 247d of the Judicial Code (28 U.S.C., Section 400), it is DECLARED AND ADJUDGED:

That the official policy and official acts of the defendants Board of Education of Anne Arundel County and George Fox, as County Superintendent of Schools of Anne Arundel County, in paying the plaintiff and all other colored teachers and principals in the public school system of Anne Arundel County smaller salaries than are paid by said defendants to white teachers and principals with similar professional qualifications and experience, in so far as such differentials are predicated solely on race or color, are unlawful and unconstitutional, and are in violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States and of Sections 41 and 43 of Title 8 of the United States Code.

And it is ORDERED, ADJUDGED AND DECREED:

1. That the third-party complaint heretofore filed herein be and the same is hereby dismissed.

2. That the defendants Board of Education of Anne Arundel County and George Fox, as County Superintendent of Schools of Anne Arundel County,

Bd. of Ed. Final Judgment Appendix #8

and the agents of said defendants and each of them, be and they are hereby perpetually enjoined and restrained from discriminating in the payment of salaries, against the plaintiff and any other colored teachers and principals in the public school system of Anne Arundel County, and in favor of any white teachers or principals in the public school system of Anne Arundel County, solely on account of race or color; and from paying plaintiff and any other colored teachers and principals in the public school system of Anne Arundel County less than the ~~minimum~~ salary ~~provided for~~ paid white teachers of ~~similar standard~~ the same qualifications and experience, on account of race or color.

Provided, that the operative effect of the foregoing judgment and decree be and the same hereby is postponed until the scholastic year beginning September, 1940.

The taxable Court costs to be paid by the ~~defendants~~ original

W Calvin Chesnut

United States District Judge

Attorney for plaintiff

Attorney for defendant

Attorney for third-party defendants

Attorney for third-party defendants

* started at page 3

→Partial Copy.

ion. Moreover, for the most part white schools in Anne Arundel County have been consolidated while colored schools have not been consolidated. Consequently, most of the white principals, teachers and pupils in Anne Arundel County have longer distances to travel from their homes, and white principals and teachers are called upon to be present at their respective schools earlier in the morning and to remain later in the afternoon, than is the case with colored principals and teachers, in order to supervise the arrival and departure of the pupils.

Principals and teachers in the white public schools of Anne Arundel County are paid higher minimum salaries than similarly qualified principals and teachers in colored schools because of the generally better performance of the pupils of white schools as compared with pupils of colored schools, and because of the longer hours of work required of white principals and teachers as compared with colored principals and teachers as above set forth.

(7) The allegations of the tenth paragraph of the Complaint are admitted.

(8) These defendants admit the allegation of the eleventh paragraph, that the State of Maryland and the several counties thereof maintain separate schools for white and colored pupils. The rest of the said paragraph contains allegations of law which these defendants are not called upon to answer, and they do not admit the relevancy of the said allegations to the issues of this case.

(9) These defendants admit that the State of Maryland has provided a system of uniform qualifications for teachers as alleged in the twelfth paragraph. They admit that all teachers, white and colored, are required to hold certificates of the State Superintendent of Schools, as alleged. They admit the allegations with respect to the examinations and certification of teachers in the State of Maryland,

Appendix #9

Defendants' Answer to Defendant's Motion to Dismiss

as required by law. They further admit that it is the duty of these defendants to enforce the law, the provisions of which are cited in said paragraph of the Complaint.

(10) Answering paragraph thirteen of the Complaint, these defendants deny that their conduct of the school system of Anne Arundel County, including the scale of salaries paid to principals and teachers, constitutes an unlawful discrimination against, and prejudice to, colored teachers and principals in their civil right of pursuit of a livelihood and vocation.

(11) Answering paragraph fourteen of the Complaint, these defendants admit that the State of Maryland has by statute, as alleged, established a schedule of minumum salaries for principals and teachers in colored schools, but that the State has not established a schedule of minimum salaries for principals in colored schools.

(12) Answering paragraph fifteen of the Complaint, these defendants deny the assumption therein and elsewhere in the Complaint, that the statutory requirements for a higher minimum salary for principals and teachers in white schools than for principals and teachers in colored schools is equivalent to discrimination between colored principals and teachers, on the one hand, and white principals and teachers, on the other; and these defendants, further answering, say that in any event the power of legislation is not in their hands and that they have no legal power or authority but to obey and execute the laws enacted by the Legislature of the State of Maryland, unless such enactments are held void by a court of competent authority.

(13) Answering the sixteenth paragraph of the Complaint, these defendants admit that the public schools of Anne Arundel County are under the immediate control and supervision of these defendants, acting as an administrative department or division of the State of Maryland; but they aver that they are required to enforce the educational policies

and practices of the State of Maryland laid down in the statutes and in the rules and regulations made and provided by other public authorities of the State, to wit; the State Board of Education is given control and supervision over the public schools and educational interests of the State, including of course Anne Arundel County, by Sections 11 and 12 of Article 77, Code of Public General Laws of Maryland. Such control and supervision by the State Board of Education includes matters of educational policy and fiscal expenditures, as provided in Section 29 of said Article 77. The fiscal management of the schools of Anne Arundel County is intimately and materially influenced by the administration of the Equalization Fund, which administration is committed solely into the hands of the State Board of Education and disbursements from which are made by the Comptroller of Maryland. These defendants have no power or authority to levy taxes but they are dependent for the support of the public school system of Anne Arundel County (except as to moneys distributed by the State Board of Education) upon the action of the County Commissioners of Anne Arundel County. These defendants are powerless to overcome or void the operation of the statutes of the State of Maryland or the acts of the public officials above mentioned; if this Honorable Court should uphold the plaintiff's contention that such statutes and acts of officials of the State of Maryland are unlawful, discriminatory, unconstitutional and void, these defendants would be unable to perform the decree of the court and yet maintain in a proper manner the public school system of Anne Arundel County, unless appropriate co-relative relief is granted against said State and Anne Arundel County officials who have by leave of court been brought into this suit as third party defendants.

(14) These defendants admit the allegation of paragraph seventeen of the Complaint, that they are by law charged with the duty of fixing salaries subject to the pertinent statutes of the State of

Maryland, and they admit that they have deemed it their duty to respect and enforce said statutes; while the defendants deny that their acts constitute an unlawful discrimination, as alleged in the said paragraph, they aver that they have acted solely in obedience of said statutes and consistently with the policies of the said statutes under the direction and supervision of the State and County officials above mentioned and within the possibilities of the funds made available to them.

(15) These defendants admit that the schedule of salaries set forth in the eighteenth paragraph of said Complaint is correct.

(16) These defendants, answering the nineteenth paragraph of the Complaint, while denying the plaintiff's conclusions therefrom, do admit that they have deemed it a sound policy of the public school system of Anne Arundel County to employ white principals and teachers in the white schools and colored principals and teachers in the colored schools.

(17) These defendants, answering the twentieth paragraph, deny that they are authorized, empowered, directed, required and permitted to raise any funds whatsoever by taxation; and they aver on the contrary that the funds for maintaining the public schools of Anne Arundel County come solely from County taxation levied by the ~~School~~ Commissioners of said County and moneys derived from the said Equalization Fund and General State School Tax Fund administered by the said officials, as above set forth. The defendants admit that the disbursements of the school funds for the maintenance of the school system of Anne Arundel County is ~~not~~ in their hands, but they aver that in the disbursement of said funds they are necessarily governed by statutory and administrative policies over which they have no control.

(18) The allegations of the twenty-first paragraph of the Complaint are admitted, except that the minimum salary schedules there

referred to are unlawfully discriminatory.

(19) Answering the twenty-second paragraph of the Complaint, these defendants aver they have heretofore in answer to earlier paragraphs of the Complaint set forth the pertinent facts. The defendants deny that they have acted in violation of the Fourteenth Amendment, but repeat that they have acted solely as an agency of the State of Maryland under the statutory and administrative laws and regulations binding upon them.

(20) Answering the twenty-third paragraph of the Complaint, these defendants admit that the plaintiff and others filed a petition requesting the adoption of a salary schedule providing equal pay for white and colored teachers; but for the reasons hereinbefore stated the defendants have been unable without the concurrent action of the General Assembly of the State of Maryland, the State Board of Education, and the County Commissioners of Anne Arundel County, to grant the request made in the petition.

(21) The defendants, answering the twenty-fourth and twenty-fifth paragraphs of the Complaint, aver that the plaintiff is entitled to no relief against them but if the court should, upon hearing of the case, hold that the allegations and proof in this case warrant relief against these defendants then to make such relief effective for the plaintiff, and to avoid disruption and confusion in the administration of the schools of Anne Arundel County, appropriate co-relative relief should be granted against the third party defendants, because, as the plaintiff recognizes and acknowledges, any relief granted the plaintiff will require important alteration of State and County policy, which it is beyond the power of these defendants to make without concurrent action on the part of the third party defendants. Furthermore, these defendants say that the mere postponement of the operation of the decree against these defendants, until the next regular fiscal year, will not achieve the purpose

desired by the plaintiff as well as the defendants to avoid confusion and disorganization of the school system of the said county.

WHEREFORE these defendants demand,

(1) That the court dismiss the Complaint against these defendants and award them their proper costs; and in the alternative

(2) If the court should hold that the plaintiff is entitled to relief against these defendants they demand judgment against the third party defendants for all sums that may be adjudged against these defendants in favor of the plaintiff, Walter Mills; and that the court should require the third party defendants to perform all such acts as may become necessary to be performed by them respectively in order to make possible the due performance by these defendants of any decree which may be passed against them in this court.

Noah Hillman

Noah Hillman, Attorney for Board of Education of Anne Arundel County, and George Fox, as County Superintendent of Schools of Anne Arundel County.

Maryland Hotel Building,
Annapolis, Md.

DUCES TECUM

District of Maryland

September TERM, 193 9.

To the Marshal of the Maryland District:

Summon Miss Merle S. Bateman, Office of State Board of Education, Lexington Building, Baltimore, Md.

To appear before the District Court of the United States, at Baltimore, Md., to testify on behalf of the Plaintiff in case of

WALTER MILLS, Plaintiff
-vs- BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, et al., Defendants -
#170 Civil

and to bring with her the following records and documents:

a. Teacher's certificate and elementary principal's certificate issued to Walter Mills.

b. All rules and regulations of the State Board of Education of Maryland pertaining to the issuance of certificates to teachers and principals in the public schools of Maryland.

returnable 9th day of November, 193 9, at 10 a. m.

Arthur S. Gamer, *Clerk.*

Issued 7th day of November, 193 9.

7—1963

Appendix #10
St Bd of Ed · Bateman Duces Tecum

315 Civil

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND

WALTER MILLS Plaintiff	:	
vs.	:	CIVIL DOCKET NO. 170
BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, et al Defendants	:	

REQUEST FOR SUBPOENA DUCES TECUM

125

Mr. Clerk:

Please issue a subpoena duces tecum addressed to Miss Merle S. Bateman at the offices of the State Board of Education, Lexington Building, Baltimore Maryland, returnable before Hon. W. Calvin Chesnut in the District Court of the United States for the District of Maryland, Post-Office Building Baltimore Maryland at ten o'clock A.M. November 9, 1939, to testify for the plaintiff in the above entitled case and to bring with her the following records and documents:

a. Teacher's certificate and elementary principal's certificate issued to Walter Mills.

b. All rules and regulations of the State Board of Education of Maryland pertaining to the issuance of certificates to teachers and principals in the public schools of Maryland. //

Thurgood Marshall
Thurgood Marshall
Attorney for plaintiff.

ORIGINAL

DUCES TECUM

District of Maryland

September TERM, 193 9.

To the Marshal of the Maryland District:

Summon George Fox, Superintendent of Schools of Anne Arundel County, at the office of the Board of Education of Anne Arundel County, Annapolis, Md.

To appear before the District Court of the United States, at Baltimore, Md., to testify on behalf of the Plaintiff in case of

WALTER MILLS, Plaintiff
-vs- BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, et al., Defendants -
#170 Civil

and to bring with him the following books, records and other documents in his possession as Superintendent of Schools and Secretary of the defendant Board of Education of Anne Arundel County:

1. All records of the official courses of study prescribed by the State Board of Education, State Superintendent of Schools, the Board of Education of Anne Arundel County or the Superintendent of Schools of Anne Arundel County for elementary and high schools and now in effect in Anne Arundel County; together with all arules, regulations and orders pertaining thereto.

2. All rules, regulations and orders of the Board of Education or the Superintendent of Schools of Anne Arundel County now in effect in said county prescribing the duties of teachers, teacher-principals and principals in the schools of Anne Arundel County.

3. All rules, regulations, orders or memoranda, past or present, of the Anne Arundel County Board of Education of of the Supprintendent of Schools of said county, prescribing basic salary schedules, scales or rates of pay for : (a) teachers in white schools; (b) teachers in colored schools; (c) white teachers; (d) colored teachers; (e) for groups and classes of teachers without regard to the race or color of the teachers involved or the students taught.

3a Copies of reports to State Board of Education of Salaries, certification and experience of teaching staff of Anne Arundel County from 1916 to date.

4. All rules, regulations, orders or memoranda now in effect in Anne Arundel County regulating and controlling the payment of salaries to teachers, teacher-principals and principals in excess of those prescribed by the present basic schedules, scales and rates of pay.

5. The official record of the name of, location of, area served by, type and classification of, number of teachers, number of pupils by grades, number of classrooms, and number of grades taught in each of the schools in Anne Arundel County for (a) white pupils, and (b) Negro pupils.

6. The official roster or other official records showing the name and salary of each teacher, teacher-principal and principal, white and Negro, employed in Anne Arundel County, together with his or her place of residence, class of teaching certificate possessed, teaching experience, school to which assigned, teaching assignment by grades or courses, and any other offical duties.

7. All minutes of the Board of Education of Anne Arundel County.

returnable 9th day of November 1939, at 10 a. m.

Arthur F. Cramer, Clerk.

Fox Duces T. # Appendix

3/5 9 Civil

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND.

WALTER MILLS, PLAINTIFF	)	
vs.	)	CIVIL DOCKET NO. 170
BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, et al., DEFENDANTS.	)	

REQUEST FOR SUBPOENA DUCES TECUM

Mr. Clerk:

Please issue a subpoena duces tecum addressed to George Fox, Superintendent of Schools of Anne Arundel County, at the office of the Board of Education of Anne Arundel County, in Annapolis, Maryland, directing him to be present before the Honorable W. Calvin Chesnut in the District Court of the United States for the District of Maryland, United States Postoffice Building, Baltimore Maryland at ten o'clock A.M. on the ninth day of November, 1939 as a witness in the above-entitled cause, and to bring with him the following books, records and other documents in his possession as Superintendent of Schools and Secretary of the defendant Board of Education of Anne Arundel County:

1. All records of the official courses of study prescribed by the State Board of Education, State Superintendent of Schools, the Board of Education of Anne Arundel County or the Superintendent of Schools of Anne Arundel County for elementary and high schools and now in effect in Anne Arundel County; together with all arules, regulations and orders pertaining thereto.

2. All rules, regulations and orders of the Board of Education or the Superintendent of Schools of Anne Arundel County now in effect in said county prescribing the duties of teachers, teacher-principals and principals in the schools of Anne Arundel County.

3. All rules, regulations, orders or memoranda, past or present, of the Anne Arundel County Board of Education of of the Superintendent of Schools of said county, prescribing basic salary schedules, scales or rates of pay for : (a) teachers in white schools; (b) teachers in colored schools; (c) white teachers; (d) colored teachers; (e) for groups and classes of teachers without regard to the race or color of the teachers involved or the students taught.

3a. Copies of reports to State Board of Education of salaries, certification and experience of teaching staff of Anne Arundel County from 1916 to date.

4. All rules, regulations, orders or memoranda now in effect in Anne Arundel County regulating and controlling the payment of salaries to teachers, teacher-principals and principals in excess of those prescribed by the present basic schedules, scales and rates of pay.

5. The official record of the name of, location of, area served by, type and classification of, number of teachers, number of pupils by grades, number of classrooms, and number of grades taught in each of the schools in Anne Arundel County for (a) white pupils, and (b) Negro pupils.

6. The official roster or other official records showing the name and salary of each teacher, teacher-principal and principal, white and Negro, employed in Anne Arundel County, together with his or her place of residence, class of teaching ce tificate possessed, teaching experience, school to which assigned, teaching assignment by grades or courses, and any other offical duties.

7. All minutes of the Board of Education of Anne Arundel County.

Thurgood Marshall
Attorney for the Plaintiff.

1 be equitable and just.

Walter Mills

Walter Mills, Plaintiff

Thurgood Marshall

Thurgood Marshall
1838 Druid Hill Avenue
Baltimore, Md.

Charles H. Houston

Charles H. Houston
615 "F" Street, N.W.
Washington, D. C.

Leon A. Ransom

Leon A. Ransom
615 "F" Street, N.W.
Washington, D. C.

Edward P. Lovett

Edward P. Lovett
615 "F" Street, N.W.
Washington, D. C.

W. A. C. Hughes, Jr.

W. A. C. Hughes, Jr.
22 St. Paul Street
Baltimore, Maryland

Counsel for Plaintiff

STATE OF MARYLAND
Baltimore City SS

I, Walter Mills, having been first sworn according to law, depose and say upon oath that I am the plaintiff named in the foregoing Complaint; that I have read said complaint and that the matters and facts set forth therein are true to the best or my information, knowledge and belief.

Walter Mills

Subscribed and sworn to before me this 12th day of April, 1939, in the City and State aforesaid.

Sarah J. Ambers

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF MARYLAND

WALTER MILLS, Plaintiff,	)	
v.	)	
BOARD OF EDUCATION OF ANNE ARUNDEL COUNTY, a corporation, and GOERGE FOX, as County Superintendent of Schools of Anne Arundel County, Defendants.	)	Civil Docket No. 170

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this suit under Section 24 (1) of the Judicial Code (28 U.S.C., Section 41 (1), and under Section 24 (14) of the Judicial Code (28 U.S.C., Section 41 (14)).

2. Plaintiff as a teacher by occupation has a legal right to maintain this suit.

3. Plaintiff has established and proved a cause of action against the defendants Board of Education of Anne Arundel County and George Fox as County Superintendent, etc., under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, and under Sections 41 and 43 of Title 8 of the United States Code.

4. The official policy and official acts of the defendants in respect to salary payments, including their official policy and official acts in providing higher minimum salaries for white teachers and principals than for colored teachers and principals of comparable qualifications and experience, discriminate against plaintiff and those on whose behalf he brings this suit in the practice of their profession and the pursuit of their livelihood and occupation, solely on account of their race or color, and their policy and acts are to that extent unconstitutional under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, and to that extent are also violative of Sections 41 and 43 of Title 8 of the United States Code.

Bd of Ed
Conclusions of Law, Appendix #13

in this Court

5. Plaintiff has no adequate remedy at law. ~~The objection of the defendants that an injunction should not be granted because there is an adequate remedy at law by mandamus in the state court can not be sustained and~~ This case comes within the rule of Section 43 of Title 8 of the United States Code authorizing an injunction as an appropriate remedy in this type of case.

6. The third-party complaint heretofore filed herein by the defendants Board of Education of Anne Arundel County and George Fox as County Superintendent, etc., does not state any cause of action against the third party defendants named therein, nor does the proof entitle said defendants to any relief against the third-party defendants, and the third-party complaint should accordingly be dismissed.

7. Plaintiff is entitled to a declaratory judgment pursuant to Section 247d of the Judicial Code (28 U.S.C., Section 400) and to a permanent injunction against said defendants in terms and forms as in the subjoined judgment and decree.

Dated, Baltimore, Maryland, ~~December~~ January 11, 1940.

W. Calvin Chesnut
United States District Judge

Attorney for plaintiff

Attorney for defendants

Attorney for third-party defendants

Attorney for third-party defendants.

BOARD OF EDUCATION
Annapolis, Maryland

October 21, 1936

Dear Principal:

The members of the Board of Education are unanimous in their opinion that teachers should be in charge when the first bus arrives at the school, that a room should be open for all children to come into a warm room, and that while children may be permitted to talk there should be no disorderly conduct or "skylarking" permitted in this room. The room should be quiet enough for children to discuss their lessons or study if they care to.

The Board of Education members are also of the opinion that all teachers should be in their classrooms by 8:30 a.m. and remain in the afternoon until 3:30 p.m. Any child who wishes to go to the classroom should be permitted to go there with the principal's approval; to wit: A child who is back in his lessons, who is on the bus a long time, or who must study at home under a handicap should be permitted to study in his classroom if he wishes to do so. No talking should be permitted and no walking around the room. A classroom should be as quiet as a library room. Children who attend the classrooms under this arrangement should be given a card of approval by the principal and should show this card to the teacher. Any disorderly conduct or breaking of school rules in the corridors should be cause for the withdrawal of this card.

Principal and teachers should endeavor to make the hours spent in waiting for the bus profitable to the children who arrive early. This may be done in several ways. First, there may be a period for study in preparing home work that it was impossible to prepare at home. There may be a reading period where children secure magazines, library books, and reference books to improve their opportunities. Credit should be given for such reading if it is done under the supervision of a teacher. Second, it may be a period of recreation. This would be under two heads: those children who wish to play outside should be permitted to do so. Children of the more quiet dispositions who prefer to play "Dominos", "Checkers" or similar games should also be permitted to do so in the school building. The teacher should solicit used magazines from the community. Most everyone who has finished with a magazine will be glad to donate it to the school. Children should be taught to replace these magazines on the table when they are through with them or when the bell rings. A few subscriptions may be included as a part of your book order.

From January 1st to April 1st, principals may arrange a shorter recess and have the buses leave at 3:15 p.m. in the elementary schools if they care to do so, providing satisfactory arrangements can be made for buses. This earlier dismissal should not extend after April 1st.

The Board members feel that a teachers should be held responsible when placed in charge of the children; that is, every teacher need not be at the school when the first bus arrives, but one teacher should be at the school and a record kept on file in the office of which teacher is on duty every day, so that if there is negligence, the Board can easily discover who is responsible.

Salary Schedule &
1936 Bd. of Ed guide
Appendix # 14

P+2

BOARD OF EDUCATION
Annapolis, Maryland

The following scale of salaries for the coming year was adopted by the Board of Education at the regular meeting held April 7, 1937.

I am sending this notice to you in order that you may know exactly what your salary will be next year.

All principals' salaries will be fully restored on the 1932 basis. There will be some adjustments made, but these adjustments will be in favor of the principals and not against the principals.

Sincerely yours,

GEORGE FOX,
County Superintendent.

WHITE ELEMENTARY SCALE

1	2	3	4 - 5	6-7	8-9	10-11	12 & Over
$1,000	$1,050	$1,100	$1,150	$1,200	$1,250	$1,300	$1,350 *

*with one step more of $50.00 if funds are available.

Elementary principals of one and two-room schools - Scale plus $100.00
" " " three-room " - " " $150.00
" " " four-room " - " " $200.00

WHITE HIGH SCHOOL SCALE

1	2-3	4-5	6-7	8-9	10 and over
$1,300	$1,400	$1,500	$1,600	$1,700	$1,750 With one more step of $50.00 if the funds are available.

160
56

1951-1952

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6
9

COLORED TEACHERS' SALARY SCALE FOR ANNE ARUNDEL COUNTY

Years Experience	1-3	4-5	6-7	8 and over
First Grade	$ 70.00	$ 75.00	$ 80.00	$ 85.00
Second Grade	50.00	55.00	60.00	65
Third Grade	40.00	45.00		

Principals of two-teacher schools - $5.00 per month additional.

Principals of larger schools - salaries to be paid according to responsibility.

Deduct 1/20 of a month's salary for lost days and 1/30 of a month's salary for sick days.

Elementary salaries are paid on an eight and a half month basis.

Substitutes:

Normal school graduation or equivalent - $3.00 per day
Less than normal school training - 2.50 per day

COLORED HIGH SCHOOL TEACHERS SALARY SCALE

Years Experience	1-3	4-5	6-7	8 and over
State Certificate	$ 90.00	$ 95.00	$ 100.00	$ 105.00

Substitutes:

College graduates - $3.50 per day
Others - $3.00 per day.

High school salaries are paid on a ten months' basis.

COLORED TEACHERS' SALARY SCALE FOR ANNE ARUNDEL COUNTY

Effective January 1, 1936

Years Experience	1-3	4-5	6-7	8 and over
Anne Arundel County	700 $600.00	750 $625.00	800 $650.00	850 $700.00
State Scale	$481.00	$518.00	$555.00	$629.00

Principals of two-teacher schools - $5.00 per month additional.

Principals of larger schools - salaries to be paid according to responsibility.

Deduct 1/30th of a month's salary for lost days and 1/40th of a month's salary for sick days.

Elementary salaries are paid on an eight and a half month basis.

All substitutes will receive $2.50 per day.

COLORED HIGH SCHOOL TEACHERS' SALARY SCALE

Years Experience	1-3	4-5	6-7	8 and over
Anne Arundel County	900 $850.00	950 $900.00	1000 $950.00	1050.00 $1000.00
State Scale	$666.00	$749.25	$790.88	

All substitutes will receive $2.50 per day.

High school salaries are paid on a ten months' basis.

COLORED TEACHERS' SALARY SCALE FOR ANNE ARUNDEL COUNTY

Decrease Effective January 1, 1934

Years Experience	1-3	4-5	6-7	8 and over
First Grade	548.30	587.46	626.62	665.79
Second Grade	412.25	455.48	469.97	509.15

Principals of two-teacher schools—$5.00 per month additional.

Principals of larger schools—salaries to be paid according to responsibility.

Deduct 1/20th of a month's salary for lost days and 1/30th of a month's salary for sick days.

Elementary salaries are paid on an eight and a half month basis.

All substitutes will receive two dollars per day.

COLORED HIGH SCHOOL TEACHERS' SALARY SCALE

Years Experience	1-3	4-5	6-7	8 and over
State Certificate	829.55	875.45	921.50	967.58

All substitutes will receive two dollars per day.

High school salaries are paid on a ten months' basis.

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COLORED TEACHERS' SALARY SCALE FOR ANNE ARUNDEL COUNTY

Decreases Effective January 1, 1933

Years Experience	1-3	4-5	6-7	8 and over
First Grade	565.25	605.62	646.00	686.38
Second Grade	425.00	467.50	484.50	524.88
Third Grade	340.00	387.50		

Principals of two-teacher schools - $5.00 per month additional.

Principals of larger schools - salaries to be paid according to responsibility.

Deduct 1/20th of a month's salary for lost days and 1/30t of a month's salary for sick days.

Elementary salaries are paid on an eight and a half month basis.

All substitutes will receive two dollars per day.

COLORED HIGH SCHOOL TEACHERS' SALARY SCALE

Years Experience	1-3	4-5	6-7	8 and over
State Certificate	855.00	902.50	950.00	997.50

All substitutes will receive two dollars per day.

High school salaries are paid on a ten months' basis.

EDUCATION OF COLORED CHILDREN IN MARYLAND COUNTIES

EDUCATION OF COLORED CHILDREN IN THE MARYLAND COUNTIES

For some time there have been demands from colored people in the State for equal salaries for colored and white teachers, equal length of term, and proportionate distribution of funds for transportation of pupils, for buildings, and for other purposes. In order that conditions with respect to these matters may be known, the historical setting has been explored and the statistical material has been brought up to 1938-39.

1. Salaries

A brief history of salary legislation in Maryland will give the necessary perspective in viewing the salary situation.

The 1872 law provided that the salaries of teachers of each county should be fixed by the board of county school commissioners. The 1904 legislature continued this policy, but provided that no white teacher having an average attendance of 15 pupils or more should receive a salary of less than $300 per school year. The 1908 and 1910 legislatures fixed annual salaries of from $350 to $450 for white teachers, according to their rating and experience.

White Elementary Teachers

After the school survey, the legislature in 1916 established State certification of teachers, and at the same time fixed minimum salary schedules based on certification and experience. With the increased cost of living during the war period, the legislature found it necessary in 1918, in 1920, and in 1922 to raise the minimum salary schedules to attract and retain teachers. (See upper part of Table A, page 20.)

In 1939 the legislature established a new State minimum salary schedule for white teachers, which sets up a single salary schedule based on preparation and experience to replace the former position-experience schedule. The period of years over which increments may be earned for satisfactory experience is extended from 8 years to 17 years. Teachers without degrees receive an initial salary of $1,000 with salary increments every two years until a maximum of $1600 is earned in the seventeenth year by those whose service is rated first class. Teachers with degrees, whether teaching in the elementary or the high schools, start with $1200 and have a maximum of $1800 for satisfactory service in the seventeenth year. Teachers with more than 8 years experience will receive only one increment of $100 in any two-year budgetary period until the maximum is reached. (See Table D, page 23.)

Colored Elementary Teachers

For colored teachers the 1872 provision giving the board of county school commissioners authority to fix salaries was in effect until 1918, when a minimum salary schedule of $30, $35, and $40 per month was established for teachers holding third, second, and first grade certificates, respectively. The required length of term was fixed at 140 days, or 7 months. This law also contained the following sentence: "The average of the annual salaries paid all teachers regularly employed in the public schools for colored children in any county of this State having a 7 months' term for colored children shall not be less than $250 in any such county." In 1920, the legislature increased the monthly salaries fixed in 1918 to $40, $50, and $65. It was not until 1922 that provision was made for giving recognition in the salary schedule to increased

experience on the part of colored elementary teachers. The top minimum salary schedule for experienced teachers holding third, second, and first grade certificates became $45, $60, and $85 per month, respectively. The 1922 law also increased salaries of colored teachers by lengthening the term in colored schools to 8 months. The 1937 law increased salaries for 1939-40 by lengthening the minimum school term to 180 days, or 9 months. (See lower part of Table A, page 20.)

Principals of White Elementary Schools

The first legislation establishing minimum schedules for white principals of elementary schools was passed in 1918 and fixed annual salaries ranging from $550 to $650, based on years of experience. In 1920 the above limits were made $900 and $1,050. Further increases were scheduled in 1922 and special provision was made for higher salaries for principals in charge of the larger schools. (See Table B, page 21.)

In 1939 the legislature set up new State minimum salary schedules for white elementary school principals based on preparation and experience. According to these schedules, principals holding degrees receive $200 more than those not holding degrees, and the period of years over which increments may be earned for satisfactory experience is increased from 8 to 17 years. (See Table D, page 23.)

High School Teachers and Principals

In 1910, minimum salaries of $500 for county high school teachers and of $1200 for principals were established. It was not until 1916 that experience was used as a basis for salary increments. Because of rising living costs higher salaries for teachers only were fixed by the 1918 legislature.

The first colored high schools approved were 4 two- and three-year high schools in the school year 1918-19. In 1919-20 these became approved four-year high schools. The 1920 legislature established separate salary schedules for white and colored high school teachers and principals.

The minimum annual salaries of white teachers established in 1920 ranged from $900 to $1,150, depending on years of experience. Schedules were fixed for white principals in charge of high schools varying in size. Further increases were provided in all these schedules in 1922. (See upper part of Table C, page 22.)

In 1939 the legislature set up new State minimum schedules for white teachers with degrees providing for initial salaries of $1200. The maximum salary of $1800 after 17 years' experience will be approached gradually by teachers whose service is rated as first class, the increase in any two-year period not exceeding $100. The minimum salary for a white principal of a small high school was made $1650; for the principal of a school having 100 pupils in attendance, $1850; and for a principal with 200 pupils in attendance $2050, the maximum of $800 additional being earnable after 17 years' experience rated as first class, and being approached gradually, the increase in any two-year period not exceeding $100.

In 1920, the salary for colored high school teachers was fixed at $75 per month and for principals at $90 per month, for a school year of at least 7 months. In 1922, these basic amounts were increased, value of experience was recognized by allowing higher salaries, special schedules were set up for principals of larger high schools and the required session was increased to 8 months. As a result of legislation in 1937, the required session was increased to 180 days, or 9 months, effective in September, 1939. (See lower part of Table C, page 22.)

As will be evident from the above, the Maryland Legislatures have fixed minimum salaries for white teachers since 1904 and for colored teachers since 1918. For white teachers, salaries are fixed on an annual basis, paid in most counties in 10 monthly installments, while for colored teachers the salary is scheduled on a monthly basis, paid, since 1922, in counties having schools open only the required minimum session, in 8 monthly installments. In 1937, the required session in colored schools beginning in September, 1939 was increased to 180 days, or 9 months.

The basic schedules now in effect for colored teachers were fixed by the legislature of 1922. They are shown in the column with the heading 1922 at the right side and in the lower part of Tables A and C, pages 20, 22. The new minimum schedules for white teachers and principals in effect as of September, 1939 are included in Table D, page 23.

As a result of the State Equalization Fund which was created by the legislature of 1922, and through which the State has helped the financially less able counties to finance the increases brought about by the 1922 salary legislation, these counties have not had to increase their tax rates from 1923 to 1929 in order to finance the minimum State program. In 1922, approximately one-third of the white and colored elementary teachers were normal school graduates, another third were only high school graduates, and the remaining third had little more than their elementary schooling as preparation. As a result of the program making teacher training less expensive and salaries of trained teachers more attractive, and providing State aid to the financially poorer counties in order that they might employ an increasing number of trained and experienced teachers, more than 98 per cent of the elementary staff are at least normal school graduates or have had equivalent professional preparation, and an increasing proportion of teachers have had 3 or 4 years of college training.

Because of the depression, temporary percentage reductions* in the 1922 salary schedules and abrogation of the increases provided on account of years of experience since 1932-33 were made by the legislatures of 1933 and 1935.

In Table 1, on page 4, the average annual salaries actually paid white and colored teachers in Maryland county elementary and high schools are shown for the period from 1921 to 1939. Salaries above the minimum schedule are paid in several of the counties and are included in these averages.

* See note on page 4.

TABLE 1

ANNUAL AVERAGE SALARY OF MARYLAND COUNTY TEACHERS IN

Year Ending June 30	Elementary Schools		High Schools	
	White	Colored	White	Colored
1921	$ 881	$442	$1,289	$864
1922	937	455	1,345	871
1923	990	513	1,436	906
1924	1,030	532	1,477	835
1925	1,057	546	1,485	808
1926	1,103	563	1,517	891
1927	1,126	586	1,534	908
1928	1,155	602	1,544	897
1929	1,184	621	1,557	879
1930	1,199	635	1,550	874
1931	1,217	643	1,559	882
1932	1,230	653	1,571	856
1933	1,231	657	1,532	837
1934	*1,122	*595	*1,394	*784
1935	*1,135	*602	*1,398	*790
1936	*1,202	*636	*1,469	*817
1937	*1,220	*653	*1,488	*821
1938	1,295	745	1,587	905
1939	1,314	848	1,595	991
Increase 1921-39				
Amount	433	406	306	127
Per Cent	49	92	24	15
Number of Teachers 1939	2,946	658	1,439	150

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* Salaries under $1200, reduced by 10% in 1934 and 1935, were cut instead by 7 1/2% in 1936 and 1937.

Salaries from $1200 to $1799, reduced by 11% in 1934 and 1935, were cut instead by 8 1/4% in 1936 and 1937.

Salaries from $1800 to $2399, reduced by 12% in 1934 and 1935, were cut instead by 9% in 1936 and 1937.

In 1921, salaries in county elementary schools averaged $881 for white principals and teachers and $442 for colored teachers. The 1922 minimum salary schedule took effect in the year 1922. Because of changes in certification status resulting from increased professional training and because of a gradual lengthening of the years of teaching service, there was a steady increase to 1932-33 in

the average salary, although there was no change in the basic minimum salary schedules after the school year ending in June, 1923. At their maximum in 1933, prior to the cuts which resulted from 1933 and 1935 legislation, the salaries averaged $1,231 in white and $657 in colored elementary schools. The cuts, in effect from 1934 to 1937, brought reductions in salaries, followed by restorations in 1938 and 1939, when salaries reached their peak, the average for white elementary teachers and principals being $1314 and for colored elementary teachers $848. Over the entire period the total increase for white principals and teachers was $433 and for colored teachers $406, giving percentage increases of 49 and 92 respectively. The number of individuals for whom these salaries were averaged involved 2946 white and 658 colored elementary teachers in 1939.

In county high schools, salaries of white principals and teachers averaged $1,289 in 1921. Although the basic minimum salary schedule did not change after 1923, the employment each year of a larger proportion of teachers and principals meeting full certification requirements and having longer teaching experience brought about a steady advance in average salaries until 1932, when the maximum average salary reached $1,571. The percentage cuts from 1934 to 1937 brought reduction in salaries followed by restoration in 1938 and 1939, when salaries were at their peak. In 1939 the average annual salary of county white high school teachers and principals was $1595 and of colored high school teachers and principals $991. There were 1439 white and 150 colored principals and teachers in service in the counties in 1939. Salaries in county colored high schools up to 1933 do not show the consistent upward trend displayed for the white and colored elementary and white high school teachers. The number of teachers in county colored high schools increased rapidly from 20 in 1921 to 150 in 1939; therefore, a large proportion of of the teachers each year received the salary paid the teachers with the least experience.

In the Chart on page 6 , the salaries of the four groups are plotted on a ratio chart. It will be noted that the lines for colored elementary, white elementary, and white high school teachers are almost parallel throughout the period, and this is also true for the teaching staff in colored high schools for 1933 and the years following, although the percentage increase for the colored staff was greater than that for the white staff. The lines plotting salaries for the staffs in all types of schools except those for colored high school pupils show similar tendencies to increase from 1921 to 1933 with the improvement in the certification and experience status of the members of the group; and to fall in 1934 to 1937 as a result of the salary cuts; and to increase in 1938 and 1939 after restoration of cuts in salaries. The line for the county colored high school staff up to 1933 does not show the consistent upward trend of the other three groups because of the rapid expansion of the number in this group, and the consequent employment of many beginning teachers.

Only one county in the State, Allegany, which employs only ten colored teachers, paid equal salaries to white and colored teachers throughout the period under consideration. Montgomery and Baltimore Counties have recently equalized salaries. In 1938-39, ten counties, Allegany, Baltimore, Carroll, Cecil, Dorchester, Frederick, Harford, Montgomery, Talbot, and Washington, kept their white and colored elementary and high schools open more than 180 days. Five counties, Anne Arundel, Calvert, Charles, Kent, and Queen Anne's kept the white and colored <u>high</u> schools open 180 days or more. The differences between the salaries of white and colored teachers in the above mentioned counties are not as great as in the counties which kept the colored schools open only the required minimum session of 160 days. In Allegany, Anne Arundel, Baltimore, Cecil, Frederick, Harford, Montgomery, Prince George's, and Washington Counties, salaries for all, or many of the teachers are above the State minimum schedule. For the average salaries paid in the four types of schools in each county see Table 2.

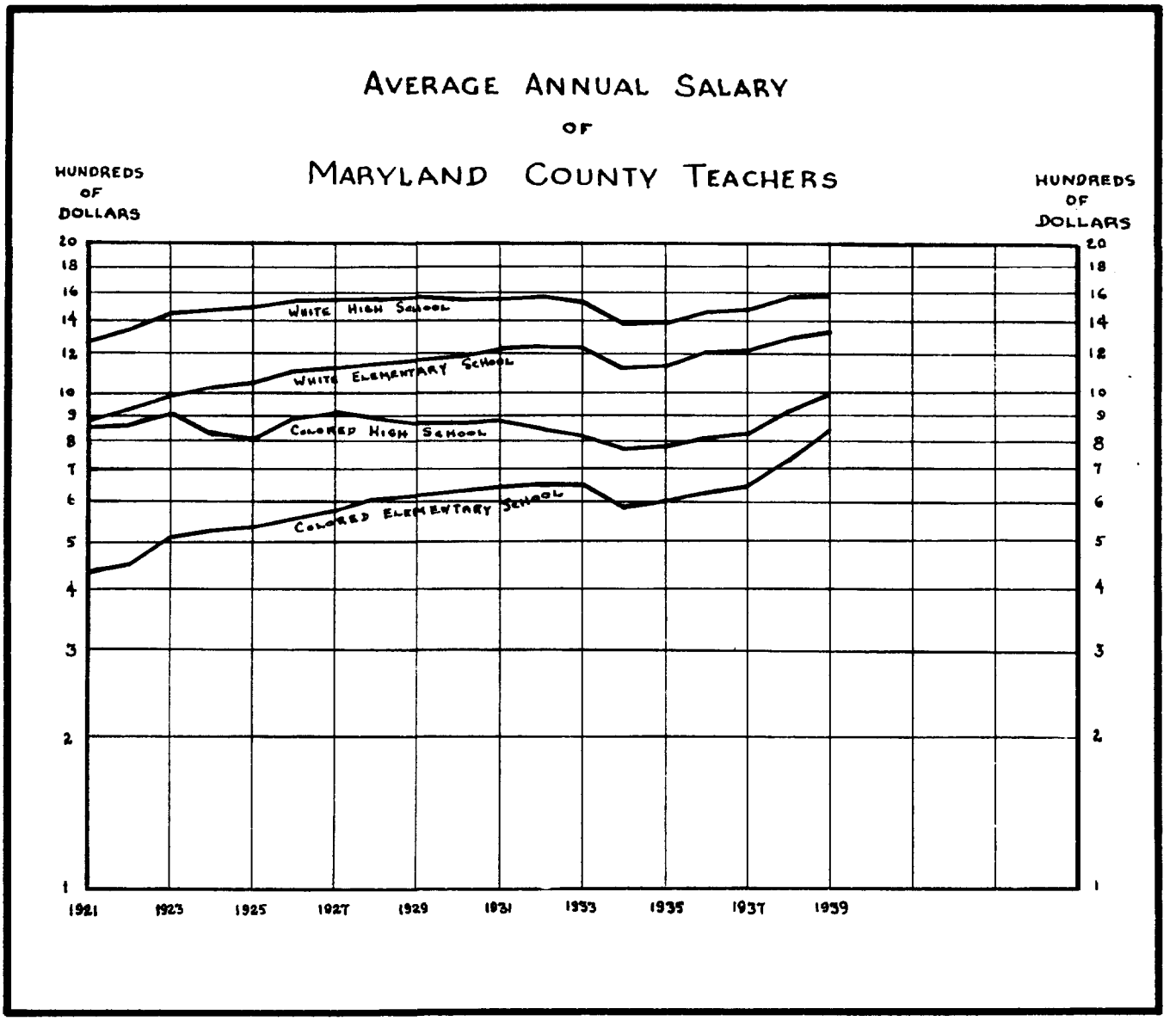
AVERAGE ANNUAL SALARY
OF
MARYLAND COUNTY TEACHERS
HUNDREDS OF DOLLARS
HUNDREDS OF DOLLARS
20
18
16
14
12
10
9
8
7
6
5
4
3
2
1
WHITE HIGH SCHOOL
WHITE ELEMENTARY SCHOOL
COLORED HIGH SCHOOL
COLORED ELEMENTARY SCHOOL
1921
1923
1925
1927
1929
1931
1933
1935
1937
1939

TABLE 2

AVERAGE ANNUAL SALARY

Per Principal and Teacher in Maryland County Schools, 1938-39

County	Elementary Schools		High Schools	
	White	Colored	White	Colored
Average	$1314	$ 848	$1595	$ 991
Allegany	1336	1287	1616	1599
Anne Arundel	1333	839	1626	1107
Baltimore	1552	1434	1893	
Calvert	1153	701	1526	948
Caroline	1180	806	1466	1079
Carroll	1198	845	1469	1127
Cecil	1290	1097	1546	1276
Charles	1092	636	1402	864
Dorchester	1170	659	1403	850
Frederick	1305	930	1564	1118
Garrett	1152		1509	
Harford	1199	874	1580	978
Howard	1162	722	1436	905
Kent	1197	790	1469	1058
Montgomery	1546	1450	1729	1565
Prince George's	1216	791	1466	876
Queen Anne's	1208	805	1533	983
St. Mary's	1180	638	1404	792
Somerset	1159	603	1480	721
Talbot	1167	751	1502	982
Washington	1325	1170	1812	1493
Wicomico	1170	620	1426	765
Worcester	1137	588	1421	779

If the equalization of salaries of colored and white teachers could be brought about without causing large additions to the State and county budgets, the objections on the part of county leaders and legislators might be more easily overcome. However, calculations made in 1931, before salaries were cut and when the colored teaching staff was smaller than it is today, indicates that an increase of over $450,000 would be required in the State Equalization Fund for eighteen counties and that four county budgets would have to be increased by $43,000 to bring equalization of colored salaries on the State minimum basis for white teachers, a total increase of nearly $500,000. Since that time there has been a further increase in salaries of white teachers.

Since minimum salary schedules are fixed by the legislature, a State-wide increase in the minimum salary basis for colored teachers can come about through legislation, which must have the support of the county members of the Senate and House of Delegates. Their support can not be secured until there is a general sentiment among the leaders in most of the counties for such increase. Legislation of this character is usually possible only after the financially able and more progressive counties have tried out such policies and found them advantageous. Changed attitudes can not be brought about by imposition from above by the State Board of Education or the State Superintendent of Schools, but must grow out of an interest in the problem by the people of the individual counties.

2. Length of Session

According to Chapter 377 of the laws of 1872, "there shall be kept open for ten months in each year, if possible, one or more schools free to white youths." The same law provided that the public schools established for colored youths shall be kept open "as long as other public schools of the particular county, provided the average attendance be not less than 15 scholars;" in 1904, however, in Chapter 584, this was changed to read "as long as the board of county school commissioners shall determine; provided, the colored population of such district warrant said board in establishing said schools." In 1916 the minimum session for white elementary schools was fixed at 180 days and schools were to be kept open ten months, if possible. For colored schools, the 1916 legislature fixed the required session at 140 days, or seven months, but the 1922 legislature subsoquently increased this to 160 days, or eight months. In the financially poorer counties in which a large part of the county colored population lives, the legislation of 1922, which set up the Equalization Fund, made it possible for the State to take over the cost of the additional month. According to Chapter 552 of the laws of 1937, schools for colored youth shall be kept open not less than 180 actual school days, or nine months, in each year, beginning with the school year 1939-40.

The 1916 legislature fixed the required session for approved high schools at 180 days. (See Section 193, Article 77.) In 1920, when specific provision was made for high schools for colored pupils, their minimum term was fixed at 140 days, which was subsequently increased in 1922 to 160 days. (See Section 203, Article 77.) In 1937, the Legislature by enactment of Chapter 552 fixed the session in colored schools at 180 days, or nine months, to take effect as of September 1, 1939.

Table 3 shows the average number of days county white and colored elementary and high schools have been open from 1921 to 1939. As indicated above, a number of the counties keep schools open more days than the minimum number stipulated in the law.

TABLE 3

AVERAGE DAYS IN SESSION IN MARYLAND COUNTY

Year Ending June 30	Elementary Schools White	Elementary Schools Colored	High Schools White	High Schools Colored
1921	179.5	146.7	181.0	156.3
1922	182.2	146.7	184.0	160.1
1923	186.4	162.5	187.0	171.5
1924	186.3	165.0	188.0	171.8
1925	186.2	164.2	186.9	171.9
1926	186.7	166.2	187.1	174.9
1927	186.7	166.2	186.9	173.7
1928	188.4	168.4	189.5	176.0
1929	186.8	167.2	186.9	173.0
1930	187.0	167.5	186.7	172.8
1931	186.6	166.8	186.5	173.0
1932	187.9	168.1	188.0	172.9
1933	187.7	167.8	186.4	173.0
1934	186.8	168.3	187.0	173.9
1935	185.6	166.9	185.8	171.2
1936	186.1	167.0	186.4	171.3
1937	185.0	167.9	185.1	172.8
1938	187.2	170.4	187.2	176.0
1939	185.6	172.0	185.5	176.6
Increase 1921 to 1939				
Amount	6.1	25.3	4.5	20.3
Per Cent	3.4	17.2	2.5	13.0

The white county elementary schools were open just under 180 days in 1921 and 185.6 days in 1939. The colored elementary schools increased the session by 25.3 days from 1921, when it was 146.7 days, to 172.0 days in 1939.

The white county high schools were in session 181 days on the average in 1921 and 185.5 days in 1939. The corresponding figures for colored high schools were 156.3 days in 1921 and 176.6 days in 1939.

Ten counties in 1938-39 kept all colored schools open the same length of time as the white schools. In addition, five counties kept the white and colored high schools in session approximately the same number of days. (See Table 4.) The enactment of Chapter 552 of the laws of 1937 will bring about sessions of at least 180 days in the colored schools during the school year 1939-40.

TABLE 4

AVERAGE DAYS IN SESSION 1938-39

in Maryland County Schools

County	Elementary Schools		High Schools	
	White	Colored	White	Colored
County Average	185.6	172.0	185.5	176.6
Allegany	185.7	186.2	185.4	184.9
Anne Arundel	185.8	150.8	187.0	188.0
Baltimore	190.8	191.0	191.0	190.0
Calvert	182.9	159.9	183.4	181.1
Caroline	181.8	173.0	181.8	173.0
Carroll	183.9	182.7	183.9	183.0
Cecil	188.0	189.6	188.0	189.0
Charles	182.8	161.2	184.1	183.5
Dorchester	185.4	182.4	185.1	181.6
Frederick	182.0	182.9	182.0	182.9
Garrett	184.3		184.3	
Harford	189.6	181.1	189.9	181.0
Howard	188.5	176.4	189.0	176.9
Kent	183.1	160.3	183.0	183.1
Montgomery	184.0	183.9	184.0	184.0
Prince George's	184.3	173.6	183.5	173.5
Queen Anne's	183.0	168.1	183.0	180.0
St. Mary's	182.0	161.4	182.0	161.3
Somerset	182.3	162.3	182.3	162.7
Talbot	183.2	181.0	183.0	181.0
Washington	186.1	186.3	186.0	185.8
Wicomico	182.0	163.0	182.0	163.0
Worcester	181.0	162.0	181.0	162.0

3. Transportation of Pupils to School

Transportation of white pupils to elementary and high schools in whole or in part at public expense has been furnished in every Maryland county only since the school year 1930-31. In 1938-39, every county is transporting at public expense colored elementary pupils and all except one county is transporting colored high school pupils. The financing of transportation of pupils was entirely a county matter until 1925, when the State began giving aid toward it in Equalization Fund counties. The improvement of roads, the consolidation of

many small elementary schools, the elimination of most of the very small high schools, the demand for free transportation on the part of school patrons, the aid furnished by the State to Equalization Fund counties, and aid from the Rosenwald Fund for transportation of colored high school pupils, have all played their part in increasing the program for transportation of pupils at public expense.

The cost of consolidated schools, including cost of transportation, is often not as great per pupil as that of operating the one-teacher elementary and small high schools which are eliminated in the progress of school consolidation, and educational results are usually greatly improved. School consolidation, however, is a slow process, requiring careful planning and the approval of the communities affected. Some communities are eager for consolidation, while others resist it. The interest and enthusiasm of local communities and the citizens of the county as a whole in improving the educational opportunities of their children are important factors in promoting a program of school consolidation accompanied by transportation.

The counties have reduced the number of white one-teacher elementary schools by 958 from 1,171 in 1920 to 213 in the fall of 1939, a reduction of 82 per cent. The corresponding reduction in colored one-teacher schools has been 222, from 422 in 1920 to 200 in the fall of 1939, a reduction of 47 per cent. However, it will be noted that there are still more white than colored one-teacher elementary schools, 213 white as against 200 colored. (See Table 5 below).

TABLE 5

REDUCTION IN THE NUMBER OF ONE-TEACHER SCHOOLS IN MARYLAND COUNTIES

Year	Number of County One-Teacher Elementary Schools		Per Cent of County Elementary Teachers Employed in One-Teacher Schools	
	White	Colored	White	Colored
1920	1,171	422	39	62
1921	1,149	408	38	59
1922	1,124	406	37	57
1923	1,093	403	36	57
1924	1,055	395	34	54
1925	1,005	397	33	55
1926	956	394	31	54
1927	898	382	29	53
1928	823	378	27	52
1929	739	372	24	51
1930	663	363	22	50
1931	586	353	19	48
1932	489	344	16	47
1933	407	334	14	47
1934	377	331	13	47
1935	365	318	12	45
1936	342	309	12	44
1937	324	293	11	42
1938	289	271	10	40
1939	260	233	9	35
Fall of 1939	213	200	--	--
Decrease 1920 to Fall of 1939				
Number	958	222	30.3	26.4
Per Cent	82	47	78	57

The number of one-teacher white and colored schools in individual counties in 1938-39 is given in Table 6. In a number of counties the population is widely scattered, living in inaccessible territory, such as islands, necks of land, and mountainous regions, remote from improved roads. In many cases it is not feasible to abandon the one-teacher schools in these sections because no means for removing the children to larger centers can be devised with present road conditions. Furthermore, although in eliminating a small elementary school by consolidation, the cost of transporting pupils often replaces the salary of a teacher and the cost of operating the building, the lack of building facilities adequate to house a larger group of children in the centers to which children might be transported, and the existence of satisfactory building facilities where children are now attending, retard consolidation of many one-teacher schools, both white and colored. Of course, for many groups who live in crowded centers of population within walking distance of school facilities, the problem of transportation does not arise.

The transportation program has been greatly increased for both white and colored county pupils. In 1923, there were 4,328 white county pupils in 20 counties transported to school at an expense to the public of $129,738, while for the year 1939, the number transported was 54,276, in the 23 counties, and the public expense was nearly $1,203,000. Only 5 counties furnished transportation to 133 county colored pupils in 1923 at a cost of $2,853. By 1929 9 counties were transporting 270 colored pupils at a cost of nearly $6,000. During the school year 1938-39 every county having colored pupils provided transportation for some of them, the total number transported being 7,355 and the total cost to the public for their transportation being nearly $137,000. (See Table 7.)

Since for reasons given before, consolidation of elementary schools has not progressed as rapidly for colored as for white pupils, the per cent of all county colored elementary pupils transported in 1938-39 was 17 as against 32.5 per cent for white elementary pupils. However, the per cent of county high school pupils transported wholly or in part at public expense was 70 for colored pupils, as against 39 for white pupils. In no county are there more than three high schools for colored pupils; therefore a larger proportion of colored than of white high school pupils have to be transported and travel longer distances.

The facts regarding transportation in each county are given in Table 8.

TABLE 6

NUMBER AND PER CENT OF MARYLAND COUNTY ELEMENTARY TEACHERS GIVING INSTRUCTION IN ONE-TEACHER SCHOOLS

School Year 1938-39

County	White Elementary		Colored Elementary	
	Number	Per Cent	Number	Per Cent
Total and Average	260	8.8	233	35.4
Allegany	20	5.9	1	17.2
Anne Arundel	1	.6	18	23.4
Baltimore			7	16.1
Calvert	1	4.3	14	56.0
Caroline				
Carroll	11	8.4	4	46.0
Cecil	23	25.5	6	50.0
Charles	2	5.1	22	55.0
Dorchester	22	27.7	23	62.2
Frederick	7	3.9	10	45.5
Garrett	50	43.0		
Harford	21	17.4	12	48.0
Howard	14	24.5	7	43.8
Kent	7	17.6	13	61.9
Montgomery	8	3.0	9	20.0
Prince George's	9	3.4	16	20.1
Queen Anne's	5	12.5	14	63.6
St. Mary's	9	30.0	11	39.3
Somerset	5	9.4	12	30.2
Talbot	9	18.7	14	58.3
Washington	29	9.9	2	28.6
Wicomico	6	6.8	10	29.4
Worcester	1	1.8	8	25.8

TABLE 6

NUMBER AND PER CENT OF MARYLAND COUNTY ELEMENTARY TEACHERS GIVING INSTRUCTION IN ONE-TEACHER SCHOOLS

School Year 1938-39

County	White Elementary		Colored Elementary	
	Number	Per Cent	Number	Per Cent
Total and Average	260	8.8	233	35.4
Allegany	20	5.9	1	17.2
Anne Arundel	1	.6	18	23.4
Baltimore			7	16.1
Calvert	1	4.3	14	56.0
Caroline				
Carroll	11	8.4	4	46.0
Cecil	23	25.5	6	50.0
Charles	2	5.1	22	55.0
Dorchester	22	27.7	23	62.2
Frederick	7	3.9	10	45.5
Garrett	50	43.0		
Harford	21	17.4	12	48.0
Howard	14	24.5	7	43.8
Kent	7	17.6	13	61.9
Montgomery	8	3.0	9	20.0
Prince George's	9	3.4	16	20.1
Queen Anne's	5	12.5	14	63.6
St. Mary's	9	30.0	11	39.3
Somerset	5	9.4	12	30.2
Talbot	9	18.7	14	58.3
Washington	29	9.9	2	28.6
Wicomico	6	6.8	10	29.4
Worcester	1	1.8	8	25.8

TABLE 7

MARYLAND COUNTY PUPILS TRANSPORTED TO PUBLIC SCHOOLS AT PUBLIC EXPENSE

1923 - 1939

Year	Pupils Transported to School at Public Expense								Public Expenditures For Transportation of	
	Number Transported				Per Cent Transported					
	Elementary		High		Elemen.		High		White	Colored
	White	Colored	White	Colored	Wh.	Col.	Wh.	Col.	Pupils	Pupils
1923	3,485	133	843	0	3	1	6	0	$ 129,738	$ 2,853
1924	4,682	133	1,701	0	5	1	11	0	185,263	3,253
1925	6,269	144	2,197	1	6	1	13	0	238,094	3,947
1926	7,613	105	2,835	14	8	0	15	2	308,596	3,899
1927	9,778	†140	3,424	15	10	1	17	1	368,089	5,079
1928	11,774	†201	3,870	20	11	1	18	2	431,065	5,517
1929	14,028	†247	4,632	*23	14	1	20	2	506,478	5,907
1930	16,670	†310	5,660	*174	16	1	23	9	594,473	8,675
1931	20,593	†493	7,746	*215	20	2	29	10	726,747	17,633
1932	24,787	†724	9,019	*477	23	3	32	19	807,373	27,305
1933	28,741	†847	10,157	502	27	3	34	19	828,067	30,207
1934	29,969	†1,051	10,581	740	28	4	35	27	826,817	36,732
1935	31,147	†1,096	11,517	1035	29	4	37	35	836,355	44,781
1936	32,676	†1,389	13,191	1795	31	6	41	51	890,325	62,272
1937	34,076	†1,807	13,970	2395	32	8	42	59	944,922	74,951
1938	35,980	†2,749	14,556	2983	34	12	43	68	1,013,356	108,142
1939	38,201	†4,097	16,075	3258	36	18	45	70	1,066,210	136,574
Increase, 1923 - 1939:										
	34,716	3,964	15,232	3,258	33	17	39	70	936,472	133,721

† Includes county pupils transported to elementary school at Bowie State Teachers College at expense of State.

* Includes Rosenwald aid toward transportation of pupils.

TABLE 8

ENROLLMENT TRANSPORTED AND COST TO PUBLIC OF PUPILS TRANSPORTED

TO PUBLIC SCHOOLS AT PUBLIC EXPENSE, 1938-39

County	Pupils Transported at Public Expense								Public Expenditures for Transportation of	
	Number				Per Cent					
	Elementary		High		Elemen.		High			
	White	Colored	White	Colored	W.	C.	W.	C.	White	Colored
All Counties	38,201	4,097	16,075	3,258	36	13	45	70	$1,066,210	$136,574
Allegany	3,009	4	1,008	15	25	2	26	16	71,953	300
Anne Arundel	3.114	91	1,407	221	52	3	65	50	77,250	3.199
Baltimore	5,464	394	2,546	158	33	21	50	85	123,521	9,087
Calvert	605	211	201	142	75	20	97	97	26,161	6,567
Caroline	1,174	424	473	156	61	66	62	84	28,530	9,962
Carroll	2,893	151	1,135	72	62	47	65	73	77,677	4,474
Cecil	951	85	609	73	32	25	49	75	28,243	4,891
Charles	949	103	428	282	67	7	74	89	34,907	8,489
Dorchester	893	216	483	170	38	18	50	64	37,836	8,559
Frederick	2,876	217	1,092	114	42	28	45	56	85,409	7,635
Garrett	1,313		791		36		68		65,530	
Harford	1,017	74	65	0	27	10	4	0	21,797	1,061
Howard	893	42	516	22	45	7	78	38	27,108	1,770
Kent	602	124	310	145	46	20	53	91	19,836	6,829
Montgomery	3,364	438	848	248	38	26	30	89	11,439	9,896
Prince George's	1,841	74	915	371	19	3	28	82	38,270	8,071
Queen Anne's	788	132	337	86	57	23	67	84	28,227	5,548
St. Mary's	491	271	398	212	60	29	99	95	31,026	6,251
Somerset	956	218	356	220	50	17	48	75	28,914	5,947
Talbot	647	216	332	135	41	27	49	68	27,195	5,874
Washington	2,006	29	770	6	19	12	30	11	50,359	2,560
Wicomico	1,156	263	522	262	35	21	41	70	35,386	7,493
Worcester	1,109	320	438	148	59	27	56	55	35,636	7,311

4. a. Buildings and Equipment

Provision of school sites, buildings and equipment is a responsibility which rests solely on the individual counties. No State aid is given for these purposes. The only responsibility for buildings assumed by the State Board of Education is approval of the plans with respect to location of buildings and the size and arrangement of the different parts of the building as presented by the county school authorities.

The value of school sites, buildings, and equipment per colored pupil is lower than that per white pupil. Much of the difference results from the fact that a larger proportion of the school buildings occupied by colored pupils are small. This condition has obtained because the colored population, though only about one-sixth the size of the white population, is distributed over nearly the same State area as the white and is thus in comparison less densely concentrated both in the urban and in the rural sections.

Most of the small buildings for both white and colored pupils are of frame construction and are therefore much less expensive per pupil than the larger stone and brick buildings of several stories with stairways, auditoriums, central heating plants, and inside plumbing. These larger buildings must be of fireproof or fire-resisting construction, because of fire hazard. The material of a school building has no effect on the instruction given. Whether the building is properly lighted, ventilated, and heated, however, determines the comfort in which teacher and children do their work.

All school buildings constructed in Maryland since 1920 meet the standards set up by the State Department of Education with respect to arrangement and lighting. The total capital outlay for schools from 1920 to 1938 was 96 per cent of the 1938 valuation of school property used by white pupils and 84 per cent of property used by colored pupils. This means that a very large part of our school plant for both white and colored pupils is modern.

Of the rooms used by county colored pupils in 1934-35, 434, or 53 per cent, were built after 1920. The Rosenwald Fund, which has furnished $114,450, or approximately one-tenth of the capital outlay for colored schools since 1920, proved an invaluable stimulus in promoting the building of well-constructed schools.

These figures would indicate that in the past twenty years the school authorities have been giving relatively as much attention to improving school buildings used by colored pupils as to schools used by white pupils. If specific conditions in individual counties need improvement, recourse must be had to the responsible officials in these counties.

b. Books and Materials

The amount expended from State and county funds combined per elementary and high school pupil for books, materials, and "other costs of instruction*" is larger for white than for colored pupils, as shown by the figures for 1923 to 1939. In the first four columns of Table 9 the effect of the depression in causing reductions in the amounts shown for the later years is very evident. The differences between the amounts expended per white and colored elementary

* Excluding salaries

pupil are explained in part by the differences in the distribution of children among the lower and upper grades. Pupils in upper grades of the elementary school need a larger number of more expensive books than those in the lower grades. The per cent of pupils in the first three grades is somewhat higher in colored than in white elementary schools, as appears in the last two columns of Table 9. It should be noted, however, that both types of schools show a steadily decreasing percentage of elementary pupils in the lower grades.

TABLE 9

Year	Expenditure per County Pupil Belonging for Books, Materials, and "Other Costs of Instruction"*				Per Cent of County Elementary Pupils in Grades 1-3	
	Elementary		High			
	White	Colored	White	Colored	White	Colored
1923	$1.85	$ .99	$6.15	$7.06	48.1	65.2
1924	2.20	1.06	7.26	7.24	46.9	61.9
1925	2.19	1.12	7.42	4.82	46.2	59.9
1926	2.31	1.25	6.86	5.34	45.5	57.7
1927	2.22	1.23	6.68	4.58	45.7	56.7
1928	2.09	1.17	6.71	4.53	46.1	55.5
1929	2.19	1.20	6.31	3.74	46.1	53.9
1930	2.15	1.29	6.12	3.96	46.0	53.4
1931	2.12	1.21	6.28	3.92	45.4	52.7
1932	1.91	1.22	5.53	3.61	44.8	51.4
1933	1.36	.89	3.76	3.02	44.6	50.7
1934	1.41	.96	3.54	3.16	44.1	50.3
1935	1.61	1.16	4.08	3.69	44.0	49.8
1936	1.53	1.34	4.69	3.57	43.3	49.0
1937	1.73	1.29	4.84	3.00	42.8	48.9
1938	1.84	1.17	5.36	3.32	42.3	48.3
1939	1.78	1.31	4.86	3.47	42.2	48.6

* Excluding salaries

State funds for free books and materials of instruction are distributed to the counties and Baltimore City on the basis of the average total enrollment in white and colored elementary and high schools. Although there has been an increase of 47,416 in the State average public school enrollment from 1923 to 1939, the State aid available for the purchase of free books and materials, $250,000, has remained stationary. This means that the average State aid available per child for books and materials for the average enrollment has declined from $1.06 to 89 cents. As this amount has proved to be more and more inadequate, it has been necessary to supplement State aid with county funds. Since 1933 the effect of the depression on school budgets has been particularly evident in reducing funds available for purchase of books and supplies. School children should, of course, be supplied, with the books and instructional materials which they can use to good advantage.

5. Funds from the Federal Government for Vocational Education

The only Federal funds for educational purposes under the jurisdiction of the State Board of Education are those which give aid toward the salaries of teachers of vocational agriculture, vocational home economics, and trade and industrial education. This aid has been and is available on the same basis to every county white or colored high school for which the county board of education has employed or desires to employ a teacher of these subjects.

Instruction in home economics and industrial arts has been given in the larger white and colored county high schools for a long period of years. The tendency in the later years has been to give instruction for 5 or 10 periods a week to first and second year pupils, with electives in the third and fourth year, instead of the earlier policy of requiring the entire enrollment in the four years to take these subjects two periods each week. High schools in the rural parts of the State have offered instruction in agriculture since 1918. In 1938 of 150 county high schools for white pupils 52 had courses in agriculture, and of the 29 high schools for colored pupils 11 offered opportunity for instruction in agriculture. The State supervisors of agriculture, home economics, and industrial education supervise the work in these subjects in both white and colored high schools.

For total high school enrollment, exclusive of withdrawals for removals, transfer, and death, and for number of high school boys and girls taking agriculture, home economics and industrial work, see Table 10.

TABLE 10

Maryland County High School Enrollment excluding Withdrawals for Removal, Transfer and Death: Total, Agriculture, Industrial Work, Home Economics

	Total County High School Enrollment*		Number Enrolled* for Agriculture Boys		Industrial Work Boys		Home Economics Girls	
Year	White	Colored	White	Col.	White	Col.	White	Col.
1926	18,527	927	936	32	4,256	226	7,141	495
1927	20,131	1,128	922	15	4,905	328	7,922	647
1928	21,526	1,291	948	12	5,341	320	8,384	642
1929	22,993	1,583	969	19	5,528	329	8,595	666
1930	24,417	1,916	933	22	5,719	383	8,295	801
1931	26,595	2,183	1,099	53	6,449	385	8,319	894
1932	28,171	2,465	1,264	111	6,461	446	8,234	930
1933	30,302	2,716	1,259	106	6,900	554	8,543	1,011
1934	30,533	2,766	1,278	104	6,946	527	8,688	1,010
1935	31,227	2,954	1,389	83	7,276	593	9,105	1,155
1936	32,596	3,421	1,482	200	7,700	815	9,589	1,567
1937	33,398	3,913	1,644	384	8,010	682	9,508	1,759
1938	33,918	4,348	1,833	589	8,422	698	9,898	2,135
1939	36,134	4,484						
Increase 1926-1938								
Amount	15,391	3,421	897	557	4,166	472	2,757	1,640
Per Cent	83	369	96	1740	98	209	39	332

* Excluding withdrawals for removal, transfer and death

Summary and Conclusion

The State school system is made up of self-governing local county units under the leadership of professionally trained superintendents and supervisors, each unit developing at its own pace in its own way. Except for checking on compliance with the requirements of the State School Law, there is no attempt on the part of the staff of the State Department of Education to require the counties to adopt uniform policies. Some counties are emphasizing certain phases of the school program, such as consolidation or vocational education, while others are stressing early entrance to school, good attendance, lowering of retardation, improvement of the course of study, better study habits.

The different members of the staff of the State Department of Education are, however, constantly studying all parts of the school program, and through individual conferences of members of the State staff with county school officials, through State-wide meetings of county school officials with members of the State staff at which professional problems of administration and supervision are discussed by those leading the way in solving these problems, and through the annual reports of the State Department of Education in which the counties are ranked on all measurable items, the status of each county in each phase of the school program is made known. The State school authorities do not attempt to impose on individual counties improvements adopted in the more progressive counties, until these self-governing local units are ready wholeheartedly to undertake such new policies. The education of public opinion must precede adoption of improvements. The slow but steady advance in all phases of the school program as each county develops at its own rate, backed by the support of public opinion, means that we are building on a firm foundation.

The demands made by the representatives of the colored groups for higher salaries and longer school terms are logical and legitimate, but require legislation. Until the more progressive counties try out and prove the advantages of new policies and these are gradually adopted by other counties which are favorably impressed, it is not possible to secure the backing of public opinion for such programs. Since the longer school term had found acceptance in many of the counties, it was not difficult to obtain legislation in 1937 making the longer term a minimum requirement effective in September, 1939. The active cooperation of leading citizens in each county in changing attitudes and in influencing public opinion must be secured in order to bring about consolidation and transportation, better buildings, a richer supply of books and materials of instruction, and extension of opportunities for vocational education.

The amount of money spent on a county or a State school system is not the sole index of its efficiency or its progress. Many, if not all, of the less wealthy counties are always among the leaders in some school activities and no county stands first in all phases of school progress.

The goal which was set in our State program in 1922 as the most essential requirement for a good school system, "a competent, well-trained teacher in hearty accord with American ideals, in every public school position in Maryland" has been realized.

Competent leadership on the part of the county superintendents, the county boards of education, and the supervisors, principals, and teachers, and on the part of the members of the State Department of Education, all working together for the best interests of the children, is the best guarantee for a progressive State school system.

TABLE A

Minimum Salary Schedules for Maryland County ELEMENTARY Teachers

Certification Requirement / Experience	Enacted in the Following Years 1904	1908 / 1910	1916	1918	1920	1922	[e]1933 / 1935	[f]1937	[g]1939
WHITE ELEMENTARY TEACHERS									
15+ pupils in A.D.A.*	$300								
1st Class Rating									
3 years		$350							
5 years		400							
8 years		450							
2nd Class Rating									
8 years		350							
Third Grade									
1-3 years			$300	$400	$600	$600			
4 years			300	425	650	650			
6 years			300	450					
9 years			350	475					
Second Grade									
1-3 years			300	450	700	750			
4-5 years			350	475	750	800			
6 years			400	500	800	850			
9 years			450	525					
First Grade									
1-3 years			400	500	[b]800	[b]950			g
4-5 years			450	525	[b]850	[b]1050			g
6-8 years			500	550	[b]900	[b]1100			g
9+ years			550	600	[b]950	[b]1150			g
COLORED ELEMENTARY TEACHERS									
Third Grade				[a]30	[c]40				
1-3 years						[d]40		[f]40	
4+ years						[d]45		[f]45	
Second Grade				[a]35	[c]50				
1-3 years						[d]50		[f]50	
4-5 years						[d]55		[f]55	
6+ years						[d]60		[f]60	
First Grade				[a]40	[c]65				
1-3 years						[d]65		[f]65	
4-6 years						[d]70		[f]70	
7-8 years						[d]75		[f]75	
9+ years						85		[f]85	

[a] Per month for seven months, average annual salary to be at least $250 for teachers in the county who teach seven months

[b] If in charge of one- or two-teacher schools, $100 additional

[c] Per month for seven months

[d] Per month for eight months

[e] 1933 legislation made temporary percentage cuts of 10% from 1922 schedule for 1934 and 1935, and 1935 legislation made temporary cuts of 7 1/2% for 1936 and 1937. No increments for experience were allowed from 1934 to 1937 inclusive.

[f] Per month for nine months for colored teachers, taking effect in September, 1939, according to Chapter 552, laws of 1937.

[g] See Table D for new salary schedules for white teachers and principals set up by 1939 legislation

* Average daily attendance

TABLE B

Minimum Salary Schedule for Maryland County WHITE ELEMENTARY PRINCIPALS

Certification and Experience	Enacted in the Following Years				
	1918	1920	1922	[a]1933 [b]1935	[c]1939
Elementary Principal					
1-3 years	$550	$900			
4-5 years	575	950			
6-8 years	600	1000			
9+ years	650	1050			
2 Assistants					
1-3 years			$1150		
4-5 years			1250		
6-8 years			1300		
9+ years			1350		
5 Assistants					
200 A.D. A.*					
1-3 years			1350		
4-5 years			1450		
6-8 years			1500		
9+ years			1550		
9 Assistants					
360 A.D.A.*					
1-3 years			1550		
4-5 years			1650		
6-8 years			1700		
9+ years			1750		

a. For 1934 and 1935 salaries in 1922 schedule under $1200 cut by 10%; those from $1200 to $1799 cut by 11%; no increases for experience in 1934 and 1935.

b. For 1936 and 1937 salaries in 1922 schedule under $1200 cut by 7-1/2 %; those from $1200 to $1799 cut by 8-1/4%. No increases for experience in 1936 and 1937.

c. See Table D for new salary schedules for white teachers and principals set up by 1939 legislation.

* Average daily attendance

TABLE C

Minimum Salary Schedules for Maryland County HIGH SCHOOL TEACHERS AND PRINCIPALS

Position / Experience	Enacted in the Following Years							
	1910	1916	1918	1920	1922	c1933 d1935	e1937	f1939
					WHITE			
High School Assistant	$500							
1 year		$ 500	$ 600	$ 900	$1,150			
2-3 years		500	600	950	1,200			
4-5 years		600	675	1,000	1,250			
6-7 years		700	750	1,050	1,300			
8 years +		800	800	1,150	1,350			
High School Principal	1,200							
Third Group								
1 year				1,000	1,250			
2 to 3 years				1,050	1,300			
4-5 years				1,100	1,350			
6-7 years				1,150	1,400			
8 years+				1,200	1,450			
Second Group								
1 year		1,000	1,000	1,100	1,350			
2-3 years		1,000	1,000	1,150	1,400			
4-5 years		1,100	1,100	1,200	1,450			
6-7 years		1,200	1,200	1,250	1,500			
8 years +		1,300	1,300	1,300	1,550			
First Group								
1 year		1,200	1,200	1,200	1,550			
2-3 years		1,200	1,200	1,300	1,650			
4-5 years		1,300	1,300	1,400	1,750			
6-7 years		1,400	1,400	1,500	1,850			
8 years +		1,500	1,500	1,600	1,950			
5 assistants, 100 A.D.A.*				† 100	† 200			
9 assistants, 200 A.D.A.*				† 200	† 400			
					COLORED			
High School Assistant				a 75				
1-3 years					b 80			
4-6 years					b 90			
7+ years					b 95			
High School Principal				a 90				
1-3 years					b 95			
4-6 years					b 110			
7+ years					b 120			
5 assistants, 100 A.D.A.*					b +10			

*A.D.A.-Average Daily Attendance. a-Per month for seven mos. b-Per mo.for 8 mos.
c-Percentage reductions in 1934 and 1935 from 1922 schedule of 10% from salaries under $1,200; 11% from salaries $1,200-$1,799; 12% from salaries from $1,800-$2,399. No increases for experience for 1934 and 1935.
d-Percentage reductions in 1936 and 1937 from 1922 schedule of 7-1/2% from salaries under $1,200; 8-1/4% from salaries from $1,200-$1,799; 9% from salaries from $1,800-$2,399. No increases for experience for 1936 and 1937.
e-Per month for nine months effective Sept.1,1939 for colored teachers and principals
f-For new salary schedules resulting from 1939 legislation see Table D.

†-More than above figures for high school principal, first group.

TABLE D

Minimum Salary Schedules for Maryland County White Teachers and Principals Established by 1939 Legislation

Position	Years of Experience† 1-2	3-4	5-6	7-8	9-10	11-12	13-14	15-16	17+
Teacher without Degree*	$1,000	$1,050	$1,100	$1,150	$1,250	$1,350	$1,450	$1,550	$1,600
Teacher with Degree*	1,200	1,250	1,300	1,350	1,450	1,550	1,650	1,750	1,800
In addition to above amounts for Teacher in charge of two-teacher el. school	100	100	100	100	100	100	100	100	100
Principal of Elementary School with									
2-4 Assistants	200	200	200	200	200	200	200	200	200
5 Assistants (200 A.D.A.) ‡	400	400	400	400	400	400	400	400	400
9 assistants (360 A.D.A.) ‡	600	600	600	600	600	600	600	600	600
Teacher in charge of Second Group H. S.	200	200	200	200	200	200	200	200	200
Principal of First Group High School with									
1 to 4 assistants	$1,650	$1,750	$1,850	$1,950	$2,050	$2,150	$2,250	$2,350	$2,450
5 assistants, (100 A.D.A.) ‡	1,850	1,950	2,050	2,150	2,250	2,350	2,450	2,550	2,650
9 assistants (200 A.D.A.) ‡	2,050	2,150	2,250	2,350	2,450	2,550	2,650	2,750	2,850

Third grade certificate $650 Second grade certificate $850

*With education courses to meet required certificate standards for elementary or high school teaching.

†Teachers and principals having eight years or less experience shall be placed on the salary step in the new schedule corresponding with their years of experience. Teachers having more than eight years experience shall receive only one increment for experience in any two-year period. Increments may be earned only by teachers who are rated as first class.

‡Average daily attendance.

Sample Principal Cert.
Appendix 15

FORM 7

DEPARTMENT OF EDUCATION

STATE OF MARYLAND

No. Class

Elementary School Principal's Certificate

This is to certify that
has satisfied the requirements of law necessary to make
eligible for appointment, in the State of Maryland, to the position of

Principal of an Elementary School of Three or more Teachers

This certificate is valid for three years from date and renewable for four-year periods on evidence of successful experience and professional spirit and summer school credits earned within the last period for which the certificate has been valid.

Given at Baltimore,

STATE SUPERINTENDENT OF SCHOOLS.

Sample Principal Cert
Appendix 154

FORM 7

DEPARTMENT OF EDUCATION

STATE OF MARYLAND

No

Class

Elementary School Principal's Certificate

Valid to teach in Colored Schools

This is to certify that
has satisfied the requirements of law necessary to make
eligible for appointment, in the State of Maryland, to the position of

Principal of an Elementary School of Three or more Teachers

This certificate is valid for three years from date and renewable for four-year periods on evidence of successful experience and professional spirit and summer school credits earned within the last period for which the certificate has been valid.

Given at Baltimore,

STATE SUPERINTENDENT OF SCHOOLS.

people who live in Baltimore City and Baltimore County, comparatively rich counties, contribute to the education, say of the children in Calvert county, so that the burden of taxation is spread out throughout the State.

Now, that is not in all State departments throughout this country. But here in Maryland is the only state, and I say to the disgrace of Maryland,-it does not even exist in the statutes in the States that we think are very bad -- the State of Maryland bases it on this salary schedule. It does not base it on the number of children, it does not base it on the number of schools they have, or the population, or the school population, but bases it on the salaried schedule that is in this Code.

And, if your Honor pleases, it says here on page 9, at starting/line 12, to provide certain counties money "to enable them to pay the minimum salaries."

Now, here is what happens: when the county qualifies for the equalization fund, for which it shows it does not have enough money, then the State of Maryland, at the end of the year, the State Board of Education, the defendant State Boar' of Education, requires these counties

to send into the State Board a list of all of their teachers, their years of experience, and the salaries they are actually paid. The statistician takes those lists, and if they are paid more than the minimum required by law, that is put out in an outside column and that is deducted from the amount the State will give under their equalization fund. All that they pay over the minimum salary they have to bear themselves.

As a result, taking our case, if Anne Arundel county should say, Well, we should equalize salaries, we should give the negroes equal protection of the laws, we will equalize the salaries, and we will pay Walter Mills the same we pay a white principal in an elementary school, then, by law the State Board of Education, the defendant in this case, would strike the amount above the minimum, would strike that off, and tell the county board of education that, We won't give you that much, we will only give you the minimum salary; so, we say to you, that if you undertake to follow the law and give to those negroes equal protection of the law, we will penalize you for it, and take that much away from you.

So, not only does this statute fail to give protection to the negroes, but it also furnishes that if some county that is trying to do it is unable to do so.

Now, the counties can not equalize it out of their own pockets, because these counties under the equalization fund are too poor to maintain the program in the first place. They could not put more money in it. So we say that the equalization fund is the sole basis and cause of Walter Mills at the present time receiving less money than he is entitled to.

Now, what remedy does he have? Mandamus? He can not mandamus the State Board of Education to appropriate more money to him, becausethe statute says they must follow the minimum salary schedule set out by law. He can not mandamus the county board to do it, because the county board does not have the money to do it. And you can not require any State agency to do an impossible act.

And the other reason why you can not mandamus the county board is because the county board is itself an agent of the State; and you can not compel an agent to go against its principal, the laws all state.

THE COURT: Well, of course there is a simpler reason than that against mandamus. Congress has not given power to the District Courts to issue mandamus.

MR. MARSHALL: Yes, sir.

THE COURT: And is not that really what you want here, though? You want positive action, whereby the salaries of colored teachers will be increased?

MR. MARSHALL: Well, if your Honor pleases, one point there: this Legislature in Maryland -- I mean this is off the record -- the Legislature in Maryland is meeting right now. I mean there is no question, as counsel says, of wrecking the school system, because the appropriation for this quarter under the equalization fund has already been made; and before another one is to be made -- I understand -- I do not know the exact dates that they pay them on -- the Legislature can put a law in there that is constitutional. So it does not wreck the school system. There is no question there. We have no idea of wrecking any school system. I mean nobody under the present day theory -- I mean this is not a question of a man coming in here and just trying to create disorder,

or to do something to the State of Maryland. This is a teacher who has been suffering for ten years, just like other teachers have suffered for sixteen years, and he has gone through every legal remedy he can: he goes and cries to the State Board periodically, and he goes down to the Legislature, and he meets with the Legislature, and he gets to the point of getting the bill introduced every year, and that is as far as he gets.

Now, everybody in the State of Maryland admits that this law is unconstitutional. They put it in all the papers. It is not only the Attorney General's Office who admitted it. Attorney General O'Conor admitted that the statute was unconstitutional. So it seems to me. And that is out of the picture. Everybody admits that. And, if your Honor pleases, if you want those newspaper clippings, I am sure I can find them. Andthis statement is also in his possession, because it is in the possession of the State Board of Education.

Now, if your Honor pleases --

THE COURT: You can ask Judge Walsh whether he admits that the statute is unconstitutional.

MR. MARSHALL: I would love to, sir, with your permission.

THE COURT: All right, then, when he replies you can ask him that.

MR. MARSHALL: All right, sir.

If your Honor pleases, on this question of jurisdiction, my brother here, Mr. Ransom, has worked on that; and, if your Honor pleases, I would like to turn over some of my time to him to argue on the point of jurisdiction. The other points are all covered in the brief.

THE COURT: Certainly, you can divide the time as you like. The thing that I must consider, though, even if the statute would be held to be unconstitutional -- and I express no opinion about it because I have not studied it -- but even assuming that it is unconstitutional, in the sense that you use it, I am not persuaded yet that it makes a practical case for me to deal with. It is not appropriate for courts to undertake to pass on the constitutionality of a statute, Federal and State, unless there is a specific case which requires determination in order to decide the case. The plaintiff comes into court and makes a claim, and the defendant sets up an

answer, and the answer relies upon an unconstitutional statute: the judge has to determine that the statute is unconstitutional in order to decide the case. But, of course, you can not come into a court and ask the judge simply to declare that a statute is unconstitutional, unless you have a cause of action, the decision of which makes it necessary, to hold the statute unconstitutional. In other words, you have to have the unconstitutional act getting in the way of the decision, and to be bowled over in order to reach a decision. If the case requires a certain path to be taken through the law and facts of the case, and you come to a barrier of a statute which can not be passed, and there is no way around it, you have to either stop or demolish the fence, or the gateway, whatever the barrier is.

Now, if it is unconstitutional, why, of course, you demolish it. But it is because it gets into the path of the decision. And unless you have an ultimate object to be accomplished by suit, where the journey's end is the other side of the statute, I have no right to pass on the statute. In other words, if there is a way around to your

objective, or journey's end, without passing on the statute, the judge is expected to do it.

Now, I am afraid -- I have not read your petition et, and, of course, I will do that carefully, but I am afraid from what I have heard so far that you are putting up a case here which has no definite objective on the other side of the statute. What your objective here is, really, is to demolish the statute, in the hopes, and very possibly in the justified hopes -- I express no opinion about that -- that the Legislature will then pass a law, but unless I have some judicial object to accomplish here which is on the other side of the statute, which can not be reached except by going through the statute, then I have no right to deal with the statute.

It occurs to me that possibly the way the question could be raised for a decision would be under the Declaratory Judgment Act. But that, of course, does require an existing controversy.

Now, I am not ready to say you could not raise the question under the Declaratory Judgment Act by a proper plaintiff. I have never myself run into a line of cases

which permits a person who is employed as a Federal officer, or as a State officer, to himself demand higher pay through the courts. Don't you see, the courts have nothing to do with the pay schedule of officials of the State, whether of the State of Maryland or the Federal officers. We have nothing to do with that. If the plaintiff here were suing for a particular salary which he claimed was due him, and the State of Maryland came in and said, No, you are not entitled to that salary, by virtue of an unconstitutional statute, you would have a different kind of a case.

MR. MARSHALL: If your Honor pleases, on that point, the thing that we are complaining about right here is the question that this statute as it exists denies to this man the equal protection on this basis, that if they pay a white principal what they pay Mills, he can go into any court and sue under the statute. The statute says you must pay him not less than a certain amount of money. Now, that is what the laws of the State of Maryland say. That is the protection they give to the white principal; but they do not give that to Mills. Mills has no cause of action.

Steno Case

ence as the white teachers, although they got paid less, so that the school child would have no complaint, unless it could be shown that as a result of the practical operation of the law the teachers furnished to negro children were not properly trained, and, therefore, the negro child was not getting the same quality of education; but that is a position we are unwilling to take.

THE COURT: I quite understand that. But you do not have to admit that there is any actual comparative disparity or deficiency or lack of equal experience on the part of colored teachers. If a pupil is entitled and given the right under the statutes of the United States to the same quality of tutorial instruction, then the tendency of smaller salaries to impair that might be regarded as a sufficient basis for action under the Equal Rights Statutes, even though the fact may be that the teachers are equally qualified.

I am merely suggesting that. I have not considered it at all.

MR. RANSOM: The vice of that proposition, I suppose, lies in this, that the State Board of Education has as a

part of this general scheme already issued certificates to every negro teacher in the State, certifying as to his ability and quality; so that if we argue that the teachers were, that is, on behalf of the pupil, that the teachers were incompetent, or, at least, tended to be so, we would be met with what I think would be a proper answer by the State, that these teachers have all been examined under the same conditions, and under the same rules as in examining the white teachers, and we find them all to be equal in preparation and experience.

THE COURT: That is not the point I am calling to your attention. Now, my only reason for suggesting it is the immediate doubt on my part, not having studied the question, as to whether the Equal Rights Statutes of the United States are for the benefit of Federal or State officers. There is a distinction between the right of a citizen to certain governmental benefits which ought to be equal for all, and the complaint of an officeholder with regard to inequality of salaries. And I am wondering whether a schoolteacher is the proper plaintiff to enforce the equal rights, which are designed

for the benefit of citizens, not of officeholders or employes. For instance, no one, I take it, could suggest that a statute which classified employes in road work and paid certain ones a certain amount,and certain others a certain amount, was a deprivation of equal rights under the law. But if John Smith and Peter Jones, living on the highway which is to be improved, have an equal right to have an equally good road before their house, they might say that discrimination injured them if the lower paid laborers were employed on their job other than on the job next door. You see, it is the function of government to provide certain facilities for certain citizens. It is not the function of the Government to undertake to provide jobs for anybody.

Now, that is the thought that occurred to me as to whether you have got the proper party plaintiff here.

MR. RANSOM: If I follow the Court correctly, the Court would be of the impression, or, at least, is thinking about the problem that an employe of the Government, merely because he is an e mploye of the Government, would therefore be estopped to attack the

validity of any State law that made an unconstitutional discrimination against him.

THE COURT: No, I do not mean to suggest he is estopped. I merely mean to say that in his capacity as an employe he is not injured by the matter, in the legal sense. Practically, of course, I see what you are after. You want to have the pay scale increased for colored teachers as well as white. Now, as to that I am not expressing any opinion at the moment. I do not think it would be appropriate for me to do so. I can, however, say that I can clearly understand why you want it done. And it does not shock me that you do want it done. But I do not think, or, at least, I am inclined to doubt whether the teachers are the people to rely upon the Equal Rights Statutes of the United States, because they are not the beneficiaries. The people who are the beneficiaries of the equal rights are the people who are entitled to the benefits of government.

For instance, what is the object of a system of public education? It is to educate the youth of the State. Now then, on that basis, I suppose we will all

concede that all that the youth of the State, irrespective of race, color or creed, or general belief, or anything else, are entitled to have the same benefits of education, subject to necessary, perhaps wise police regulations, whatever they may be. But the Equal Rights Statutes are perfectly clear that everybody is entitled to the same benefits of government. But I have never heard it suggested heretofore that officeholders are classified under the head of beneficiaries of government.

MR. RANSOM: I am afraid I must beg leave to differ with the Court in his interpretation of our position. The Court is apparently of the opinion that we are asking some sort of relief in the matter of salary for our claimant. We are not. We are not asking any relief of this Court.

I concede that the Court may be right in its position. For the sake of argument I will concede that the Court may be right that an officeholder ought not to be allowed to come in and complain about the rate of salary which he is being paid. But I certainly am not willing under any circumstances to concede that an

officeholder, merely because he is an officeholder, can not complain of an unconstitutional discrimination against him, solely upon the basis of rates in the payment of salary.

In other words, I do not believe that in the State courts of Maryland, so as to get it out of the Federal court -- let us say, if the State of Maryland passed a statute stating that all white janitors, or all white clerks employed in or about the courthouse shall receive a certain salary, and all negro clerks, or all negro janitors shall receive a certain salary, that would be a violation of the Constitution of the United States in a most flagrant manner; and I believe any Federal court would immediately enjoin it. And merely because he happens to be an officer of the State, he would not lose his individual rights as a citizen to equal protection. In other words, he could not complain about a salary schedule set up so long as it applies to all of them equally. So I feel, if the Court bears with us in following our line of argument, that is, takes the view that we are not asking this Court to do anything about the salaries, we do

not care, we are not interested in the matter of salary. Of course, off the record, I would say that we would like to see all teachers' salaries raised. But we are not asking anything at all to be done about the salaries, All we are asking is for you to stop the State from enforcing a statute which says, Because you are black you can not receive as much as a white man. And that is the gist of our whole complaint.

THE COURT: Evidently you have not grasped my comment, or, at least, I have not made my comment clear to you.

MR. RANSOM: Perhaps I am confused, sir.

THE COURT: In order to upset the statute, you have to show that it interferes with a legal right of the plaintiff; in other words, that the plaintiff is damaged. Now, I can understand how a pupil, or, possibly the parent of a pupil, would argue that he is damaged by not paying teachers to teach him the same as teachers are paid to teach some other class or group of people. But how is the plaintiff as a teacher damaged?

MR. RANSOM: I thought, perhaps, the Court did not

understand me at the beginning of my argument. I thought I had made the proposition then that the plaintiff is damaged in that his right of contract, his right of freedom of contract, is interfered with by the statute.

THE COURT: I caught that point, but I am afraid that that is -- well, I will be glad to read your brief on that. Perhaps I have not any certainly definite idea about it yet.

MR. RANSOM: If the Court pleases -- I beg your pardon?

THE COURT: Go ahead.

MR. RANSOM: If the Court pleases, I was getting ready to say that there are innumerable cases listed among those that I have cited to you this morning, in which the Court has expressly stated it was protecting that sort of right, the right of freedom of contract. As a matter of fact, in Truax vs. Raich, both in the District Court and in the Supreme Court decision, the Court talks almost exclusively about that, and says that the State statute by its operation is depriving this man of his right to freely contract for his labor; and it says that is one of

the things that the Fourteenth Amendment is designed to protect. And also, incidentally, it was brought under the same sectionswe are bringing this action, Sections 41 and 43, Title 8, Chapter 3. So that the Court has repeatedly done exactly that thing.

Now, in conclusion I might say that the Court has mentioned the fact that perhaps a pupil or a parent might be the proper person to bring this action. For the purposes of the record, I am willing to say that we might concede that he would be a proper party in the sense that the term is used in equity, and we would gladly amend if the Court thinks it essential. If the Court thinks it is indispensable, we would gladly amend and add such a party to the petition. But we, I think, are forced to rely upon our proposition that the proper relief is injunction, and that we are in the proper court seeking it.

Argument by Mr. Houston

MR. HOUSTON: If your Honor pleases, ordinarily it is customary for only two counsel to argue. But may I say something just about the question of why this suit

was brought?

THE COURT: Yes.

MR. HOUSTON: This is one of a series of suits. And I want to explain some of the other suits, and just say a word as to why this suit was brought.

THE COURT: I might say that I have no objection to multiplicity of counsel as long as I am getting help in the case. But I do have some time limitation, though.

MR. HOUSTON: I hope I do not repeat.

THE COURT: Go ahead.

MR. HOUSTON: This is not the first case that has been brought in Maryland upon the question of the equalization of teachers' salaries. The first case brought in Maryland was a mandamus against the Montgomery County Board of Education. Our understanding is that Montgomery county is not one of the equalization counties. In the case where the county is not an equalization county, where the county board of education makes up its entire budget out of the county funds, it seems to me you are quite right, your Honor, in saying that mandamus is the proper remedy, because what you want to get is positive action,

affirmative action equalizing these salaries. The county board of education then has plenary jurisdiction to fix that salary scale, so that you are not asking that the county rewrite a law which the State has passed, and forcing that county board to do properly and within the limits of the Constitution that which it has full power to do.

But when you come down to the question of equalization counties, you have an entirely different situation. You have a situation in which, in order to get the equalization fund, the county must comply with the State Equalization Law.

And now, if the county does not comply with the State Equalization Law, it loses the State Equalization Fund. What do you do then? You go into the counties. And what do they begin to do? They merely state, We will pay the same amount. But that does not get you what you want. You are up against the fact that the vice is at the central point, where the State Equalization Fund itself sets up the discrimination.

Well, now, it seems to me to go back to the case

of Ex Rel Murray vs. Pearson, the University of Maryland case, in which the Court of Appeals said that the Court could not rewrite the statutes of Maryland and set up a separate Law School for negroes, and it was the University of Maryland Law School, so that the negro boy went to the University of Maryland Law School.

In the same way, we could not go into the county board of education, and through mandamus ask the county board of education to rewrite the city statute. So, you had this very line set up there in front of you, over which you must turn in order to reach the question of equal protection of the laws for this plaintiff.

And it is alleged in our bill, on page 9, beginning at line 10, "That by reason of the statutes hereinbefore set forth the defendants and each of them are precluded and prohibited from contributing, appropriating and paying out of the equalization fund, and into the county treasuries of Anne Arundel county and other poor counties sharing in said equalization fund, on behalf and for the benefit of plaintiff and other teachers and principals similarly situated, sums greater than those provided for

principals and teachers in colored schools, which said sums are less than those provided for white teachers and principals."

So that you have this situation: you have a situation in which for years and years and years and years, by administrative action you have paid out of the equalization fund for negro principals less money than the minimum established by law, by the State Legislature, for white principals. And under the doctrine of encrustation, you have this administration in future interpretation becoming a part of the statute, so that you have two definite levels established by the Legislature of Maryland, which is not subject to mandamus. You could not come in and mandamus the State Board. We can not ask the State Board to rewrite State legislation.

Therefore, it seems to me that where we come in and allege that the plaintiff is being paid on the basis of an equalization fund set up in the State equalization fund, where we come in and allege that the plaintiff has this contract, where we are setting forth not only a wrong in the past, but a continuing wrong, and a wrong

which will be prospective and go on into the future, and then we come in and show your Honor that we can not come in without asking the State to completely rewrite the law, we can come in here and say this: Remove this law, because it is unconstitutional.

Now, your Honor say what actual benefit will there be? Well, I come back and say, what benefit is there any time State taxation laws are enjoined? What benefit was there in the Claybrook vs. City of Owensboro case, where they enjoined them, because the white taxes would go to white schools, and the negro taxes would go to negro schools. You can not say there was not any benefit. The benefit comes from the fact that you removed an insuperable barrier, an insurmountable barrier against equalization; so that when you come back to the county board of education, in having this unconstitutional statute upon which to rely, the Legislature will have at its choice to say, either one won't work in the salary schedule whatsoever, or if we do have a salary schedule, then that salary schedule must be equal.

In other words, there may be two sides to this

whole procedure. And what we are asking your Honor to do is to take the necessary preliminary step here, remove this unconstitutional statute, so that we may move on, because this is a hurdle that we must surmount in order to get equalization of salaries.

REPLY ARGUMENT ON BEHALF OF DEFENDANTS

Argument by Mr. Walsh

THE COURT: Judge Walsh.

MR. WALSH: If your Honor pleases, my brothers on the other side have made some announcement here about the attitude of my distinguished predecessor towards this law. Now, I am not familiar with any statement that may have been made by my predecessor regarding this law. And so far as I am personally concerned, I am here representing the State of Maryland. And I conceive that it is my duty in that capacity to defend and endeavor to sustain the validity of these laws which were duly passed by the Legislature of Maryland, and approved by the Governor. And I do not think that my own personal views about the matter have anything to do with the case one way or the

other. So my position as counsel for the State is that these laws are not unconstitutional.

Now if your Honor pleases, it certainly is not clear that these statutes are unconstitutional. One part of the statute sets out that a certain minimum salary shall be paid to white teachers. Then the other part of the statute does not say that certain minimum salaries shall be paid to colored teachers, but says that a certain minimum shall be paid to those who teach in the colored schools.

Now, the bill alleges that as a matter of practice only white teachers teach in the white schools, and colored teachers in the colored schools. But there is not anything in the law or the statutes to prevent white teachers from teaching in the colored schools.

And it is not a clear discrimination between the two in the point I am trying to make, because one provides a minimum for white teachers; and then when it comes to the question of colored schools it simply says, those who teach in the colored schools shall have another minimum.

Now, it also has something to do with the question

of the relief to be granted in this case. It has been discussed quite freely here this morning; and I am not going to labor the question, or tire your Honor with it. And we do not have any specific case on it. But it does not seem to me that the plaintiff in this case is going to get any benefit, or be able to say that he has achieved anything in the event that the injunction which he asks for here would be granted.

If it is granted, what happens? If it is granted on the ground that these statutes are unconstitutional, the State of Maryland is then without any minimum salary schedules. All these people, I assume, who have signed contracts, or who are now under contracts to teach in the schools, made those contracts. I would not assume, and they do not even ask in this bill to have those contracts stricken down. So that all the present schoolteachers, under whatever contracts they may have, would carry them out. When the time comes to renew the contracts, or to get teachers for the next year or for whatever periods, when those contracts are drawn up to have their services renewed, the State will be without any minimum schedules. And, as

my brother, Mr. Le Viness said in his opening argument, there would not be anything to prevent the school authorities from making any sort of contracts they wanted to make with any schoolteacher that came in for employment.

I am frank to say I do not know what the remedy would be. I am not prepared to say how his question could be gotten by properly.

Now, one of the points which we make, and seriously make in the matter is the question that this is not the proper remedy, that this does not get the plaintiff anywhere. The only thing he could do, as your Honor suggested a little while ago, would be to go down to the Legislature and say, This law has been thrown out, and now you have to pass another law. And there is no obligation on the Legislature to pass another law.

These people who graduate from the State Normal School or get teachers' certificates, they do not have any absolute rights to teach in the public schools of Maryland. There are any number of unemployed teachers in this State now, both white and colored, that can not get schools. There are no places for them. There are no

openings for them. So that no individual who gets a teacher's certificate has got any absolute right to teach. They have got to go and satisfy the school superintendent in some county that they are satisfactory; and it is entirely up to the members of the school boards in he different counties as to whether they are going to employ a man or woman as a teacher or not.

Hence, I do not think that you can say that the same reasoning, or the same force applies to having a different rate of pay. Even if you concede that the test would be a different rate of pay for the white and colored teachers, the same reasoning for discrimination does not apply as applies in the case of a colored student trying to get into a school where there is no other school available. It has been determined time and time again in the country, and decided by our own Court of Appeals, and now decided by the Supreme Court of the United States, that a colored citizen has got the same right as a white citizen to whatever educational advantages the State may have. I think that is entirely proper. But that is different from saying that somebody who wants to go into the service of the

State, and who may acquire the qualifications to do so, but who has not got any vested right to that employment, and who may never be employed, has got the right to say that the State has got to pay him some particular wage or salary. I do not think they have that right. I think the State of Maryland is full of cases in which people doing similar work for the State do not necessarily get the same pay. Certainly, in the Merit System they do not all get the same rate of pay. Some get more than others. There is a certain base rate of pay; but they do not all get the same rate of pay. And in the case of schoolteachers, as I say, they do not have any right to teach until somebody wishes to employ them.

Now, there is another thing. There is nothing to prevent the county board of education from paying a colored teacher any amount of money they want to. They have got to pay them the minimum; and they can pay them additional sums if they wish to do so. I believe some counties do now pay colored teachers the same as the white teachers. There are some counties which exceed the minimum requirements of the State.

Now, there is some force to the argument which one of my brothers just made, that if they do that, if they exceed the minimum, and they are in a county withdrawn from the equalization fund, then the county itself would have to put up that additional money. That is correct, they would have to do it. But there is not anything to prevent a county board of education from paying this additional money if they want to do it, if they want to collect it from the taxpayers of that county. They would not, it is true, get that additional fund back from the State to the equalization fund; but they can advance the money themselves if they wish to do so.

And there is a difference there between an absolute discrimination by the State itself and the action of the State in simply failing to make a contribution to take care of some salary that the county people may determine they want to pay to their teachers, of whatever class they may be.

Now, there is the other point that was mentioned. Of course, this bill is filed on behalf of Mills and all others similarly situated. And I believe that he would

have a right to do that. But, on the other hand, he certainly would have to have a valid case himself. And he admittedly entered the Normal School, or wherever he was educated, at a time when these statutes were on the statute books of Maryland; and he became qualified as a teacher, and he has now been teaching, under his own allegations, for ten years, and he is now under the same sort of contract to teach in the county, and has been accepting these provisions, and he knew at the time when he went into the teaching business that this is what the State of Maryland did about teachers in the colored schools. So that that is the same question, it seems to me. And he is estopped from now coming in and trying to question what he has acquiesced in for a long time, and what he knew about at the time he took up the teaching business. He had the right to take it up, as any other citizen would have the right to take it up. But at the time he took it up he did not have any assurance he would be employed. And once they get into the service, they get a certain right of tenure of office as long as they teach properly and behave themselves. But there is no guarantee that they are going to

get in.

I might say that I have some practical knowledge of that because we have one of the finest normal schools in our county, and a large number of boys and girls go there; and it is extremely difficult for them to get places. There is a very small percentage of graduates each year who are able to find positions in the public school system.

And there is another and final point I want to make. It has been suggested by your Honor that there is some difference between the right of every citizen to the facilities afforded by the State and the rights of the citizen who takes employment with the State. We think there is a radical difference between them. The books are full of cases in which the rights of the citizen as to all the facilities, educational and otherwise, afforded by the State have been enforced. But there is not any case that we have been able to find, and my brothers have not cited any case in which the courts have decided that the failure to pay certain wages to State employes constitutes a violation of any provision of the Federal Constitution.

And we submit that that is carrying the doctrine further than it has yet been carried.

I think my brothers will concede or admit that this is a case of first impression. This case in Kentucky that they cited, the case of Claybrook vs. The City of Owensboro, which is in 16 Federal, an old case, is not comparative. We do not think it is. Some of the language is; but the facts are entirely different. They divided up the tax money between the white people and colored people; and they did it specifically on that basis. The Court said that they could not do that. The result, of course, was very unequal. There was a whole lot of colored children, almost as many colored children going to the schools as white children, but the amounts of money realized from the tax in the two cases were very different. And it resulted in a very poor class of schools for the colored people as compared with the schools given to the white people. And that is clearly distinguishable from this case. But the Federal Court, and certainly the Supreme Court of the United States has never gone to the point of saying that the protection of the Fourteenth

Amendment entitles people in the employ of the State to insist on getting the same pay that somebody else gets.

And we think that for those reasons, all of them, that the bill should be dismissed.

THE COURT: Is there anything further that could be developed in the case by an answer? That is to say, if I overrule the motion to dismiss, and give you an opportunity to answer, would there be any fuller procedure or points that could be made? In other words, would your position be any stronger if you had an opportunity to answer, than on your motion to dismiss?

MR. WALSH: We do not believe it would, sir.

THE COURT: The whole case is right before me?

MR. WALSH: Yes.

THE COURT: Well, gentlemen, I will be glad to take the papers and study it.

MR. WALSH: Of course, if your Honor pleases, in the event that the motion is overruled, we would necessarily want to answer. I do not mean we want to waive the right.

THE COURT: I understand that; but I mean the

whole question of law is presented?

MR. WALSH: The real points are before your Honor right now.

THE COURT: All right.

I would like to see counsel just about the matter of procedure. Just step up, please.

(Conference at the bench).

(Thereupon at 11:45 o'clock a. m. the argument was concluded).

A. P. TUREAUD
ATTORNEY AND COUNSELOR-AT-LAW
NEW ORLEANS, LA.

NOV 18 1941 T.M.

November 17, 1941.

18802

Special Delivery

Memorandum: to office
From: Thurgood Marshall
Re: "Saving the Race"

Background

Left New York October 31 for two days in Washington with enough clothes for one day and a tooth brush - still on the road.

Old Texas Primary Case

Only way to get to Dallas in time for the meeting on Wednesday, November 5th was to fly by way of New Orleans to Houston and then to Dallas. On Tuesday night before I arrived in Dallas Charlie Brackins and some other members of the local committee made some rather bad statements about "messing up" the case etc. Had to take most of the time Wednesday pointing out to Brackins and others the true difficulties in the case and the benefits of filing another case. All agreed that if we did not get another case started all of us would have to leave the U.S. and go live with Hitler or some other peace loving individual who would be less difficult then the Negroes in Texas who had put up the money for the case.

New Case????

The gang in Dallas swore that they had a good plaintiff for a new case. We immediately started drafting a new complaint to fit this situation. By the time the man returned to town we discovered that he was not sure when he tried to vote. On checking the dailies we found that he had attempted to vote in the "run-off" primary in 1940 and we were right where we started-out in the street. Checked again and could find no cases in Dallas. Next stop Houston - still not anxious to go live with Hitler. This was on November 8th.

In Houston talked with Dr L. E. Smith who is alleged to have attempted to vote at the right time. Checked his story as best I could. Started drafting complaint. Davis' stenographer can't type worth a dime. Tried for a day to get a stenographer who specialized in typing - no such animal available. Called Carter Wesley and drafted his secretary who really can type.

Had to go to Court House to find names of officials involved in case. Got the name of the County Clerk. Tried to get the names of the elections judges. Could only get the name of the election judge. Called this man and told him I was a reporter for a local daily and wanted the name of his associated judge. Got the name and called this man who admitted hewas the associate judge in the particular precinct. Drafted complaint Thursday and

Thurgood Marshall to NAACP "Saving the Race"

Appendix #17

Appendix #19 2-11-39

With winter winds keeping society indoors, the attraction which holds the attention of thousands of socialites is the bridge table, as demonstrated by these charming young women. They are (from left to right): Millicent Murray, Leonie Stokes, Viola Sullivan, Grace Lofton, Delores Mack, and Melvine Dial.

Education Bill Assures Equality

Judge Cayton Quits Howard Law Faculty

In a protest against the manner in which the affairs of Howard University are administered, Judge Nathan A. Cayton of the District Municipal Court resigned from the Law School faculty, Monday.

His resignation leaves only one white teacher in the Law School, Theodore Cogswell, District register of wills.

Both Judge Cayton and Mr. Cogswell were appointed to the law school faculty after the entire white portion of the Law School teaching corps had quit in protest against the treatment accorded Chief Justice Fenton W. Booth of the Court of Claims, dean of the school.

Judge Booth resigned in protest against the abolition of the evening law school.

States Reasons

In his letter of resignation Judge Cayton expresses regret at being compelled to quit the Law School faculty, but declared he was actuated to do so in order to focus attention on conditions at the university which need correction.

His resignation was addressed to Dr. Mordecai W. Johnson, president, and the board of trustees. It is to take effect immediately. The letter in part follows:

"I tender this resignation after a decade of harmonious and cordial relations with the officers, faculty, and student body. I have no personal grievances to air.

"I deem it my duty, however, to give voice to the inescapable and continuing protest I feel against the manner in which the affairs of the university are being conducted.

"I protest against the indecent manner in which former Judge

(Continued on Page 2, Col. 4)

Protection of the rights of colored school children is provided for in the bill introduced by Congressman William H. Larrabee (Dem., Ind.) to provide Federal funds for education in the several States.

The bill, H. R. 3517, provides for an initial sum of $40,000,000, for the year ending June 30, 1940, with increased amounts for each subsequent year until a maximum of $140,000,000 annually is reached.

Safeguard Provisions

The Larrabee Bill, with its companion bill to be introduced in the Senate by Senators Pat Harrison and Elmer Thomas, contains the safeguards necessary for the protection of colored persons which have been urged upon Congress by the NAACP since the introduction of the first Federal education bill in 1937.

The bill, first introduced, S.419, did not provide safeguards for minority groups. Since that time the NAACP and the national coordinating committee for equitable distribution of Federal aid to education have been maintaining a sustained campaign to amend the Federal education bills to safeguard colored people.

Equitable Distribution Made

The new bill has been drafted so as to provide for an equitable distribution of funds to colored people in the States which have separate schools established by law.

It provides that in order to qualify for receiving funds appropriated, a State must follow certain rules, one of which is:

"States where separate schools are maintained for separate races must provide for a just and equitable apportionment of such funds for the benefit of schools and teacher-preparation institutions maintained for separate races, without reduction of the proportion of State and local monies expended during the fiscal year ended in 1938, for schools or teacher-preparation institutions for minority races, excepting monies expended for construction or equipment of school buildings."

Similar provisions appear in the several sub-sections of the bill, each requiring an equitable distribution of funds where separate schools are required.

3 AME Leaders Badly Hurt in Auto Crash

Two AME ministers, the Revs. J. Campbell Beckett and J. T. Bailey, were confined to their respective homes, and W. H. C. Brown, lay member of the AME Church board, was under treatment at Freedmen's Hospital, early this week, as a result of injuries sustained in an automobile accident in North Carolina on Thursday.

The trio were passengers in a machine driven by the son of the Rev. Mr. Bailey, Charles, when the car skidded on a wet road near Henderson, N.C., and turned over three times.

Brown Badly Hurt

Mr. Brown, who was seriously injured in an auto accident three years ago, was the only member of the party to suffer any serious hurts. He sustained a fracture of the hip bone and was returned to the city in an ambulance and carried to Freedmen's Hospital, where he is now confined.

The Rev. Mr. Beckett returned in the same ambulance, but is suffering with body bruises and

(Continued on Page 2, Col. 2)

His Brother

The Biblical story of Cain and Abel was re-enacted in the city morgue Wednesday when a coroner's jury exonerated James Boyd, 23, of 212 L Street, Northwest, on charges of slaying his brother Joseph, 30, who died of blows allegedly inflicted during a family row in their home on Monday.

Testimony revealed that Joseph attacked his younger brother with an iron pipe as an aftermath of a quarrel over Joe's bad behavior, and was fatally hurt when knocked to the floor by James's fists.

According to Sergt. John W. Wise, white, of the homicide squad, Joseph had only recently come from Baltimore. He had been a guest at his brother's residence for a week.

Made Threats, Charge

During a drinking orgy on Monday, Joseph, witnesses testified, boasted to James's wife and the landlady, Miss Mary Maxwell, that he had "pulled a job" in Baltimore and was going to "pull another here by killing his brother."

He gave no reason for threatening to kill, they stated, merely announcing his intention.

Later that night, witnesses revealed, Joseph argued with his brother and attempted to enter his room. He was persuaded to go downstairs, but threatened to "get

(Continued on Page 2, Col. 7)

Threaten... Color Ba...

NAACP attorneys are considering filing a petition to have tax exemptions withdrawn from the $2,628,254 Constitution Hall here because of the refusal of the Daughters of the American Revolution to permit Marian Anderson to sing there.

The DAR board last week ruled against permitting Miss Anderson to appear on April 9. This followed on the heels of protests from Lawrence Tibbett and Kirsten Flagstad, stars of the Metropolitan Opera; Leopold Stokowski, former director of the Philadelphia Symphony Orchestra; and Walter Damrosch, composer and musician of New York.

In a telegram to the DAR before the board meeting, Walter White, secretary of the NAACP said that "barring a world-famed artist because of color from a building named 'Constitution Hall', violates the very spirit and purpose of the immortal document after which the hall is named."

STRAWS IN THE WIND

Show Pee Wee which way the wind is blowing. But he knows, without looking, that the trend in journalism is to the favorite newspaper he reads every Thursday.

He KNOWS because he reads the AFRO

WPA Cut Won't Hit Teachers

Slashes in the WPA rolls will not affect the home instruction project for shut-in school children, the board of education was assured, last week.

A report on the handicapped children revealed that fifty-four students are now being instructed by visiting teachers as follows: Children's Hospital, 27; Freedmen's, 7; Gallinger, 9; Emergency, 2; and private homes, 9.

Nine teachers and one supervisor are employed on the project, and it was thought that the proposal to cut from WPA rolls women with dependent children, who were ruled eligible for social security benefits, would probably cause dismissals.

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Appendix #18

OPINION

Jim Crow Educational Appeasement

In a clean cut decision in the case of Lloyd Gaines vs. Canada, registrar of the University of Missouri, the U.S. Supreme Court gave Missouri and all other Southern States the choice of opening State universities to all citizens or erecting separate, but equal, universities for colored people.

Since then, white presidents of white Southern schools have been holding conference to decide how this mandate shall be met.

It would be supposed that college presidents, whose job it is to teach young America respect for law, order and the Constitution, would have met to find the best way to carry out the decision of the highest tribunal in the land. But what they have been doing has been to seek, by hook or crook, to prevent its enforcement.

One proposal, said to have the endorsement of so important an agency as the General Education (Rockefeller) Board, would set up regional universities at some existing schools—at Howard in Washington, Fisk in Nashville, Dillard in New Orleans, and Atlanta University.

Under this scheme these institutions would give up undergraduate work and become graduate schools to take care of colored students from States which would enter into contracts jointly to support them.

This would be a blatant attempt to violate the Constitution and override the U.S. Supreme Court, which, in the Gaines case, said this:

> By the operation of the laws of Missouri, a privilege has been created for white law students which is denied to Negroes by reason of their race . . . . That is denial of the equality of legal right to the enjoyment of the privilege which the State has set up, and the provision for the payment of tuition fees in another State does not remove the discrimination . . . .
>
> The obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction . . . . That obligation is imposed by the Constitution upon the States severally. . . .
>
> We find it impossible to conclude that what otherwise would be an unconstitutional discrimination, with respect to the legal right to the enjoyment of opportunities within the State, can be justified by requiring resort to opportunities elsewhere.

Summed up, what the court said was:

1. That the basic consideration was that Missouri itself was furnishing opportunities to white students which it must provide also for colored.
2. That these opportunities may be furnished separately but equally.
3. That they must be furnished within the State (of Missouri).
4. That they must be furnished, no matter how few the applicants, because even one individual is entitled to equal protection of the law.

The jim crow States which have separate schools are the poorest States and least able to support two separate school systems. But their prejudice is so great that they refuse to listen to any economic reasoning in the matter. And if they are so intolerant that they demand these expensive, separate educational setups they should be willing to pay for them without singing the blues.

Experience has shown that there is no reason why every law school in the United States should not open its doors to all races. Those behind the regional university plan know that it would violate the law. What they hope is, that by offering a little more money to colored colleges, and by spreading good doses of flattery among presidents of these schools, they can sugar-coat this jim crow plan and make it so attractive that colored people will swallow it.

There was a man who sold his birthright for a mess of pottage, and we would not be surprised if some of our leaders do the same thing in the jim crow educational appeasement matter.

* * * *

DON'T FORGET THE COLOR PEOPLE, MR. PRESIDENT

News Item: The President, to show his disdain of race and religious in a Catholic and a Jew to the highest offices in the countr

U. S. Discrimination as Bad as Germany's

By WESTBROOK PEGLER
in the Washington Post

We have in the United States a minority of native Americans who are victims of discrimination, as follows:

They live in segregated districts, and when one of their families buys a home in a white neighborhood the white neighbors are indignant and real estate values suffer.

Force of Custom

They are barred by force of custom, according to locality, from theatres and restaurants, or, if not barred from theatres, are segregated from the whites, or, if not segregated, are made to feel unwelcome and uncomfortable.

In certain parts of the country they are segregated in public conveyances and are forbidden to be abroad in certain areas after sundown.

In certain sections they are barred from public schools, to the support of which they contribute their taxes according to their means, on equality with the [illegible] in the back of their minds an unformed intention some day to make conditions more pleasant for their minority and enlarge their opportunities, but progress toward that goal is as slow as the workings of evolution.

Extermination on Policy

The Nazis, on the contrary, have no intention ever to improve the conditions of their minority.

Their policy is to inflict pain and make life so hideous by abrupt contrast that they will either cease to breed, kill themselves, die of want or escape by the generosity of humane peoples elsewhere.

There is a distinction between the officials and popular attitude of American and Nazi majorities toward their respective minorities, from which the American majority may derive a little, but only a little, moral satisfaction or face.

We are not purposely, suddenly cruel, and we hope to do better.

No Better Off

But in the real conditions of life the American minority is no

Frankfurte Needs a Di

Dear AFRO:

I trust that give me for an's name on his. They ha the universe i

The man is professor of la of our great j American. You in "Who's Wh has appointed preme Court.

The woman find Elizabeth "Who's Who"— called "Red N on almost all ple mentioned is trying to furter off the bench because Jewish people!

And yet, son thinking that here.

And she sa love" to have jurist already en off the be he is a Jew. T need a United mittee to talk t tator.

This woma tried to interf

2-11-02 Appendix #20

[SL]AVES WHO BOUGHT THEIR FREEDOM SET UP OWN SCHOOLS IN WASHINGTON

[...]N W. Smith [...]arly D.C. [...] AFRO

[...] Washington public [...]ebrated the 75th an[...] public education for [...] the nation's capital, [...]n AFRO-AMERICAN [...] of articles on the [...] history of the schools [...], former school of[...]ters who have been [...]es of the schools.

[...]N W. SMITH

[...]e Congressional [...]64, to make pro[...] [...]ayed the opening [...]l until 1866. In [...]teacher was em[...] [...]per annum, and [...] years the revenue [...] is reported to [...]an $800.

[...]eferred to, Miss [...] was the only one [...]ion until July 1,

[...] for this period, [...]amed in the act, [...]h year, viz: [...]l Breed, Zenias [...] Sayles J. Bowen, [...]s J. Bow[...] [...]Breed, Zenias [...]64-65, Sayles J. [...] Hall vice Breed, [...]signed); Steven J. Tabor (resigned); L. McClary (removed), and G. E. Baker.

Jones First Trustee

From the reports and records the latter year was a very stormy one, for it seemed to be very uncertain in the mind of some one of these trustees how the trust should be administered.

The next year, however, relieved the situation somewhat and that year brought forth a board composed of the following: 1867-68, Sayles J. Bowen, Albert G. Hall, and Alfred Jones — the last named trustee being the first colored man appointed as a member of the board of trustees of the public schools of Washington and Georgetown.

At the end of 1868, a year which marked the full operation of the act, there were forty-one schools, forty-one teachers, and 2,300 pupils.

The year, 1868-69, saw the composition of the board as follows: William Syphax vice Sayles J. Bowen, Albert G. Hall and Alfred Jones. Mr. Syphax was elected president of the board, being the first colored man to be president of the board of trustees.

All-Colored Board

The board for 1869-70 was composed of William Syphax, Alfred Jones, Charles King; 1870-71, William Syphax, Charles King, William H. A. Wormley; 1871-72, Henry Johnson, Charles King, William H. A. Wormley; for 1872-73, Henry Johnson, John A. Gray, William H. A. Wormley.

This board was the first composed of all colored men, although all of its members did not necessarily have to be colored.

It was so active that an Act of Congress, approved March 3, 1873, ushered in a new board composed of a greater number, all of whom were colored men, of which Henry Johnson was president.

The members of this board were appointed April 1, 1873, and the duration of the board's existence was shortlived. During the life of this board came the desire of the citizens for the consolidation of all public school boards in the District, which was finally effected during the next year.

Separate Superintendents

There was, however, one superintendent of the white schools of the "cities of Washington and Georgetown and the white and colored schools of the country outside the cities of Washington and Georgetown," and one superintendent of the colored schools of the cities of Washington and Georgetown.

This arrangement existed until June 30, 1900.

The colored schools during that period showed remarkable growth under the arrangement, as follows:

	1867-68	1870	1880	1890	1900
Schools	41	66	117	197	273
Teachers	41	63	130	216	352
Pupils	2,300	3,650	8,080	11,438	12,748

The percentage of increase per decade, starting with 1870, is as follows:

	1870	1880	1890	1900	Average Per Decade Since 1870
Schools	60.9	77.2	68.3	38.5	61.3
Teachers	53.6	106.3	66.1	62.9	78.4
Pupils	58.6	121.0	41.5	11.4	57.9

The above figures speak for themselves and clearly show the success the schools attained from the beginning to 1900.

County Law Failed

Congress by an act approved May 20, 1862, attempted to establish a system of public schools in the county outside of the cities of Washington and Georgetown, for instruction in separate schools of white and colored children.

The management of these schools and the division of the territory into seven school districts were entrusted to seven school commissioners.

It was found, however, that nothing could be accomplished under this act, and consequently no schools were organized under it.

The defects, however, were remedied by the enactment of a law by Congress on June 25, 1864. This legislation rendered operative the previous act of May 20, 1862.

Under the June 25, 1864, act, the colored county schools actually began operation, and continued under this management with a separate superintendent, until these schools and the schools of Washington and Georgetown were incorporated under the management of the superintendent of white schools of Washington and Georgetown and the white and colored schools of the county.

This arrangement existed until June 30, 1900.

19,000 Pupils in 1920

Facts show the growth of the schools continued, as follows:

	1900	1910	1920
Schools	330	404	431
Teachers	412	546	654
Pupils	15,258	18,065	19,523

Per cent of increase per decade is as follows:

	1900	1910	1920	Average per Decade since 1900
Schools		22.4	6.6	14.5
Teachers		32.5	19.7	26.1
Pupils		18.3	8.0	13.1

Thus, by 1920, the enrollment of the District schools had increased from forty-one students in 1867 to 19,523 with comparative increases in teachers and schools as shown by the accompanying tables.

(To be continued)

Baltimore Y to Entertain Group from Washington

The committee of management of the Druid Hill Avenue Branch YWCA will be hostess to the committee of management of the Washington, YWCA on Saturday, March 25, at a conference beginning at 11 a.m.

Mrs. Julia West Hamilton of Washington will preside at the morning session at which time the subject will be "The Responsibility of the Volunteer Leadership for Interpreting the YWCA."

A member of the committee of management from Washington will outline the present responsi[...] [...]cuss "The Industrial Study."

Will Feature Skit

The committee of management at Druid Hill will give a skit as the closing feature of the program entitled "The Great Standards Mystery."

Members of the committee of management at Druid Hill who will be hostess to the conference include:

Mesdames Carrington L. Davis, T. I. Brown, W. Tyler Coleman, B. M. Rhetta, W. L. Fitzgerald, Truly Hatchett;

Mesdames Albert Smith, Daniel Brown, Thomas Smith, John [...]

Denies Control of Whitelaw

Management of the Whitelaw Hotel and disposition of its funds are subject to the control of Nelson E. Weatherless, 420 T Street, Northwest, declares Talley R. Holmes, 1345 T Street, Northwest, in his answer to the suit of Samuel H. Keets, 1218 T Street, Northwest, a part owner, for an accounting and receivership.

The arrangement putting control of the hotel into the hands of Mr. Weatherless was known to Mr. Keets when he purchased his interest from W. H. C. Brown, 400 T Street, Northwest, says Mr. Holmes, adding that the agreement between Weatherless, Holmes and Brown was brought to his attention in a title company report.

Admits Stopping Deposits

Mr. Holmes admits that at the direction of Mr. Weatherless he stopped making deposits in a joint account in the names of himself and Mr. Keets.

After the purchase of Mr. Brown's interest, Mr. Holmes states, Mr. Keets was accorded free access to the records of the hotel and the accounts were kept in his and Mr. Keets's names until the latter attempted to interfere with the payment of current indebtednesses, particularly the monthly instalments on a second trust mortgage on the property owed Mr. Weatherless.

As to the right of Mr. Keets to participate in the profits, Mr. Holmes asserts that revenues are being applied to current expenses and there has been no profit. He points to a reduction of the debt on the property to about $43,000.

Principals Hear Dr. Howard Long

Speaking on "Factors Influencing Children's Learning," Dr. Howard H. Long, stressed the importance of environment in a child's progress, at the Colored Principals' Association meeting, Tuesday.

Mr. Long also stated that pupil-ability and teacher-efficiency were important factors. He said it was a fallacy to compare children of different races and declare one group inferior to another when environment tends to make the results what they are.

Others Participate

He also said that no school should be satisfied with an achievement far below what the pupils' ability makes possible.

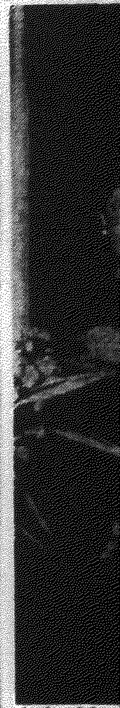
Participating in the discussion which followed the talk were, Elmer Henderson, Mrs. Viola C. Jackson, Mrs. Elizabeth Henderson, and Mrs. Marguerite Seldon.

Col. West A. Hamilton, a member of the Washington school board, and Harold Haynes, principal of Browne Junior High School in Washington, who accompanied Mr. Long, made brief talks.

Dr. Brown Talks to Dads and Sons

Dr. Roscoe C. Brown of the [...]

H[...]



[...]ittle Miss[...] a corsage[...] worth as [...] ercises at [...] Left to righ[...] mer princi[...]

Sa[...] Dr[...]

Decrying [...] ministers ar[...] transformists[...] Monroe of W[...] dressed the [...] ing, Wednesda[...]

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Popular

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"Transformi[...] sors, unpopula[...] persistent atti[...] the intelliger[...] themselves, [...] scientific, eco[...] and religious [...] the work of tr[...]

He said [...] should not [...] to become [...] set ideas of [...] organization.

Says 176[...] Arrested a[...]

By[...]

A total of [...] have been [...] charges of d[...] the repeal [...] into effect R[...] R. Sheppard [...]

3-11-39 Appendix 21

5 ools

of some of the members nal board of trustees ers of the board of nd thirty-five reports oard of education as far 1868.

ortraits of Leaders

n display is a gallery of nately one hundred por- persons on the board of board of education, fficials, and teachers. Dr. Woodson has made avail- Journals of Negro History ontain articles by Wash- achers or sketches of per- tstanding in the local

oom on the second floor leveland School building, the exhibit is housed open for study purposes, rch 2 through March 31, l children and teachers m 3:30 to 5 p.m. Mem- the research and records e will be on duty to as- ons who want to do re- or projects, classes and purposes.

eserve Mementoes

f the most valuable ob- display in the collection cal mementoes is a chair as used by John F. Cook ivate school.

chool was closed as a re- he Snow riot in 1834, at me Mr. Cook escaped to hia.

s later requested to come Washington by President Jackson. This chair has ed through the courtesy Cook of Baltimore, f John F. Cook.

ade Daniels St. Clair is man of the research and committee. Members are: Batson, Miss K. C. Bruce, D. Graves, Mrs. M. W. Mrs. M. W. Lewis, Miss yson, Miss M. E. Perry, S. Peters, M. W. Sewell, phax, Miss M. E. Petway, Murray, and Mrs. C. G.

Association s Anniversary

Pleasant Plains Civic As- will celebrate the seven- anniversary of free edu- or colored people in the during its third annual eting at the Miner Teach- lege, Friday.

sentative Jennings Ran- f West Virginia, and Dr. C. Wilkinson, assistant su- dent of schools, will be akers.

erating with the civic as- in the celebration, the Teacher Association of School and Monroe School ticipate in the celebration.

TELLS OF RISE OF D.C. SCHOOLS

DR. GARNET C. WILKINSON, first assistant superintendent of colored schools in the District of Columbia, as he appeared at station WRC, in Washington, in an address on Friday inaugurating the celebration of the establishment of free colored schools in Washington seventy-five years ago.

Maryland Plans Salary Appeal

BALTIMORE—Following dismissal of the requests for a permanent injunction to Walter Mills in the Maryland Teachers' Equal Pay Case, NAACP attorneys said this week that they would immediately amend the action as suggested by Presiding Judge W. C. Chestnut in the U.S. District Court and proceed with the case.

Judge Chestnut based his dismissal decision, Wednesday, primarily on the point that the suit should not have been filed against the State Board of Education but against the Anne Arundel County board of education, which employed Mr. Mills. He gave the NAACP attorneys ten days within which to file an amended petition.

"The object of this action," the decision set forth, "is to accomplish, if possible, an equalization of salaries paid to white and colored teachers. To redress this grievance, the defendant filed suit, not against the county board, by which he is employed, but against the State Board of Education, the State superintendent, the treasurer and comptroller."

Voters League to Meet on Friday

The first meeting of the tenth unit of the District of Columbia Voters' League of the Vermont Avenue Baptist Church, will be held in the church auditorium, Friday at 7:30 p.m.

Sunday, when the unit was formed by the league the Rev C. T. Murray spoke to the more than five-hundred persons present, emphasizing the advantages to be gained by obtaining a right to vote.

reedmen's and Howard's udget Bill to House

Interior Department Sun- quested by Dr. T. Edward Jones,

Senators Told U.S. Must Aid State Education

Private Funds Less Each Year, NAACP Counsel Asserts

Church and philanthropic foundations are supporting the development of education for colored people on a gradually diminishing scale, and this has forced the Federal Government to step in more and more, especially in the Southern States where segregated schools exist, because the States themselves are too poor to carry on the work.

This was the statement made by Charles H. Houston, special counsel for NAACP before the Senate committee on education and labor, in support of the Harrison-Thomas Federal Bill to aid education in the States.

Provides Safeguards

The bill provides safeguards for equitable distribution of Federal money in States where the races go to separate schools.

Mr. Houston stressed the fact that the States would have to increase their support of colored graduate and professional education under the Gaines case, the decision in which was rendered by the United States Supreme Court against the University of Missouri on December 12, 1938.

Need More Money

He stated that the NAACP's position is that colored people should be admitted to the State universities, but that even so, this would necessitate large expenditures.

If the States establish separate graduate and professional schools, he noted, the expenditures would be increased in even larger amounts.

Under all circumstances it appears that the States will have to rely on Federal aid in order to make adequate provision for graduate and professional education, the NAACP counsel asserted.

Would Benefit All

Mr. Houston said that the bill would benefit the entire nation on the ground that democracy depends for existence on the intelligence of its citizens, and that the nation could no more exit today one-half educated and one-half untrained than it could exist in 1861, half free and half-slave.

It is better for the Government and the States to build schools rather than hospitals and jails, he added.

J. Finley Wilson to Address Boy Scouts

Boy Scout Troop No. 509 Parents' Club was entertained, Tuesday, at the home of Mrs. Gladys Mitchell, 1135 Twenty-third Street, Northwest.

The evening was devoted to final arrangements for a musical and pow rally to be held by the club at Union Wesley Church on Sunday at which J. Finley Wilson, grand exalted ruler of Elks, will speak.

Dixie Press Slaps

(Continued from Page 1)

a gift of God, no matter the color of the skin of the person who possesses it.

"The arts, music, sculpture, writing, painting, stand on their own feet. Genius is genius, regardless of by whom possessed.

"If Mrs. Roosevelt did resign from the DAR because she did not approve the asinine attitude of a committee of the organization, then she was perfectly within her rights."

S.C. Paper Agrees

A similar stand was taken by the State of Columbia, S.C., which said in an editorial:

"The colored race clearly is the winner in that unfortunate and

r of school board.

first assistant superintendent of schools.

second assistant superintendent of schools.

JOHN H. WILSON
School Board Member

3-11-39

COL. WEST A. HAMILTON,
member of school board.

3-11-39

Appendix 22

IAM THOMPKINS,
der of deeds.

ld for Maxwell

services for Mrs. axwell, 1551 Ninth nwest, who died at ospital, after a brief e held at Mt. Airy ch, North Capital and with the Rev. E. K. ing.

se taking part in the are the Rev. J. L. tor of Tenth Street ch, and Miss Myrtle sang.

ell was a native of and is survivied by s McGarr, Jr.; two Mrs. Rachel Holmes bbie Lee Maxwell, p-children, Matilda Maxwell of Georgia.

Wilkerson Is Heard in Attack on Griff Plan

A warning against threats to equitable representation on the school board and other administrative positions contained in the Griffenhagen reorganization proposal now before Congress was sounded in a broadcast from Station WMAL by Dr. Doxey Wilkerson on Tuesday.

Dr. Wilkerson, associate professor of education at Howard University, spoke as chairman of the committee of strategy of the Joint Citizens' Committee of the District of Columbia.

He attacked many phases of the new "city manager" plan, which would strip colored citizens of many civic gains which they now hold.

Among other things, he said:

"The most radical recommendations of the Griffenhagen Report are those which pertain to the public schools. Their effect upon the education of our children would be decidedly unwholesome.

"In the first place it is proposed that the board of education be abolished, and that effective control of the schools be centered in the hands of a director of education, appointed without term, and subject solely to the dictates of the city manager. This proposal is directly contrary to the universal practice of American cities.

"Through generations of experience, the American people have learned that the education of their children is best protected when control of the schools is kept separate from the rest of the city government, with effective control vested, not in one appointed official, but rather, in an elected board of education. In the District, where the board of education is appointed by the courts, the people are not now able, as are citizens in other communities, to act directly in this area of government which so intimately affects their welfare.

"If suffrage is granted to the District, it may be well for our board of education to be elected as in other communities. However, under any circumstances, there must be maintained a separate board of education with adequate authority to determine school policies. Even our present system is infinitely more desirable than that proposed in the Griffenhagen Report.

Affects Teachers

"But abolition of our citizens' board of education is not the only blow which the report has in store for our schools. The selection, promotion, and retirement of teachers and other educational personnel would be removed entirely from the control of educational authorities, and placed in a new and entirely separate department of personnel. Thus, whatever agency is vested with control of the schools would have no authority whatever to select educational personnel.

"This proposal, likewise, runs contrary to the dictates of experience in the administration of public education."

WARNS AGAINST CITY REORGANIZATION PLAN

DR. DOXEY WILKINSON,
speaking from station WMAL, Tuesday, where he warned of pitfalls to freedom and liberty in the proposed Griffenhagen reorganization plan for the city government of Washington.

Educators at D.C. Conference

A meeting of the National Advisory Committee on the Education of Negroes was held, last week, in connection with the Convention of the American Association of School Administrators.

This committee, which is composed of twenty-four colored and white leaders in the field of education from all parts of the country, acts in an advisory capacity to the Office of Education in the prosecution of its program of research in and promotion of education.

Many other educational leaders interested in the education of colored people also attended the meeting.

The morning session included a brief talk by Superintendent John A. Sexson, president of the American Association of School Administrators. Harry A. Jager, chief of the Occupational Information

Bill Would Give Recorder's Office White Control

By KELLY MILLER

The pending Griffenhagen Bill for the re-organization of the District government advocates the city-management plan which would obviously, abolish the independent character of the office of recorders of deeds and limit it to its purely local character.

The report of Dr. William J. Thompkins, recorder of deeds for the District of Columbia, raises the question as to how long this important branch of the public service is to remain under colored control.

Only Independent Bureau

The recordership is the only independent bureau of the government whose head is appointed by the President and confirmed by the Senate and who is directly responsible to the President. The office represents, in fine, the only remaining vestige of authority exercised by any colored man in public service.

There has been repeated effort to take from the colored man even this small crumb of official comfort. The District commissioners have insisted that as the functions of the office are purely local, its control and management should fall under their jurisdiction.

Under Dr. Thompkins, the present recorder, the office has been taken out of the red, and is returning a surplus to the Federal treasury.

Citizens Will Benefit

The office has been modernized

SWING BY LIONEL HAMPTON

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who know their fa-
ir styles have asked whether Harry James records with me on the disc of "I'm in the Mood for Swing."

Yes, that's Harry. He uses the pseudonym of Jimmy Brack. That's Benny Carter (he wrote and arranged it) on alto sax, Jack Kirby on bass, Joe Jones (my favorite) on drums), and Billy Kyles at the piano.

Others are:

Dave Matthews on sax, Babe Rusin on tenor sax, and Herschel Evans on sax.

To settle another argument:

Dick Rose, not Fletcher Henderson, wrote "Swinging at the Make-Believe Ballroom." A grad of Juilliard, he arranges for Bunny Beringan and Isham Jones. "Sugar Blues" is one of his best.

Dyed-in-the-wool music critics still speak in reverent tones of Bubber Miley, the wildest, the best, and the greatest showman trumpeter ever to set Harlem wild.

He went to Harlem from Washington and became, perhaps, the greatest thing the Lafayette had had for many years.

Of his many fading-out acts on band leaders, the last walk-out on Duke paved the way for Jabbo (Claude Hopkins) Smith's best break.

Bubber died in 1932.

* * *

Often students of serious music want to know the origin of the vibres. Four thousand years ago, the vibres had their beginning as the most ancient of instruments, having been used in Chinese ceremonials.

* * *

EDITOR'S NOTE: Swing readers are asked not to write the AFRO for photos of Lionel Hampton. They may be had at MCA, 745 Fifth Avenue, New York City.

DARK LAUGHTER . . . By Ol Harrington

"Look, Bootsie, why don't you and Stewmeat eat all the meat offen the pork chops before you puts them in the garbage can—first you know the rents be raised ag'in."

SEES HUSBAND HONORED

Wilkinson Lauds Progress of NAACP

Peaceful and insistent penetration should eventually secure colored persons positions on the school boards in the South as well as the North, Dr. Garnet C. Wilkinson, superintendent of District schools, told students at Miner Teachers' College, last week.

Speaking on a program in honor of the annual Men's Day, Dr. Wilkinson lauded former members of the District board of education and urged Miner students to accept position in the private and public institutions of the South as well as in the North.

Praises Houston

Citing the achievements of Dr. Charles H. Houston, former member of the D. C. board of education now legal counsel for the NAACP, Dr. Wilkinson declared the Gaines case in Missouri may ultimately lead to more democratic opportunities in elementary and secondary schools in the South.

The school official also praised Dr. J. Hayden Johnson, retired member of the board, for his twenty-one years' of consecutive service, and the late George F. Cook, who served in a supervisory capacity in the District schools for twenty-nine years—1871 to 1900.

Only four other cities, Philadelphia, Atlantic City, Cleveland and Wilmington, Del., have colored members on the school board, Dr. Wilkinson pointed out.

AT HOWARD U. CHAPEL

The all-university religious service in Andrew Rankin Memorial Chapel, Howard University, Sunday morning, will have for speaker, Joseph N. Hill, dean of Lincoln University, Pennsylvania.

Music will be furnished by the university choir.

The fifth organ recital in the series will be given, Sunday, at 6:30 p.m., in Andrew Rankin Memorial Chapel by Roy W. Tibbs, organist, Howard University.

3-25-39 Appendix 24

Racial Status

of the Oklahoma Supreme
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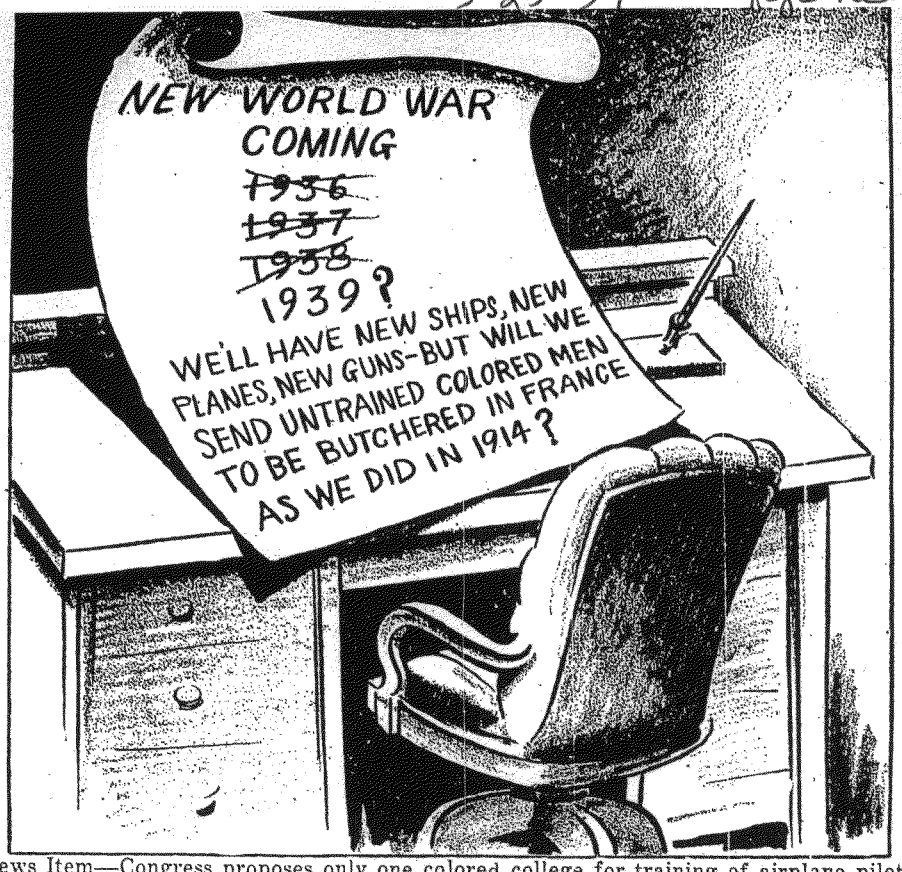


News Item—Congress proposes only one colored college for training of airplane pilots and mechanics. . . .

Segregation and White Supervision

Here is a photograph of Dr. Fred M. Alexander. We don't know Dr. Alexander, never heard of him before. This photograph appeared recently in a Virginia periodical, and if he is what we think he is, Dr. Alexander is a white man and State supervisor of education of colored people in Virginia. That's an anomaly, of course, but it is just such a peculiarity as exists today in most parts of the South. To satisfy the Nordic myth of racial superiority, colored people are set off into separate schools, but not satisfied there, they must have white directors, supervisors, or assistant superintendents; and in Richmond white principals even of colored schools.

Dr. Alexander

This situation is one of the strangest things to understand in American life. Historically, of course, there might have been some reason for it. Before the advent of public school, college, and university education, it may have been difficult to find colored men qualified to hold supervisory positions. But today, seventy-five years after the Civil War, there is no dearth of colored people who are well qualified by training and proved character, to occupy any supervisory position their own schools need.

Despite this, we still have white men and women as supervisors of schools, as members of boards of public institutions of which the inmates are all colored, as policemen, firemen and even garbage collectors in colored neighborhoods.

Why does any white man want to be head of colored schools? Why does he want to run any colored institution? Why? For no reason except the salary that such a job pays. He doesn't mind working with us, if there's salary attached.

The AFRO-AMERICAN is fundamentally opposed to separate schools and institutions in our American democracy, but if we must be segregated, we demand the segregated jobs that go along with it.

There can never be any progress in a colored community until that community can have its own supervisors, leaders, policeman, garbage collectors and all other jobs based on segregation.

Thinks Expose Hurts Prison Inmates

Dear AFRO:

I beg to advise that the state-

God Wants Judah and Israel Unified

Dear AFRO:

I am writing you again to keep

Marian Should Cut Washington Off List

Dear AFRO:

If Miss Marian Anderson appears in Washington the matter will be somewhat "smoothed over."

If she shakes the dust of Washington from her feet, it would be a living witness against Washington before the great judgment bar of history, and the great white throne of public opinion.

The managers of Miss Anderson ought to know that pushing the great artist under unfavorable circumstances would not be nearly so effective as keeping her away altogether.

In other words, Miss Anderson can afford to stay away from Washington much better than Washington can afford to forego the honor of her visit.

The honor is Washington's and not Miss Anderson's alone as her promoters seem to infer.

Marian Anderson does not have to elbow her way in any more, and it is unfortunate that her promoters think otherwise.

Why not let Miss Anderson stay away and let the cultural sore run rather than heal it so soon with a somewhat untimely appearance.

GORDON B. HANCOCK,
Dean, Virginia Union University
Richmond Va.

Lauds School Papers

Dear AFRO:

The long and increasing list of school periodicals indicates what an important part journalism is playing in the school life of America.

Probably few of the staff members of these publications will ever become professional journalists, but the majority of them will have had experience that will be valuable to them, regardless of

SPRING SOUVENIRS

You came with spring's first lovely days.
I never shall forget
That perfect setting for romance —
Romance since turned regret.
We drove for miles on smooth highways,
Enjoyed a soft warm breeze,
While southland sun intensified
Bright shades of budding trees.

We left the highway on a trail
Past old homes, in seclusion,
Adorned by strand and clumps of gold —
Gay jonquils in profusion.
We loved; you left — perhaps forgot;
Now, jonquils moist with dew
Are golden dreams — subdued by tears;
Spring souvenirs of you!

The First Lady Versus the D.A.R.

Dear AFRO:

For years the colored American has been cheated out of his birthright in a land of plenty due to the tyranny of racial prejudice.

Critics of all nations say that Marian Anderson's singing is superb. The citizens of Buffalo realize the great sacrifice Mrs. Eleanor Roosevelt has made in Miss Anderson's behalf by putting herself at odds with the Daughters of the American Revolution. Words cannot adequately express the heartfelt esteem and great devotion we have for Mrs. Roosevelt, our champion and angel of mercy.

Cultural advances of the masses along certain lines such as developing more civic interest and creating a more comprehensive view of politics and economics would make a big step towards doing away with racial prejudice.

It is to be hoped that the glorious example Mrs. Roosevelt has set will act as a clarion throughout this nation.

FRANK A. JONES,
Publicity Chairman, Fifth Ward Colored Democratic Committeeman's Ass'n.
Buffalo, N.Y.

Un-American Daughters

Dear AFRO:

The Daughters of the American Revolution have shown the depth of their Americanism by discriminating against a citizen whose high achievement no doubt surpasses the accomplishments of those snooty un-American daughters.

Evidently we Americans have misunderstood this group all along. They should call themselves the Daughters of the American Rebellion, which nearly wrecked the Union for which 175,000 colored soldiers fought to preserve.

JOHN I. HALL, Sr.
Box 53-A,
Absecon, N.J.

Rate Yourself, Reader Advises

Dear AFRO:

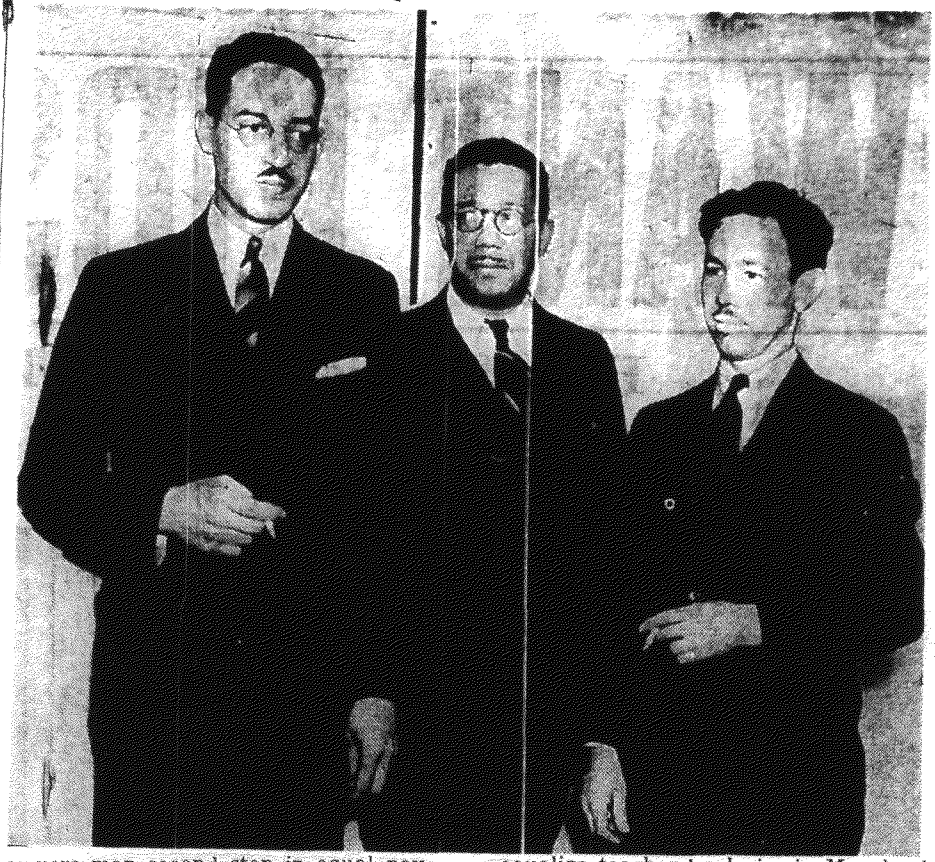
We as individuals rate each other daily. Some of us rate our fellowmen silently to ourselves, while others rate them verbally or by script.

Wouldn't this be a much finer place to live and wouldn't everyone be happier, if each of us would just try to rate himself?

W. S. MAIZE,
Acting Dean,
State Normal School,

Appendix 25 Miles March 25, 1939

DIRECT EQUAL PAY FIGHT



Lawyers map second step in equal pay case. Left to right: Thurgood Marshall, Leon Ransom and Edward Lovett, NAACP attorneys handling the fight to equalize teachers' salaries in Maryland. Anne Arundel County will be added to the defendant list.

Students Back President of Wilberforce U.

Resent Attack by Measure in Legislature

Continued From Page 1

Dr. D. Ormonde Walker, president of Wilberforce University, recently made the target in a "ripper bill," were filed in the office of the personnel deans, Saturday.

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The students' petition lauded the administration of Dr. Walker and attributed numerous major improvements in the educational factors of the institution and in the physical plant to him.

"We believe," the petition say in part, "that our president is doing his utmost and all that is humanly possible for the betterment of the oldest colored institution in America.

"We do not appreciate any one who is so small as to use unscrupulous methods to impede the progress of colored youth. Each

SURPRISED

MISS FLOSSIE TILLARY, 1617 Fifteenth Street, Northwest, Washington, who was given a surprise birthday party Friday by Mrs. Estelle McKenny.

Sees Need for Spanking

Continued From Page 1

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Need Spanking

Dr. Edward Harris, president of the Lincoln Civic Association is heading the drive to have the rules changed.

In a statement to the AFRO-AMERICAN, Dr. Harris said:

"The situation has reached a deplorable stage. Children are growing more and more impud-

Numbers Barons Jittery after 13 Are Nabbed

Old Bugaboo of Income Tax Dodge Ropes Them in

ANNUAL TAKE SET AT FIVE MILLION

Control Said to Be Lily-White

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Although the game in North Jersey has lily-white control many of its employees are colored and most of the players are colored.

$5,000,000 Annual Take

Atlantic City is in a turmoil over the indictments of its big shots and no one knows where the lightning will strike next. The take in Newark yearly is estimated at $5,000,000.

Herndon Daniels, Leroy Williams, Isaac Washington

Czechs' Fate Parallels Ethiopians'

Continued from page 1

Italian conquerors in Ethiopia and related how he had been robbed of all his possessions by the raiders.

Man Without Country

"Today," he admitted, "I am practically a man without a country."

Madame Hurban and her husband are likewise people without a country, victims of the other end of the Rome-Berlin axis. But exile is no new experience for Madame Hurban. As a young girl she came to America with her father because under the rule of Hungary no Slovak could be ordained in the ministry.

At this early age she experienced a type of prejudice not unlike that which darker Americans are compelled to endure.

Typed Declaration

Her father, with other exiles, struggled here for the freedom of their people at home and following the World War, the Czecho-Slovakian Republic was carved out of Europe.

Madame Hurban herself typed the declaration of independence, which had been written by the late Dr. Thomas Mazaryk, who became the first president, and her husband.

Tragic Parallel

It was beneath a pastel portrait of Dr. Mazaryk that she stood, almost in reverance, and expressed her sorrow at the fall of her nation.

The world will not soon forget the tragic parallel between exiled President Benes of Czecho-Slovakia and exiled Emperor Haile Selassie of Ethiopia.

Last September, President Benes, in a broadcast to the world from Prague, called upon the powers and public opinion to help stop Hitler's avowed intention of dismembering the republic.

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But a few years ago, the world heard a similar plea from Haile Selassie at Geneva as the legions of Mussolini were poised on his borders.

The world heeded not the plea of Haile Selassie.

The great powers ignoble compromise cried for help.

The Fascist Juggern... Which nation and ... will be the next to f...

Seek to Keep Post for Bishop Ransom

COLUMBUS, O. — (ANP) — Because the Republican administration is expected to try to replace the State Parole Board by legislation, friends of Bishop R. C. Ransom, A. M. E. Church and Democratic leader, are circulating a petition to have him retained as a member of the commission. He was appointed by former Governor Martin L. Davey.

Bishop Ransom

HE DIDN'T CUT THE RUG; GETS NINETY DAYS

3-25-39

Appendix #26

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"We believe," the petition say in part, "that our president is doing his utmost and all that is humanly possible for the betterment of the oldest colored institution in America.

"We do not appreciate any one who is so small as to use unscrupulous methods to impede the progress of colored youth. Each and every student at Wilberforce is sincerely interested in cooperating with the president to better conditions and opportunities here.

"We are expressing our wholehearted gratitude to our president for his relentless battle to raise the standard of our school and we trust that the public will not be swayed by malicious propaganda."

Some of the improvements listed by the students are:

Faculty Strengthened

Improvement of all the dining halls on the campus; completion and equipment of the library; enlargement and equipment of the laboratories for the basic sciences; building of roads with curbing on the campus to replace mud paths:

Strengthening of the faculty with teachers holding the M.A., and three with a Ph.D.; establishment of lights on the campus; increased lavatory facilities in the dormitories, single beds in most of the rooms, and a general uplift of the moral tone of the university.

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"The situation has reached a deplorable stage. Children are growing more and more impudient and unruly. This is because home life, due to the pressure of economic conditions, is growing more lax every day and children are practically raising themselves.

"This puts an added burden on the teacher and children knowing that the teacher's hands are tied take advantage of them.

Some Are Blackmailed

"Many teachers have been slapped, sassed, scratched, kicked and bitten, but could not retaliate for fear of losing their jobs.

"I know of an instance where a teacher did slap a child and the child's parents blackmailed her to the extent of $25 per month on threat of having her expelled.

"These conditions must be corrected. We believe that if the rules are changed that teachers can be depended upon to use restraint and good judgement in the use of corporal punishment, but there is no doubt that the younger generation is in sore need of corrective measures being applied."

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Herndon Daniels, Leroy Williams, Isaac Washington, Austin Clarke, and Harold Schepper, prominent in Atlantic City business life and sporting world, were among the thirteen named in indictments presented to Federal Judge Philip Forman.

The indictments charge evasion of income taxes for the years of 1935, 1936 and 1937 and culminate an eight month's investigation by the intelligence unit of the treasury department.

More than 1,000 were examined, including 800 storekeepers alleged to have been writing numbers.

They found that in 1935 the numbers game in Atlantic City had a take of $786,293.54. In 1936 it grossed $1,000,949.75 and in 1937 totaled $1,144,735.

Tax Is $79,735

From the thirteen men the government is seeking a total of $79,735 in taxes and $310,000 in penalties, exclusive of the fines if the men are convicted.

Marian Anderson to

At this early age, she experienced a type of prejudice not unlike that which darker Americans are compelled to endure.

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Bishop Ransom

HE DIDN'T CUT THE RUG; GETS NINETY DAYS

Chargesd with cutting George Martin, at a local hotel, Monday, at a dance, Harry A. Pitts, 22, of 920 Hughes Court, Northwest, was sentenced, Tuesday, by Judge Edward M. Curran to serve ninety days in jail.

3-11-39

Appendix 27

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... assistant sec-
...Hayes, general
... Pittman, ser-

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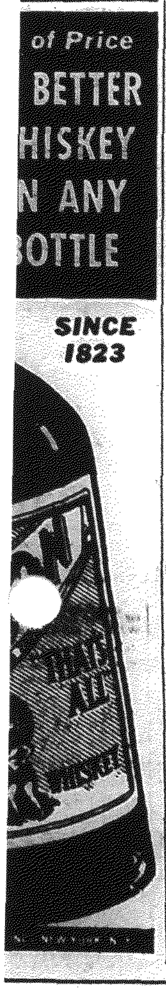
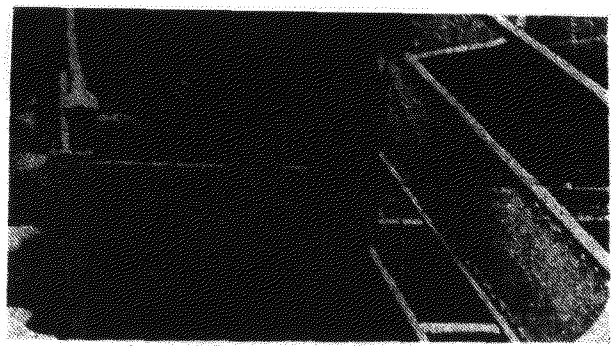




THOMAS W. PARKS

investment and three-fourths of the local residents are home owners," Mr. Parks stated.

During 1930-36, it was estimated by real estate circles that the Parks real estate concern sold more homes than any other office in the city.

The insurance department is headed by Howard L. Turner with several agents employed; more or less indirectly, on part-time basis.

Practices Law, Too

Ranking second to Parks's real estate business is his law firm. Besides his partner, law associates active in the legal set-up are: Frank W. Adams, former Republican assistant district attorney; Dewey Cobb, and Claude Williford.

Mr. Parks is the son of Wiley and Sarah Parks of Washington, formerly of Charlotte, N.C., where the subject of this sketch was born. He was educated in the public schools of the District, and graduated from the Howard University school of law in 1925.

While attending Howard, Mr. Parks worked as a real estate salesman and later as a stenographer for a now extinct real estate concern. When his law studies were completed, he entered the real estate business.

His first office was established at 1359 U Street, Northwest.

Business Expands

In 1928, a larger office was needed and Mr. Parks's business was moved to 207 Florida Avenue, Northwest, where more space was divided into a real estate, insurance, and law departments.

He is legal adviser for the Industrial Bank, a member of its board of directors; member of the board of directors of the Washington Real Estate Brokers' Association; Criminal Justice Association; president of the YMCA Emblem Club; and of the board of management of Twelfth Street Y; Elks, Masons, Musolit Club, and trustee of the Asbury ME Church.

Newest NAACP School Suit for Virginia

COVINGTON, Va.—Three hundred residents asked the Alleghany County school board what was it going to do about inequalities in colored schools.

Their petition recited the following deficiencies affecting colored schools only:

(1) Health service; (2) transportation by school buses; (3) instructors in manual and domestic arts; (4) library for high and elementary schools; (5) school auditoriums; (6) gymnasiums and athletic fields.

Hewin With NAACP Attorneys

The petition was drawn by J. Thomas Hewin, Jr., and Thurgood Marshall, Charles H. Houston and Leon A. Ransom, NAACP attorneys.

Usually, such petitions to school boards precede court action to compel the school authorities to act.

Constitution Violated

The petition declares that the school board, by failure to provide equal facilities for colored children, is violating the State constitution and the Fourteenth Amendment to the Federal Constitution.

It asks the board to put in its budget for 1939 and 1940, a sum of money to remedy these deficiencies and revise plans of the proposed Watson Training School accordingly.

First of Its Kind

If the county board refuses and suit is filed, it will be the first NAACP suit to equalize school buildings and equipment. Previous suits have dealt with unequal teachers' salaries.

The U.S. Supreme Court in its decision in the Missouri University case, ruled that schools may be separate but must be equal.

CAPPER PRESENTS PLEA FOR ANTILYNCHING BILL

WASHINGTON

Senator Arthur Capper (R., Kan.) presented to the Senate on Thursday a resolution adopted by the Young People's Religious Union of the Unitarian Church of Westwood, Mass., favoring enactment of antilynching legislation.

ROBERTS TO SPEAK

William A. Roberts, attorney, will address the Luncheon Club at the Southeast House, Saturday, on "All of Washington Is Talking about the Franchise, What Are Your Opinions?"

the participation of colored in the management of projects, and the inclusion of clauses in construction contracts designed to insure the equitable employment of colored skilled and unskilled labor.

The report called attention to the necessity of being on guard against the possibility of using "public housing projects as an instrument to extend segregated areas."

Precaution was also urged against "the demolition of a larger number of dwellings available for any racial group than the program provides for this group," as well as against the tendency to raise rents unduly in substandard houses which have been improved rather than demolished in accordance with the requirements of the United States Housing Act of 1937.

Addressing the conference, Mr. Straus declared:

"In every community in which there is a large colored population living in the slums, it seems to me fitting, proper, and reasonable that one member of the local housing authority or housing committee of five should be a member of that race."

Shiloh Circle Holds Banquet

The Shiloh Sewing Circle of Shiloh Baptist Church celebrated its first anniversary, Monday, at a banquet at the YMCA.

Composed of a group of young women, the circle was formed a year ago for the purpose of sewing clothes for the poor and needy of Washington.

The principal speakers at the affair were John Nixon and Mrs. L. E. Brown, white, of the Federation of Churches.

Among the guests were:

Mrs. E. L. Harrison, wife of Shiloh's pastor; Miss Sarah White, president of the church's missionary society; the Rev. Ralph Fowler, of Howard University; C. D. Black, Mrs. Eula Hoffman, Sandy A. Mayes, Bernard Hughes, and Lawrence C. Smith.

Members of the Shiloh Sewing Circle are:

Mesdames Estelle Williams, president; Mae Johnson, vice-president; Lawrence Smith, secretary; Diana Mosley, assistant secretary; Armitcher Perry, treasurer;

Mesdames Letha Hunt, Martha Hector, Bessie L. Black, Helen Mayes; Misses Emma Robinson, Hilda Lee, and Nancy Jackson.

Y Will Honor Pastors, Wives

The Twelfth Street YMCA will hold its third annual reception to new ministers and their wives on Friday night.

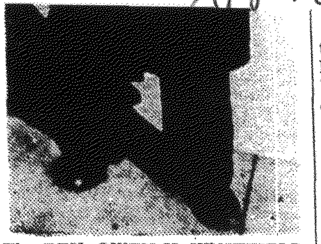
A program of musical selections and readings will be presented by Mrs. Rayford W. Logan, Miss Erma Barbour and Charles W. Flemmings.

The Junior Hostesses' Club will be the official hostesses for the reception.

The Parents' Club will have charge of preparation of the service. Mrs. Etta Versa Frye will serve with the Rev. Mr. and Mrs. L. T. Hughes as co-ordinators of the activities and attendance.

All ministers and their wives are invited. The reception committee is composed of:

The Rev. Messrs. and Mesdames A. F. Elmes, F. W. Alstork, J. L. S.



The REV. OWEN H. WHITFIELD, vice president of the Southern Tenant Farmers' Union, who was in Washington this week to plead the cause of the Missouri sharecroppers before administration officials.

Holloman, E. F. Howard, L. T. Hughes, M. F. Newman and H. B. Taylor.

10 Days for 5 Cents Worth of Spaghetti

For stealing a five-cent can of spaghetti from a grocery store, Edward Reed, 29, of 610 N Street, Northwest, was sentenced to pay $10, or serve ten days in jail when arraigned in police court, Tuesday.

Blames High ... His Domestic ...

Charging desertion, Horace P. Gassaway, a Treasury Department employee, 113 U Street, Northwest, filed suit in the District court Saturday for an absolute divorce from Mrs. Hayest Gassaway, 1217 Q Street, Northwest.

"Quarters Too Small"

In his complaint, he charges his wife was constantly complaining that the apartment in which they were living was too small and demanding that he rent a larger one, alth... $1,080 a... He sa... pay the... and on... took a... dress... fused t... new qu... The... Rockvil... 1925... sents G...

Judge ... the case w... Mrs. You... W. A. C. ... duced cour... a previous... signed Dr. ... young hus... child.

The for... Funches w... R. (Babe)...

Widow ... Buried

BOSTO... were held... laide Fair... Rev. Benj... Church; ... pioneer ... Mack Ch... Mrs. Sr... Boston, ... illness of...

Close... are: her... terson of... Cour of... stepmoth... Washingt...

Appendix 28

The Wa
MARCH 11, 1939

OF MAN IS—

INISTER?

BOUT WASHINGTON YMEN

THE REV. E. H. BEARD

our and one-half months old, one f the joys of Mr. Beard's domes-ic life.

The organization and leaders of Brown Memorial are:

Trustees, William Berry; stewards, Matthew Bailey; finance, John E. Green; unday School, Mrs. Bessie Johnston; oung Men's Progressive Club, Thomas Daily Vacation Bible Class, Mrs. Johnston;

League, Miss M. I. Washington; ary Society, Mrs. E. H. Beard; tewardess board No. 1, Mrs. Carrie ohnson; stewardess board No. 2, Mrs. ertrude Green;

Ushers, James Gray; senior choir, harles Matthews; gospel choir, Mrs. lizabeth Shellman; junior choir, Miss Inora Rogers; organist, Mrs. Edna vans; BBusy Bee Circle, Mrs. Mary rawner;

Tried Few Circle, Mrs. Katie McCalis-r; pastor's aid group, Miss Idella Bad-y; conference claims group, John E. reen; Silver Leaf Circle, Mrs. Ira Dial; lower Circle, Mrs. Annie Bell; and liss Sara Gary, Junior Ushers' League.

TO BE HONORED

MISS RUTH CUMBER, president of the Nurses' Health Unit No. 422 of the I.B.P.O. of Elks, who will be feted at a banquet at the Lincoln Colonnade on

Petitions Filed in Covington and Norfolk

NAACP Attorneys for Miss Aline Black Sue for Writ

CITY ASKED FOR $133,000 BOOST

Alleghany Co. Would Pay $7,245 More

NORFOLK, Va.—Two moves in the fight to equalize teachers' salaries in Virginia occupy the educational spotlight this week.

Attorneys of the NAACP, representing Miss Aline Black, a science teacher in the Booker T. Washington High School here, filed suit in circuit court for a writ of mandamus to compel the local board of education to pay colored teachers as much as white teachers doing the same work.

Hearing, March 13

March 13 is the date that has been set for a hearing on the petition which charges that the present salary schedule which discriminates in favor of white teachers, denies the equal protection of the law as provided by the Fourteenth Amendment to the U.S. Constitution.

Almost simultaneous with the suit here was the petition filed at Covington, Va., on Monday by attorneys representing Miss Olga Lomax, teacher in the Watson Training School, requesting the Alleghany County School Board to make the salaries of colored teachers equal to those of whites doing the same work.

Miss Lomax

Denial of the rights guaranteed by the Fourteenth Amendmend is also the basis of this petition which was filed by J. Thomas Hewin, Jr., of Richmond, representing the NAACP.

Representing Miss Black, in addition to Mr. Hewin, are Thomas Young, Norfolk attorney, and Thurgood Marshall, Leon A. Ransom and Charles H. Houston of the NAACP national legal staff.

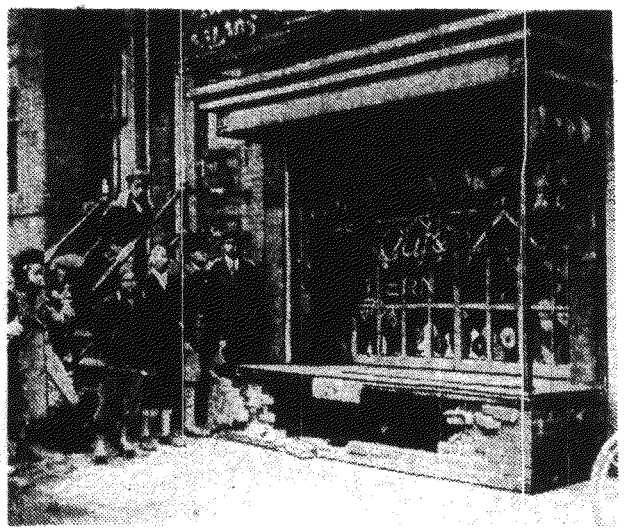
Minimum $699

According to Miss Black's petition, which is filed under the auspices of the Joint Committee for the Equalization of Teachers' Salaries in Virginia, colored women high school teachers in Norfolk receive a minimum yearly salary of $699 and a maximum of $1,105, while white teachers doing the same work, receive a minimum of $970 and a maximum of $1900 a year.

Colored male high school teachers are paid a minmum of $784.50 and a maximum of $1,235, while white men are paid from $1,200 to $2,185 for the same work.

A victory for Miss Black will mean that the city of Norfolk will have to add approximately $133,000 to bring

FASHIONABLE CAFE HAS UNEXPECTED GUEST



An unexpected guest entered Harrison's cafe Sunday morning, when Mrs. Sallie Gaskins, 60 First Street, Northeast, drove her car into the plate glass window when she failed to make the turn from New Jersey Avenue into Florida Avenue.

Don't Use Back Door, Miss Anderson Urged

Dear AFRO:

So Miss Marian Anderson has now been permitted to sing in the Central High School Auditorium on April 9, but alas, the "great back door" has been opened to her, the recipient of decorations from two kings and from the French Government.

The question is, should she accept the "back door" offer now? If she accepts under the present proviso, the cause of all who came to her aid so nobly will either be sidetracked or defeated.

If she refuses, the fight will go on for an "open door" for colored artists. If she accepts, I ask, where will she sing in Washington, her capitol, in the years to come?

I, too, anxiously wished that the ruling banning her appearance at the Central High School be removed, since the Constitution Hall is inevitably a bulwark of impossibility for access by colored Americans.

Now I fear greatly that if Miss Anderson does elect to sing at Central High School, under the present proviso, the colored citizens of Washington shall ever bemoan the fact that our integrity and self-respect shall be challenged in the years in the future.

To the cause of Miss Anderson has come the most brilliant array of liberals ever to support a single colored issue of racial oppression. History undoubtedly will refer to it as the L'Affaire Anderson.

Again I repeat, if Miss Anderson sings at the Central High School Auditorium on April 9, she will merely sing there now to save the present board of education from further disgrace and criticism.

She was finally granted the right to sing at Central High School, not as a courtesy to Howard University, but in order to keep Miss Anderson from becoming a martyr of race oppression in democratic America.

Perhaps, if Miss Anderson could have been a witness at the board meeting, that finally permitted the release of Central High School Auditorium for her own use, she, too, would have joined Mrs. McGuire in weeping and she would immediately elect becoming a martyr.

WILLIAM FRAZIER
1646 Sixth Street, N.W.
Washington, D.C.

Pastor Given $450 Bonus

The Rev. J. L. He Observes 4th Yec at Tenth Baptist

A banquet was given b Tenth Baptist Church, M celebrating the fourth an sary of its pastor, the Rev. Henry.

The speakers included: Thomas W. Parks, Jesse I ell, Dr George L. Adam Revs. George Bullock, E. L rison, S. G. Lamkins, Hughes, J. P. Nichols, K. W Augustus Lewis, Robert A son, Harvey Randolph, Stevenson, L. R. Rollins, J. Holloman, S. L. Young, Brown, G. Z. Brown, M W M. Bundric, F. D. Thornto Otto McClarin.

Philadelphian Preaches Se

The anniversary sermo delivered, Sunday, by the Leonard Carr of Philadelphi pastor of the Vine Street I Church.

During the banquet the gregation of Tenth Street I Church, presented their with a cash appreciation of $450. Another award of was a $25 check given George L. Adams, head of A private hospital.

John Banks and Mrs. Walls were in charge anniversary committee.

Asks $10,000 for Injuries

Mrs. Grace Howard is s damages of $10,000 in a sui in the United States I Court, Tuesday, as the res injuries sustained in an au cident on Thanksgiving nigh

The defendant is Mrs. Martin, in whose auto Mrs. ard was riding when the ac occurred en route from Spa Point, Md.

Rhines in Arkansas

John T. Rhines, local mor is expected to return the part of this week from Srpings, Ark., where he w little over a month ago.

3-11-39 Appendix 29

... choir, Mrs. ... Miss ... choir, Edna ... Mrs. Mary ... Mrs.

...s. Katie McCallis- ... Miss Idella Bad- ... group, John E. ..., Mrs. Ira Dial; Annie Bell; and ... Ushers' League.

BE
ORED

MISS RUTH CUMBER, ...dent of the Nurses' Health ... No. 422 of the I.B.P.O. of ... who will be feted at a ban... at the Lincoln Colonnade on ...sday. She is to be honored for her humanitarian work.

Lincoln Temple Ends Anniversary Service

At the closing service of the ...eighth anniversary celebra... of the Lincoln Temple Church Sunday morning, the Rev. R. W. Brooks will speak on "The Kingdom of Heaven a Possibility on Earth," the vested choir, with Miss Otis Holley as soloist, will sing.

Ross's concert band will render selections in the morning, including the "Hallelujah Chorus."

The men's brotherhood will be led at 10 a.m., by Claude G. Young, director of religious education. He will discuss "The Function of the Church in Current Daily Problems."

Seeks $10,000 from Bottling Works Firm

Damages of $10,000 is sought from the Washington Coco Cola Bottling Works in a suit filed in the United States District Court, Tuesday, as the result of injuries received by Thomas Brookings, 1342 Fifth Street, Northwest.

The boy was struck by a hit-and-run truck. James G. Eaton, attorney, representing the boy says he has a witness who says the truck belonged to the Washington Coco Cola Bottling Works.

...questing Alleghany County School Board to make the salaries of colored teachers equal to those of whites doing the same work.

MISS LOMAX

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A victory for Miss Black will mean that the city of Norfolk will have to add approximately $133,000 to bring the 228 colored teachers' salaries up to the maximum now enjoyed by whites.

Miss Black, who is working toward a Ph.D. degree at New York University, holds a collegiate professional certificate that expires in 1946, and is paid $1,110.50 per year. She has been employed for twelve years in the local schools.

The Norfolk School Board has taken the position that teachers' pay is a matter of contract between the individual teacher and the board and is not controlled by any regulations affecting civil rights.

Board Declined

On October 27, 1938, Miss Black filed a petition with the school board, requesting the equalization of salaries, but the board, in a letter received on December 30, of that year, denied her request.

In the case of Miss Lomax at Covington, it is pointed out that colored teachers are paid a minimum of $65 per month and a maximum of $70, while white teachers receive an $80 minimum salary, ten dollars more than the maximum for colored teachers.

Miss Lomax, who has a master of arts degree from Columbia University, holds a collegiate teaching certificate which expires in 1945.

There are 15 colored teachers and one supervisor in Alleghany County and a sum of $7,245 is necessary to raise their salaries to the level of whites doing the same work.

...came either be sidetra... the figure...

If she refuses, the fight ... on for an "open door" for colored artists. If she accepts, I ask, where will she sing in Washington, her capitol, in the years to come?

I, too, anxiously wished that the ruling banning her appearance at the Central High School be removed, since the Constitution Hall is inevitably a bulwark of impossibility for access by colored Americans.

Now I fear greatly that if Miss Anderson does elect to sing at Central High School, under the present proviso, the colored citizens of Washington shall ever bemoan the fact that our integrity and self-respect shall be chal...

...She ... right to sing ... as a courtesy ... School, not as a courtesy ..., but in order to ... ard University, but ... order to keep Miss Anderson from becoming a martyr of race oppression in democratic America.

Perhaps, if Miss Anderson could have been a witness at the board meeting, that finally permitted the release of Central High School Auditorium for her own use, she, too, would have joined Mrs. McGuire in weeping and she would immediately elect becoming a martyr.

WILLIAM FRAZIER
1646 Sixth Street, N.W.
Washington, D.C.

Indict Slayer of Illinois Student

CHAMPAIGN, Ill. — (ANP) — Mrs. Margaret Strothers, owner of the Pullman Hotel, was indicted, Friday, by the grand jury for murder.

She allegedly shot William Spurrier, 20, white sophomore at the University of Illinois, when he and a group of friends after a beer drinking party threw a bottle through the hotel window when they were denied admittance.

Mrs. Fleming Gets ...lute Divorce

... divorce

...Court, ... injuries sustain... night ... cident on Thanksgiving night.

The defendant is Mrs. Mary Martin, in whose auto Mrs. Howard was riding when the accident occurred en route from Sparrows Point, Md.

Rhines in Arkansas

John T. Rhines, local mortician, is expected to return the latter part of this week from Hot Srpings, Ark., where he went a little over a month ago.

April 1, 1939

Appendix #30

National Bench

Risher Appointment Held Up Pending Receivers' Appeal

The United States Court of Appeals for the District of Columbia on Saturday denied Gilbert A. Clark and Frank B. Bryan, Jr., receivers of the defunct National Benefit Life Insurance Company, a special appeal from the decision of Justice Peyton Gordon of the U.S. District Court holding that they were illegally appointed.

The appellate court, however, suspended the order ousting them and appointing John T. Risher, president of the company, in their stead.

Suspension Continued

The suspension of the order is to continue until the final determination of the case of the Shaw-Walker Company, a judgment creditor, against the National Benefit, is finally determined or until the appellate court enters another order.

A general appeal from the Gordon decision was set for hearing on the May assignment.

Attorneys representing the Shaw-Walker Company, the Shaw-All Sales Company, and Mrs. Leah B. Wilson, wife of J. Finley Wilson, grand exalted ruler of the Elks, had opposed the petition of the receivers for a writ of supersedeas and also their motion for allowance of a special appeal on the ground that Mr. Clark and Mr. Bryan have no special interest in the company or its assets.

Risher Posted Bond

Mr. Risher had posted a bond of $50,000 and qualified to take

(Continued on Page 2, Col. 5)

MISS MARY CAMP,

who makes a poetic study in simplicity and charm in this expression caught by the candid camera. She is a beautician, a native of Detroit who is a pleasant addition to the capital's colony of professional women.

Civic Association Balks at Spanking

Acting President of Allen Forced to Resign Post

Students End Strike When New Head Leaves Campus

By Staff Correspondent

COLUMBIA, S.C. — The three hundred Allen University students who went on strike two weeks ago, protesting the election of the Rev. E. F. Dent as acting president to succeed the late Dr. E. H. McGill, returned to their classes, Tuesday, after forcing the Rev. Mr. Dent to resign.

During a call session of the executive board the student council refused to accept anything other than the resignation.

Dean Thurman B. O'Daniel has been elected acting president until June.

Bishop J. S. Flipper, via tele-

(Continued on Page 2, Col. 4)

A resolution seeking to have the rule prohibiting corporal punishment in public schools of the District abolished, was tabled at the regular meeting of the Federation of Civic Associations, Friday, at the District Building.

The resolution, presented by the Lincoln Civic Association, through its president, Dr. Edward F. Harris, had specific reference to the recent complaint of parents of a junior high school girl, Virginia Anderson, 1724 Euclid Street, Northwest, involving Mrs. M. H. Plummer, principal at Francis Junior High.

It was the hope of Dr. Harris and his group to have the matter brought before the board of education at its meeting, Wednesday.

Want Slum Cash

Favorable action was taken, however, on a recommendation that Congress be asked to restore an item of $1,000,000 for the Alley Dwelling Authority so that the work of slum clearance might be continued.

The federation also indorsed the Overton plan of proportionate Federal and municipal contributions to the District government, based on the area occupied by the Federal Government.

House, Senate Adopt Report on U.S. Aviation

Bill Contains Provision for Training Colored Pilots

Both the House and Senate adopted, last Thursday, the conference report on the Army Air Corps' Expansion Bill, completing legislative action on that measure.

By this action the two bodies substituted the language proposed by the conferees with respect to colored schools for the training of colored pilots in place of the amendment of Senator H. H. Schwartz (Dem., Wyo.).

The Schwartz amendment, approved by the Senate, authorized the Senate to lend aircraft and other flying equipment for the training of military personnel at civilian aviation schools including "at least one colored school for the training of colored air pilots." This language was unequivocal.

Proviso Inserted

At the behest of Army Air

(Continued on Page 2, Col. 3)

Concert Battle May Re-echo in Congress

The board of education, at its meeting on April 5, refuses to grant use of the Central High School auditorium for an Easter Sunday concert by Marian Anderson "without the intolerable conditions laid down in the report of March 3," the matter will be carried to Congress with a request for an investigation of the entire system of community use of Washington school buildings.

A resolution asking the board to re-consider its decision and calling for such action in an event the ruling is an adverse one was adopted unanimously at a mass meeting held at the Metropolitan AMEZ Church, Sunday, with approximately 1500 colored and white citizens in attendance.

The meeting was sponsored by the Marian Anderson Citizens' Committee which originally appealed the case before the board when the first request for use of the auditorium was denied the Howard University concert committee, sponsors of the contralto's recitals in Washington.

On March 3, the board voted to permit Miss Anderson to sing in the auditorium on condition that the concession should not be taken as a precedent, and that in

Many Join Protest

Other letters supporting Howard's refusal to accept the conditions for the concert and decry-

(Continued on Page 2, Col. 3)

109 on Project Tracing Maps

Two hundred and fifty persons, 109 of them colored, are working on an aerial map-tracing project at Washington. Three Government agencies are cooperating to make this possible—the WPA, the NYA and the REA.

Of the 35 NYA youths and 215 WPA workers on the project none had any experience in map-making when assigned to the project. They were not even qualified draftsmen. Hence their training had to begin at the bottom.

When they were assigned to the project, all the WPA workers were classified as clerks. As they gained in skill, they have received promotions. Five colored workers have been advanced to the grade of senior draftsmen and seventeen to junior draftsmen.

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NAME GUGGEN

RICHARD W author, who was on nine persons to rec fellowship from the Memorial Foundatio nounced in New Yo Mr. Wright, a nativ Miss., is author of Children," which prize from Story Ma best manuscript s anyone connected w eral Writers I

WASHING

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Published Every S THE AFRO-AM COMPAN WASHINGTON, 1800 11th STREI PHONES: DECATU

school accredited by the Civil Aeronautics Authority.

At present there are fourteen civilian aviation schools accredited by the Civil Aeronautics Authority. They are all white. The authority has also selected a small number of white colleges where it is proposed to begin training of commercial pilots.

Concert Battle May Re-Echo in Congress

(Continued from page one)

ing the board's action were read, from:

Senators LaFollette (Progressive, Wis.), and Thomas (Dem., Utah), Secretary of Agriculture Henry A. Wallace, Representatives Gavagan (Dem., N.Y.) and McGranery (Dem., Penn.), Miss Anderson's district; W. A. Neilson, president, Smith College; Ned H. Dearborn, dean of education, New York University; Clyde R. Miller, professor of education; and Franz Boas, professor of anthropolgy, Columbia University; the Robert T. Freeman Dental Society, and Canon Anson Phelps Stokes.

Canon Stokes wrote that he has an offer from a white woman who will contribute $500 towards Miss Anderson's expenses if a free concert is given in protest of the board's stand.

E. C. Moran, Maritime Commission, wrote that it was "particularly shocking that those entrusted with the education of our youth should set an example of disregard of those principles of democracy they are supposed to teach."

Meanwhile, the Howard University school of music is accepting reservations for the concert to prevent the appeal to the board from being an idle gesture. Tickets will not be sold, if at all, until after the board meeting, April 5. In the future the board "will not again be asked to depart from the principle of a dual system of schools."

Later, the permission was withheld by Supt. Frank W. Ballou, white, when the Howard University group refused to accept the building under the terms.

Narrows Issue

The resolution, introduced by Dr. C. Herbert Marshall, chairman of the District branch of the NAACP, declared the basic question involved is neither "the dual school system" nor the "front motive," but the community use of public buildings supported by all taxpayers of the District.

It termed the denial of the use of Central as "the very antithesis of democracy" which "strikes at the fundamental principles upon which our country was founded."

The board also was charged with ignoring the precedents cited by Dr. Charles H. Houston, chairman of the committee, which showed that inter-racial meetings had been held on several occasions—not only in Central but in other schools — and that professional artists had appeared in various schools at admission prices as high as $1.65.

Self Respect at Stake

"Acceptance of the conditions laid down would mean the mortgaging of the self-respect of the citizens and abridging their right of petition for redress of grievances, which is the basis of American democracy," the resolution concluded.

It also commended Howard University for the position it has consistently taken len must be a resident of South Carolina.

Another trustee, W. R. Bowman, said, however, that Bishop Flipper was unanimously appointed chancellor of Allen by the board of trustees, and this "gives him the authority to appoint during vacancy or vacancies any persons on the faculty without the consent of any board connected with Allen."

"In the appointment of Dr. Dent as acting president, Bishop Flipper just exercised his authority," declared Mr. Bowman. "The presiding elders in their council meeting endorsed this appointment on motion of Dr. J. E. Thomas of Florence, and there is no doubt in my mind that when the trustees meet they will do the same."

John Middleton of Summerton, vice president of the student council and one of the strike leaders, said he was called before the faculty and questioned about the demonstration.

He said that in answer to a direct question from Dr. Dent, he replied that the students "are dissatisfied with the election of a man as president of an institution with the fine traditions which Allen represents, so soon after Dr. McGill's indisposition." He declared there was objection to Dr. Dent's election before Dr. McGill died.

Six Students Named

The six students, said to be Albert Kennedy of Columbia, Clyde Richards of Athens, Ga., Jerome Pettis of Newberry, Robert Ford of Newark, N.J.; Anderson Davis of Atlanta, and John Middleton of Summerton, were each charged with inciting to and participating in a riot at Allen University.

They sang in unison, "Hail, hail, we'll go to jail," as they were hustled off by the sheriff. However, shortly after their arrests, unnamed parties retained Kenneth R. Kreps and T. Pou Taylor, white, as counsel and arranged for the release of the sextet on bail of $300 each.

Following their return to the campus the six students were notified by letter by Acting President Dent that they were expelled from the university. In the meantime, all are still on the campus, some still living in the dormitories and eating every day in the dining hall.

Blease Calls Names

At an arbitration meeting called by the faculty, ex-Governor Cole L. Blease, invited by the faculty, allegedly referred to the students as "d—s." Blease told the committee that the university property must be protected, and repeatedly called the students "d—s," to which none of the faculty is said to have objected.

Dr. Dent in a letter to Bishop Carl S. Flipper of Atlanta, said he believed that a large number of students would return voluntarily to their classes were it not for the "influence of the ring leaders and the fear of harm."

Pair Accused in Holdup Under Bail

BALTIMORE — Two men believed involved in a $10 holdup were ordered held under bail, on Thursday, pending grand jury action.

The men, Bernard Robinson, 33, of 1134 Brewer Street, and Robert Jefferson, 39, of 1014½ W. Preston Street, were said to have assaulted and robbed Jake Smith, of 16 East Street of $10.

Appendix 31

According to papers filed in the case, the assets now in the hands of Mr. Clark and Mr. Bryan are valued at less than $300,000. No payments have yet been policyholders.

Besides, Mr. Clark Bryan for a while cor modified insurance bus collected premiums.

At the beginning of teenth century, one bo average slave for $200; 1860 the price ranged fr to $2,000.

Appendix 32

OLS

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EFFICIENT SUPERVISOR

MISS SARAH MIMMS,
who directs the work of 118 workers on the WPA project in the office of the recorder of deeds who are making valuable contributions to the preservation of the archives of the nation's capital. They copy, on the typewriter, land deeds written by hand long ago in tattered, decaying ledgers.

It is conceivable that religion may be morally useful without being intellectually sustainable.—J. S. MILL.

* * *

Whatever strengthens and purifies the affections, enlarges the imagination, and adds spirit to sense, is useful.—SHELLEY.

No man will ever be a big executive who feels that he must, either openly or under cover, follow up every order he gives and see that it is done; nor will he ever develop a capable assistant.—JOHN LEE MAHIN.

Say Teachers' Pay Bill Based on Race

A sharp difference of opinion on the racial dangers couched in a bill to regulate teachers' pay in the District was expressed by Dr. Garnet C. Wilkinson, first superintendent of schools, and Congressman Arthur W. Mitchell.

The bill, now before Congress, had been interpreted by Mr. Mitchell as a move to establish a differential in salaries paid to teachers in Group B and Group D classes of the white schools and those paid teachers of the same classes in colored schools.

For this reason, he opposed the bill on the floor of the House, demanding time to study its purpose and content.

Interpretation

Dr. Wilkinson stated that this is not the purpose of the bill. He explained:

"The original salary act of 1924 required that 'the number of Group B and Group D salaries in any salary class shall be divided proportionately between the teachers in the white schools and teachers in the colored schools on the basis of enrollment of pupils in the respective white and colored schools.'

"In our new salary bill we decided to strike out the words 'in any salary class,' because we found it mathematically impossible to meet that requirement.

No Differentials

"The amended bill, therefore, simply calls for a distribution of salaries equally as proportionate as in the past. It does not mean an increase in one case and a decrease in another."

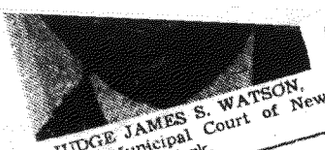
The two groups involved represent what is known as "superior salary grades," the AFRO was informed. Teachers are promoted to these classes after having proved their all-round efficiency in teaching work.

The darkest hour in any man's life is when he sits down to plan how to get money without earning it.—HORACE GREELEY.

April 22, 1939

Appendix #33

CLAUDE McKAY, ...riter, whose novel, ...rlem," created a stir ...rcles. Winner of the ...n Award in 1928, he once ...d in the Kingston (Jamaica) constabulary.



JUDGE JAMES S. WATSON, of the Municipal Court of New York.

CASPAR H... of New York, whose phil... pies have made it possible for ... many young Virgin Islanders to ... complete their education in the foremost comic... duced. United States.

NAACP Opposes Delay in Norfolk Teachers' Case

Refuses Municipal Counsel's Request for More Time

NEW YORK — The NAACP will not consent to any delay or dilatory tactics in the Norfolk, Va., teachers' pay equality case, Thurgood Marshall, assistant special counsel, said this week.

Mr. Marshall stated that Alfred Anderson, city attorney of Norfolk, suggested that a postponement of the scheduled April 20 hearing be agreed upon by parties involved in the case of Miss Aline Black against the Norfolk board of education.

State Not Included

Anderson informed Mr. Marshall that he had expected the State Board of Education to join the defense, but it had not done so. He said that in view of this turn, and of other city litigation, the court should be asked to place the equal pay suit on its May docket.

Mr. Marshall answered to the effect that while the decision is up to the court, the NAACP will insist that a hearing on the mandamus be held as soon as possible.

State Students Defy Cops in Bus Dispute

ETTRICKS, Va.—Five Virginia State College students, returning from Danville on an eastbound Greyhound Bus following their Easter vacation, in the face of threats of eviction and imprisonment, demanded continued, satisfactory transportation to their destination.

When the students refused to ride the remainder of their journey in a ramshackle school bus, the driver called to his aid three strong-armed officers who gruffly told the students:

Voices Jail Threat

"You will have to abide by this driver's orders or go to jail. Get out of that cab and board this school bus," one of the cops demanded of the students, as he threateningly waved a three-foot black broomstick.

P. S. Brodnax, senior business student, acting as spokesman for the group, reminded the driver and the officers that the company was bound by law to provide equal accommodations for both races.

Student Cites Virginia Law

Pointing out that space in a dilapidated county school bus did not satisfy the requirements of the Virginia Code, the students turned a deaf ear to the driver's threat when he declared: "You colored people will have to either board this extra bus or stand in the main coach."

Finally convinced of the stern determination of his passengers, the driver, then, offered the students passage on the Trailways Line, which proved a more comfortable and quicker means of travel.

MISS JANE SMITH, of St. Lucia, B.W.I., who is a school teacher there.

White Miss. Girl Didn't Know F. D. Was President

CLARKSDALE, MISS.—(ANP)—Colored residents here were frankly amazed as they read of the backwardness of the white Mississippi girl, Alma Mardis, 16, who, last week, visited Memphis and after exhausting her slender means was taken, penniless, to juvenile court for temporary aid.

The 16-year-old girl told officials she had never heard a radio, seen an electric light, talked over a telephone or been higher than the second floor of a building.

She didn't know Franklin D. Roosevelt was president, had never heard of Hitler nor Mussolini, was unaware of the meaning of Easter or of the Christmas tree, had never tasted an ice cream cone nor attended a movie.

Brotherhood Wins Northwestern Votes

NEW YORK, (ANP).—The national office of the Brotherhood of Sleeping Car Porters announced this week that the right to represent the coach car, parlor car and club car porters of the Northwestern Railroad was won by the brotherhood in an election.

The election was conducted by John F. Murray of the National Mediation Board and Milton P. Webster, brotherhood first vice president. A. Philip Randolph, president, said that the brotherhood has been certified by the Mediation Board.

DR. ROLAND B. SCOTT HONORED BY PEDIATRICS

CHICAGO—In recognition of his work as specialist in diseases of infants and children, the Chicago Pediatric Society, last week, elected Dr. Roland B. Scott to membership in the society.

Reds Urge U.S. to Probe Floggings

NEW YORK—The Communist party has sent to Attorney General Frank Murphy a memorandum citing the legal basis for Federal investigation of the flogging of Kirby Baldwin and Floyd Edwards in Goldsboro, N.C.

James Ford, member of the Communist national committee, said he believed that conspiracy to deny prosecution is justified. The two were jailed without a hearing and taken out later by a mob after an altercation with the mayor of Goldsboro.

SPEAKER FOR A DAY

HOMER S. BROWN, State Representative of Pittsburgh, who presided over the Pennsylvania Legislature, Thursday, while the body gave preliminary readings to nineteen bills. When he completed his job, Speaker E. J. Turner said: "The chair feels that the gentleman from Allegheny sets us all a very

Doctor and Wife File Cross Suits

MONTCLAIR, N.J. — Counter suits asking for divorce on the grounds of desertion have been filed by Dr. Carl Mahoney of 343 Orange Road and his wife, Mrs. Viola Mahoney, in chancery court.

Mrs. Mahoney asked for alimony. She stated that her husband is one of the owners of the ...boratories of Newark, and ...rns $75 a week.

Mitchell to Speak at Fla. A. and M.

TALLAHASSEE, Fla.—Congressman Arthur W. Mitchell has been scheduled as the principal speaker on a dual founders-dedication exercise at the Florida A. and M. College on Sunday, May 7.

P. B. Young, Norfolk, Va., editor and publisher, will deliver the commencement address on Monday, May 29, to a class of approximately 110.

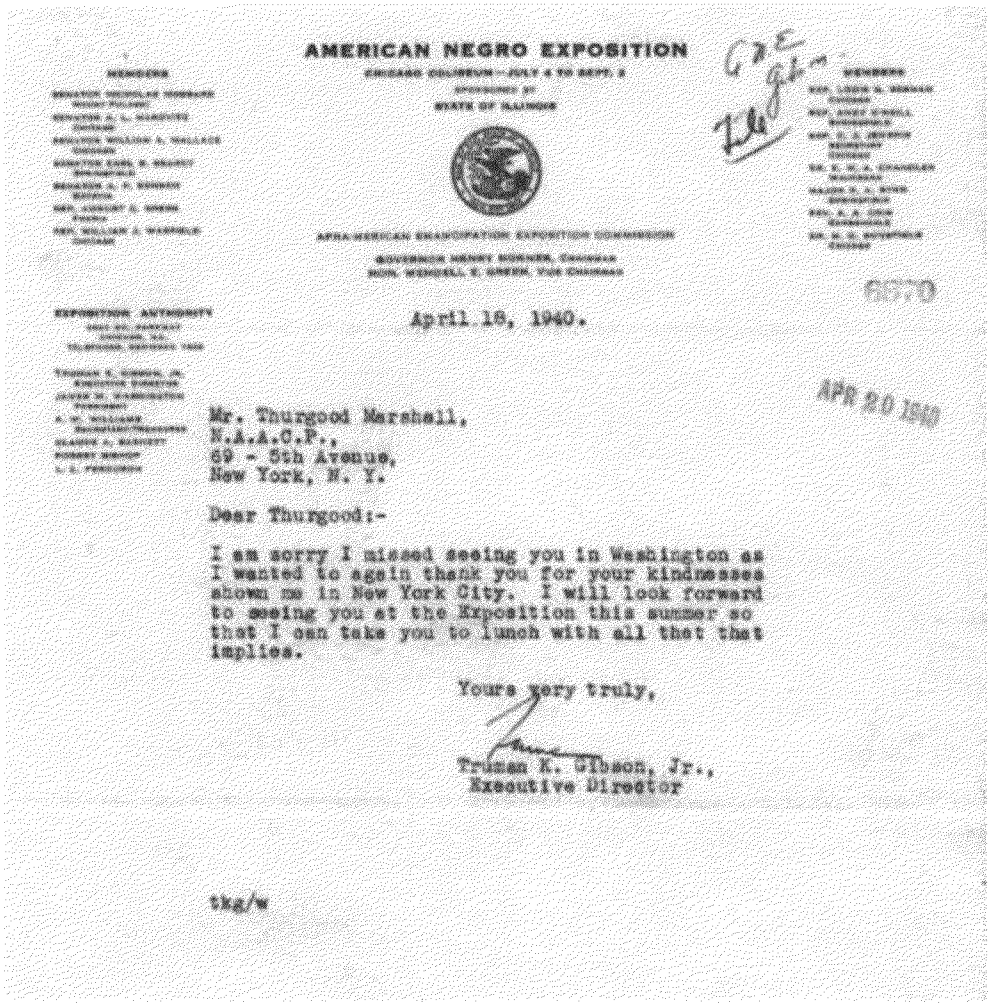
...ARK, N.J.

#34

Unequal Salaries Virtually a Tax

To pay colored rural teachers $500 a year and whites $1000 is equiva to paying them both the same and taxing the colored $500 a year. Edv Lovett (right), Thurgood Marshall (center) and Dr. Charles Hou (left) NAACP lawyers argued for salaries, no tax, at Rockville, Md., las week.

AFRO-AMERICAN —JUNE M.,



AMERICAN NEGRO EXPOSITION

CHICAGO COLISEUM—JULY 4 TO SEPT. 3

SPONSORED BY STATE OF ILLINOIS

AFRO-AMERICAN EMANCIPATION EXPOSITION COMMISSION

GOVERNOR HENRY HORNER, Chairman
HON. WENDELL E. GREEN, Vice Chairman

MEMBERS

EXPOSITION AUTHORITY

April 18, 1940.

Mr. Thurgood Marshall,
N.A.A.C.P.,
69 - 5th Avenue,
New York, N. Y.

Dear Thurgood:-

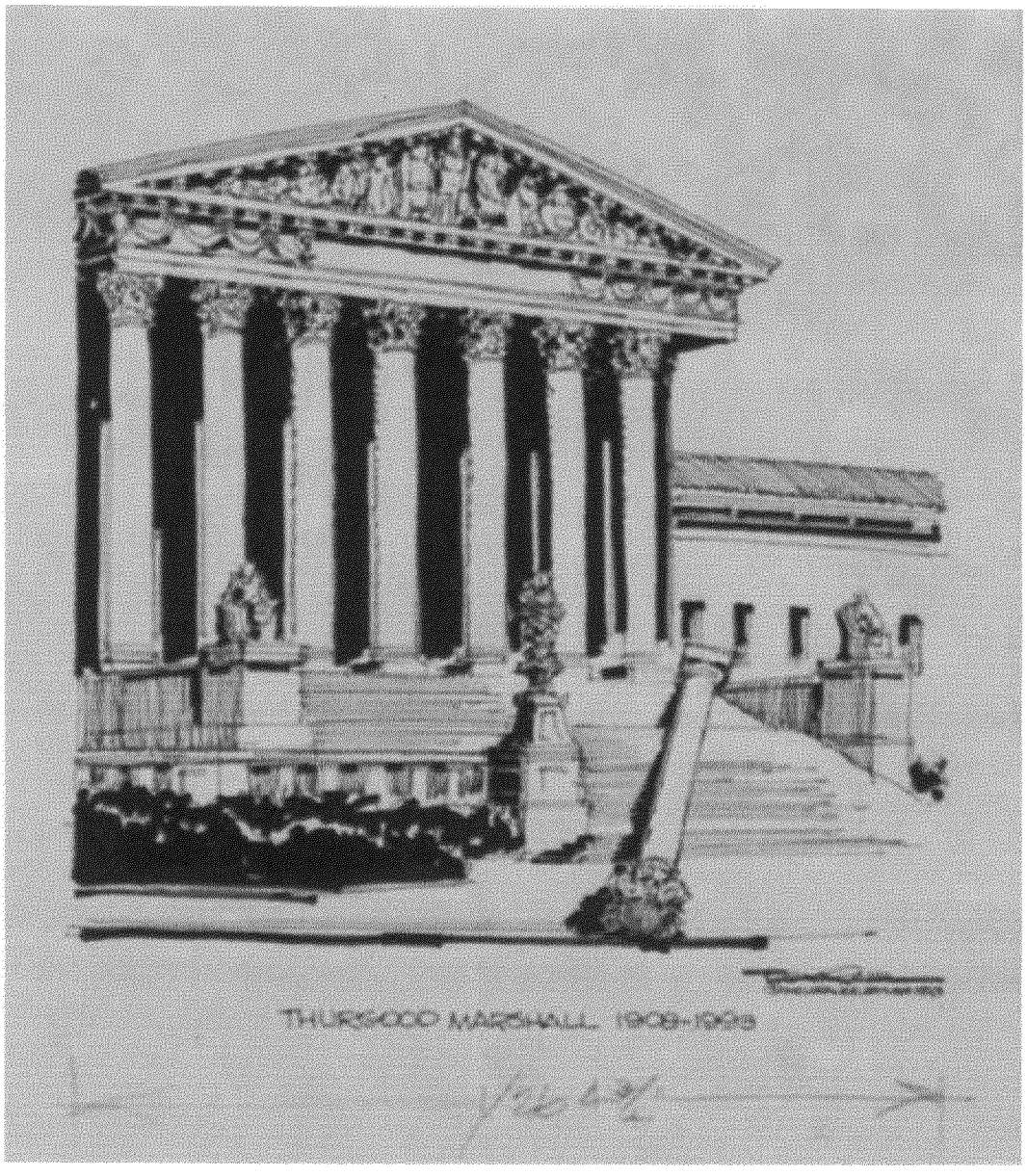
I am sorry I missed seeing you in Washington as I wanted to again thank you for your kindnesses shown me in New York City. I will look forward to seeing you at the Exposition this summer so that I can take you to lunch with all that that implies.

Yours very truly,

Truman K. Gibson, Jr.,
Executive Director

tkg/w

Appendix #35



Appendix #36

1 be equitable and just.

Walter Mills

Walter Mills, Plaintiff

Thurgood Marshall
Thurgood Marshall
1838 Druid Hill Avenue
Baltimore, Md.

Charles H. Houston
Charles H. Houston
615 "F" Street, N.W.
Washington, D. C.

Teresa Lancaster
Seminar Paper
Race & the MD
Experience

Professors Papenfuse
& Gibson

10-29-02

Leon A Ransom
Leon A. Ransom
615 "F" Street, N.W.
Washington, D. C.

Edward P. Lovett
Edward P. Lovett
615 "F" Street, N.W.
Washington, D. C.

W. A. C. Hughes, Jr.
W. A. C. Hughes, Jr.
22 St. Paul Street
Baltimore, Maryland

Counsel for Plaintiff

STATE OF MARYLAND
Baltimore City SS

I, Walter Mills, having been first sworn according to law, depose and say upon oath that I am the plaintiff named in the foregoing Complaint; that I have read said complaint and that the matters and facts set forth therein are true to the best or my information, knowledge and belief.

✓ Walter Mills

Subscribed and sworn to before me this 12th day of April, 1930, in the City and State aforesaid.