WILLIAMS v. ZIMMERMAN:
Maryland on the Road to Brown v. Board

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In 1954, a landmark United States Supreme Court decision changed the face of America forever. After more than 150 years of racial discrimination, hatred, violence and segregation, The Supreme Court finally banned racial segregation in American public schools. When it issued its decision in *Brown v. Board of Education*[1], the Court at last overturned the long-held principle of "separate but equal" first expounded in *Plessy v. Ferguson*[2] nearly a century before. The decision in *Brown v. Board* became the tool with which the door to racial freedom and equality in American society would at last be pried open.

It took many more years for the vision of *Brown* to become a reality – there are those still, this author included, who believe that it has yet to be fully realized – and the journey to racial equality has not been an easy one. For decades following the *Brown*

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[1] *Brown et al. v. Board of Education of Topeka et al.* 347 U.S. 483, 1954 (Overturning Plessy v. Ferguson and the "separate but equal" doctrine, the Court found that segregation had no place in public education, that segregation was a denial of the equal protection of the laws under the Fourteenth Amendment and that separate educational facilities were inherently unequal.)

[2] *Plessy v. Ferguson* 163 U.S. 537, 1896 Upholding a Louisiana statute that provided for separation of the races on railway cars and issuing in the era of "Separate but Equal" accommodations for blacks and whites in all segments of public life. ("we think the enforced separation of the races... neither abridges the privileges or immunities of the colored man, deprives him of his property without due process of law, nor denies him the equal protection of the laws, within the meaning of the Fourteenth Amendment")

decision, most public areas in the U.S. remained fully segregated. It wasn't until the civil rights movement gained momentum in the 1960's that the idea of full racial equality began to take hold.

But long before *Brown* - long before the Civil Rights Movement, Martin Luther King's now famous, "I Have a Dream" speech and the marches on Washington, D.C. and Selma, Alabama - the journey began for one little girl, Margaret Williams, in a one-room schoolhouse in rural Baltimore County, Maryland.

Long considered the very first of the school desegregation cases that eventually led to the landmark decision in *Brown*, *Williams v. Zimmerman*[3] set the stage for what would become a decades-long battle for true equality in American education. It would also set the tone for a the career of one America's most notable African-American heroes, Thurgood Marshall, the attorney that represented Ms. Williams in her attempts to attain equal education.

In this paper, I will examine the history of African-American education and provide a brief synopsis of the Supreme Court decision that started it all – *Plessy v. Ferguson* - and I will briefly explore the rise of the NAACP and its efforts to overturn legalized racial segregation. I will then explore *Williams v. Zimmerman*, the first of the school desegregation cases that led to *Brown v. Board of Education* and I will provide a brief biography of Thurgood Marshall from birth through the *Brown* years.

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[3] *Margaret Williams et al. v. David W. Zimmerman et al.* 172 Md. 563, 1937 (finding that separation of the races in public schools is settled policy in the state of Maryland and does not abridge the rights of African-Americans under the 14th Amendment)

PART I

A BRIEF HISTORY OF BLACK EDUCATION IN AMERICA –

Education in an Era of Slavery

In 1616, the first African slaves were brought to the American colonies. In 1790 there were an estimated 700,000 slaves in the United States. By the beginning of the Civil War in 1860, that number had swelled to nearly 4 million.[4] Slaves were often taught "ciphering" and simple mathematics because many had the responsibility of bookkeeping and the sale of inventory and marketing of farm products. But slave owners believed that an educated slave was a dangerous slave and so, fearing rebellion, most slave owners forbade access to education beyond the most rudimentary level. Following the Haitian slave revolt of 1791, laws forbidding the education of slaves rapidly appeared.[5]

But the laws didn't prevent slaves from struggling to attain an education. Throughout the South, underground schools sprang up in Georgia, North and South Carolina, Kentucky, Virginia and Louisiana. For some, classes were held secretly in "churches, deserted railroad cars, abandoned shacks, under the moonlight and virtually anywhere that was relatively secure." [6] As with the black abolitionist leader and statesman from Maryland, Frederick Douglass, some slave owners ignored the laws and taught their slaves to read and write. Anti-slavery societies and churches such as the Abolition Society and the Quakers openly defied the laws to establish schools of their

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[4] *The Struggle for Equal Education* by Clarence Lusane;1992, The African American Experience Series; Franklin Watts, New York
[5] Ibid.
[6] Ibid.

own. It is estimated that, by 1862, the year in which President Abraham Lincoln issued his Emancipation Proclamation, five to ten percent of all African-Americans were literate.[7]

From Emancipation to Reconstruction

In 1863, the first year that the Emancipation Proclamation took effect, hundreds of schools were opened for former slaves. Other than survival, access to education became the primary objective of newly freed slaves. In Maryland, freedom came in 1864 at the Maryland State Convention with the adoption of the 24th Article of the Declaration of Rights[8] and, when slavery was legally abolished by the thirteenth amendment to the U.S Constitution[9] on January 31, 1865, the effort to educate former slaves intensified and nearly any usable space was converted into a schoolroom.

On March 3rd of the same year, the Freedmen's Bureau was opened to assist former slaves in "assimilating" into U.S. society. [10] Commissioner Howard, the head of the Freedman's Bureau, believed that the best way to accomplish such assimilation was through education.[11] During this period, trade schools, night schools, colleges and universities including Howard University, The Hampton Institute, Fisk University and Atlanta University were founded.

The Freedman's Bureau provided additional assistance to churches and other relief organizations by supplying books and classroom space and providing living space

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[7] Ibid.

[8] "Hereinafter, in this state, there shall be neither slavery nor involuntary servitude, except in punishment of crime, whereof the party shall have been duly convicted; and all persons held to service or labor, as slaves, are hereby declared free."

[9] "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

[10] Lusane at footnote 4. *See also:* Alton Hornsby, Jr., *Chronology of African American History,* Gail Research, Inc Detroit, London (1991)

[11] *Bury Me Not in a Land of Slaves* by Joyce Hansen; 2000, Franklin Watts, New York pg 116

and salaries for teachers.[12] By 1869 the Freedmen's Bureau had recruited nearly nine thousand teachers to teach throughout the South. However, just one year later, the Freedmen's Bureau abandoned all attempts to educate black students, bowing to the pressures of Northern legislators and Southern racists.[13]

Following the Civil War, a number of private individuals, charities and churches financed the creation of several schools. Some of the first such schools to be sponsored by a northern organization appeared in Virginia in 1861.[14, 15] In Baltimore, The American Missionary Association (AMA) started four schools and the Baltimore Moral Improvement Association, sixteen.[16] In Fortress Monroe, Virginia the AMA opened a school with only six students. Classes were taught in the home of the teacher, Mrs. Peake, and, within a month, the class size had grown to nearly sixty students. [17]

In 1866 The Freedmen's Aid Society of the Methodist Episcopal Church (MEC) was formed. Under the auspices of The Board of Education for Negroes, The MEC sponsored no less than a dozen colleges and universities including Clark University in Atlanta, Georgia and Morgan College (now Morgan State University)[18] in Baltimore. It was the goal of the MEC to produce "a steady stream of teachers, mechanics, farmers, business men, musicians, preachers, doctors, dentists, pharmacists and lawyers... to go

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[12] Ibid., 114
[13] Lusane, pg 15
[14] Ibid
[15] Hansen, 112
[16] *Race and the Law in Maryland (tentative draft)* David S. Bogen, University of Maryland School of Law. Pg 109
[17] Hansen, 112
[18] Founded in 1867 as the Centenary Bible Institute, the name was changed to Morgan College in 1890 when its educational base was broadened to include instruction in the arts and sciences.

out to minister to the people of their own race and to make their contribution to the total of the world's human achievement."[19]

From Reconstruction to Jim Crow

With the advent of reconstruction in May, 1867 came the move toward free public schools in the South. Throughout the South, constitutional conventions were convened to create new state governments and rewrite state constitutions. Of 1,000 delegates elected to the conventions, 265 were African-American. Of these, 76 were from South Carolina, an overwhelming majority of that state's delegates. [20] Most of the state delegations agreed to the formation of free public school systems although many southern white delegates were opposed to funding black schools with public taxes.

Very few delegates would commit to stating whether the schools should be integrated and only two states, South Carolina and Louisiana, created laws specifically to integrate the schools. The law in South Carolina read, "...all public schools, colleges and universities of this state, supported in whole or in part by the public funds, shall be free and open to all the children of this state without regard to race or color."[21]

In Maryland, the Mayor and City Council of Baltimore appropriated funds for the education of black students in the City of Baltimore. The use of black teachers was phased out and, by 1868, all the teachers in the black schools were white. By 1883, Baltimore City had established primary and grammar schools and the first black high

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[19] *Methodist Adventures in Negro Education* by Jay S. stowell;1922, The Methodist Book Concern; Electronic edition, North Carolina Collections, University of NC at Chapel Hill

[20] Hansen, 97

[21] John Hope Franklin, *Reconstruction After the Civil War*, 6th ed. (Chicago; University of Chicago press, 1961) pg 60 as quoted in Hansen pg 98 - ("When the new constitution in South Carolina was ratified, it was called the 'work of sixty-odd Negroes, many of them ignorant and depraved, renegades, betrayers of their race and country." Hansen, pg 99)

school was opened.[22] Baltimore County began providing funds for the education of black children in 1872.[23] In 1888, a Baltimore City ordinance was passed that stated that "in no case should white and colored teachers be employed in the same school." [24]

In 1875 the first Jim Crow[25] Laws began to appear and, by 1885, almost all southern states had legislated the separation of black and white students. The rise of the Klu Klux Klan, the 1894 repeal of the 1870 and 1871 Civil Rights Acts and the Supreme Court's 1896 decision in *Plessy v. Ferguson*[26] dealt the final blow to any hope of quality education or social advancement for blacks. As a result, "Separate but Equal" became the legal doctrine that effectively allowed codification of segregation for nearly a century.

PART II

SEPARATE BUT NOT EQUAL: The legacy of *Plessy v. Ferguson*

The most prominent Supreme Court case affecting the rights of African-Americans in the last half of the 19th century is *Plessy v. Ferguson.* [27] In upholding laws and policies that separated whites and blacks in all public settings, state courts throughout the nation cited *Plessy's* "Separate but Equal" doctrine as a means to justify the continued segregation of white and black students in the public schools for more than half a century.

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[22] *Notes on the Progress of the Colored People of Maryland Since the War* (1890) pg 64 as quoted in *Bogen*, pg 109

[23] See: Appendix F, pg 8 (transcript of Louis Diggs, author of *In Our Voices*, Personal interview November 27, 2002)

[24] Bogen, supra footnote 22

[25] Jim Crow was the nickname given to a series of laws designed to maintain separation between blacks and whites throughout the South. Named after a fictional character of the early 19th century, Jim Crow Came to represent and justify the forced segregation of the races.

[26] *Plessy*. Supra at footnote 2

[27] *Plessy*. Supra at footnote 2

On June 7, 1892, Mr. Plessy, a resident of Louisiana, entered a railroad car on the East Louisiana Railway that was reserved for the exclusive use of white passengers and occupied a seat. Mr. Plessy was approached by the conductor of the train and was threatened, under penalty of law, with eviction from the train and imprisonment if he failed to vacate the car and take a seat in another car reserved for the exclusive use of "... persons not of the white race,"[28] the request being made "for no other reason than that the petitioner was of the colored race."[29] When Plessy refused the request, he was forcibly removed from the train with the "aid" of a police officer and jailed. "... [A]nd there held to answer a charge made by such officer to the effect that he was guilty of having criminally violated an act of the General Assembly of the State, approved July 10, 1890."[30]

Plessy challenged the Louisiana law as being unconstitutional for violating the Thirteenth and Fourteenth[31] Amendments of the U.S. Constitution. The Court rejected, out of hand, the argument that the Thirteenth Amendment, which abolished slavery or any form of involuntary servitude except for the punishment of a crime, had been

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[28] *Plessy* supra at footnote 2

[29] *Plessy* supra at footnote 2

[30] *Plessy* supra at footnote 2 ("This case turns upon the constitutionality of an act of the General Assembly of the State of Louisiana, passed in 1890, providing for separate railway carriages for the white and colored races. Acts 1890, No. 111, p. 152. The first section of the statute enacts "that all railway companies carrying passengers in their coaches in this State, shall provide equal but separate accommodations for the white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: Provided, That this section shall not be construed to apply to street railroads. No person or persons, shall be admitted to occupy seats in coaches, other than, the ones, assigned, to them on account of the race they belong to.")

[31] "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

violated.[32] In fact, the court used Plessy's Fourteenth Amendment argument to justify its own argument that neither legislation nor judicial mandate could force the "commingling of the two races upon terms unsatisfactory to either" and that separation of the races was a perfectly acceptable use of state police powers.[33]

The court then sounded the death knoll for any hope of integration in the public schools and when it cited an 1849 Supreme Judicial Court of Massachusetts case, *Roberts v. City of Boston;*[34] "The most common instance of this [competency of the state legislatures in the exercise of their police power] is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced." [35]

In the *Roberts* case, five year old Sarah Roberts sued the city of Boston Massachusetts by her father and next friend, Benjamin Roberts, under an 1845 statute which provided that "any child, unlawfully excluded from public school instruction in

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[32] *Plessy* supra at footnote 2: "A statute which implies merely a legal distinction between the white and colored races -- a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color -- has no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude. Indeed, we do not understand that the Thirteenth Amendment is strenuously relied upon by the plaintiff in error in this connection".

[33] *Plessy,* supra at footnote 2: "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power."

[34] Sarah C. Roberts vs. The City of Boston, 58 Mass.198 (*5 Cush. 198),*1849 (Plaintiff, a black child, appealed from the judgment of the Court of Common Pleas which ruled in favor of defendant in her action seeking damages for her exclusion from public school. The court dismissed the action)

[35] *Roberts*, supra at footnote 34

this commonwealth, shall recover damages therefore against the city or town by which such public instruction is supported." [36]

Young Sarah had made application to and been denied admission to the public school closest to her home solely "on the ground of her being a colored person."[37] It was the petitioner's contention that Sarah had been "unlawfully excluded from public school instruction" since she had met all requirements for admission to the public school nearest her home[38] and yet had been denied solely on account of her race.

In the statement of facts, the *Roberts* court revealed that, in 1846, citizens of the City of Boston had made petition to the primary school committee to abolish separate schools for white and African-American children and that the committee, in response to the petition, had adopted the following resolution: "Resolved, that in the opinion of this board, the continuance of the separate schools for colored children, and the regular attendance of all such children upon the schools, *is not only legal and just, but is best adapted to promote the education of that class of our population.*" [39] (Emphasis added)

In agreeing with the Committee and upholding the lower court's Decision, the *Roberts* court stated, "It is urged, that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste, founded in a deep-rooted prejudice

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[36] City of Boston, statute of 1845, c. 214

[37] *Roberts,* supra at footnote 34

[38] *Roberts* supra at footnote 34: "At a meeting of the general school committee, held on the 12th of January, 1848, the following vote was passed: --"The regulations of the primary school committee contain the following provisions: -- 1) Admissions-No pupil shall be admitted into a primary school, without a ticket of admission from a member of the district committee. 2)Admissions of Applicants- Every member of the committee shall admit to his school, all applicants, of suitable age and qualifications, residing nearest to the school under his charge, (excepting those for whom special provision has been made,) provided the number in his school will warrant the admission. 3)Scholars to go to schools nearest their residences- Applicants for admission to the schools, (with the exception and provision referred to in the preceding rule,) are especially entitled to enter the schools nearest to their places of residence."

[39] *Roberts* supra at footnote 34

in public opinion. This prejudice, if it exists, *is not created by law, and probably cannot be changed by law.*"[40] (Emphasis added)

Perhaps it is this statement in *Roberts* that the *Plessy* court relied upon when it stated that, "The argument also assumes that social prejudices may be overcome by legislation, and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. We cannot accept this proposition. If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals."[41]

The Court in Plessy stated that it was a "fallacy of the plaintiff's argument ... that the enforced separation of the two races stamps the colored race with a badge of inferiority" and that "If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it."

Again, it was *Plessy's* Fourteenth Amendment argument that the court used against him in holding that a man's reputation as personal property was not entitled to the protection afforded by the law. If Plessy is " ... a colored man and be so assigned, he has been deprived of no property since he is not lawfully entitled to the reputation of being a white man." [42] The court then went on to hold that that separation of the races, the doctrine of "Separate but Equal", could legally be practiced by the states.

This doctrine of separate but equal would continued to be upheld by courts throughout the nation until the landmark Supreme Court decision in *Brown v. Board of Education* in 1953 - more than half a century later.

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[40] *Roberts* supra at footnote 34
[41] *Plessy* supra at footnote 2
[42] *Plessy* supra at footnote 2

PART III

THE RISE OF THE NAACP: The challenge to "Separate but Equal"

"If we had not threatened to challenge the legality of the segregation system and if we do not continue the challenge to segregated schools, we will get the same thing we have been getting all these years – separate but never equal"[43]

Thurgood Marshall

The Birth of the NAACP

On August 14, 1908, in response to a long-standing history of political corruption and inflammatory reports by the local media about the arrest of two black men for the alleged assault of white women, racially motivated rioting broke out Springfield, Illinois. The state Militia was called in to restore order and, by the time the dust had settled the following morning, two African-Americans had been lynched, four whites had been killed and more than fifty other Springfield citizens had been injured.[44]

Following the riots, William English Walling published an article in the human rights newspaper, *The Independent*, decrying the city's response to the violence and its sanction of mob rule. Walling asked, "What large and powerful body of citizens is ready to come to the Negro's aid?"[45] In answer, Mary White Ovington[46], the "wealthy daughter of a white abolitionist"[47] wrote to Walling, requesting that they meet. In January of 1909,

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[43] *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Racial Equality* by Richard Kluger, Vintage books, New York, 1975. pg 71
[44] *History and Achievement of the NAACP* by Jacqueline L. Harris Franklin Watts, New York, 1992
[45] *NAACP-A History of the National Association for the Advancement of Colored People* by Charles Flint Kellog, Baltimore, Johns Hopkins University press, 1939 pg 11
[46] photo: appendix E, pg 5
[47] Harris, pg 21

Walling, Ovington and Henry Moskowitz, a Jewish social worker, met in Walling's apartment in New York City.[48]

It was decided at that meeting that a bi-racial organization should be formed to address the harms suffered by African-Americans. Others prominent Americans, including Oswald Villard, publisher of the New York Evening Post, were recruited to assist in the organization. Thus, was the NAACP born.

The Challenge to Educational Segregation

The first half of the twentieth century saw the beginning of a movement to use the courts as a means to end segregation in the public schools. In the 1920's a team of NAACP attorneys including Charles H. Houston, then the Dean of Howard Law School, William Hastie, James Nabrit and Leon Ransom developed and implemented the strategies that first sought to challenge segregation in higher education. Winning several court battles at that level, they reasoned, would set the pace for other cases seeking to overturn segregation at the elementary and secondary school levels.[49]

In 1929 the NAACP received a grant of $100,000 from the Garland Fund and hired attorney Nathan Margold to draw up a plan of action which came to be known as the Margold Report.[50] NAACP attorney Charles H. Houston had developed a strategy that called for individual challenges to public schools, demanding equal funding and facilities for black students under the "separate but equal" doctrine. It would, he reasoned, make segregation so economically offensive to state budgets, that integration would take place out of sheer necessity to protect the public coffers. [51]

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[48] Harris, pg 22
[49] Lusane, pg 22-23
[50] *Thurgood Marshall: American Revolutionary* by Juan Williams, Random House, New York, 1998
[51] *The Rise and Fall of Jim Crow*. Video Series PBS.org, 2002

Margold disagreed, believing that funding such a plan on a case-by-case basis would be nearly impossible and would require excessive diligence to search out appropriate cases in every jurisdiction. Believing that a frontal attack on segregation would be futile in light of Supreme Court decisions of the past, Margold instead proposed to attack segregation *as administered.* Plaintiffs would then sue to obtain the remedy of integrated services without attacking the absolute concept of segregation.[52]

In theory, this would have the same effect as the strategy proposed by Charles Houston. By demanding, within the framework of segregation, the equal protection if the laws in *administration* of those laws, the states would be forced to reach deeper into their pockets to ensure that the separate facilities for black and white students were, in fact, equal.

In the 1930's, the NAACP argued several cases at the state level and began to chip away at the "separate but equal" doctrine. One of the first such cases was that of Thomas Hocutt of North Carolina.[53] Mr. Hocutt applied for and was refused admission to the Pharmacy School of the state university in 1933. The NAACP sued but lost because the court found that Mr. Hocutt was not qualified for admission to the school, regardless of his race.[54] In fact, Mr. Hocutt was unable to prove his suitability for admission because the black president of North Carolina College refused to release Mr. Hocutt's transcript. The College president admitted that he wanted no part of integrating North Carolina's University system. [55]

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[52] Williams, pg 174
[53] *Hocutt v. Wilson*, N.C. Supreme Ct. County of Durham, Civil Issue Docket #1-188, March 28, 1933
[54] *Bogen*, 132
[55] Williams, pg 75

Though many of the early NAACP cases were lost at the state level, many more were yet ripening on the sidelines. In the coming decades, the challenge to segregation would pick up speed and the NAACP would continue whittling away at the doctrine of "Separate but Equal."

PART IV

ALL ROADS LEAD TO BROWN: The Maryland Connection

Pearson v. Murray – The University Of Maryland Law School Case

In 1936, the NAACP brought the case of Donald Gaines Murray[56] before the Court of Appeals of Maryland. In that case, a 22 year old resident of Baltimore City, Donald Gaines Murray, a 1934 graduate of Amherst College, applied to the University of Maryland Law School and was denied admission solely on account of his race. In all other respects, he had met all the criteria for admission. Murray challenged the decision of the Board of Regents of the University of Maryland at the trial court level as "a denial of equal rights because of his color, contrary to the requirement of the Fourteenth Amendment of the Constitution of the United States."[57] The trial court ordered the Regents to admit Murray to the law school and the Regents appealed.

At issue was whether the state of Maryland was, in fact, providing an equal education to African-Americans when it paid tuition for black Marylanders to attend out-of-state law schools and failed to provide equal facilities within the state. In answering

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[56] *Raymond A Pearson v. Donald G. Murray*, 169 Md. 478 (1936) (The court held that: 1) the state's operation of a law school was state action for purposes of the Fourteenth Amendment, 2) racial separation must provide equal treatment; 3) Providing tuition to a law school out of state did not qualify as substantially equal facilities 4) students of all races must be allowed to attend because it is the only law school available in the state.)

[57] *Murray*, supra at footnote 56

the Fourteenth Amendment question, the court, citing *Piper v. Big Pine School District,*[58] *Board of Education v. Foster*[59] and *Ward v. Flood,* [60] found that "the denial to children whose parents, as well as themselves, are citizens of the United States and of this state, admittance to the common schools solely because of color or racial differences without having made provision for the education equal in all respects to that afforded persons of any other race or color, is a violation of the provisions of the Fourteenth Amendment of the Constitution of the United States." [61]

In its decision upholding the lower court, the Court of Appeals held that, "We cannot find the remedy to be that of ordering a separate school for Negroes" and "If those students are to be offered equal treatment... they must, at present, be admitted to the one school provided."[62]

At last, the NAACP had won its first Maryland victory in the battle against school segregation. But it was a hollow victory. Although it was Charles Houston's hope that a favorable court decision desegregating schools at the college level would lead to additional victories for desegregation of elementary and high schools, the greater goal was to find and develop a case that would eventually be argued and won in the Supreme Court. It had been hoped that *Murray* would be that case.

Not long after the decision in *Murray,* the Maryland court of appeals heard another challenge to school segregation in Maryland. Once again, the NAACP hoped to take the case all the way to the Supreme Court and once again they would be disappointed. This time, the case involved a young black girl, Margaret Williams, who

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[58] *Piper v. Big Pine School Dist.*, 193 Cal. 664, 226 P. 926, 928;
[59] *Board of Education v. Foster*. 116 Ky. 484, 76 S.W. 354
[60] *Ward v. Flood,* 48 Cal. 36.
[61] Murray, supra at footnote 56
[62] *Murray,* supra at footnote 56

had been denied admission to a white high school in Baltimore County. Although it never made it to the Supreme Court, the case of Margaret Williams has long been considered the very first of the school desegregation cases which eventually led to the landmark Supreme Court decision in *Brown v. Board of Education* that forever banned racial segregation in public schools in America.

Williams v. Zimmerman – the challenge to high school segregation

In 1934 Margaret Williams was a 13 year-old resident of Cowdensville, Arbutus Maryland, an historically black community in southwest Baltimore County. And, like all African - American children in Cowdensville, Margaret had been educated in the only school available – a one-room schoolhouse on Garrett Avenue. Ms. Williams would later recall that, "Everyone in our neighborhood went to that little schoolhouse, and Mrs. Taylor [the teacher] taught us in groups according to our grade levels. We would have to sit quietly and do our assigned work as Mrs. Taylor taught the other grades."[63]

One-room schoolhouses were typical of black schools of the time and the little school in Cowdensville was no exception.[64] It was, as Margaret's sister, Mildred, later recalled, "crowded and...inconvenient but it was all that we had."[65] The one-room schoolhouse on Garrett Avenue served the children of Cowdensville from the first through the seventh grade but, as there were no high schools for African – Americans in Baltimore County, educational opportunities for black students beyond the seventh grade were limited.

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[63] *In Our Voices by* Louis Diggs, Uptown Press, Baltimore, 1999. pg 61
[64] Diggs, interview, pg 9
[65] Diggs, *Voices,* pg 65

Although Baltimore County had begun funding schools for African-Americans in 1872[66], there had never been a high school for black students or any provision for their education beyond the eighth grade. In response to repeated requests and petitions by the residents of Baltimore County, it was decided at a meeting of the school board on September 7, 1926 that Baltimore County would pay tuition to Douglass High School in Baltimore City for black students who had satisfactorily completed the seventh grade, had passed the admissions test and were approved by the superintendent.[67] At the same meeting, the board authorized discontinuance of the eighth grade for black students.

In 1934, there were only two options for a black student in Baltimore County who wished to continue her education beyond the seventh grade; either pass a written high school entrance exam required of all Baltimore County students to determine eligibility for tuition to Douglass High School in Baltimore City or find a way to finance her own tuition to Douglass or one of the few private or parochial schools available to black students.

The county-wide exam was given to white students in January of each year. The exam was given in the students' home schools, by teachers and administrators known to the students and who were familiar with the students' work. The grade a white student received on the exam was considered by the teachers and principals, in conjunction with the child's class work and general performance throughout the year, in determining whether the teacher would promote the student to high school. If the student did poorly

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[66] Diggs, interview, pg 8

[67] See: Appendix C, pg 218 (Petitioner's exhibit #23, "Minutes of the Meeting of the Board of Education of Baltimore County – September 7th, 1926")

on the exam, the teacher adjusted the student's "section" and the student was afforded an additional six months to improve his or her performance. [68] ,[69]

An identical exam was given to black students in June of each year. The test was given in three or four central locations throughout the county[70] and each student was responsible for getting to the test centers as the county did not provide transportation for black students. The test was administered by teachers and administrators unfamiliar to the students and who had no knowledge of the students' work throughout the year.[71]

In the black schools, no teacher or principal had the authority to promote a child to high school. The teachers and principals could only recommend a student to the Superintendent of the Board of Education and he alone had the authority to promote.[72] The sole criteria in consideration of promotion of a black student was the score he or she attained on the county-wide exam without any consideration of the student's school performance throughout the year. [73]

If an African-American student performed poorly on the exam, there was no opportunity for continued study or improved performance. If she wished to continue her education, she could return to repeat the seventh grade or pay her own tuition for attendance at Douglass High School or one of the few private or religious schools in Baltimore County. At that time, the cost of tuition at Douglass High School was $37.50 per quarter[74] – a significant sum.

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[68] See: Appendix A (Appellant's Brief) ; Appendix B, (Appellee's Brief)
[69] ibid.
[70] Ibid
[71] ibid
[72] ibid
[73] ibid
[74] Diggs, interview, pg 6 (quoting Charlotte Harvey)

Following completion of the seventh grade at Cowdensville Elementary School, Margaret Williams received a report card signed by Mrs. Violet Taylor, her teacher and the principal of the one-room Cowdensville school, which stated that she had satisfactorily completed her course of studies and that she had been "promoted to the eighth grade." [75]

On June 15th 1934, Margaret traveled to Towson and sat for the written exam required for high school admission, but failed with a score of 34 out of a possible 100 percent.[76] Soon after, Margaret's classmate and friend, Lucille Scott, sat for the exam at Catonsville High School.[77] She too, failed the exam. Despite the failure, Margaret was determined to continue her education and, in September of 1934, she began attending Douglass High School on her own initiative.

According to her teachers at Douglass, Margaret was an apt and qualified student and did "favorable work".[78] However, the William's family was unable, or unwilling, to pay the tuition required and, in October of that year, Margaret returned to the one-room schoolhouse on Garrett Avenue in hopes that, upon completing the seventh grade a second time, she would be able to pass the required high school exam.

In June of 1935 Margaret again received a satisfactory report card from her teacher with a statement that she had been promoted to eighth grade and, on June 20th,

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[75] Appellant's brief, appendix A, pg 15
[76] Appellee's brief, appendix B, pg 6
[77] Personal interview with Lucille Scott Jones, November 30, 2002. (Ms. Jones recalled that she and one other black pupil took the test that day. Ms. Jones remembered that the two sat together at a one table, alone in the midst of "all those white students." The two black students were separated before the exam began to prevent cheating. Ms Jones recalled that the exam took more than two hours to complete. She could not recall why the white students were being tested or if they were taking the same exam – JK:)
[78] Testimony of Joshua Williams on cross examination , appendix C, pg 58

she sat once again for the required exam. Once again, she failed, scoring 244 points out of a possible 390.[79,80]

In the fall of 1935, Margaret received a letter from J.T. Hershner, Assistant Superintendent of Baltimore County Schools informing her that she had failed the test and advising her that, if she were not yet sixteen years old and "have had only one year of the seventh grade, you should repeat the grade next year."[81] Since she was only 14 and had already completed two years in the seventh grade, Margaret's father, Joshua Williams, took her to the nearest Baltimore County high school in an effort to enroll her there.

On September 12, 1935, Margaret Williams applied for admission to Catonsville High School and was denied admission by the principal, David Zimmerman, on the grounds that the seventh grade report card, which stated that she had been promoted to the eighth grade, "was not in due form ... [and, furthermore, Mr. Zimmerman] had no jurisdiction over the colored race."[82,83]

History of the case

Following the refusal of David Zimmerman to admit Margaret to Catonsville high school, her father sought the counsel of Thurgood Marshall who then took the case to the General Counsel of the NAACP.[84] In a letter to Mr. Clarence Cooper, superintendent of

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[79] Appendix B, Appellee's Brief, pg 7
[80] note: the test given in June 1935 differed significantly from that given in June of 1934. The 1934 test was a subjective essay test whereas the 1935 test was an objective "fill in the blanks" type test. It is this test that Lucille Scott Jones recalls having taken.
[81] letter from JT Hershner to Margaret Williams dated 8 August, 1935 appendix pg
[82] Appendix B, Appellee's Brief, pg 4
[83] note: in his testimony to the court of appeals David Zimmerman stated on direct examination by Thurgood Marshall that "If Joshua Williams had been a white man and he had presented his daughter, a white girl, and had handed me a report card like this and the only difference would have been on the bottom reading promoted to high school...I would have accepted the pupil"
[84] Diggs, interview, pg 1

the Baltimore County Board of Education, dated September 13, 1935[85], Mr. Marshall made formal application on behalf of Margaret Williams for admission to Catonsville High School. The request was refused. A separate request for admission was also made on behalf of Margaret's classmate, Lucille Scott.[86,87] That request was also denied

On September 27, 1935, Mr. Marshall once again wrote to the county board of education recounting the history of the applications of both girls and requesting once again that the Baltimore County Board of Education reconsider its refusal to admit them. On the same date, Mr. Marshall also wrote to the State Board of Education requesting that the board "investigate this matter to the end that these children shall not be denied the equal protection of the laws guaranteed by the Constitution of the United States and the constitutional laws of the state of Maryland." [88] The state board refused to receive the appeal and did not respond to Mr. Marshall's request.

There being no other agency or superior entity to the Baltimore County Board of Education to which they could appeal, on March 14, 1936 [89] Joshua Williams as father and next friend of Margaret filed a petition for a writ of mandamus in the Circuit Court of Baltimore County to compel Margaret's admission to Catonsville High School.[90] On the same day, a show cause order was issued by C. Gus Grason. [91]

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[85] Plaintiffs exhibit #5, appendix C, pg 201
[86] Appendix C, pg 200, Petitioner's exhibit #4 (Letter dated 27 September 1935 from Thurgood Marshall to the state board of education)
[87] It is known that Lucille Scott was also represented by Thurgood Marshall in her attempts to enter Catonsville high school. However, Ms. Scott repeated the exam in June of 1935 and passed, receiving admission to Douglass High School. Therefore, Ms. Scott was never named as a plaintiff in this or any other case.
[88] Appendix C, pg 200
[89] Note: for a complete timeline of filings and hearings see Transcript of Record from the Circuit Court of Baltimore County appendix C, pg 3-4
[90] Appendix C, pg 5 (Petition for writ of mandamus)
[91] Appendix C, pg 9 (Show cause order)

Testimony began on September 14, 1936 and, when the case of Williams v. Zimmerman went to trial before Judge Frank Duncan, Margaret Williams was represented by an impressive team of NAACP lawyers. Thurgood Marshall took the position of lead counsel in the case and was supported by his friend and mentor, Charles Houston and a former classmate from Howard, Edward Lovett. Adding additional weight to the team was one of Marshall's former law professors from Howard, Leon Ransom.[92]

Judge Duncan refused to even entertain the argument that the county schools were separate and unequal or that the absence of any educational opportunities beyond the seventh grade were evidence of discrimination in and of themselves. Following the trial, a final order dismissing the petition was issued by Judge Duncan of the Circuit Court of Baltimore County on October 23, 1936 [93,94] and on December 21, 1936 Marshall filed an order for an appeal to the Court of Appeals of Maryland. The Court of Appeals issued an opinion upholding the lower court's decision on May 26, 1937.[95]

In the circuit court

The plaintiff's arguments

It was the plaintiffs position that Margaret Williams was duly qualified for admission to the high school because she had satisfactorily completed the seventh grade as evidenced by the report card bearing the words "Promoted to eighth grade" and that

[92] Thurgood Marshall would later recall that attorneys for the Board of Education were "exceptionally mean and arrogant" and that they continually "injected prejudice" into the proceedings.
[93] order of court appendix C, pg 45
[94] note: for the purposes of this paper, all testimony referred to is that of the circuit court and is taken from the transcript of the record as submitted to the Court of appeals of Maryland.
[95] Appendix D

the Baltimore County Board of Education had no authority to require her to pass a test as a requirement for admission.[96]

In the alternative, if the Board was authorized to require the test, the test was unconstitutional on its face because it discriminated against black students in form and purpose.[97] The test was not given to black and white students under similar conditions, at similar times in the school year and was administered to black students by those completely unfamiliar with the curriculum and coursework of the African-American students. In fact, testimony showed that portions of the exam tested students' abilities in areas they had never studied and had had no experience with.[98]

The African-American students suffered an immense disadvantage because they were removed from the familiar surroundings of their home schools and placed in areas they were unfamiliar with and, furthermore, they suffered the additional burden of having to arrange transportation to testing centers far from their homes while white students enjoyed the advantage of taking the exam in familiar surroundings, with teachers and administrators that were familiar to them.

Because the exam was the sole criteria for determining a black student's suitability for high school, whereas it was only a portion of the factors considered for admission of a white student, the test was illegally used as a tool to discriminate against black students and to prevent their enrollment in high schools and the subsequent obligation of the Board to pay for tuition.[99]

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[96] Appendix B (Appellant's brief)
[97] ibid.
[98] ibid
[99] Thurgood Marshall stated that "One of our contentions is that the examination if such was given during the period of 1934-5 was an unfair test and examination and was in and of itself an arbitrary attempt on the part of the county board of education to discriminate against the infant petitioner and others of her race" (direct examination of Dr. Davids, Appendix C, pg 141)

In support of the argument that the county board had no authority to require a test as a condition of advancement to high school, the plaintiffs produced the November, 1927 "Manual of Standards for Maryland County High Schools" issued by the State Board of Education. On page 175 of that manual[100] it reads:

"ADMISSION BY ELEMENTARY SCHOOL CERTIFICATE"

"The high school, in order to fulfill its function should articulate both with the schools below and with the schools above. The high school is not a separate institution but an integral part of a common school course of eleven or twelve years. In general, for a pupil to enter upon the first year of high school work he should have completed in a satisfactory manner the elementary course of seven or eight years.

"The principal test for entrance should be the ability to do the work of the high school this is usually based on the character of the pupil's previous achievements as shown in his daily work, tests and formal examinations, these factors being taken as a whole. The *possession of an elementary school certificate, signifying the successful completion by the pupil of the course of study prescribed for the elementary school is sufficient to entitle the pupil to enter an approved high school without examination.*" (emphasis added)

[100] Appendix E, pg 1-2

The plaintiffs argued that the report card Margaret Williams received with the words "promoted to the eighth grade" was sufficient evidence that she had satisfactorily completed elementary school and was qualified to enter high school without examination according to the standards set forth in the manual. In addition, the Baltimore County Board of Education was bound by the language of the state manual because the Board received state funding.[101]

Furthermore, it was argued, the exclusion of black students from Baltimore County high schools and the "wrongful and arbitrary actions of the defendants violate the Declaration of Rights, the Constitution and laws of the State of Maryland; and constitute a denial by the State of Maryland to each petitioner of the equal protection of the laws guaranteed them [by] the fourteenth amendment of the Constitution of the United States and the laws is the land."[102,103]

The Respondent's Arguments

It was the position of the defendants that Margaret Williams was not, in fact, qualified for admission to high school because the report card that she produced to prove satisfactory completion of the seventh grade and qualification for promotion to high school was, first and foremost, not in "due form." [104,105]

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[101] §193

[102] Appendix C, page 8 (petition for writ of mandamus)

[103] *Raymond A. Pearson v. Donald G. Murray* 169 Md. 478; "The State now provides education in the law for its citizens. And in doing so it comes under the constitutional mandates applicable to the actions of the states" ; "It would, therefore, not be competent to the Legislature, while providing a system of education for the youth of the State, to exclude the petitioner and those of her race from its benefits, merely because of their African descent, and to have so excluded her would have been to deny her the equal protection of the laws within the intent and meaning of the Constitution." *Pearson v. Murray* citing *Ward v. Flood,* 48 Cal. 36, 51.

[104] Appendix B, pg 4 (Appellee's Brief)

[105] See Appendix E, pg 2-3 (example of Baltimore County report card)

It was customary in Baltimore County in the 1930's for a teacher or principal to mark a student's report card so as to indicate a recommendation either for "promotion" or "promotion to high school."[106] In this manner, "promotion" would indicate a teacher's recommendation that a student be promoted *out* of school following the seventh grade. Such a promotion was reserved for students who showed little ability or qualification for continuing their education to the high school level. "Promotion to high school" would, in like manner, indicate a teacher's recommendation that a student be promoted to high school. In no case was the teacher of a black student given authority to promote a student "to high school."[107]

The report card that Margaret Williams received contained the words "promoted to eighth grade." It was the testimony of both Mr. Zimmerman, principal of Catonsville High School and Mr. Cooper, Superintendent of the Board of Education that, since no eighth grade existed at that time in Baltimore County , the only certificate that signified satisfactory completion of the seventh grade was a certificate of "promotion to high school." [108] Since black teachers had no authority to promote to a higher grade, the word "promoted" in this case indicated a recommendation that the child be promoted *out* of school.[109]

In addition, the defendants argued, Margaret Williams was properly denied admission because she failed to pass a test required by the Board of Education for all students in Baltimore County wishing to enter high school. The Board of Education was, they argued, "authorized, empowered, directed, and required to maintain a uniform and

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[106] Appendix C, pg 63
[107] Appendix C, pg 73
[108] Appendix B, pg 13
[109] ibid

effective system of public schools" [110] by "determin[ing] with and on the advice of the county superintendent the educational policies of the county and... prescrib[ing] rules and regulations for the conduct and management of the schools"[111] It was this authority, they argued, that authorized the Baltimore County Board of Education to require an exam for the admission to high school in contrary to the "Manual of Standards for Maryland County High Schools."

Furthermore, the appellees contended that the suggestions in the manual were not mandatory and were never adopted as by-laws and that the language of the manual was intended as "introductory observation" and did not limit or control the actions of the school board.[112] The county-wide exam for admission to high school had been used since 1927 and, so far as the "Manual of Standards" had ever been binding, it's requirements were superceded by custom.[113]

On the matter of the test being discriminatory on its face, the appellees argued that the difficulty of the exam was immaterial as long the board had a right to give it. In fact, the defendants argued, the exact same test was given to white students in January of that year and 95% of white students passed it easily, proving that the test was not defective.[114] In addition, the required passing score on the exam had been lowered for black students in an effort to qualify more students for admission to the high schools.[115]

The defendants believed that the differences in the treatment of the students and administration of the exam were not discriminatory at all but were in fact, designed to be

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[110] Appendix B, pg 9 (sec. 41 art 77 of the code of public general laws (Flack's 1935 Supp)
[111] Appendix B, pg 10 (§ 43, art 77)
[112] Appendix B, pg 14
[113] Ibid.
[114] Appendix B, pg. 18
[115] Ibid.

more favorable to the black students by providing a more objective environment for testing that was more desirable and better calculated to achieve a fair outcome. In fact, the defendants stated that gathering *all* the students together in central locations and administering the test in such an objective manner was far more desirable than providing testing in the individual schools. However, it was the great number of white students that made it impossible to do so.[116]

In the alternative, the defendants argued, even of the court finds that the exam is discriminatory, the petitioner was not entitled to the relief sought. The remedy for a test that is discriminatory is not admission to the white high school, they argued, but a more equal test of achievement.[117] Furthermore, the authority and discretion of the Baltimore County Board of Education were not subject to control of the court by writ of mandamus.[118] The state board of education had the sole discretion to "*decide all controversies and disputes arising under the law as to its intent and meaning and... their decision shall be final*" (emphasis in the original)[119,120]

While the petitioners had argued that refusal to admit Margaret Williams to the white high school was discrimination like that held to be unconstitutional in *Murray*, the defendants maintained that *Murray* is distinguished from this case because in *Murray* there were no other law schools in Maryland and the state hadn't made sufficient provision for attendance outside the state.[121] Here, the provision was made for attendance

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[116] Appendix C, pg 71
[117] Manger v. Board of Commissioners 90 Md. 671(Appendix B, pg.19) Frederick County Commissioners v. Fout 110 Md. 165
[118] *Manger*, supra
[119] (§ 11 (Bagby's 1924)
[120] The authority of the state board to decide controversies has been upheld in School Commissioners v. Morris 123 Md. 398, Zantzinger v. Manning 123 Md. 169, Underwood v. School Board 103 Md. 181, Shober v. Cochrane 53 Md. 544, *Wiley v School Commissioners* 51 Md. 401
[121] Appendix B, pg 22

at another high school within the state and there is nothing in the U.S. Constitution that required that there be a school in every district.[122]

According to the defendants, Margaret Williams was properly denied admission because she is black and therefore not entitled to attend a white high school. The principle of separation of the races was clear: "It shall be the duty of the county board of education to establish one or more public schools in each election district for all colored youth between six and twenty years of age to which admission shall be free ....*provided that the colored population of any such district shall in the judgment of the county board of education warrant the establishment of such a school or schools*" (emphasis added)[123,124]

Appellees claimed that the county was unable to provide high schools to African-American students because there was only small number that passed the test and qualified for admission to high school.[125] Even though Baltimore County had no black high schools, it was argued that the defendants satisfied the statutory requirement of "separate but equal" by providing admittance and paying tuition to a Baltimore City school. Furthermore, appellees claimed, the city facilities provided for black students were at least equal to, if not superior to, the facilities offered to white students in the county.[126]

In the Court Of Appeals –

In his Circuit Court ruling denying the petitioners' writ of mandamus, Judge Duncan so narrowly considered the issues that he left very little upon which the

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[122] Appellee's brief, pg 23 citing *Gong Lum v. Rice* 275 us 76
[123] Appellee's brief, pg 21) (§ 200, art. 77 of the code of public general laws (Bagby's 1924 edition) (chapter 377 of the laws of 1872)
[124] Defendants cite Roberts v. City of Boston , State v. Duffy 7 nev. 342, *People v Galagher* 93 NY 438
[125] appellees brief, 8,9
[126] Appellee's brief, pg 9

petitioners could appeal. Judge Duncan had handily side-stepped the issue of whether black schools were inherently unequal in quality and the greater issue of segregation itself.[127] Likewise, Judge Bond of the Court of Appeals limited his opinion to narrow consideration of the following 6 issues:

Was Margaret Williams lawfully qualified for admission to the high school?

"The question of whether the child had all the qualification that was lawfully required for a high school education is... a foremost one, for if she was not duly qualified to avail herself of any provision made for it by the county her admission to any could not be compelled." [128]

Margaret Williams' teachers and principal in the elementary school were satisfied that she had completed the required elementary education and was prepared for high school work. This was evidenced by the report card that she presented to Mr. Zimmerman when attempting to register at Catonsville High School.

Did the elementary principal have the authority to promote high school?

The meaning of Violet Mae Taylor's words, "promoted to eighth grade" was clear but they lacked authority because they were "not exactly those prescribed for certificates." [129] The Court agreed with the appellees that the principal lacked authority to make the determination that she should be admitted to the high school so, even if the words had been those required ("promoted to high school"), Margaret Williams would still have been lawfully denied access to the school because the principal lacked the authority to promote her.

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[127] Williams, pg 80
[128] Appendix D, pg 4 (Ct of appeals decision)
[129] ibid

Was the test, as given, authorized as a requirement for admission to the high school?

The only evidence produced by the plaintiffs to support their argument that the test was unauthorized was the "Manual of Standards for Maryland County Schools." The court found that the manual had not been modified at the time of this case and was still a valid manual of standards. However, the court agreed with appellees that the instruction in the manual hadn't been followed in quite some time, hence, "so far as it might ever have been binding , [it]was superceded by custom"[130] The state superintendent testified that the manual was to be provisional only and not binding[131].

The tests were regularly prepared after careful consideration and comparison with other tests in many jurisdictions with the full knowledge and under the authority of the state board of education and the state board had the authority to determine the educational policies of the state including testing.

The court reasoned that, if the test is not authorized to be given at all, then the remedy was not that the plaintiff should be admitted to the white school, but that admission to the black school should be made without the test. If she was denied admission to the black high school after failing a test which was legally authorized to be given to the students but was defective in form or purpose, it is not admission without a test that is required, but a better test[132]

Are there differences in the admissions test that amount to discrimination?

The plaintiffs argued that the test, in form and purpose, was used as a discriminatory device meant to limit the number of black students admitted to high school and therefore limit the financial burden on the county to pay for the high school

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[130] Appendix D, pg 7
[131] Appendix C, Testimony of Dr. Cooper
[132] Appendix D, pg 5

education of blacks. They also argued that the test is not given equally to both black and white students and that it is given to black students under conditions that deny them equal opportunity. The appellees on the other hand contend that the purpose of the admissions test was to objectively determine which students, black or white, were eligible for admission to the high school.

The Court found that the differences in administration and grading of the test, and the purpose for which it was used (namely, as the sole criteria for admission to high school for black students), were only minor differences and this, in they eyes of the Court, did not amount to discrimination. In fact, that the tests were scored according to reduced standards for black students was evidence, not of discrimination, but of advantage afforded the black students.

Is segregation of the races in the public schools appropriate treatment?

Citing Md. Code, art 77, §§114, 200-203, 211 and 256, the Court stated that "Separation of the races is normal treatment in this state...and given the settled policy of separation, the petitioner's primary right is to separate facilities substantially equal to those provided to white children." Relying on Murray, the court continued, "Admission to the white school could be required only upon a showing that the equality of treatment is not obtainable separately."[133]

If segregation is appropriate treatment, are the facilities provided substantially equal to those of the white schools?

Citing *Murray*, the Court reasoned that admission to the white school could only be made upon finding that the facilities afforded to black students were substantially unequal. The petitioner argued that inequalities in elementary teaching had an effect that

[133] Williams, pg 5 (See also: *Univ. Of Md. V. Murray,* 169 Md. 478)

denies black students equal opportunities to qualify for the tests. The court stated that, if it is an inequality in the elementary schools that makes the pupil less qualified for high school, then this a discussion not appropriate for this court in this case. That would require a remedy that reaches farther back.

The court believed that, under some circumstances, there was unavoidable inequality in dealing separately with the races and those inequalities "would render the maintenance if the separation inconsistent with the constitutional requirement of equal protection of the laws." But, the court continued, "separate" must necessarily involve some "incidental" differences and, in this case, those differences did not amount to constitutional violation.[134]

Holding

Judge Bond of the Court of Appeals upheld the circuit court's refusal to issue the writ of mandamus. The court felt that the evidence had disclosed only minor differences in the administration of the test between black and white students and those differences were not substantial enough to amount to discrimination. In its holding, the court stated "Allowing all possible force to the contention that colored children were not accorded equal treatment in the examinations, this court is of opinion that consideration of the evidence now produced discloses differences of only a minor importance. As stated and that these are not such as would justify issuance of the writ of mandamus."[135]

After the fall

Following the decision in *Williams v. Zimmerman*, there were few challenges to segregation at the high school and elementary school level for many years. It would be

[134] Appendix D, pg 6
[135] Appendix D, pg 8

nearly two decades before the challenge to segregation would work up a full head of steam but, in 1949 and 1950, dozens of cases would be heard in courts across the country, most of those argued by, or assisted by, NAACP attorneys.[136] Most ended as *Williams* had, with decisions that left plaintiffs no better off then when they had begun. It wasn't until 1954 – twenty years after Margaret Williams first sat for the Baltimore County exam – that Americans were forced to reconcile themselves to remedying nearly two centuries of injustice served upon African-American citizens.

Margaret Williams did go on to high school. In the fall of 1937, Margaret was accepted by the Oblate Sisters of Providence to complete her education at St. Francis Academy. After graduation from St. Francis, Margaret attended nursing school and practiced nursing for more than thirty years. She lives in Baltimore County. Her sister, Mildred, still lives in the family home on Garrett Avenue, near the one-room Cowdensville Elementary School, which still stands today.[137]

Lucille Scott graduated from Douglass High School in 1941. Following graduation, she worked in a beauty shop and, later, became an assistant in a nursing home. In the early 1940's, Lucille married Winston Jones and moved to Cherry Hill. They have two children. Ms. Jones resides in Baltimore.[138]

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[136] Rice v. Arnold, 340 U.S. 848, (1950) ; Boyer v. Garrett, 183 F.2d 582, (1950); Epps v. Carmichael, 93 F. Supp. 327, (1950); Carter v. School Board of Arlington County, 182 F.2d 531, (1950); Brown v. Ramsey, 185 F.2d 225, (1950);McKissick v. Carmichael, 187 F.2d 949, (1951); Briggs v. Elliott, 98 F. Supp. 529, (D.S.C. 1951);Brown v. Board of Trustees, 187 F.2d 20, (1951)Winborne v. Taylor, 195 F.2d 649, (1952); McSwain v. County Board of Education, 104 F. Supp. 861, (1952); Gebhart v. Belton, 33 Del. Ch. 144, (1952) ;Wichita Falls Junior College Dist. v. Battle, 204 F.2d 632, (1953)

[137] Diggs, *In Our Voices* pgs 61-81. (note: The schoolhouse on Garrett Avenue was sold by the County and now serves as a private residence.-JK:)

[138] Ibid

PART V

A short Biography of Thurgood Marshall

Thurgood[139] Marshall was born in born in Baltimore on July 2, 1908 to William Canfield Marshall, a steward, and Norma A. Williams Marshall, a Baltimore City school teacher.[140] Willie, as Thurgood' s father was known, had long suffered the stinging effects of racism, and had taken a keen interest in watching how the justice system worked. He would often sit for hours in the back of Baltimore courtrooms, watching trials and.[141]

Willie would often challenge Thurgood and his brother, William Aubrey Marshall, to long debates on just about every topic - from the weather to local events. Employing the style of argument he had learned by watching trials, he challenged Thurgood to back up any statements he made with a logical, thorough argument. Thurgood credits those arguments with his father with helping him develop his own argumentative style.[142]

Thurgood entered Douglass High School (Then known as the "Colored High and Training School" or, simply, "Colored High") in 1921.[143] Thurgood was not an extremely studious child and often found himself on the receiving end of discipline for being the class clown. As punishment for wrongdoing, the principal would often send Thurgood

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[139]Originally named "Thoroughgood" after his grandfather, a slave brought to US from African Congo the young man changed his name to "Thurgood" because it was easier to spell. (*Thurgood Marshall: Supreme Court* Justice by Joe Nazel, Melrose Square Publishing, Los Angeles, 1993, pg 28) (See also: Williams pg 34)

[140] Nazel, pg 27

[141] Williams, pg 35

[142] Ibid.

[143] Ibid.

to the basement of the school with a copy of the U.S. Constitution. By the time he graduated, he had memorized it. [144]

Thurgood joined the debating team during his freshman year at Douglass and soon became captain of the varsity debating team. [145] Throughout high school, Thurgood maintained a "B" average and, when he graduated from Douglass in 1925, he was in the top third of his class. According to school records, Thurgood was never late to class and was only absent one day. [146]

Though his parents had hoped that he would train to become a dentist, Thurgood's sights were set in a different direction. Following graduation from Douglass, Thurgood attended Lincoln University in Pennsylvania. In 1926 he pledged Alpha Phi Alpha Fraternity[147] but he liked to play pranks which eventually lead to his expulsion for hazing a student. [148] Due in part to the efforts of his classmate, Langston Hughes, Thurgood and the other students who had been expelled were able to successfully petition for re-admittance to the university. [149]

Despite a promise to wait until he had finished school, Thurgood married Vivian Burey on September 4, 1929 and, the following year, he received an A.B. degree from Lincoln. [150]

Contrary to popular belief, the is no evidence that Thurgood ever applied for admission to the University of Maryland School of Law.[151] It was well known at the time that the university's long standing policy of not admitting black students would prevent

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[144] "Before I left that school, I knew the whole thing by heart" (Williams, pg 34)
[145] Williams, pg 36
[146] Ibid
[147] Nazel, pg 57
[148] Williams, pg 47
[149] Nazel, pg 55, See also: Williams, pg 47
[150] Nazel, pg 64).
[151] Williams, pg 52

his application from even being considered, so he never bothered to apply. But the school's policy would be a barrier that continued to rankle Marshall for years and became a catalyst in his determination to overturn the university's segregationist policies.

In the fall of 1930 Thurgood was accepted to Howard University School of Law in Washington, D.C. and soon became the top student in the first year class. To offset the cost of tuition, Thurgood began working as student assistant in the law library which enabled him to get close to Charles Houston, dean of the law school, who would later become his mentor, friend and partner. [152]

During his senior year at Howard, Marshall joined Houston and law professor Leon Ransom in the defense of a black man, George Crawford, from charges that he murdered two white women. In 1933, Thurgood graduated from Howard first in his class.[153]

Following graduation from Howard, Marshall was invited to tour black schools in the South with Charles Houston. Houston was working with the NAACP and he wanted a first-hand look at black elementary schools in the south in order to prepare for the challenge to school segregation as outlined in the Margold report.[154]

In 1933, Dean Roscoe Pound offered Thurgood a scholarship to Harvard University to pursue an advanced legal degree. Marshall rejected the offer, opting instead to open his own legal office in Baltimore. That same year, Marshall passed the Maryland Bar Exam on the first try and took the oath on October 11, 1933.[155]

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[152] Williams, pg 56
[153] Although there had originally been 36 students in the class, only 6 survived the rigors of law school to make it to graduation. Williams pg, 59
[154] Ibid.
[155] William, pg 61

Marshall's first cases as an independent attorney were often criminal defense matters and, as he was serving a black community with little financial resource, Marshall often found it difficult to get paid. However, his fortune began to change when, in the summer of 1935, Joshua Williams hired Marshall to assist him in attaining admission for his daughter, Margaret, to Catonsville High School.

In the Summer of 1935 Lillie Mae Jackson and Carl Murphy of the African-American Newspapers, began searching for suitable plaintiffs to begin the challenge to high school segregation. Marshall and a local attorney, Warner Mc Guinn,[156] had been traveling throughout Baltimore County, documenting the condition of black schools. The Afro reported that Marshall and Mc Guinn found the black schools "falling down [with] tottering roofs, [and] rotten floors.[157] When Joshua Williams brought the matter to Marshall, Marshall immediately brought it to the attention of the NAACP.[158] Perhaps this would be the case they had been looking for. Marshall was appointed as special counsel to the NAACP and retained by the local branch to represent Williams.[159]

In 1936 Marshall was asked to run for congress as an independent and, though he toyed with the idea, on the advice of Carl Murphy, he declined to run and concentrated instead on building his law practice.[160] But What Marshall truly wanted was to work full-time with the NAACP.

During the 27th national conference of the NAACP in Baltimore, Marshall wined and dined Charles Houston, Walter White and Roy Wilkins in an effort to persuade them to hire him on at the NAACP national offices. Murphy had arranged for Marshall to give

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[156] Ibid.
[157] Williams, pg 79
[158] Interview with Louis digs and Lucille Scott Jones, November 30, 2002
[159] Diggs, interview and Nazel, pg 90
[160] Williams, pg 82

a speech at the conference on the differences and disparities between black and white education and, as a result of that speech, many new members joined the NAACP. In October 1936, the NAACP officially offered Marshall a six month assignment with the national office, which eventually led to his permanent employment. Marshall accepted and he and wife, Vivian, moved to NY.[161]

In the years that followed, Marshall continued to work closely with local branch offices and, in 1939, he was admitted to argue before the Supreme Court of the United States. Marshall soon began wracking up an impressive record of wins as he slowly chipped away at segregation in all areas of society. [162]

In 1951the beginning of the end was drawing near as *Brown v. Board of Education* began. When the Supreme Court handed down its decision in *Brown* on May 17, 1954, Thurgood Marshall had finally achieved what he had begun in *Williams v. Zimmerman* – to win a school segregation case in the Supreme Court and forever change the landscape of American society.

It would take years to fully implement the watershed changes heralded by *Brown* and the road would be a long, hard one throughout the US. But *Brown* would eventually come to be know as the single most effective tool used to pry open the door of racial equality. Finally, the world was able to see and understand what Thurgood Marshall had known and lived for so long - there is nothing "equal" about "separate".

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[161] Williams, pg 84

[162] 1938 - for *Missouri ex rel Gaines v. Canada* (Marshall assisted Houston writing the brief) ; 1940- *Chambers v. Florida* (first sc case won), *Lyons V. Oklahoma* first of only 2 losses before the SC;1944- *Smith v. Allwright,;* 1945- *Shelly v. Kraemer* ;1946 *Morgan v. Virginia* (see: Williams, pg 120) ;1950 - *Sweat v. Painter*, *Mc Laurin v. Oklahoma State Regents*

MARGARET WILLIAMS, Infant, by JOSHUA B. WILLIAMS, JR., Her Father and Next Friend, and JOSHUA B. WILLIAMS, JR., Individually, vs. DAVID W. ZIMMERMAN, ET AL.	IN THE **Court of Appeals** OF MARYLAND. APRIL TERM, 1937. GENERAL DOCKET No. 28.

APPELLANTS' BRIEF.

THURGOOD MARSHALL,
CHARLES H. HOUSTON,
LEON A. RANSOM,
EDWARD P. LOVETT,
Attorneys for Appellants.

The Daily Record Co. Print, Baltimore.

TABLE OF AUTHORITIES.

MARGARET WILLIAMS, Infant, by JOSHUA B. WILLIAMS, JR., Her Father and Next Friend, and JOSHUA B. WILLIAMS, JR., Individually,

vs.

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STATEMENT OF THE CASE.

(Unless otherwise clearly shown in context, figures in parentheses refer to pages of printed record.)

This is an appeal from the Circuit Court for Baltimore County in which the petitioners, Margaret Williams a graduate of the elementary schools of Baltimore County and her father, a citizen and taxpayer, sued for a writ of mandamus to require the defendants, members of the Board of Education of Baltimore County to admit said Margaret Williams to the Catonsville High School one of the public high schools of Baltimore County. The lower court dismissed the petition.

QUESTIONS FOR DECISION.

I.

Whether the judgment and order of the court is against the evidence and contrary to the law applicable to the case.

A. *The Baltimore County high schools are public institutions and a part of the free public school system.*

B. *The assertion by respondents of the right to exclude infant petitioner from the Catonsville High School solely on account of race or color on the ground that separate educational opportunities were offered her elsewhere, cast upon them the burden of proving express constitutional or statutory authority for such separation.*

1. Neither the Maryland Constitution nor statutes authorize respondents to exclude petitioner from the Baltimore County High Schools solely on account of race or color.

2. In the absence of constitutional or statutory authority an administrative agency cannot exclude a qualified resident from the tax supported public schools.

C. *When respondents refused to admit infant petitioner to the Catonsville High School on the ground that separate but equal educational opportunities were offered her, the burden of proof was upon respondents to show also by a preponderance of the evidence that the educational opportunities offered petitioner were in fact equal.*

1. Paying tuition for certain Negro pupils in the Baltimore City Schools is not the equivalent.

2. Opportunity to obtain free tuition to high schools outside the county is not a matter of right for all Negro pupils.

The trial court held that "the petition must fail if it is not shown by evidence that the petitioner passed the required examinations or tests prescribed by the School

Board to enter the county high school, if the petitioner fails in this, all the other questions raised by the pleadings are moot questions and should not be considered in these proceedings'' (R. 41).

Appellants, petitioners below, alleged that infant petitioner had satisfactorily completed the elementary school course and had been refused admission to the public high schools. Appellees, respondents below, alleged that petitioners were Negroes, and (1) that separate schools were maintained and (2) that equal educational opportunities were offered Negro students.

Appellants contend that the allegations of these affirmative defenses by appellees placed upon them the burden of proving said allegations (1) and (2). Appellants further contend that the appellees failed to meet this burden of proof.

II.

Whether the refusal to admit infant petitioner to the Catonsville High School was contrary to and in violation of the declaration of rights, the Constitution and the laws of the State of Maryland.

A. *The Constitution and laws of Maryland provide for a free, uniform system of public schools.*

B. *Adult petitioner as a citizen and taxpayer of Baltimore County has a proprietary interest in the public schools of the county.*

C. *The arbitrary and illegal acts of respondents in excluding infant petitioner from the high schools of Baltimore County solely on account of race or color deprive*

the adult petitioner of his proprietary interest contrary to Section 23 of the Declaration of Rights of Maryland.

The trial court ruled that the appellees had a right to separate the races to provide for the education of Negroes outside the county and that the system of providing education for Negroes outside the county was within the lawful power of the appellees.

Appellants contend that the appellees were required to maintain a uniform system of public schools and that the system of providing a high school education for some Negroes outside Baltimore County under certain limitations while at the same time providing high school education within Baltimore County to white students without the same limitations was not a uniform system and therefore in violation of the Constitution and laws of the State of Maryland.

Appellants contend further that adult petitioner in suing as a taxpayer had a proprietary interest in the schools of Baltimore County and the refusal to admit his daughter to the use of these schools was a violation of the Declaration of Rights.

III.

Whether the refusal to admit infant petitioner to the Catonsville High School is contrary to and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States for the reason that said refusal deprives adult petitioner of his property without due process of law.

A. ***Action of the respondents in the premises was state action within the meaning of the Fourteenth Amendment.***

B. *The State of Maryland, through the arbitrary and illegal acts of respondents in the premises, deprived petitioner of property without due process of law.*

C. *The judicial sanction of this discrimination against adult petitioner amounted to depriving him of his property wthout due process of law.*

The trial court ruled that all questions were moot other than the question as to whether infant petitioner had passed the required examination or test (R. 41, 42).

Appellants contend that the refusal to admit petitioner was in violation of the due process of law as guaranteed by the Fourteenth Amendment of the U. S. Constitution in that petitioners were deprived by the state of their property without due process of law. Appellants further contend that the ruling above of the trial court also amounted to a denial of due process of law.

IV.

Whether the refusal to admit infant petitioner to the Catonsville High School is contrary to and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States for the reason that said refusal denies petitioners the equal protection of the law.

A. *The action of the respondents in excluding infant petitioner from Catonsville High School was state action within the meaning of the Fourteenth Amendment.*

B. *The attempt of respondents to force petitioner to abandon present advantages of attending the high schools of Baltimore County for the possible chance of obtaining a tuition scholarship in Baltimore City through competi-*

tive examination is arbitrary and illegal action solely on account of race or color and a denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

1. The examinations were unfair and not suited for the purpose for which they were given.

2. Respondents failed to show by a preponderance of the evidence that the Baltimore County Board of Education required the same examination of the white students as a condition precedent to their admission to the Baltimore County high schools.

C. ***The competitive tuition scholarships are no substantial equivalent for the high school education afforded white pupils in Baltimore County.***

D. ***In the absence of equivalent educational opportunities an attempt by the state to exclude petitioner from the present advantages of the high school education afforded white students in Baltimore County amounts to denying her the equal protection of the law.***

E. ***The only way for petitioners to be protected in their constitutional rights under the facts of this case is to have infant petitioner admitted to the Catonsville High School.***

The trial court ruled that all questions were moot other than the question as to whether infant petitioner had passed the required examination or test (R. 41, 42).

Appellants contend that the examinations themselves denied to petitioners the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Con-

stitution of the U. S. Appellants contended that the examination to colored pupils were administered in an unfair manner and were precluded by the trial court from showing that they were unfair and unequal. Appellants contended further that the system of scholarships to Baltimore City did not furnish an equivalent for a high school education within the county.

STATEMENT OF FACTS.

There are two petitioners (appellants herein) in this case, Margaret Williams infant petitioner, and her father, Joshua B. Williams. Margaret Williams is a citizen of the State of Maryland and resident of Baltimore County (R. 52). She is of lawful school age and was born in 1921 (R. 185). She satisfactorily completed the seven-year elementary course in Baltimore County (R. 119) and applied for admission to the Catonsville High School in said county. Joshua B. Williams is a citizen of the State of Maryland, resident of Baltimore County, a taxpayer, and sues as a taxpayer to have his daughter admitted to the said Catonsville High School (R. 52).

There are several respondents (appellants herein). David Zimmerman is principal of the Catonsville High School, a tax supported, free public school established and maintained by the Board of Education of Baltimore County pursuant to the Constitution and laws of the State of Maryland (R. 52). The Catonsville High School is the nearest public high school to the residence of petitioners (R. 53). Zimmerman is the proper admitting officer thereto (R. 60). Zimmerman acts as agent of the Board of Education (R. 52).

Clarence G. Cooper is Superintendent and Secretary-Treasurer of the Board of Education of Baltimore Coun-

ty and is appointed pursuant to the laws of Maryland; he is by law the executive officer of the Board, having supervision of public schools, including the Catonsville High School (R. 52).

The other respondents are members of the Board of Education of Baltimore County; said Board of Education is an administrative department of the State of Maryland and the members thereof are appointed by the Governor (R. 52). The Board is authorized, empowered, directed and required by law to maintain a uniform and effective system of free public schools in said County (R. 53). The funds for the support and maintenance of these free public schools are derived from appropriations by the State Legislature, and out of the public treasury of the State and out of the taxes of Baltimore County, including monies paid into this tax fund by Joshua B. Williams, petitioner (R. 53). The Superintendent and Board of Education have full power over the public school system of Baltimore County (R. 62).

There is a uniform system of seven-year elementary schools and four-year high schools for white students in Baltimore County. The school system for white students is integrated. The elementary and high schools are in one system. A student completing the elementary course goes into high school (R. 62).

There are six senior high schools, one junior high school for three years and three for one year of high school work at an estimated value of $1,883,500.00 (R. 62). These high schools are used exclusively for white pupils (R. 61). There are no colored high schools in Baltimore County (R. 98).

Prior to the year 1926 there was no provision for the high school education of Negroes (R. 64). On September 7, 1926, after repeated requests from the Parent-Teacher Associations of Baltimore County (R. 218), the Board of Education decided to pay tuition to the Board of School Commissioners of Baltimore City for colored pupils who satisfactorily completed the seventh grade, passed an examination for that purpose, were recommended by the assistant superintendent, and the superintendent, and were approved by the Board of Education (R. 218, 219). The Board reserved the right to discontinue the payment of tuition for any colored students who do not maintain a satisfactory record and agreed not to pay tuition for a period longer than four years (R. 64, 65, 218).

White pupils are offered high school education within Baltimore County in public schools under the control of the Board of Education of Baltimore County (R. 70). Colored pupils who meet the requirements of the Board of Education are offered a high school education in Baltimore City solely under the jurisdiction of the Board of School Commissioners of Baltimore City (R. 70). The Board of Education of Baltimore County supervises the education of white pupils up to and including the eleventh grade, but only supervises the education of its Negro pupils up to and including the seventh grade (R. 70, 71). After the colored pupils complete the seventh grade the Board has no jurisdiction over what they will receive in the line of education (R. 71).

Transportation at public expense is provided for white high school pupils at a cost of 10 cents per day to the parent, the balance being paid by the Board of Educa-

tion (R. 62). The colored children who attend the Baltimore City Schools were not provided transportation (R. 70).

The cost of tuition for colored students taking the examination in June was provided by budget submitted the prior November. The Board on November 1 of each year would not know how many pupils would pass in the following June (R. 64). Yet no more students were ever permitted to attend the Baltimore City Schools with tuition paid by Baltimore County than there was money in the budget (R. 70). The question of expenditure for Negro education in high schools from Baltimore County depends entirely upon how many pass the examination. If a larger group of white students are admitted to the high school than usual, there would not necessarily be an increase in expense; but for each additional colored child with tuition paid there is an item of $95.00 or $150.00 for each student (R. 64).

The following year the Board of Education began giving examinations to Negro children for the purpose of deciding who should receive free tuition to Baltimore City (R. 65). The only requirement of the Baltimore City Board of Education for admission to the eighth grade is that the student must have a report card signed by the principal indicating that the seventh grade has been completed (R. 118, 137).

Each year there is a record kept in the minutes of the Board of Education of the number of colored students taking the examination; they are called "contestants" and "applicants" for high school tuition (R. 89). The minutes show the number who pass the examination and the number who are recommended for high school tuition

(R. 65, 218-222). There is no mention any place in the minutes of the giving of an examination to white students or the number who pass or the number who enter high school (R. 65).

A *subpoena duces tecum* was issued to the respondent, Clarence G. Cooper, as Superintendent of the Board of Education, to bring with him all records of results of examinations given to white pupils of the seventh grade as well as records of examinations given to colored students (R. 38, 39). These records for white students were never produced at the trial (R. 96, 185).

On July 12, 1927, the Board of Education agreed that all colored pupils who made an average of sixty per cent in the examination would receive tuition to the colored high schools of Baltimore City (R. 219). In 1928, 15 colored pupils passed the examination and received free tuition (R. 220). In 1929, 103 colored pupils took the examination and only 20 were reported with an average of sixty per cent. The Board instructed the Superintendent to recommend all colored pupils with a general average of fifty and no mark less than thirty. This lowering of the mark added 17 pupils to the eligible list, making a total of 37 colored pupils out of 103 who took the examination (R. 220). In 1931, 125 colored children were promoted from the seventh grade, 89 appeared for the examination and 30 passed (R. 80). In 1932, 153 promoted (R. 80), 52 out of 133 applicants were authorized to attend the Baltimore City high schools. In 1933, 153 were promoted, 62 pupils recommended. July 11, 1933, the Board ordered that in the future colored pupils must obtain a general average of seventy per cent (R. 221). In 1934, 137 were promoted, 64 out of 128 pupils passed (R. 211).

The passing mark for colored children in this examination has fluctuated down as low as an average of fifty and up as high as seventy (R. 67). The white students made much higher averages in their general examinations (R. 67). There are two possibilities to account for one group of children testing lower than another group; either the children are mentally inferior or they have received inferior instruction (R. 69).

The examinations to colored children are given after they have completed their seventh year elementary course; after they are promoted by their principals; after their report cards are made and given them and after their school term has closed (R. 55, 119). The examinations are given in centrally located colored schools and colored students in other schools are required to attend these schools in order to take the examination (R. 71). The students must furnish their own transportation and no effort is made to see that they attend the centrally located schools to take the examinations. The colored principals are instructed to send only those students who have a fair chance of passing the examination (R. 71, 199-200). The examination is not a matter of right.

The only requirement for admission of a white child to the public high schools of Baltimore County is that the child be promoted by his elementary school principal (R. 73, 74, 213). Infant petitioner was promoted by her elementary school principal (R. 119). A Negro child is denied admission to the high schools of Baltimore County under any circumstances (R. 61, 98). Colored children desiring to obtain free tuition to Baltimore City schools must not only be promoted by their principal but must also in addition pass an examination prepared by the Board of Education, then be recommended by the Assistant Super-

intendent, and then be recommended by the Superintendent; and finally be approved by the Board (R. 79, 116). The examination for free tuition to colored pupils is given after the pupils have satisfactorily completed the seven-year course and have been promoted by their principals (R. 119, 121). The examination is for the purpose of obtaining free tuition (R. 211, 212).

This examination for Negroes given by the Board of Education is the sole criterion for free tuition and a high school education (R. 77, 86, 112, 113). Tests given to white pupils by their principals are not for the sole purpose of deciding admission to high school, but for the purpose of aiding the principal in deciding upon promotion (R. 73, 74, 86). Promotion of the white pupil is left entirely to the discretion of the principal (R. 214). Admission to high school of white pupils is based upon the tests in consideration with classroom work and the judgment and personal knowledge of the pupil's ability by the school principal (R. 117, 213) and recommendation of teacher (R. 129).

Colored school principals were instructed to discourage pupils whom the principal did not think would pass the examination (R. 119, 199, 121). The same principals were also instructed not to recommend for the examination those whom the principals did not think would have a "fair chance to pass the examination" (R. 71, 73, 204). Principals of white elementary schools were instructed to be lenient and even authorized to promote some children who failed to meet the requirements of the principal for promotion (R. 213). At least one colored principal did not send any of his seventh grade pupils to take the examination (R. 122).

All tests for white children are given in their own schools to the entire seventh year class (R. 71). The examinations for free tuition for Negroes are given in three or four centrally located schools (R. 71). The colored children from other schools desiring to take these examinations are required to pay their own transportation (R. 55, 56, 71). If they are not informed of the examination, because the principal does not believe they have a "fair chance to pass" or if for any reason they do not get to the place of examination on the proper day, they cannot get free tuition to Baltimore City (R. 137).

The examinations to colored pupils for free tuition from 1928 to 1934 were prepared by the supervisors of white schools (R. 100, 101, 123, 125). These supervisors never supervise colored schools, and are not familiar of their own knowledge with the colored schools, the colored pupils, or whether or not the course of study is followed (R. 68, 87, 98, 123, 127). The assistant superintendent is the only person who supervises colored schools (R. 71, 98). He is not present when the examinations are prepared but they are carried to him for him "to look at" (R. 125).

The examination for free tuition for colored pupils is based on the course of study as issued by the Board. But modifications of this course of study are made to meet the individual needs (R. 93). However, the supervisors who prepare these examinations do not know of the modifications in the course of study (R. 127), and there is no consideration left open for modifications in the course of study by the people preparing the examination (R. 127).

The examinations for free tuition for colored students is given by the supervisors of the white schools (R. 109).

Principals of colored schools are not permitted to give the examination (R. 109).

The examinations for free tuition for colored pupils are all carried into the office of the Board of Education and marked by the supervisors of white schools or a committee appointed by the superintendent (R. 112). These are not always the same persons who give the examinations (R. 112, 125). When these examinations are marked, neither the classroom records nor report cards are before the markers (R. 94, 124). The supervisors marking the examination have no knowledge of these records (R. 124). The only factor that enters into the marking of the colored examination is what is actually on the examination papers (R. 124). The colored children are required to pass each subject of their examination (R. 127).

Petitioner, Margaret Williams, attended public elementary school of Baltimore County at Cowdensville, her residence. She completed the seven-year elementary course in June, 1934. She was tested by her principal and given a report card (Petitioners' Exhibit #1) showing that she was promoted to the eighth grade. She was included on the list from the respondent Board of Education to the State Board of Education among the group promoted and included in the list "graduates" (R. 119). The promotion of Margaret Williams was based upon the examination given by her principal and upon her work in the school (R. 119). According to her principal, infant petitioner had satisfactorily completed the seven-year elementary course and was a good student (R. 119). She was given an examination before being promoted (R. 119). The purpose of this examination was to determine from her school work and the examination whether

she was qualified to pass from the seventh grade (R. 119). The Assistant Superintendent stated infant petitioner's report card showed she was rated as "a very good student" (R. 105).

After having been promoted from the seventh grade and after having received her report card showing that she was promoted, infant petitioner was instructed to attend the elementary school at Catonsville for another examination. Catonsville is more than three miles from her home and she was not offered transportation by the Board of Education, but was required to furnish her own transportation (R. 55).

The examination given in Catonsville in 1934 was prepared by the supervisors of white schools who were not acquainted of their own knowledge with the methods of instruction in the colored elementary school (R. 123). The examination was given by a supervisor who had never been in infant petitioner's elementary school (R. 123). The supervisor giving the examination at Catonsville did not help to prepare or compile the questions (R. 123). She helped to mark the papers (R. 124). When the papers were marked she knew nothing of the school records of the children, the records did not come to her knowledge (R. 124). She had no information of petitioner's classroom work. The only factor taken into consideration was what was said on the examination (R. 124). The colored children were required to pass each subject of the examination (R. 127).

About a month later the Superintendent of Schools of Baltimore County informed petitioner's father that she had failed and it would be advisable for her to take the

seventh grade again. In September, 1934, petitioner entered the Baltimore City High School and was admitted on her report card alone (R. 58). The Baltimore City school authorities did not require her to take an examination for entrance (R. 58, 118). The only requirement for admission to the Baltimore City schools of a student from Baltimore County is that the student must have a report card signed by the principal indicating that the seventh grade has been completed (R. 118). A report card marked as Petitioners' Exhibit #1 "Promoted to the eighth grade" is sufficient in itself to entitle the student to admission into the Baltimore City schools (R. 118). After staying in the Baltimore City school for a month and doing satisfactory work, she was informed that since her parents lived in the County she would have to pay tuition in order to remain in the school. Her school work was satisfactory (R. 58).

Petitioner went back to the seventh grade in Baltimore County and repeated the seventh grade (R. 58). In June, 1935, Margaret Williams was given an examination by her principal; was again given a report card marked "Promoted to the eighth grade" and her name was included in the list marked "graduates" which was recorded with the State Board of Education (R. 119). According to her principal, she had again satisfactorily completed the seven-year elementary course and was a good student.

She again went to the Catonsville Elementary School for the purpose of taking an examination, paying her own transportation.

The 1935 examination given to the infant petitioner and others of her race in June was the same examination

given to all white students in January (R. 75). The examination was sent out by the State Board of Education in January for the expressed purpose of checking the work of the pupils in the schools of the counties of the State—for the purpose of having the State Department survey the work of schools throughout the State—the results to be used for diagnostic purposes and remedial work (R. 133).

The examination was used for that purpose in the white schools (R. 76). Those who failed the examination remained in the grade. In June another examination was given by the principals and teachers. The children who failed the January test were not precluded from the June test (R. 117). If a student failed the January test and passed the June test he could go to high school (R. 117). He had six months to improve his grade standing (R. 117). In recommending white pupils for high school the principals took into consideration the January test, the June test prepared by the individual teachers, classroom work and general knowledge of the student (R. 117, 128, 129).

The same examination was given to petitioner and others of her race in June in the centrally located schools by the supervisors of white schools (R. 74). This examination was used as the sole criterion for the payment of tuition for colored students (R. 77).

There are no penmanship instructors for colored schools (R. 107). Penmanship was one of the subjects upon which petitioner was tested in 1935. The possible score that she might have made on penmanship was 15, while her actual score was 6, being a difference of 9 points. Her total actual score on the examination was

244. The passing mark was reduced to 250 (R. 97), a difference of 9 points, which might have been allowed for spelling or handwriting, and which would have passed her (R. 107).

It is admitted that if a white student had failed the examination by six points and should be a very good pupil she would not necessarily fail (R. 129). Promotion would take into consideration the classroom work and the recommendation of the teacher (R. 129).

ARGUMENT.

I.

THE JUDGMENT AND ORDER OF THE TRIAL COURT ARE AGAINST THE WEIGHT OF THE EVIDENCE AND CONTRARY TO THE LAW APPLICABLE TO THE CASE.

A. The Baltimore County High Schools Are Public Institutions and a Part of the Public Free School System.

This point is conceded by respondents, and needs no argument (R. 11).

B. The Assertion by Respondents of the Right to Exclude Infant Petitioner from the Catonsville High School Solely on Account of Race or Color on the Ground that Separate Educational Opportunities Were Offered Her Elsewhere, Cast Upon Them the Burden of Proving Express Constitutional or Statutory Authority for Such Separation.

1. Neither the Maryland Constitution nor statutes authorize respondents to exclude petitioner from the Baltimore County High Schools solely on the ground of color or to set up a separate system of high school education for Negroes.

The Maryland statutory law beginning with the Declaration of Rights and Constitution in 1867 has provided

for a uniform system of education for the citizens of the State of Maryland. These provisions are:

1867—*Declaration of Rights*:

> Art. 43. "That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general amelioration of the condition of the people."

1867—*Constitution*:

> Article VIII, 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."

In construing this section of the Constitution, the Court of Appeals of Maryland has held that:

> "The Constitution of this state requires the General Assembly to establish and maintain a thorough and efficient system of free public schools. This means that the schools must be open to all without expense. The right is given to the whole body of the people. 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."
>
> *Clark v. Maryland Institute*, 87 Md., 643, at p. 662 (1898)
>
> Cited and followed in *Pearson v. Murray*, 169 Md. 478, 182 A 590, 103 A. L. R. 706, (1936).

It is interesting to note that the provisions for education in the Declaration of Rights and in the State Constitution are absolutely silent on the question of race, and these provisions neither authorize nor require the separation of white and colored students. Pursuant to these provisions, the State Legislature provided for a system of free public schools as follows:

Bagby's Maryland Code, Article 77.

> Sec. 72. "*Elementary* schools shall be kept open for not less than one hundred and eighty (180) actual school days and for ten months in each year, if possible, and shall be free to all white youths, between six and twenty years of age." (Italics ours.)

Bagby's Maryland Code, Article 77.

> Sec. 200. "It shall be the duty of the County Board of Education to establish one or more public schools in each election district for all colored youths, between six and twenty years of age, to which admission shall be free, and which shall be kept open not less than one hundred and sixty (160) actual school days or eight months in each year; provided, that the colored population of any such district shall, in the judgment of the county board of education, warrant the establishment of such a school or schools."

According to the above statutes, there is still no requirement for the separation of the races. Even if Section 72, quoted above, is construed as authorizing the establishment of separate schools for white pupils, it is by its own terms limited to elementary schools. State Legislatures wishing or intending to require the separation of the races do so by positive legislative enactment requiring separation.

Continuing its provisions for the education of the youth in this State, the legislature codified the law as to high schools in the following Act of 1916:

Bagby's Maryland Code, Article 77.

> Sec. 192. "The county board of education of any county shall have authority to establish high schools, subject to the approval of the state superintendent of schools, in their respective counties, when, in their judgment, it is advisable to do so. All high schools so established and those now in operation shall be under the direct control of the several county boards of education, subject to the provisions of this article. * * *"

The above provision of the Code neither requires nor authorizes the separation of the races in high schools. The systems of high schools in the counties are controlled by this section.

See *School Commissioners v. Henkel*, 117 Md. 97 (1912).

Under these provisions all the public schools in Baltimore County are maintained. There is no express statutory authority for the separation of the races in the high schools of Baltimore County. It is admitted in the pleadings that respondents were under a duty of providing a *uniform* and *efficient* system of public schools [Sec. 41, Art. 77, Md. Code] (R. 10).

2. In the absence of Constitutional or statutory authority an administrative agency cannot exclude a qualified resident from the tax supported public schools.

The system of high schools in Baltimore County is controlled by Section 192 of Article 77 of the Code *supra*, and under this provision there is no authorization for the separation of the races. Under such a provision the

Board of Education of Baltimore County cannot legally discriminate against or exclude from such benefits the petitioners in this case.

> "Where a state establishes a free school system and makes no distinction in regard to the race or color of the children of the state who are entitled to its benefits, equal school facilities must be provided, and no school officer or public authority can legally discriminate against or exclude from such benefits, directly or indirectly, because of race or color, any child who is otherwise entitled to attend a school established under such system."

11 *C. J. Civil Rights,* Sec 13, p. 807.

As a matter of fact, by the great weight of authority, it has been held that in the absence of express authority, a municipality or school district has no right to separate white and colored children for purpose of education:

Board of Education v. Tinnon, 26 Kans. 1 (1881).

Crawford v. District, 68 Or. 388, 137 Pac. 217 (1913).

> "* * * It must be remembered that unless some statute can be found authorizing the establishment of separate schools for colored children that no such authority exists. * * *"

Board of Education v. Tinnon, supra.

The administrative authority, in the absence of express power delegated by statute, cannot exclude Negro students from schools established for white students, even though the educational facilities in the segregated Negro school are equal or superior to those of the white school.

People ex rel. Bibb v. Mayor, 193 Ill. 309, 61 N. E. 1077, 56 L. R. A. (1901).

All youth stands equal before the law.

Clark v. Board, 24 Iowa 266, 277 (1868).

The question as to what the Legislature might have done is beside the point; the administrative authority cannot arrogate to itself the Legislative functions.

Tape v. Hurley, 66 Cal. 473, 6 P. 129 (1885).

While the Board of Education has large and discretionary powers in regard to the management and control of the schools, it has no power to make class distinctions or racial discrimination.

See:

Chase v. Stephenson, 71 Ill. 383, 385 (1874).

The reason is obvious. A discrimination by the Board against Negroes today may well spread to discrimination against Jews on the morrow; Catholics on the day following; red headed men the day after that.

> " • • • It is obvious that a board of directors can have no discretionary power to single out a part of the children by the arbitrary standard of color, and deprive them of the benefits of the school privileges. To hold otherwise would be to set the discretion of the directors above the law. If they may lawfully say to the one race you shall not have the privilege which the other enjoys they can abridge the privileges of either until the substantive right of one or both is destroyed."

Maddox vs. Neal, 45 Ark. 121, 124 (1885).

See also:

Folte vs. Hoge, 54 Cal. 28 (1879).
State vs. White, 82 Ind. 278 (1882).
Connell vs. Gray, 33 Okla. 591, 127 P. 417 (1912).

C. When Respondents Refused to Admit Infant Petitioner to the Catonsville High School on the Ground that Separate But Equal Educational Opportunities Were Offered Her, the Burden of Proof Was Upon Respondents to Show Also by a Preponderance of Evidence that the Educational Opportunities Offered Petitioner Were in Fact Equal.

The petition in this case alleged that infant petitioner, as a resident of Baltimore County, had satisfactorily completed the elementary school course and had been refused admission to a public high school in Baltimore County (R 5-9). The answer of respondents was in substance a plea in confession and avoidance. The answer alleged that there had been set up a system of paying tuition to Baltimore City Schools for Negroes and that the system offered colored pupils of Baltimore County educational advantages in all respects equivalent to those afforded by the white schools maintained by said Board of Education of Baltimore County (R 12). That put upon respondents the affirmative of the issue and the burden of proof.

> "Should defendant not traverse, generally or specifically, the allegations of plaintiff's case, but rely upon an affirmative defense, as in abatement, or confession and avoidance, which plaintiff denies, the burden of proof is on defendant to prove *every material allegation* relied on by him, although the replication itself is argumentative, or although the declaration negatives the defense by anticipation." (Italics ours.)

22 *C. J. Evidence*, Sec. 16, pp. 72, 73.

> " • • • But where plaintiff takes issue upon the plea by the general replication • • • and replies at the same time by a special replication in confession and avoidance the burden of proving the plea remains with defendant, and until some evidence is

offered in its support the issue tendered by the special replication is immaterial.

Ray vs. Fidelity-Phoenix Fire Insurance Company, 187 Ala. 91, 94, 65 So. 536 (1914).

"Where the relator has made out a prima facie case, the burden of proof is on defendant to justify his action.

38 *C. J. Mandamus* 915, Sec. 671.

See also:

Dixon vs. McDonnell, 92 Mo. App. 479 (1902).
Berger vs. St. Louis Storage & Commission Co., 136 Mo. App. 36, 116 SW 444 (1909).
Bathe vs. Metropolitan Life Insurance Co., 152 Mo. App. 87, 132 SW 743 (1910).
Menzenworth vs. Metropolitan Life Insurance Co., 249 SW 113 (Mo. App. 1923).
Maddox vs. Neal, 45 Ark 121 (1885).

The burden of proof is important in the instant case for several reasons. Information concerning the school system of Baltimore County, the examinations, methods of administering examination and other material facts were peculiarly within the knowledge of respondents. The only possible way for petitioners to deny allegations of respondents was by calling respondents and their agents to witness stand and examining them as adverse witnesses. (R 59, 61, 97, 98, 116, 119, 120, 123, 127, 129, 183).

All knowledge of the facts concerning the allegations that white pupils were required to pass the same examin-

ation as infant petitioner, the actual examinations (if given), the records of these examinations, etc. were within the peculiar knowledge and control of the respondents. The law of evidence is settled as to the effect of peculiar knowledge or control of evidence.

> "Effect of Peculiar Knowledge or Control of Evidence. In the administration of justice it is often wise to place the burden of producing evidence on the party best able to sustain it, and ambiguity, concealment, or evasion react with peculiar force on a pleader who asserts a fact and fails to produce the evidence, which if his assertion were true would be in his possession. Hence it is very generally held that where the party who has not the general burden of proof possesses positive and complete knowledge concerning the existence of facts which the party having that burden is called upon to negative, or where for any reason the evidence to prove a fact is chiefly, if not entirely, within his control, the burden rests on him to produce the evidence, although he is obliged to go no further than necessity requires. It is, however, anomalous that mere difficulty in discharging a burden of making proof should displace it; and as a matter of principle the difficulty only relieves the party having the burden of evidence from the necessity of creating positive conviction entirely by his own evidence; so that, when he produces such evidence as it is in his power to produce, its probative effect is enhanced by the silence of his opponent. Where the party on whom rests the burden of evidence as to a peculiar fact has the essential documents or evidence within his control, a peculiar clearness of proof is demanded, although the fact is negative."

22 *C. J. Evidence*, Sec. 24, pp. 81, 82.

See also:

Runkle v. Burnham, 163 U. S. 216, 14 S. Ct. 837, 38 L. Ed. 694 (1893).
Graves v. U. S., 150 U. S. 118, 14 S. Ct. 40, 37 L. Ed. 1021 (1893).
Farrall v. State, 32 Ala. 557 (1858).
Cumberland Coal, etc. v. Parish, 42 Md. 598 (1874).

Respondents alleged in their pleadings that the same examinations are given white and colored students (R 12, 16). Petitioners denied this allegation and demanded strict proof of same (R 21, 24, 25). Petitioners issued a *subpoena duces tecum* to respondent Cooper to bring with him all examinations given to white pupils and the records of the results of said examinations (R 38, 39).

Throughout the trial respondents alleged that the examination was given white and colored students alike, and that the white students took the examination. Examination papers and records of examinations for colored students for years back were produced but despite reiterated demands throughout the trial (R 96, 185), and a formal demand at the close of petitioners' case (R 185-187) not a single examination paper of a white student was produced nor was a single record exhibited showing the authorization for giving of an examination to white pupils nor a single record offered to show the results of any white students examination, even though the office of respondents was in the Court House itself, there was a white school within two blocks of the Court House and the trial lasted several days with respondents and their agents in constant attendance. Obviously there is no way for petitioners to show that the examina-

tions were not given to white students except by the logical inference which arises from the failure of respondents to sustain the burden of proof placed upon them by their own pleadings and testimony.

Respondents allege that the examinations were ordered given to white and colored pupils alike pursuant to the rules and regulations of the Board of Education of Baltimore County (R 12, 16). The minutes of the Board accurately represent all that transpires in the Board. There are no official acts not recorded in the minutes (R 62). There is no mention of an examination to white pupils any place in the minutes (R 65). The first mention in the minutes of any examination is coincident with the decision of the Board to pay tuition of Negro students to go to Baltimore City and is limited solely to Negroes (R 218, 219). The minutes for each year after 1927 show full records of the examinations to Negro pupils and the results (R 219-222). There is no mention of any type of examination to white pupils prior to July 7, 1936 (R 222), almost four months after case was filed, two months after replication and two days before argument of the demurrer (R 3-4).

Perhaps the nearest case in point on the question of the power to require examinations is *Crayhon v. Bd. of Education*, 99 Kan. 824, 163 Pac. 145, L. R. A. (1917C) 993 (1917). This case involved the giving of examinations to pupils who had completed the eighth grade of a parochial school and who had applied for admission to the public high schools. No examinations were given to the graduates of the public elementary schools. The answer of the defendants admitted that the students of the parochial school had received the same type of educa-

tion as the pupils in the public elementary schools. The Supreme Court of Kansas granted the mandamus to admit the pupils without the taking of the examination and although the Court held that the case should not be a precedent for all cases it held that it would apply under the facts as admitted in the answer. In the case at bar the Board admits that the infant petitioner received the same type of education as offered all students in Baltimore County. She was tested and graded while an elementary student and promoted or "graduated" from the seventh grade.

In a similar case practically the same ruling was handed down by the Supreme Court of Illinois in *Trustees v. The People,* 87 Ill. 303, 29 Am. R. 55 (1877). In this case the relator, a citizen and taxpayer applied to have his son admitted to the high school. The son passed a satisfactory examination and was sufficiently proficient in all branches of study, except that of grammar, to entitle him, under the regulations prescribed by respondents, to admission to the high school. The relator had forbidden his son to study grammar, and desired that he should pursue no study which necessitated a previous knowledge of grammar and asked that he be admitted to pursue only those studies in which he was sufficiently proficient to entitle him to admission to the high school. The Respondents denied the son admission to the high school, solely because of his inability to pass satisfactory examination in grammar.

Power of trustees "to adopt and enforce all necessary rules and regulations for the management and government of the schools; to direct what branches of study shall be taught, and what text-books and apparatus shall be

used, and to enforce uniformity of text-books (Rev. Stat. 1874, pp. 962-3, Sec. 48).

In speaking of act which created high schools, the Court stated:

> "It is apparent the object of the legislature was simply to increase the facilities for acquiring a good education in free schools. The high school thus established can no more be controlled for the benefit of some to the exclusion of others, than can the district schools. All children in the township, within the prescribed ages for admission to the public schools, have equal rights of admission to the high school when they are sufficiently advanced to need its instruction. It would be contrary to national right and the manifest purpose of the legislature, to hold that the high school, by arbitrary and unreasonable regulations of the trustees should be practically closed to all but a favored few. Every taxpayer contributes to its benefits, in equal degree by all." at p. 306

> "We think the exclusion of the relator's son from the high school, upon the ground alleged, by the respondents, unauthorized by the statute. The regulations requiring it is arbitrary and unreasonable, and cannot be enforced, but must be disregarded." at p. 309

1. ***Paying Tuition for Certain Negro Pupils in the Baltimore City Schools Is Not the Equivalent of Educational Opportunities Offered to White Pupils in Baltimore County.***

Respondent Board of Education maintains an integrated school system for white pupils in Baltimore County consisting of a uniform elementary course of seven years and a high school course of four years (R 62). White pupils pass from the seventh grade of the elementary school to the first year of the high school

in the same manner as they pass from one grade to another in the elementary and high schools, and in many instances both elementary and high schools are housed in the same building, all part of the same system.

There are ten high schools in Baltimore County used by white pupils, the same being estimated at a value of $1,883,500 and operating at a total annual current expense of $336,594.88 (R 62). The Board of Education furnishes transportation at public expense to white pupils attending these high schools except for 10 cents a day paid by parents (R 62).

The colored pupils who are approved by the Board of Education are offered free tuition to the Baltimore City high schools. The colored pupils in the Baltimore City schools are under the sole control of the Board of School Commissioners in Baltimore City. The respondents supervise and control the education of the white pupils through the elementary and high schools. They supervise and control the education of the colored child only up to the seventh grade. After the seventh grade respondents have no jurisdiction over what the colored child shall receive in the line of education (R 70-71).

Under the system of education of Baltimore County there are seven years elementary school and four years high school making a total of 11 years to complete the education in public schools. Under the system of sending colored children into Baltimore City the children are required to take five years high school, making a total of 12 years to acquire the same education offered to white pupils in 11 years. This amounts to a loss of one year of the Negro pupils' life.

Adult petitioner as a taxpayer of Baltimore County has a proprietary interest in the public school system of said county, which gives him a corresponding power of control over the administration and conduct of such schools and the type of education which should be offered therein—a right which he does not possess over the schools of Baltimore City and the type of education offered to his daughter under the plan adopted by the Baltimore County Board of Education.

> " * * * the public school system owes its existence and perpetuity to taxes drawn from the people; in a sense therefore the citizen may be said to have a proprietary interest in the system.
>
> This is true not only in a pecuniary sense in that he contributes annually to its support but on account of the advantages extended to his children, who, within the contemplation of the law, are entitled, without stint or distinction, to whatever rights and benefits the system affords."

Wright vs. Board of Education, 295 Mo. 466, 246 SW 43 (1922).

See:

Chase, et al. vs. Stephenson, et al., (supra).

The respondents cannot discharge their admitted obligations to the adult petitioner as a taxpayer and to infant petitioner as a resident infant of lawful school age by requiring infant petitioner to go out of the county to a school not maintained or controlled by respondents.

> "The education of the children of the state is an obligation which the state took over to itself by the adoption of the constitution. To accomplish the purposes therein expressed the people must keep un-

der their exclusive control, through their representatives the education of those whom it permits to take part in the affairs of the state."

Piper v. Big Pine School District, 193 Cal. 664, 226 P. 926 (1924).

2. *Opportunity to Obtain Free Tuition to High Schools Outside the County Is Not a Matter of Right for All Negro Pupils.*

Prior to 1926 there was no provision for the high school education of Negroes (R. 64). Up to the present time there are no separate high schools for Negroes in Baltimore County and by administrative rule Negroes are not permitted to attend the existing high schools.

Starting with 1927 there has been a system of payment of tuition for certain Negro students in Baltimore City schools. There are several reasons why this system was never meant to be a matter of right for colored pupils. In the first place the Board was very careful in granting this privilege to impose certain limitations. The Negro child could only receive tuition upon the promotion by his principal plus the approval of the Board after a recommendation by the Assistant Superintendent plus a recommendation by the Superintendent (R. 218-19).

Principals of colored elementary schools were instructed by respondents to discourage certain pupils from taking the examinations for high school tuition and to only recommend those who had a "fair chance to pass" (R. 99, 199).

If for any reason a colored pupil does not take the examination or is not present at the designated place

when the examination is given, the pupil cannot be recommended for approval by the Board of Education for the payment of free tuition (R. 88, 137).

II.

THE REFUSAL TO ADMIT INFANT PETITIONER TO THE CATONSVILLE HIGH SCHOOL IS CONTRARY TO AND IN VIOLATION OF THE DECLARATION OF RIGHTS, THE CONSTITUTION AND LAWS OF THE STATE OF MARYLAND.

A. The Constitution and Laws of Maryland Provide for a free, Uniform System of Public Schools.

See I B (1) *supra.*

B. Adult Petitioner as a Citizen and Taxpayer of Baltimore County Has a Proprietary Interest in the Public Schools of the County.

See:

Wright v. Board of Education, supra.
Chase, et al. v. Stephenson, et al., supra.

C. The Arbitrary and Illegal Acts of Respondents in Excluding Infant Petitioner from the High Schools of Baltimore County Solely on Account of Race or Color Deprive the Adult Petitioner of His Proprietary Interest Contrary to the Declaration of Rights of Maryland.

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled or in any manner destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land."
>
> *Art. 23, Declaration of Rights of Maryland.*

III.

THE REFUSAL TO ADMIT INFANT PETITIONER TO THE CATONSVILLE HIGH SCHOOL IS CONTRARY TO AND IN VIOLATION OF SECTION 1 OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES FOR THE REASON THAT SAID REFUSAL DEPRIVES ADULT PETITIONER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW.

A. The Action of the Respondents in the Premises Was State Action Within the Meaning of the Fourteenth Amendment.

Respondents admit that the Board of Education of Baltimore County is an administrative department of the State of Maryland (R. 52). It follows that the action of respondents in refusing to admit infant petitioner to the public high school of Baltimore County was state action within the meaning of the Fourteenth Amendment to the Constitution of the United States.

> *Ex parte Virginia*, 100 U. S. 339, 346, 25 L. Ed. 676 (1879).
> *Pearson v. Murray, supra.*

B. The State of Maryland, Through the Arbitrary and Illegal Acts of Respondents in the Premises, Deprived Petitioner of Property Without Due Process of Law.

The property interests protected by the due process clause include not only physical possession but all rights of use and enjoyment.

> *Buchanan v. Warley*, 245 U. S. 60, 62 L. Ed. 149 (1917).

The tax supported public high schools of Baltimore County maintained from tax funds contributed to by adult petitioner are of no benefit to him if his child, in-

fant petitioner, is denied use thereof. The arbitrary acts of respondents in excluding infant petitioner have deprived adult petitioner of this proprietary right without due process of law.

C. The Judicial Sanction of This Discrimination Against Adult Petitioner Amounted to Depriving Him of His Property Without Due Process of Law.

The refusal of the trial court to issue its peremptory writ of mandamus in effect ratified and endorsed the deprivation of adult petitioner's property by the arbitrary and unconstitutional acts of the respondents, and itself amounted to depriving adult petitioner of his property without due process of law.

IV.

THE REFUSAL TO ADMIT INFANT PETITIONER TO THE CATONSVILLE HIGH SCHOOL IS CONTRARY TO AND IN VIOLATION OF SECTION 1 OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES FOR THE REASON THAT SAID REFUSAL DENIES PETITIONERS THE EQUAL PROTECTION OF THE LAW.

A. The Action of the Respondents in Excluding Infant Petitioner from the Catonsville High School Was State Action Within the Meaning of the Fourteenth Amendment.

See argument III A, *supra.*

As evidence that respondents refusal to admit infant petitioner to the privileges of a high school education was based solely on her race or color it appears that when her report card was presented to the proper admitting officer of the Catonsville High School, infant petioner was denied admission prior to any knowledge on his part that she had allegedly failed to pass the so-called

uniform examination, relying on the assertion that he had no jurisdiction over the colored race. Respondents and their agents testified that if infant petitioner had passed the so-called uniform examination and had presented herself for admission to the Catonsville High School, still they would not have admitted her because of her race or color. It thus appears that no question of the qualifications of infant petitioner was considered by respondents or their agents, but that, irrespective of qualifications, infant petitioner's race or color was the sole consideration incident to the refusal of admission to infant petitioner. Or in other words, respondents, reacting to an age-old custom of assuming a dual standard of the enjoyment of state and federal rights of citizenship between the white and Negro citizens, were set in their ideas that infant petitioner, a Negro, had no right to enjoy the privilege to a high school education equivalent to that offered white pupils.

See:

Strauder v. West Virginia, 100 U. S. 303, 307 (1879).

B. The Attempt of Respondents to Force Infant Petitioner to Abandon Present Advantages of Attending the High Schools of Baltimore County for the Possible Chance of Obtaining a Tuition Scholarship in Baltimore City Through Competitive Examination Is Arbitrary and Illegal Action Solely on Account of Race or Color and a Denial of the Equal Protection of the Laws as Guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The theory upon which petitioner proceeded was that the requirement of an examination as a condition precedent to the payment of tuition in the high schools of Baltimore City was an arbitrary and illegal imposition

placed only upon petitioner and members of her race and purposely set up to discourage rather than encourage Negro pupils to attend high school; that the examinations were conducted in such a manner as to diminish the chances of Negro pupils' passing them; that the examinations were given under unfavorable conditions which further lessened these chances; and were given for the purpose of limiting the amount of money to be paid by the respondent Board of Education for Negro pupils (R. 21, 24). It is submitted that the lower court erred in ruling as a matter of law, prior to the trial, throughout the trial, and restricting consideration of the case and his opinion to such sole proposition, that the petition must fail unless petitioner showed that she had passed the examination set up by respondent Board of Education and that all other questions raised by the pleadings were moot questions and not to be considered in these proceedings (R. 34, 37, 42, 103-182). Evidence on behalf of respondents attempting to show the fairness of the examination was admitted into the record over objection of petitioner (R. 125, 126, 188-191). Petitioners were precluded from introducing testimony from an expert witness as to the unfairness of the examination or its lack of suitability for the purposes for which it was used (R. 141-182).

1. ***The Examinations Were Unfair and Not Suited for the Purpose for Which They Were Given.***

The record is replete with testimony which clearly establishes that the examinations given to Negro pupils for the purpose of obtaining free tuition to the Baltimore City High Schools are unfair. This unfairness manifests itself both in the administrative practices governing the preparation, the giving and the marking of the

examination, and the constitution of the examination itself.

There is abundant evidence to sustain the fact that only certain Negro pupils were encouraged to take the examination (R. 99-116, 199). Just how the principals of the Negro schools were to determine who were to be encouraged and who discouraged was only one of the mysterious things left unexplained by the respondents during the course of the trial.

The discriminatory practices as to the preparation of the examination are evidenced by the fact that white supervisors who have never been officially in the colored schools, who have no knowledge of the pedagogical practices therein, and have no actual knowledge of their own as to the extent which the course of study, as given in the colored schools, deviates from the standard course of education prescribed by the Baltimore County Board of Education, prepare these examinations without any consultation with the teachers who have instructed the persons to be examined (R. 123-125, 127, 128). Moreover, these examinations were given by the same supervisors and these young colored pupils were required to take the examinations under the supervision of these unfamiliar tutors, not acquainted with their particular mental and physical problems and in strange surroundings, all of which factors have tended to make it even more difficult for the pupils to meet the rigorous standards set up by the examiners, rather than to produce an atmosphere in which the child would be encouraged to display his true intellectual level. In those few instances in which their colored instructors were even permitted to be present, they were allowed to take no part in the actual

conduct of the examination and acted only as monitors to maintain discipline (R. 109).

As a final example of unfairness in the administration of the examination, attention is called to the fact that the papers were marked by the same group of supervisors, or other persons especially assigned for that purpose. But the papers were not always marked by the same person who gave the examination, and quite frequently not marked by the persons who had prepared the examination (R. 123-125, 127, 128). The Negro teachers who had instructed the pupils never participated in the marking of the examinations and were not even consulted as to the peculiar abilities of their students in order to afford the marker a basis for evaluating the students' answers to the questions (R. 124, 128).

As indicated above it is difficult for petitioner to prove by the testimony that the examinations were unfair in their content for the reason that the court erroneously excluded all testimony offered or tendered to establish that fact while permitting respondents' witnesses to testify, even by hearsay, that the examinations were fair. However, petitioners did introduce Dr. Robert R. Davids for this purpose. It should here be parenthetically noted that Dr. Davids is the only expert who testified at the hearing, and is the only witness qualified to speak with authority upon the many technical questions that these examinations produced. Each of the respondents, their agents and their witnesses who testified disclaimed any expert knowledge on these matters. Moreover, Superintendent Cooper, who has charge of the white schools, and Assistant Superintendent Herschner, who has charge of the colored schools in Baltimore County, each dis-

claimed knowledge of the facts relative to the examinations given under the supervision of the other.

While petitioner contends that the court below committed error in refusing to concede Dr. Davids' qualifications as an expert and refused to admit him as such expert witness (R. 141-145), the evidence does disclose that Dr. Davids' opinion, elicited largely by cross-examination, is to the effect that such examinations are not a fair method of testing a student's ability, and does not represent the prevailing practice in accredited schools in this country.

Even if the respondents had the authority to give these examinations and if they were in fact given to white and colored students alike under exactly identical circumstances, it still follows that the examinations would not be suited for the purpose of determining whether or not the student should be promoted to high school (R. 141-183). More particularly is this true in regard to the 1935 examination, the so-called "progressive achievement" test. All of the testimony discloses that it was issued by the State Board of Education for the sole purpose of obtaining a diagnosis of all the schools and students throughout the state, and was so distributed and used in all of said schools with the lone exception of the Negro students in the seventh grade in Baltimore County (R. 75, 105, 116-18, 132, 136, 190-191). It was in fact so used with the white seventh grade students in Baltimore County in January in that year and its purpose served by remedial work given to those students thereafter. Dr. Davids' testimony is clear and uncontradicted that the use of this examination alone for the purpose of promotion is unsound and not the accepted form in modern schools (R. 145-182).

2. Respondents Failed to Show by a Preponderance of the Evidence that the Baltimore County Board of Education Required the Same Examination of White Students as a Condition Precedent to Their Admission to the Baltimore County High Schools.

Respondents in alleging that infant petitioner failed in the required uniform examination given to white and colored pupils alike as a precedent to admission to high school assumed the burden of proving that the examinations were in fact required of white pupils for admission to high school and that they were uniform. (See I C.)

White pupils are admitted to the ten so-called "white high schools" maintained by the county solely on the recommendation of their own principal, whose recommendation is based on examination given by such white principal in his own school along with a consideration of his class room work. Thus the admission of the white pupil to the high school becomes a matter of absolute right upon the satisfactory completion of the seven years of prescribed elementary work. And the determination of whether or not the white pupil has satisfactorily completed this work rests within the sole judgment of the white principal, and does not require even the consideration of or any consultation with the Assistant Superintendent, the Superintendent, or any member of the respondent Board,—much less a recommendation from any one of them. In fact, according to respondents' own testimony, no administrative officer or member of the respondent board has any knowledge of how many white pupils are "promoted to the high school" as distinguished from those merely "promoted out."

In contrast to the above method of admitting white students to high school as a matter of right upon the

satisfactory completion of the seventh grade, the Assistant Superintendent who is supervisor of Negro schools and is the only person authorized to recommend Negro pupils for approval of the Board of Education and the payment of tuition testified that he does not put any confidence in the colored teacher's certification that the child has completed the work of the seventh grade (R. 111-112). The only requirement for admission of a white student to the Baltimore County high schools is that the pupil satisfactorily complete the seven year elementary course. Not only does a colored pupil have to satisfactorily complete the seven year elementary course as required of all pupils, but must in addition thereto be recommended by his principal, second, take the so-called uniform examination for tuition to the Baltimore City high school, third, be recommended by the Assistant Superintendent, fourth be recommended by the Superintendent. and fifth and finally must be approved by the Board of Education (R. 79, 115, 116).

The practical result of these discriminatory practices are shown by a comparison of the statements of respondent witnesses that practically all white students go from the seventh grade to high school and the figures in the minutes as to colored students: viz:

1931—128 colored children promoted from 7th grade. (Report of State Board of Education).
89 took examination for high school tuition
30 passed (Minutes, p. 75)

1932—158 colored children promoted from 7th grade. (Report of State Board).
133 took examination for high school tuition
52 passed (Minutes, p. 137).

1933—153 colored children promoted from 7th grade.
(Report of State Board).
135 took examination
62 passed (Minutes, p. 189).

1934—137 colored children promoted from 7th grade.
(Report of State Board).
112 took examination
31 passed (Minutes, p. 243).

1935—153 promoted from 7th grade.
(Report of State Board).
128 took examination
64 passed (Minutes p. 307).

Respondents at trial refused to make any distinction as to the mental qualifications of Negro children or that they were inferior as to ability to absorb education. They maintained that the Negroes received the same type of education as whites. Then how can they explain that only about 36% of the Negroes pass the examination and that only about 32% of the Negroes who leave the seventh grade are approved by the Board?

If it were assumed that the Court could find that prior to 1935 the examinations had been uniform, evidence adduced by respondents themselves disclosed that the 1935 examination was sent out by the State Board of Education for the purpose of determining the grade placement level of all students, white and colored, as well as to detect and analyze deficiencies in the method of class room instruction, and to obtain an analysis of the efficiency of the courses of study in use in the various counties, and was used for this purpose in the seventh grade of the so-called white elementary schools in Baltimore County and was given to the pupils of such grade

in January of 1935. But this examination was arbitrarily withheld from the Negro pupils of the seventh grade in Baltimore County until June of 1935, when it was given to petitioner, along with a few others, arbitrarily selected by the principals of the colored elementary schools, in accordance with the instructions previously mentioned, from the Assistant Superintendent, and was used as the sole basis for determination of whether or not those successfully passing such examination, should receive the recommendation of the Assistant Superintendent and other administrative officers for approval by the Board for free tuition.

Contrasted with the practice followed in 1935 respecting petitioner and others of her race, the Court's attention is directed to the testimony of Principal Zimmerman, who stated that after the examination was given to the seventh grade white students in January, 1935, remedial work was given to those students who showed any deficiencies on such examination, and that their promotion to high school was based upon their daily class room work, along with an examination prepared and given by the seventh grade teachers to their individual classes. Assuming, for the sake of argument, that there is any merit in respondents' contention that there has been a long-continued practice of giving uniform, county-wide examinations to white and colored students alike for the purpose of determining "promotion to high school", their own testimony shows that this practice was abandoned for the year 1935, one of the years upon which petitioner bases her claim that she has been unjustly discriminated against. No argument need be advanced to disclose the discrimination lurking in this practice. The white pupil is given the advantage of analysis of her de-

fects, remedies applied, and promotion to high school granted upon the basis of an examination constructed by the teacher who is aware of her peculiar educative problems, plus a consideration of class room work. On the contrary, petitioner was required to stand or fail for admission to high school upon the results of the test alone, given under the discriminatory circumstances outlined previously. That these strange surroundings must have militated against petitioner and others of her race is shown by the fact that 95.5% of the white pupils were said to have successfully passed the test in January of 1935, while only 50% of the Negro students could pass it in June of the same year, six months later. This, despite the fact the respondent Board contends that the course of study for the Negro schools is the same as that in the white schools, and despite the fact that the officers and agents of the respondents would not contend that the Negro child is inferior in learning ability to the white child.

While the 1935 examination was used as the sole criterion for free tuition for colored pupils white principals were instructed that "If you feel that certain seventh grade pupils who failed to meet the prescribed requirements should be given a chance to prove their ability to carry high school work, you may enter the following on their reports, "Promoted to high school on trial" (R 213). Margaret Williams is alleged to have failed the 1935 examination by six points (R 97). According to respondents' testimony, if a white student had failed by about six points he would not necessarily not be promoted to high school (R 129). It was possible for a white student to fail the examination and still be promoted to high school (R 116-118).

C. The Competitive Tuition Scholarships Are No Substantial Equivalent for the High School Education afforded White Pupils in Baltimore County.

See argument I C (1).

D. In the Absence of Equivalent Educational Opportunities an Attempt by the State to Exclude Petitioner from the Present Advantages of the High School Education afforded White Students in Baltimore County Amounts to Denying Her the Equal Protection of the Law.

All cases which hold that the races may be segregated in public schools under statutory authority base this holding upon the condition that equal educational opportunities are offered the two races. With one exception, it is uniformly held that Negro students cannot be denied admission to the public schools maintained for whites in the absence of provisions for their education equal to those offered other citizens of the state.

> "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. Remarks quoted in argument from opinions of courts of other jurisdictions, that the educational policy of

a state and its system of education are distinctly state affairs, have ordinarily been answers to demands on behalf of non-residents, and have never been meant to assert for a state freedom from the requirement of equal treatment to children of colored races. 'It is distinctly a state affair. * * * But the denial to children whose parents, as well as themselves, are citizens of the United States and of this state, admittance to the common schools solely because of color or racial differences without having made provision for their education equal in all respects to that afforded persons of any other race or color is a violation of the provisions of the Fourteenth Amendment of the Constitution of the United States. * * *' "

Pearson v. Murray, supra.

"The right to segregate the races for the purposes of education does not mean that either may be denied the privilege of attending the public schools. And when a uniform system of public schools has been adopted under the authority of the state, any discrimination in the enjoyment of its privileges on account of race is forbidden by the equal protection clause of the 14th Amendment, and there is no question that a legislature cannot exclude colored children, merely because they are colored, from the benefits of a system of education provided for the youth of the state, nor can a school board discriminate against them in exercising the discretion vested in them over school matters. But their rights are amply protected if separate schools of equal merit are maintained for their education. Therefore, where the law provides for separation of the races in education separate schools must be maintained for colored children, *and if this is not done, colored children cannot be excluded from schools kept for white pupils. If a school is maintained for white children, but none for colored children, the*

remedy of the latter is not by injunction to prevent the maintenance of the school for whites, for this could only result in harm to the whites without any compensatory good to the blacks, but a writ of mandamus to compel the admission of the colored children to the school maintained for whites. * * *"* (Italics ours.)

24 *Ruling Case Law* 653 11 C. J. (Civil Rights) p. 807.

See:

State v. Duffy, 7 Nev. 342 (1872).

See also:

Ward v. Flood, 48 Cal. 36, 17 Am. R. 405 (1874).
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, 735, E. 154 (1911).
Cooley on Torts (Perm. Ed.) Sec. 236.

In *Piper v. Big Pine School District*, 193 Cal. 664 (1924), a fifteen year old Indian girl applied for a writ of mandamus to compel the trustees of the school district in which she resided and its teachers to admit her into the school as a pupil. A California Statute provided for statewide system of public schools for all children between the ages of 6 and 21. *It authorized, but did not require, the establishment of separate schools for children of Indian, Chinese, Japanese or Mongolian parentage. It required that when separate schools were established, Indian children could not be admitted into the white schools. Another statute also provided that where the*

United States Government had established an Indian school in a California school district, the Indian children therein eligible to attend the Indian school, might not be admitted into the district school.

In the district where the petitioner resided, there was a federal government school for Indians to which she was eligible for admittance, but no separate state school. There was a white school to which she had been denied admittance on the ground that she could attend the Indian school.

The Court, in granting the mandamus, held:

> "• • • But the denial to children whose parents as well as themselves, are citizens of the United States and of this state, admittance to the common schools solely because of color or racial differences without having made provisions for their education equal in all respects to that afforded persons of any other race or color, is a violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, nor shall any state • • • deny to any person within its jurisdiction the equal protection of the laws." (668-669)

> "Respondents call our attention to the serious effect that the issuance of the writ will have upon the respondents' district. Big Pine School District is located in a sparsely settled portion of the state and contains a number of Indian children, who, it is fairly inferable, attend the Indian or Federal school, either as a matter of choice or under the belief that they may not, as a matter of right, attend the district school. It appears from the papers in the case that children of non-taxpaying Indian parents are, by government rule or upon other authority eligible to attend the federal school, but Indian children

INDEX TO RECORD.

MARGARET WILLIAMS, Infant, by JOSHUA B. WILLIAMS, JR., Her Father and Next Friend, and JOSHUA B. WILLIAMS, JR., Individually, vs. DAVID W. ZIMMERMAN, ET AL.	IN THE **Court of Appeals** OF MARYLAND. APRIL TERM, 1937. GENERAL DOCKET No. 28.

A MEMORANDUM TO FOLLOW THE CASES CITED ON PAGE 28 OF OUR BRIEF.

Jones on Evidence, 2d Ed., Sec. 179:

"Of course the pleadings are the guide in the first instance; and pleadings are so framed that in most cases the plaintiff is the actor who must take the initiative and the one on whom the burden of proof rests. Ordinarily, in the absence of any evidence on either side, the plaintiff's action would fail, but this is not necessarily true. For example, in an action on contract the defendant may admit the due execution of the contract but set up an independent defense. In such cases he becomes the actor; and it is then incumbent upon him to establish the affirmative defense which he alleges. This is well illustrated in actions on insurance policies where the answer admits the issuing of the policy and the loss and damages claimed, but alleges a breach of conditions; in such cases the plaintiff is entitled to a verdict unless the defendant satisfies the jury that the conditions have been broken. Nor is the rule changed in cases where the complaint alleges that none of the conditions of

the particular averment lies upon the opposite party, determination of the amount of evidence necessary to be produced by the party having the general burden in order to place the burden of going forward with the evidence upon the party having possession of the facts, become important. (Citing U. S. v. Denver & R. Ry. Co., 191 U. S. 83, 48 L. ed. 106, 24 S. Ct. 33—cutting timber on right of way)."

See also:

39 Y. L. J. 117;
1 Phillips on Evidence (Edward's 5th Am. Ed.), *822 N. 8;
2 Ency. of Evidence, 804, 809;
Jones on Evidence (2d Fed.), Sec. 179;
2 Chamberlyne on the Law of Evidence, Sec. 984;
1 Greenleaf on Evidence, 16th Ed., Sec. 79;
5 Wigmore on Evidence, Sec. 2486;
Gorter on Evidence, p. 58;
3 Nichols on Applied Evidence (Mandamus), p. 2972.

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MARGARET WILLIAMS, Infant, by JOSHUA B. WILLIAMS, JR., her Father and Next Friend, and JOSHUA B. WILLIAMS, JR., Individually

vs.

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IN THE

Court of Appeals

OF MARYLAND.

APRIL TERM, 1937.

GENERAL DOCKET No. 28.

BRIEF UPON BEHALF OF APPELLEES.

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Counsel for Appellees.

The Daily Record Co. Print, Baltimore.

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GENERAL DOCKET NO. 28.

BRIEF UPON BEHALF OF APPELLEES.

THE APPEAL.

(Unless otherwise clearly shown in context, figures in parentheses refer to pages of printed record.)

This is an appeal from a final order of the Circuit Court of Baltimore County (DUNCAN, J.) dismissing a

petition for a writ of mandamus filed by appellant requiring appellees, the Board of Education of Baltimore County, the Superintendent of County Public Schools and the Principal of Catonsville High School to admit the infant appellant, a colored girl, to the Catonsville Public High School, which is maintained for white pupils only.

The appellees contend that appellant was properly denied admittance because she failed to qualify by passing an examination prescribed by the County Board of Education for the purpose of determining whether she was entitled to be promoted to high school, and because she is a person of color and as such not entitled to attend a white school because of the principle of separation of the races enjoined by Section 200 of Article 77 of the Code of Public General Laws (Bagby's 1924 Edition).

In answer to the first defense the appellant contends that she was duly qualified for admission to high school because no authority rested in the County Board of Education to require passage of an examination as a condition of admission to high school, and because the examination given to colored pupils discriminated against them in favor of white pupils similarly seeking admission to high schools; to which the respondents reply that the County Board had proper authority to require the passage of an examination as a condition of promotion to high school, that the examination given to colored pupils did not discriminate against them in favor of white pupils, and that even if the examination were shown to have been discriminatory, the remedy is not to admit petitioner to high school but to require the County Board to give her a fair and non-discriminatory examination.

In answer to the second defense appellant contends that the County Board maintains no high schools for colored pupils and that the statute as thus applied denies to the petitioner the equal protection of the laws, to which the respondents reply that the County Board gratifies every requirement of law by making provision for the admittance of qualified colored children to the high schools in Baltimore City.

The issues raised by this appeal therefore are as follows:

I. Was the County Board of Education authorized to require the passing of an examination as the condition of promotion to high school?

II. Did the examination discriminate against colored children?

III. Do the laws of the State of Maryland authorize the exclusion of qualified colored children from the white high schools?

IV. Does such exclusion deny qualified colored children the equal protection of the laws in view of the provision made for study in the high schools of Baltimore City?

STATEMENT OF THE CASE.

A complete statement of the facts of the case should be made in order that the above issues may be determined.

Appellant in company with her father applied to the principal of the Catonsville High School seeking her ad-

mission to that school in September, 1936 (R. 60). At this time a card was presented showing the record of the appellant as a seventh grade pupil, which had "promoted to eighth grade" written upon it. She was refused admission by the principal, in the first place because the report card was not in due form. He also refused because he had no jurisdiction over the colored race.

At a meeting of the Board of Education of Baltimore County on September 7, 1926, it was decided to pay tuition to the Board of School Commissioners of Baltimore City for the high school education of colored pupils who have satisfactorily completed the work of the elementary schools and are approved by Mr. John T. Herschner, Assistant Superintendent of Schools of the County. The Board reserved the right of discontinuance at any time of payment to the Board for pupils who did not maintain satisfactory records in their studies nor does the Board pay tuition for a longer period than four years from the date of the pupil's enrollment. If a pupil should be assigned to the Junior High School by the school authorities of Baltimore City his enrollment in said school would be considered a part of the four year high school education for which the Board was obligated. The Board instructed the Superintendent to discontinue the eighth grade in the colored elementary schools (R. 65, 66). Later on the Board extended the period mentioned above from four to five years (R. .....).

On July 12, 1927, the minutes of the Board of Education show the following: "The Superintendent reported that a county wide examination to determine the qualifi-

cations of colored pupils for admission to the high schools of Baltimore City according to the terms set out in the minutes of this Board under date of September 3, 1926, was held at the Towson colored school on June 23, 1927. The Board instructed the Superintendent to advise the pupils who made a general average of 60 or more in the examinations, that the Board would pay for their instruction in the colored high schools of Baltimore." Apparently examinations had been given for an indefinite period before this to white seventh grade children, the passing of which was a prerequisite to promotion to high school (R. 63, 64, 65, 81).

Following the action of the Board above mentioned uniform examinations were held for white and colored seventh grade pupils (R. 63, 64, 86, 89). Upon this examination the passing mark for white pupils was 70% in each subject, and the passing mark for the colored pupils was 60% in each subject, the colored pupils being allowed a margin of 10% in their favor (R. 90). The only other differences were that the colored pupils took their examination at five different centers, namely, Catonsville, Reisterstown, Towson, Sparrows Point and Turners, whereas the white pupils took the examination in the school buildings which they attended. The white pupils' papers were marked by the principals of their respective schools, and the examinations of the colored pupils were marked by white supervisors of schools (R. 91, 105). It was also testified by Mr. Cooper, Superintendent of Schools, that it was desirable to collect the white pupils in various centers to take the examination as was done in the case of colored pupils, but owing to the large num-

ber of white school population this could not be done. The white pupils number approximately 24,000 in all schools and grades, the colored pupils number 2,000 in all schools and grades. In 1934, 128 colored pupils took the examination for entrance to high school (R. 91).

The course of study in the colored and white schools is the same, they use the same text books and are given like facilities (R. 87, 106, 107).

On June 15, 1934, one of these uniform examinations was given to all pupils, white and colored, in the Baltimore County schools (R. 63, 64, 71, 86). Margaret Williams took this examination and failed to pass it, notwithstanding the 10% allowance made in favor of colored pupils (R. 84, 92). She received upon this examination 34% out of a possible 100% in Geography; 21% out of a possible 100% in History; 61% out of a possible 100% in English; 37% out of a possible 100% in Arithmetic, her marks indicating that she was unprepared at that time for admission to high school, that is, she had made a very low grade (R. 92). On June 20, 1935, the appellant appeared to take the examination again (R. 92, 104). This examination differed from the examination of 1934 only in that instead of being what is known as the essay form of examination it was a standard objective test. By this is meant that it is a test that is recognized generally as being fair for the pupils taking it, the marking upon an examination not depending upon the judgment of the marker. This standard test was given to the white pupils in January of 1935 (R. 90), and the result showed that a very high percentage of the seventh grade pupils passed the test, in some schools 95% of the pupils

passed. This same examination was given to the colored pupils in June, 1935, and it was this standard test that the appellant took. In the case of the white pupils, the standard test was not used as the sole criterion of eligibility for high school, but it was so used in the case of the colored pupils. At this examination she again failed to pass, obtaining a score of 244 points out of a possible 390, a very unsatisfactory showing, which indicated that she was not eligible for first year high school work (R. 90, 92).

Promotion to high school in Baltimore County from the seventh grade in both white and colored schools can only be made upon the successful passing of the uniform examination, and no principal has authority to promote any pupil to high school who has not passed the examination (R. 71, 73, 77). The card which Margaret Williams presented to Mr. Zimmerman, the principal of the Catonsville High School, had written upon it, as already stated, "promoted to eighth grade". There is no eighth grade in Baltimore County (R. 89). When a seventh grade pupil has passed the examination for entrance to first year high school the pupil's card has noted upon it "promoted to high school" (R. 88).

The Board of Education of Baltimore County has never maintained a colored high school, but since 1926, as noted above, has made provision for giving high school facilities to colored pupils by paying their tuition and providing for their education at the high schools in Baltimore City. The failure to provide a high school in Baltimore County is due to the fact that a high school cannot be efficiently run with only a small number of

pupils. The total number of colored pupils who attended the Baltimore City high school in all of the five year grades was 158. The attendance and capacity of the ordinary white high school is from 500 to 1,250 (R. 91). There is a difference in efficiency between a small and a large school. It is impossible for a small school to offer the various types of subject matter that a large one can offer. It is also difficult to obtain efficient instruction in a small school. That is an accepted principle in education (R. 91). Mr. Cooper testified that the colored pupils get better educational opportunities in Baltimore City than the white children get in Baltimore County, and that if he had his choice he would not erect a high school in Baltimore County as against sending the colored pupils to the schools in Baltimore City (R. 92).

The largest colored school population in Baltimore County is at Towson, Sparrows Point, Turners and Catonsville. The center of this population is Baltimore City. It is very much more convenient for the colored pupils to attend schools in Baltimore City than to attend some high school in Baltimore County. This would be true as to 90% of the population (R. 93).

Summarizing the testimony it shows that the appellant never passed the examination required of all white and colored pupils in the seventh grade in Baltimore County, as a prerequisite to promotion to high school.

The same examination exactly is given to white and colored pupils. The only differences with respect to the examination of white and colored pupils are that white pupils receive the examination in the schools which they

attend, whereas colored pupils take it in five different centers in Baltimore County, and that the white pupils are marked by their principals and that the colored pupils are marked by supervisors.

Baltimore County does not maintain a high school for colored pupils owing to the small number of these pupils, there being only 158 colored pupils at the present time attending the high schools in Baltimore City from Baltimore County. In order to conduct a high school efficiently and provide the best instruction there should be schools of from 500 to 1,000 pupils.

The facilities which Baltimore County has provided for the colored pupils who successfully pass the examination at the end of the seventh grade are equal to or superior to those provided for the white children in Baltimore County. 90% of the colored population of Baltimore County is centered around Baltimore City, and the schools in the city are of more convenient access than would be a school located somewhere in Baltimore County.

ARGUMENT.

I.

By Section 41 of Article 77 of the Code of Public General Laws (Flack's 1935 supp.), all property theretofore vested by law in the public school authorities of any county is vested in the County Boards of Education who are authorized, empowered, directed and required to maintain a uniform and effective system of public schools throughout their respective counties.

By Section 43 (Bagby's 1924 ed.) it is provided that the County Board "shall to the best of its ability cause the provisions of this article, the by-laws and the policies of the State Board of Education, to be carried into effect. Subject to this Article and to the By-Laws and the policies of the State Board of Education, the County Board of Education shall determine, with and on the advice of the County Superintendent, the educational policies of the County, and shall prescribe rules and regulations for the conduct and management of the schools."

By Section 192 (Bagby's 1924 ed.), the County Board of Education of any county is given authority to establish high schools in their respective counties when in their judgment it is advisable to do so, subject to the approval of the State Superintendent of schools. It is expressly provided that such high schools shall be "*under the direct control of the several county boards of education.* subject to the provisions of this article."

By Section 11 (Bagby's 1924 ed.), the State Board of Education is given power to determine the educational policies of the State and to enact by-laws for the administration of the public school system which, when enacted and published, shall have the force of law. It is provided that the State Board of Education *shall decide all controversies and disputes arising under the law as to its intent and meaning and that their decision shall be final.*

Section 199 (Bagby's 1924 ed.) authorizes the State Board of Education to prepare the course of study to be used in all high schools, and gives the Board author-

ity to make any by-laws "for their government not at variance with the provisions of this article."

Section 193 (Flack's 1935 supp.) authorizes State aid to high schools qualifying therefor. One qualification is that the education provided should conform to the standards required by the State Board of Education.

By Section 136 (Bagby's 1924 ed.) the County Superintendent of Schools is given power to explain the true intent and meaning of the school laws and of the by-laws of the State Board of Education, and to decide, without expense to the parties concerned, all controversies and disputes involving the rules and regulations of the County Board of Education and the proper administration of the public school system in the county. It is provided that his decision shall be final except that an appeal may be taken to the State Board of Education, if taken in writing within thirty days.

The appellees contend that the power conferred by section 192 upon the County Board of Education plainly includes the power to prescribe the taking and passing of an examination as a condition to promotion to the high school. This would certainly seem to come within the scope of the legislative grant of "*direct control*" over the high schools. The appellant contends, however, that the State Board of Education in the exercise of the power conferred upon it by Sections 11 and 199, has prescribed by-laws having the force of law which directly prohibit the employment of the examination as a method of determining the right of the pupil to enter high school.

The issue is one of fact and of law. The petitioner relies upon the following language appearing in the "Manual of Standards for Maryland County High Schools" issued by the State Department of Education in November, 1927:

> "ADMISSION BY ELEMENTARY SCHOOL CERTIFICATES
>
> "The high school, in order to fulfill its function, should articulate both with the schools below and with the schools above. The high school is not a separate institution, but an integral part of a common school course of eleven or twelve years. In general, for a pupil to enter upon the first year of high school work, he should have completed in a satisfactory manner the elementary course of seven (or eight) years.
>
> "The principal test for entrance should be the ability to do the work of the high school. This is usually based on the character of the pupil's previous achievements, as shown in his daily work, tests, and formal examinations, these factors being taken as a whole.
>
> "The possession of an elementary-school certificate, signifying the successful completion by the pupil of the course of study prescribed for the elementary school, is sufficient to entitle the pupil to enter an approved high school without examinations." (R. 81).

The County Superintendent testified that the Board of Education of Baltimore County has for years followed a definite system under which pupils whose presence in the elementary schools is no longer beneficial to the pupils, are given certificates of promotion entitling them to leave school and go to work (R. 77). An examination is given to all pupils, white and colored, to determine wheth-

er they have satisfactorily completed the seventh grade work. Pupils passing this examination are given certificates of promotion to high schools entitling them, if white, to enter the high schools maintained by the County Board of Education, and if colored, to free tuition in high schools maintained by Baltimore City. Thus, the only certificate signifying the successful completion by the pupil of the course of study prescribed for the elementary school, *is the certificate of promotion to high school.*

Here the petitioner seeks to argue that the report given by her principal, which contained the statement "Promoted to Eighth Grade" was equivalent to a certificate of satisfactory completion of seventh grade work. The undisputed testimony, however, shows that such is not the case, and that such a certificate is wholly unauthorized. There is no eighth grade in the public schools of Baltimore County.

Petitioner further contends that the system maintained by the Board of Education of Baltimore County conflicts with the language of the standards previously quoted. There is no such conflict. Nothing in the quotation from the Manual of the State Board of Education prevents the County Board of Education from basing the right to a certificate of successful completion of the course of study prescribed for the elementary school, and hence the right to promotion to high school, upon the ability of the pupil to pass an examination based upon that course. The statement that usually daily work and tests are considered, is clearly a mere suggestion. The obvious purpose of the State Board is to prevent admission to high school from being based upon standards other

than those of successful completion of elementary school work. It follows that where the right of the pupil to promotion to high school is based upon an examination framed for the purpose of determining whether the pupil has successfully completed the elementary school work, the suggestion of the State Board is fully complied with.

Admitting for the sake of argument that the system maintained by the County Board is in conflict with the suggestions made in the Manual, it is apparent that these suggestions are not mandatory. That they are not by-laws adopted pursuant to Section 11 is clear, both from the emphatic testimony of Dr. Albert S. Cook (R. 192) the State Superintendent and Mr. Cooper (R. 81) the County Superintendent, and from the plain import of the language relied on by the appellant. Manifestly, legislation would not, under ordinary circumstances, be couched in such words. No minute of the State Board of Education was offered to show that this regulation was ever presented to the Board, or adopted by it as a by-law. Compare the pamphlet containing "The Public School Laws of Maryland", published by the State Board of Education in June, 1927, in which are printed the by-laws duly adopted by the State Board of Education.

It is suggested, however, that the quoted language, if not a by-law, is at least a standard, and as such binding upon the County Board because the Catonsville High School is in receipt of State aid under Section 193. That section limits State aid to schools conducted in accordance with standards prescribed by the State Board of Education, but the case at bar does not deal with the

Geo M. Berry	Ex Parte in the Matter of W. W. Alger Alleged Lunatic -197-	March 5. 1936 Petition of W. W. Alger that the question of Sanity or insanity or Mental disorder be determined by a Jury in accordance with Sec. 21 Art 59 & Order of Court thereon granting said request & further Ordering Warden of the County Jail to hold said Petitioner in Custody until further Order of this Court with Admission of States Atty. thereon fd. Tested Copy of Order delivered to Warden of County Jail. App of Geo. M. Berry Esq. for Petitioner Mch 26. 1936 Petition of Jam. C. L. Anderson, States Attorney for Baltimore County with Report of Board of Mental Hygiene attached & Order of Court thereon filed directing that

xx Supt. of Spring Grove State Hospital fd. Sept. 20, 1940, Letter from Dr. Silas W. Weltmer to Judge T. Scott Offutt dated Sept. 10 1940 filed Sept. 20 1940, Copy of Letter from Judge C. Gus Grason to Dr. Silas W. Weltmer dated Sept. 1940 filed Oct. 1 1940 Letter from Dr. Weltmer to Judge Grason fd. Oct. 1, 1940, Copy of Judge Grason's reply to above letter fd.

Wilmer W. Alger be committed to Spring Grove State Hospital for thirty days or for such period as necessary for proper examination & definite conclusion reached & Ordered further that said Alger be committed for treatment and examination & That Supt. of said Hospital report to this Court as early as practicable his findings, Conclusions and recommendations as to whether said Alger be permanently committed or released. Apr. 7. 1936 Report of Silas W. Weltmer xx

Thurgood Marshall Atty 5.00 Clerk 10.50 Shff Co. 24.10 " City 5.25 " Test Co. 85 45.70 Record 45.00 Pd 3/18/37 Pd by Petitioner Clerk 1.00 Atty 5.00 William L. Rawls C. W. Roe	Margaret Williams, infant by Joshua B. Williams Jr., her father & Next friend & Joshua B. Williams Jr. individually -198- David W. Zimmerman, Principal of the Catonsville High School, Clarence G. Cooper, Superintendent of Baltimore County Public Schools, Secretary & Treasurer, Board of Education Henry M. Warfield President, and James M. Jordan, T. W. Stemley, Oscar B. Coblentz, Joseph P. Reynolds & Edward B. Palsano, Members the Board of Education of Baltimore County	March 14. 1936, Plaintiffs Petition & Affidavit thereon for a Writ of Mandamus, fd. Mch 14. 1936, Order of Court filed directing that Writ of Mandamus be issued unless Cause to the Contrary be shown on or before Mch. 28. 1936, providing Copy of Petition, Afft. and Order of Court be served on Defendants on or befor March 21st 1936 Same Day. Tested Copy of Pet. Afft. & Order of Court delivered to Shff of Balto Co. to be served on the Defdts. App of Thurgood Marshall Esq. for the Petitioners Mar 16. 1936. Copy of Petition for writ of Mandamus Affidavit and Order of Court served on and left with Clarence G. Cooper Superintendent of Baltimore County Public Schools and Secretary and Treasurer of Board of Education this 16th day of March 1936 Shffs Ret fd Mch 27. 1936. App of William L. Rawls & C. W. Roe Esqrs. for the Defdts. To folio 291
Jas. C. L. Anderson L. E. Ensor Irving H. Mezger Julius A. Romano	State of Maryland -199- Max Caplan	Apr 18. 1936 Petition affidavit and Order of Court directing that a Writ of Certiorari be issued directed to J. C. Myers Justice of the Peace and Sergeant Blizzard Maryland State Police restraining them from proceeding in this Case in any manner pending the hearing and determination under this writ. Writ issued made returnable 24th day of April 1936 at 10 O'clock Am. 2 Copies of writ sent. App of Irving H. Mezger and Julius A. Romano for Petitioner Apr 20. 1936. Writ of Certiorari and Copy of Petition & Order of Court made known to J. C. Myers Justice of the Peace and Sergeant Blizzard Maryland

To folio 295

	Margaret Williams, infant, by Joshua B. Williams Jr., Father & Next friend 198 David K. Zimmerman Etal.	From folio 245 Same Day- Answer of the Board of Education of Balto County fd. May 5. 1936 Replication fd by Petitioners with permis of Copy Admitted thereon May 9. 1936 Motion re. Recipiter by Defendants. May 22, 1936 Plaintiffs Answer to Motion re recipiatior fd. May 22, 1936 Hon. Frank J. Duncan) Hearing on Motion re-recipiator had. Held sub Curia June 26, 1936 Hon. Frank J. Duncan) Motion re-precipiation overuled with leave to reply in 15 days July 2-1936 Defendants Demurrer & Affidavit (15 Replication) with Service of Copy Admitted Thereon fd July 9 1936 (Hon. Frank J. Duncan) Hearing on Demurrer to Replication had- Held sub Curia. Aug 4, 1936 Opinion of the Court filed Overruling Demurrer to Plaintiffs
XXX Mch 9, 1937 Transcript sent- taken to Annapolis by one of Deputy Clerks of this Court X Appeal Court of Appeals Rec'd $361.00 Brief 110.00 Aff'd Fee 10.00 Clerks Cost 2.75 $483.75 Appellee — Brief 363.00 Aff'd Fee 10.00 Clerks Cost .75 $463.75 Total $547.20 X	Replication with leave to Defendants to take issue or traverse. Aug 18, 1936 Defdts. Rejoinder under affidavit fd. Rule Surrejoinder. Aug 20, 1936 Petitioners request for an Exception to the Courts Opinion overruling Defdts demurrer and filed Aug 4. 1936 fd. Aug 28. 1936 Plaintiffs surrejoinder with admission of Service thereon (Hon. Frank J. Duncan) Testimony started Sept 15. 1936 Testimony resumed Sep 15. 1936 Case passed to Sep 18. 1936. Sep 18. 1936, Testimony resumed. Sep 18. 1936 Testimony Concluded, Briefs to be filed Oct 22. 1936 Memorandum of Court dismissing Petition fd Oct 23. 1936 Order of Court that the Petition for writ of Mandamus filed in this Case be and the same is hereby dismissed, the Costs of the Case to be paid by the Petitioners, Order fd. Dec 21. 1936 Stipulation fd, Dec 21. 1936 Plaintiffs Order for an Appeal to the Court of Appeals of Maryland fd Mch 8. 1937 Bill of Exceptions & Testimony fd Mch 8, 1937- Seventeen Photostatic Copies of Exhibits sent with record, the Original of which are filed in Court Stenographers Custody. Eleven Typewritten Copies of Exhibits prepared by Court Stenographer XXX
	June 28. 1937 Mandate from the Court of Appeals rec'd fd ... May 26. 1937. Order	affirmed with Costs. Opinion filed. Op.- Bond C. J.

Record - - No. 28

MARGARET WILLIAMS, INFANT, BY JOSHUA B. WILLIAMS, JR., HER FATHER AND NEXT FRIEND, AND JOSHUA B. WILLIAMS, JR., INDIVIDUALLY,

VS.

DAVID W. ZIMMERMAN, PRINCIPAL OF THE CATONSVILLE HIGH SCHOOL, CLARENCE G. COOPER, SUPERINTENDENT OF BALTIMORE COUNTY PUBLIC SCHOOLS, SECRETARY AND TREASURER BOARD OF EDUCATION, HENRY M. WARFIELD, PRESIDENT, ET AL.

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
LEON A. RANSOM,
EDWARD P. LOVETT,
For the Appellants.

WILLIAM L. RAWLS,
CORNELIUS V. ROE,
For the Appellees.

IN THE

Court of Appeals

OF MARYLAND.

APPEAL FROM
THE CIRCUIT COURT
FOR
BALTIMORE COUNTY.

APPEAL TO THE
APRIL TERM, 1937
OF THE
COURT OF APPEALS
OF MARYLAND.

Filed March 19, 1937.

Press of
THE DAILY RECORD COMPANY
23-25 East Saratoga Street
Baltimore, Md.

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE CASE OF

MARGARET WILLIAMS, INFANT, BY JOSHUA B. WILLIAMS, JR., HER FATHER AND NEXT FRIEND, AND JOSHUA B. WILLIAMS, JR., INDIVIDUALLY,

VS.

DAVID W. ZIMMERMAN, PRINCIPAL OF THE CATONSVILLE HIGH SCHOOL, CLARENCE G. COOPER, SUPERINTENDENT OF BALTIMORE COUNTY PUBLIC SCHOOLS, SECRETARY AND TREASURER BOARD OF EDUCATION, HENRY M. WARFIELD, PRESIDENT, ET AL.,

TO THE

COURT OF APPEALS OF MARYLAND.

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
LEON A. RANSOM,
EDWARD P. LOVETT,
For the Appellants.

WILLIAM L. RAWLS,
CORNELIUS V. ROE,
For the Appellees.

In the Circuit Court for Baltimore County.

Margaret Williams, Infant, by Joshua B. Williams, Jr., her father and next friend, and Joshua B. Williams, Jr., Individually,

vs.

David W. Zimmerman, Principal of the Catonsville High School, Clarence G. Cooper, Superintendent of Baltimore County Public Schools, Secretary and Treasurer Board of Education, Henry M. Warfield, President and James P. Jordan, T. W. Stingley, Oscar B. Coblentz, Joseph G. Reynolds and Edward B. Passano, Members of the Board of Education of Baltimore County.

March 14, 1936—Plaintiffs' Petition and affidavit thereon for a Writ of Mandamus fd.

Mch. 14, 1936—Order of Court filed directing that Writ of Mandamus be issued unless cause to the contrary be shown on or before Mch. 28, 1936, providing copy of Petition, Affdt. and Order of Court be served on Defendants on or before Mch. 21st, 1936.

Same day—Tested copy of Pet., Affdt. and Order of Court delivered to Shff. Balto. Co. to be served on the Defdts. App. of Thurgood Marshall, Esq., for the Petitioners.

Mar. 16, 1936—Copy of Petition for Writ of Mandamus, Affidavit and Order of Court served on and left with Clarence G. Cooper, Superintendent of Baltimore County Public Schools and Secretary and Treasurer of Board of Education, this 16th day of March, 1936. Shffs. ret. fd.

Mch. 27, 1936—App. of Wm. L. Rawls and C. V. Roe, Esqrs., for the Defdts.

Same day—Answer of the Board of Education of Balto. Co. fd.

May 5, 1936—Replication fd. by Petitioners with service of copy admitted thereon.

May 9, 1936—Motion Ne Recipiatur by Defendants fd.

May 22, 1936—Plaintiff's answer to Motion Ne Recipiatur fd.

May 22, 1936—(Hon. Frank I. Duncan) Hearing on Motion Ne Recipiatur had. Held Sub Curia.

June 25, 1936—(Hon. Frank I. Duncan) Motion Ne Recipiatur overruled with leave to rejoin in 15 days.

July 2, 1936—Defendants' Demurrer to replication and affidavit with service of copy admitted thereon fd.

July 9, 1936—(Hon. Frank I. Duncan) Hearing on Demurrer to Replication had. Held Sub Curia.

Aug. 4, 1936—Opinion of the Court filed overruling Demurrer to Plaintiffs' replication with leave to Defendants to take issue on traverse.

Aug. 18, 1936—Defdts. Rejoinder under affidavit fd. Rule Surrejoinder.

Aug. 20, 1936—Petitioners' request for an exception to the Court's Opinion overruling Defdts. Demurrer and fd. Aug. 4, 1936, fd.

Aug. 28, 1936—Plaintiffs' Surrejoinder with admission of service thereon joining issue on Defdts. Rejoinder filed.

Sept. 14, 1936—(Hon. Frank I. Duncan) Testimony started.

Sept. 15, 1936—Testimony resumed.

Sept. 15, 1936—Case passed to Sep. 18, 1936.

Sep. 18, 1936—Testimony resumed.

Sep. 18, 1936—Testimony concluded, Briefs to be filed.

Oct. 22, 1936—Memorandum of Court dismissing Petition fd.

Oct. 23, 1936—Order of Court that the Petition for Writ of Mandamus filed in this case be and the same is hereby dismissed, the costs of the case to be paid by the Petitioners, Order fd.

Dec. 21, 1936—Stipulations fd.

Dec. 21, 1936—Order for an Appeal to the Court of Appeals of Maryland fd.

Mar. 18, 1937—Bill of Exceptions and Testimony filed.

Mar. 18, 1937—Seventeen photostatic copies of exhibits sent with record, the originals of which are filed in Court Stenographer's custody, and eleven typewritten copies of exhibits prepared by Court Stenographer sent.

PETITION FOR WRIT OF MANDAMUS.

(Filed March 14, 1936.)

To the Honorable, the Judges of said Court:

The Petition of Margaret Williams, infant, by Joshua B. Williams, Jr., her father and next friend, and of Joshua B. Williams, Jr., individually, respectfully shows:

First: Margaret Williams is fourteen years of age, a citizen of the United States, and the State of Maryland, and a resident of Baltimore County, in said State, living at home with her father, Joshua B. Williams, Jr. She has been illegally and arbitrarily refused admission to the free public high schools of Baltimore County as hereinafter set forth, and by her father and next friend brings this action against the defendants named. Joshua B. Williams, Jr., is of full age, a citizen of the United States, a citizens and taxpayer of the State of Maryland, and a resident in Baltimore County, in said State. He files this suit as father and next friend of Margaret Williams, and in his individual capacity.

Second: David W. Zimmerman is the Principal of the Catonsville High School, a free public school established and maintained by the Board of Education of Baltimore County pursuant to the constitution and laws of the State of Maryland. As principal of said school he acts as agent of the Board of Education of Baltimore County, Clarence G. Cooper is Superintendent of the Baltimore County Public Schools, and Secretary and Treasurer of the Board of Education of Baltimore County. Henry M.

Warfield is President of said Board of Education, and James P. Jordan, T. W. Stingley, Oscar B. Coblentz, Joseph G. Reynolds and Edward B. Passano the remaining members thereof. All the foregoing defendants held their respective offices at all the times herein material, and are sued in their official capacities.

Third: The Superintendent aforesaid is appointed pursuant to the laws of the State of Maryland and is by law the executive officer of the Board of Education, having supervision over the Baltimore County public schools, including the Catonsville High School. The Board of Education was created by and exists pursuant to the laws of the State of Maryland, as an administrative department of the State, and the members thereof are appointed by the Governor.

Fourth: The Board of Education of Baltimore County is authorized, empowered, directed and reqnired by law to maintain a uniform and effective system of free public schools throughout Baltimore County. The funds for the support and maintenance of the public free schools of the said County are derived from appropriations by the State Legislature, out of the public Treasury of the State of Maryland, and from taxes collected in Baltimore County, including monies paid into the state treasury and into the county tax fund by your petitioner, Joshua B. Williams, Jr.

Fifth: Pursuant to the power vested in and the duty imposed upon it by law the Board of Education of Baltimore County has established and maintains throughout Baltimore County a system of uniform free public elementary and high schools for the residents thereof. Through their officers and agents said Board offers a uniform seven year course of study in the free elementary schools; and upon the students' satisfactorily completing said elementary school course, it offers them a uniform four year course of study in the free high schools. Said free high schools are by law under the direct control of the Board of Education of Baltimore County and the defendant Superintendent. The Catonsville High School is one of said free high schools, and is the nearest free high school in Baltimore County to the residence of petitioners, Margaret Williams and Joshua B. Williams, Jr.

Sixth: By rule of the Board of Education of Baltimore County and by administrative practice approved by the defendant Cooper as Suoerintendent and executive officer of said Board, the pupils of the Baltimore County free elementary schools upon satisfactorily completing the course therein are promoted and transferred to the free high school nearest their respective residences? Subject to the authority of the defendant Superintendent and of said Board of Education, the principals of the free high schools, as agents of the Board of Education, are the admitting officers to pass upon the qualifications of the pupils desiring to *enrol* in the high schools and to accept them into said schools.

Seventh: Petitioner Margaret Williams attended one of the uniform free elementary schools in Baltimore County established and maintained by said Board of Education, and on or about June 21, 1935, did satisfactorily complete the seven year elementary school course and was duly certified by the lawful and duly authorized agents of said Board of Education as promoted from the seventh to the eight_ grade, meaning thereby that she was qualified and eligible for admission into the first year of the free high schools aforesaid.

Eighth: On or about September 12, 1935, within the period of enrolling new students under the rules of said Board of Education, petitioner, Margaret Williams in company with her father and next friend, Joshua B. Williams, Jr., reported to the Catonsville High School and made in due form formal application to defendant, David W. Zimmerman, Principal, to have petitioner Margaret admitted as a regular student in eighth grade (first year class) of said high school. They offered themselves ready and willing to abide by all lawful rules governing the conduct of pupils in said schools. Defendant Zimmerman admitted that petitioner Margaret Williams, was educationally qualified to be admitted and had the proper residence, but wrongfully and arbitrarily refused to receive her into said high school as a student.

Ninth: Petitioners thereupon promptly appealed from the wrongful and arbitrary decision of defendant Zimmerman to defendant Cooper as his superior officer, and as Superintendent of Schools and the executive offi-

cer of the Board of Education aforesaid; but the defendant Cooper wrongfully and arbitrarily affirmed the illegal exclusion of Margaret Williams from the Catonsville High School and further arbitrarily and wrongfully refused to admit her to any other free high school in Baltimore County. From the illegal and arbitrary decision of the defendant, Cooper, petitioners appealed to the defendants, the Board of Education of Baltimore County, but said Board arbitrarily and wrongfully refused to admit petitioner to the Catonsville High School or any other free high school in Baltimore County. There is now other officer or agency to which either petitioner may appeal except this Honorable Court.

Tenth: Petitioner, Margaret Williams, is of lawful school age, in all respects qualified to be admitted into the free high schools in Baltimore County established and maintained as aforesaid, and is legally entitled to admission therein, but the defendant wrongfully and arbitrarily exclude her and refuse to giver her any education in the free schools in Baltimore County beyond the elementary course although they offer free high school education to the other residents of Baltimore County.

Eleventh: The aforesaid actions of the defendants have arbitrarily and wrongfully deprived petitioner, Joshua B. Williams, Jr., as a resident of Baltimore County and a taxpayer of the State of Maryland and of Baltimore County, and as father of a minor daughter of school age, resident in his household, of his right to have his said daughter educated in the free high schools of said County as her qualifications entitle her to be.

Twelfth: The aforesaid arbitrary and wrongful actions of the defendants violate the Declaration of Rights, the Constitution and the laws of the State of Maryland; and constitute a denial by the State of Maryland to each petitioner of the equal protection of the laws guaranteed them the Fourteenth Amendment of the Constitution of the United States and the laws of the land.

Thirteenth: Unless this Honorable Court, by its writ of mandamus shall secure, preserve and enforce the rights of petitioners in the premises they will suffer irreparable injury and will be without redress or remedy.

Wherefore your petitioners pray this Honorable Court to issue a Writ of Mandamus directed to the defendants David W. Zimmerman, Principal of Catonsville High School, Clarence G. Cooper, Superintendent of Schools, Secretary and Treasurer of the Board of Education of Baltimore County, Henry M. Warfield, President, and James P. Jordan, T. W. Stingley, Oscar B. Coblentz, Joseph G. Reynolds and Edward B. Passano, Members of the Board of Education of Baltimore County, constituting and being the Board of Education of Baltimore County, at their office in the Court House, Towson, Maryland, requiring the said defendants, by and through their agent, David W. Zimmerman, to admit the said Margaret Williams as a regular student in the eighth grade (first year class) of the Catonsville High School, and further ordering and requiring such other and further relief and protection to your petitioners and their several rights as may be proper and necessary in the premises.

MARGARET WILLIAMS, Infant,

JOSHUA B. WILLIAMS, JR.,

Father and Next Friend,

JOSHUA B. WILLIAMS, JR.,

Individually.

THURGOOD MARSHALL,

CHARLES H. HOUSTON (J. M.),

Counsel for Petitioners.

ORDER OF COURT.

(Filed Mar. 14, 1936.)

Upon the aforegoing Petition for Writ of Mandamus and affidavit, it is this 14 day of March, 1936, by the Circuit Court of Baltimore County Ordered that the Mandamus prayed for in the said Petition be granted and issued forthwith unless cause to the contrary be shown by the defendants David W. Zimmerman, Clarence G. Cooper, Henry M. Warfield, James P. Jordan, T. W.

Stingley, Oscar B. Coblentz, Joseph G. Reynolds, and Edward B. Passano, on or before the 28 day of March, 1936, provided a copy of this petition and order be served upon the said defendants on or before the 21 day of March, 1936.

C. GUS GRASON.

ANSWER.

(Filed Mar. 27, 1936.)

To the Honorable, the Judges of said Court:

The Answer of the defendants, David W. Zimmerman, principal of the Catonsville High School, Clarence G. Cooper, superintendent of Baltimore County Public Schools, Secretary and Treasurer Board of Education, Henry M. Warfield, President, and James P. Jordan, T. W. Stingley, Oscar B. Coblentz, Ernest H. Akehurst, successors to Joseph G. Reynolds, deceased, and Edward B. Passano, members of the Board of Education of Baltimore County, to the petitioner of the plaintiff filed herein, respectfully shows:

First: They admit the allegations of the first paragraph of the petition except that they emphatically deny that the said Margaret Williams has been illegally and arbitrarily refused admission to the free public high schools of Baltimore County, said allegations being further answered in subsequent paragraphs of this answer.

Second: They admit the allegations of the second paragraph of said petition except that Joseph G. Reynolds named as one of the members of the Board of Education of Baltimore County died, and Ernest H. Akehurst was appointed in his place as a member of said Board of Education.

Third: These defendants admit the allegations of the third paragraph of said petition.

Fourth: These defendants admit the allegations of the fourth paragraph of said petition.

Fifth: These defendants admit that the Board of Education of Baltimore County has established and maintains throughout said County a system of uniform free public and elementary and high schools for the residents thereof, as is alleged in said fifth paragraph of said petition, and as will be more fully stated hereinafter in this answer. These defendants admit that through their officers and agents said Board of Education offers a uniform seven year course of study in the free elementary schools, and admit that the students satisfactorily completing said elementary school course are offered a uniform four year course of study in the free high schools, except as to the colored pupils of which the said infant plaintiff was one, a five year course of studty in high schools is provided in the manner hereinafter set forth. These defendants admit that said free hich schools are by law under the direct control of the Board of Education of Baltimore County and the defendant superintendent, except as to the high schools hereafter mentioned. The defendants admit that the Catonsville High School is one of the free high schools maintained in said county, but they deny that plaintiff was or is entitled to admisstion to said high school, even though it was the nearest high school to her residence.

Further answering said paragraph of said petition, these defendants say that said Board of Education is required by law to maintain separate schools for colored children in said county. Annotated Code of Maryland, Art. 77, Sec. 109, 200.

In accordance with law the said Board of Education has established throughout Baltimore County twenty-four (24) elementary schools for colored children, located in various sections of said county. That by far, the greater portion of colored population in said Baltimore County is located in the territory of said county contiguous to Baltimore City, that the colored population in the other parts of the county is comparitively small; that the entire number of colored pupils in the elementary schools of the county for the present year is 1912; that upon completion of the elementary course when qualified as hereinafter set forth, the colored pupils through an arrangement with the Board of School Commissioners of

Baltimore City existing over a period of years attend one of the three colored high schools of said City, namely, Douglass, Booker T. Washington and Dunbar High Schools, the same being reasonably accessible, to the said colored pupils, and affording adequate courses for said pupils and giving said pupils educational advantages in all respects equivalent to those afforded by the white schools maintained by said Board of Education of Baltimore County.

Sixth: These defendants deny all of the allegations of the sixth paragraph of said petition, except that they admit that subject to the authority of the defendant superintendent and the said Board of Education the principals of said free high schools as agents of the Board of Education are the admitting officers to pass upon the qualifications of the pupils desiring to enroll in the high schools and to accept them into said schools, subject however to the qualifications that no principal of any high school in said County or in Baltimore City is authorized by the Board of Education of Baltimore County to admit a pupil to said high school who has not passed the uniform examination hereinafter mentioned.

Further answering said sixth paragraph of said petition, these defendants allege that under the rules and regulations prevailing under the authority of said Board of Education and said superintendent, all pupils, white and colored, throughout said county who desire to attend a high school, were required to take a uniform examination and to attain a prescribed average upon said examination; that no principal or teacher is authorized to recommened or promote for entrance into a high school from any elementary school in Baltimore County any pupil, either white or colored, except upon the successful passing of said examination by said pupil, upon which and only upon which said principal is authorized to recommend said pupil for entrance into a high school; that the said Margaret Williams, infant, as hereinbefore alleged, was a colored pupil and attended one of the colored elementary schools of said county, namely, No. 21 in the Thirteenth Election District of Baltimore County, located at or near Cowdensville; that at the end of the seventh grade said Margaret Williams, in compliance

with the aforementioned rules and regulations of the Board of Education presented herself to the proper authority as designated by said Board and said superintendant to conduct said examination on June 20, 1934, and took the same, but failed to attain the required average, her average being upon said examination 38¾ out of a possible 100, with 60 as the minimum passing mark; that said infant, Margaret Williams, thereafter attended the seventh grade in School No. 21 above mentioned, during the school year of 1934-1935; that on June 20, 1935, said infant, Margaret Williams, again presented herself to the properly designated authorities as aforesaid, to take again the required examination for entrance into a high school, but still failed to successfully pass said examination as required by the rules and regulations aforesaid, attaining upon said examination a mark of 244 with a minimum passing mark of 250, out of a possible credit of 390, and accordingly the said Margaret Williams was never qualified for admission to a high school, anywhere under the control or authority of the Board of Education of Baltimore County or said superintendent or any other agent of said Board.

Seventh: The defendants deny all the allegations of the seventh paragraph of said petition, except that the said Margaret Williams attended one of the uniform free elementary schools in Baltimore County established and maintained by the Board of Education.

Further answering said paragraph these defendants allege that the said Margaret Williams did not satisfactorily complete the seven year elementary school course, as is alleged in said seventh paragraph of said petition, but upon the contrary failed to pass the required uniform examination for such purpose. These defendants deny that the said Margaret Williams was duly certified by the lawful and duly authorized agents of said Board of Education as promoted from the seventh to the eighth grade, meaning thereby that she was qualified and eligible for admission into the first year of the free high schools aforesaid, as is alleged in said seventh paragraph of said petition. These defendants repeat that no principal or person acting under the Board of Education of Baltimore County was authorized to recommend any pupil

from the seventh grade who had not successfully passed the said uniform examination.

Eighth: These defendants admit that on or about September 12, 1935, the petitioner, Margaret Williams, in company with her father and next friend, Joshua B. Williams, Jr., reported at the Catonsville High School and made application to defendant, David W. Zimmerman, principal, to have petitioner, Margaret Williams, admitted as a regular student in the first year class of said high school; but they deny that the said Joshua B. Williams, Jr., or the said Margaret Williams, infant, offered themselves ready and willing to abide by all lawful rules governing the conduct of pupils in said schools: that the said Margaret Williams had no right of any kind to attend said Catonsville High School by reason of her failure to pass the examination hereinbefore mentioned, or any other high school maintained or provided by the Board of Education of Baltimore County.

These defendants, and particularly, the defendant Zimmerman, expressly deny that the said Zimmerman admitted that petitioner Margaret Williams was *educationly* qualified to be admitted and had the proper residence, and allege, upon the contrary, that said Zimmerman told said Joshua B. Williams, Jr., that he had no authority to admit said Margaret Williams into said Catonsville High School. That said Catonsville High School is one maintained and for and attended by white children, and that no one acting under the Board of Education was authorized to admit said Margaret Williams into said school. These defendants deny that the said David W. Zimmerman wrongfully and arbitrarily refused to receive the said Margaret Williams into said Catonsville High School as a student as is alleged in said eighth paragraph of said petition, these defendants alleging that said refusal was in all respects legal and in accordance with the rules and regulations and practice of the Board of Education of Baltimore County.

Ninth: Answering the ninth paragraph of said petition, these defendants admit that the said petitioners appealed from the decision of the defendant Zimmerman to the defendant Cooper as his superior officer and as Superintendent of Schools and the executive officer of the

Board of Education aforesaid, as is alleged in the ninth paragraph of said *said* petition; buts these defendants deny that the defendant Cooper wrongfully and arbitrarily affirmed the illegal exclusion of Margaret Williams from the Catonsville High School—and further deny that he arbitrarily and wrongfully refused to admit her to any other free high school in Baltimore County, for the reason *particulary,* as hereinbefore set forth, that said Board of Education of Baltimore County had provided adequate and equal educational advantages to the said Margaret Williams in the three colored high schools of Baltimore City under the arrangements aforesaid. These defendants admit that the petitioners appealed to the defendants, the Board of Education of Baltimore County, from the decision of the said defendant Cooper, but deny that said decision was illegal or arbitrary and these defendants further deny that the said Board arbitrarily and wrongfully refused to admit petitioner to the Catonsville High School or any other high school in Baltimore County for the reasons hereinbefore and hereinafter set forth.

Tenth: Answering the tenth paragraph of said petition, these defendants admit that the said Margaret Williams is of lawful school age, but deny that she is in all respects qualified to be admitted into the free high schools in Baltimore County established and maintained by the Board of Education of said County, as is alleged in said tenth paragraph; and also deny that the defendants wrongfully and arbitrarily exclude her and refuse to give her any education in the free schools of Baltimore County beyond the elementary course, as is alleged in said tenth paragraph, for the *resons* hereinbefore and *and* hereinafter set forth.

Eleventh: These defendants deny the allegations of the eleventh paragraph of said petition.

Twelfth: These defendants deny that any action on their part was arbitrary or wrongful or in violation of the Declaration of Rights and the Constitution and laws of the State of Maryland, and constitutes a denial by the State of Maryland to each petitioner of the equal protection of the laws guaranteed by the Fourteenth Amend-

ment to the Constitution of the United States and the laws of the land, as alleged in said twelfth paragraph.

Thirteenth: These defendants deny that the petitioners have shown any right whatsoever to a writ of mandamus to secure to the petitioner, Margaret Williams, the right to be admitted as a regular student in the first year class of the Catonsville High School, and further deny that the said petitioners will suffer irreparable injury and will be without redress or remedy without said writ of mandamus, as is alleged in said thirteenth paragraph of said petition.

These defendants allege that it has been shown by the foregoing allegations of this answer that said Margaret Williams was not eligible to attend any high school established or provided by the Board of *of* Education of Baltimore County, and particularly that she was not eligible or qualified to attend the Catonsville High School.

Further answering each and all allegations of said petition, these defendants say:

(a) That in the orderly and regular conduct the public schools of Baltimore County it was required under the authority of said Board of Education that in order to attend a high school provided by said Board of Education for either white or colored pupils said pupils should pass in the manner aforesaid the uniform examination that said requirement for the taking of said examination was in pursuance of the lawful authority of said Board of Education.

That as appears from the allegations of this answer, said Margaret Williams had twice taken and failed said uniform examination given to white and colored pupils alike, and was not entitled, eligible or qualified to attend any high school provided by the Board of Education of Baltimore County.

(b) These defendants further allege that it has long been the custom in Baltimore County and in Baltimore City, in cases where it would be more convenient to the pupils in a particular section of the city or county, to provide reciprocally for the attendance of pupils at certain designated schools in Baltimore City by pupils re-

siding in Baltimore County, and by pupils residing in Baltimore City at certain designated schools in Baltimore County; that said plan, these defendants believe and accordingly allege has promoted the welfare and convenience of said pupils in said city and county, and that it provides and has provided at reasonably accessible schools and high schools equal educational advantages to white and colored pupils, alike; that as alleged above, the colored population of Baltimore County is mainly centered aroun*g* the territory contiguous to Baltimore City, and that the colored population in other parts of the count*ies* is small, and the number of pupils successfully completing the seventh grade of the elementary course as hereinbefore described is comparatively few; that as a matter of fact in the entire county there are only 155 colored pupils attending the five grades of the three colored high schools hereinbefore mentioned in Baltimore City; and further that of the total 1912 pupils enrolled in the colored elementary schools of Baltimore County there are 231 seventh grade elementary pupils, in said schools. These defendants allege that the said Board of Education has found no reasonable necessity or occasion, in view of the provision made for entrance by colored pupils into the Baltimore City high schools aforesaid, to erect or maintain within the limits of Baltimore County a colored high school or high schools, that by providing the educational advantages afforded by said high schools said defendants, the Board of Education of Baltimore County, have fully and completely discharged their duty to the colored pupils residing in said county; that *he* said Board of Education has maintained and established high schools for white pupils residing in Baltimore County, but this was justified and necessitated by the fact that there are approximately 2,000 white pupils in Baltimore County qualified annually to attend high school, residing in the various sections of the county.

That the plan and arrangement hereinbefore set forth of providing high school advantages to colored high school pupils in the three colored high schools of Baltimore City by the said Board of Education has not been actuated by motives of economy because it believes that it could maintain a high school in Baltimore County for the total annual sum paid Baltimore City for rendering

said high schools available to the colored pupils of Baltimore County.

That said Board, however, after deliberate and mature consideration determined that with the large colored population aroung Baltimore City the said plan afforded educational advantages certainly equal to if not better than any that *he* Board of Edudation could provide in a small high school, in Baltimore County; that under the arrangement with the Board of School Commissioners of Baltimore City, the Board of Education of Baltimore County pays one hundred fifty dollars ($150.00) per year for senior high school pupils, and ninety-five dollars ($95) per year for junior high school pupils. The High Schools maintained under the Board of Education of Baltimore County average around sixty-three dollars ($63) per pupil.

Having fully answered the petition filed herein these defendants pray that they may be hence dismissed with their proper costs.

And as in duty bound, etc.

WILLIAM L. RAWLS,

CORNELIUS V. ROE,

Attorneys for Defendants.

REPLICATION.

(Filed May 5, 1936.)

To the Honorable, the Judges of said Court:

The replication of the petitioners to the answer filed herein respectfully shows:

First: Replying to the first paragraph of the answer insofar as the allegations of the first paragraph of the answer deny the allegations of the first paragraph of the petition your petitioners join issue with such allegations of the answer.

Second: Replying to the second paragraph of the answer, petitioners admit the allegations contained therein.

Third: Replying to so much of the fifth paragraph of said answer as does not admit the allegations of the fifth paragraph of the petition your petitioners allege they have no personal knowledge of a five year course of study in high schools for colored pupils, and therefore can neither admit nor deny the same; however, they demand strict proof of such allegations; petitioners allege that they are residents of Baltimore County and citizens of Maryland and entitled to the equal protection of the laws under the 14th Amendment aforesaid, no more and no less, and as such do not desire any special protection, privilege or benefit above that accorded the white citizens of person_ of the State; they object to any waste of taxpayers' monies in maintaing a system of providing five year high school training for one group of students when the same could be give_ in Baltimore County in four years petitioners allege further that the unequal system of requiring colored pupils to take a five year course while the defendants provide a uniform four year course giving the same type of education amounts to loss of one year of infant petitioners' life and is an unequal burden or discrimination placed upon the petitioners and others by the defendants on account of their race or color, petitioners allege that Margaret Williams is entitled to admission to the Baltimore County high school nearest to her residence namely Catonsville High School.

Petitioners are informed *an* believe and therefore admit that there are twenty-four colored elementary schools throughout Baltimore County, as set out on page three of the answer, these petitioners allege that fourteen of these twenty-four elementary schools are the inferior, inadequate and unequal "one teacher" type schools, that the defendants in violation of their own confessed legal obligations set out in paragraph four of the petition and admitted in the answer and in violation of the 14th Amendment of the Constitution of the United States have established and maintain in Baltimore County a system of education for Negroes unequal, inferior and inadequate in every respect, that in the matter of transporta-

tion physical plant text books materials of instruction libraries health service number and distribution of schools, curriculum offerings, supervision, enforcement of school attendance laws and other respects, the defendants both by rule and administrative policy discriminate directly against the Negro population of Baltimore County, and petitioners, making it difficult for infant petitioner and others of her race to qualify for higher education; petitioners are informed and believe and therefore, admit that the greater portion of the colored population in said County is located in the territory contiguous to Baltimore City and that the colored population in the other parts of the County is comparatively small; Petitioners allege further that the greater portion of the white population of the County is also located in the territory contiguous to Baltimore City and that the white population in the other parts of the County is comparatively small, yet the largest high schools of the County are located in the territory contiguous to Baltimore City, there are other white high schools consolidated with elementary schools in other sections of the County, they are without information as to the entire number of colored pupils in the elementary schools of the County for the present year and can neither affirm nor deny such allegations but call for strict proof of the matters alleged; petitioners emphatically deny that the arrangement with the Board of School Commissioners of Baltimore City affords to the colored pupils or petitioners adequate courses and/or educational advantages in all respects equivalent to those afforded by the white high schools maintained by said Board of Education of Baltimore County, that the three colored high schools of Baltimore City mentioned in said paragraph are located near the center of Baltimore City, that under the arrangement mentioned above no provision was made for the transportation of those students required to go out of the County to obtain a high school education, under this system infant petitioner would be forced to lose considerable time in going to and from Baltimore City in addition to transportation costs, her parents would not have their child under their control if that said child would be out of the County, it would be inconvenient to follow the education of the child, Petitioner Joshua B. Williams,

Jr., not being a resident of Baltimore City would have no power to require the Board of School Commissioners of Baltimore City to act on behalf of his daughter infant petitioner would be forced to attend school in an entirely different environment among total strangers and to study under a system of high school education prepared for pupils accustomed to large city elementary schools, rather than the "one teacher" type school, where infant petitioner obtained her elementary school education.

Fourth: Replying to the sixth paragraph of the answer insofar as the allegations of sixth paragraph of the said answer deny the allegations of the sixth paragraph of the petition, your petitioners joins issue with such allegations of the answer.

As to the further answer contained in said sixth paragraph of the answer petitioners deny that under the rules and regulations prevailing under the authority of said Board of Education and said Superintendent, all pupils, white and colored, throughout said County who desire to attend a high school were required to take a uniform examination and to attain a prescribed average these petitioners allege they are without information as to the type or form of examination required of white students and demand strict proof of the same, the present system of the defendants, is to require the colored pupils who have satisfactorily completed the seven year elementary school course to take an additional examination for the purpose of having their tuition paid into Baltimore City and not for the purpose of qualifying for a high school education, and not only is the examination itself an unfair discrimination, but it is also conducted under conditions which are set up for the purpose of discouraging rather than encouraging the colored pupils, that *may* colored pupils are not permitted to take the examination, the taking of this examination has never been a matter of right but has been left to the arbitrary will of agents of the defendants, that the examinations have been given in three central points and that the colored children attending other school have been required to journey to these points and there to take examinations made out by the supervisors of white schools, agents of the defendants, absolutely unfamiliar with the training of colored

pupils, that said examinations were given by the said supervisors who were total strangers to the colored pupils, that these examination papers were marked by the same people, that some students had to travel more than twenty miles to take these examinations and their parents had to furnish the means of transportation that the entire system of examinations for the payment of tuition is in itself an unequal burden of discrimination placed on petitioners and others of their race and color, petitioners admit that Margaret Williams is a colored pupil and attended one of the colored elementary schools as set out in the answer, they allege that said school was one of the unequal inferior and inadequate "one teacher" type schools mentioned above that at the end of the seventh grade said Margaret Williams presented herself for the purpose of taking an examination as an applicant for high school tuition in Baltimore City, that petitioners have no information other than from the defendants as to whether or not she failed said examination and therefore, can neither affirm nor deny said allegation but call for strict proof thereof, that Margaret Williams repeated the seventh grade as alleged in said paragraph of the answer and again presented herself to take an examination as set out above, petitioners have no information other than from the defendants as to the result of this examination and therefore, can neither affirm nor deny said allegation but call for strict proof thereof, that Margaret Williams had satisfactorily completed the seven year elementary course that the examination was given at Catonsville, away from the school attended by infant petitioner, that petitioner Joshua B. Williams, Jr., was required to furnish means of transportation to and form Catonsville, that at the place of the examination petitioner was suddenly thrown into a different environment from the "one teacher" school to which she was accustomed, that the examination was prepared by the supervisor of the white schools and given by one of them who was an absolute stranger to infant petitioner, that said supervisor marked the examination papers, and informed petitioner that she had failed said examination petitioners expressly deny that Margaret Williams was never qualified for admission to a high school anywhere under the control or authority of the Board of Education of

Baltimore County or said superintendent or any other agent of said Board.

Fifth: Replying to the seventh paragraph of the answer insofar as the allegations of said seventh paragraph deny the allegations of the seventh paragraph of the petition, your petitioners join issue with such allegations of the answer.

As to that further answer set out in said seventh paragraph petitioners deny that Margaret Williams did not satisfactorily complete the seven year elementary course, they deny that there was any uniform examination for the purpose of completing the seventh grade, the deny the examination was uniform. As to all other allegations set out in said paragraph these petitioners join issue.

Sixth: Replying to the eighth paragraph of the answer insofar as the allegations of said eighth paragraph deny the allegations of the eighth paragraph of the petition, your petitioner join issue with such allegations of the answer.

Seventh: Replying to the ninth paragraph of the answer insofar as the allegations of said ninth paragraph deny the allegations of the ninth paragraph of the petition, your petitioners join issue with such allegations of the answer.

They deny that said Board of Education of Baltimore County had provided adequate and equal educational advantages to the said Margaret Williams.

Eighth: Replying to the tenth paragraph of the answer, insofar as the allegations of the said tenth paragraph deny the allegations of the tenth paragraph of the petition, your petitioners join issue with such allegations of the answer.

Ninth: Replying to the eleventh paragraph of the answer, insofar as the allegations of said eleventh paragraph deny the allegations of the eleventh paragraph of the petition, your petitioners join issue with such allegations of the answer.

Tenth: Replying to the twelfth paragraph of the answer insofar as the allegations of said twelfth paragraph

deny the allegations of the twelfth paragraph of the petition, your petitioners join issue with such allegations of the answer.

Eleventh: Replying to the thirteenth paragraph of the answer insofar as the allegations of the said thirteenth paragraph deny the allegations of the thirteenth paragraph of the petition your petitioners join issue with such allegations of the answer.

Replying to that part of the answer beginning with "Further answering" at line 19 on page 8 of the answer, petitioners allege:

(a) The petitioners deny that under the authority of the Board of Education both white and colored pupils are required to pass a uniform examination as set out in the answer, that all colored pupils who complete the seven year elementary course and desire to attend high school are required to take the necessary examinations to complete the seventh grade and in addition thereto are required to apply for free tuition to Baltimore City schools and to take another examination in order to qualify to have their tuition paid to the Baltimore City schools the inferior and unequal and discriminatory system of elementary school education offered to infant petitioner and others of her race the plan of discouraging colored students from taking these examinations, and the method of giving said examinations make it an unreasonable unequal and unjust burden, these examinations are given at central points at the larger schools, and the colored pupils are required to travel to these schools at their own expense away from the elementary schools attended by them and there to take examinations prepared and given by the supervisors of white schools, that the examination papers are marked by the said supervisors, that this system of examinations has been prepared for the purpose of excluding the larger part of Negro pupils desiring to attend high school and to thereby limit the amount of money to be paid by the defendant Board of Education for tuition, that by the system of then requiring the colored students to take unfair examinations under unfamiliar and strange surroundings, the infant petitioner and the majority of Negro students completing the elementary school course are arbitrarily and wrongfully denied the

opportunity of obtaining a high school education, that said system of examinations is an unreasonable burden placed on the infant petitioner by the defendants because of her race or color, and denies to both petitioners the equal protection of the law under the 14th Amendment. The petitioners deny that said requirements for the taking of said examinations were in pursuance of the lawful authority of the said Board of Education, and allege that it is an arbitrary and unlawful rule and practive for the purpose of denying to these petitioners the equal protection of the law and is in direct conflict and a violation of the standards for County high schools as promugated by the State Department of Education.

The petitioners admit that Margaret Williams had twice taken the examination given to colored pupils but deny that said examinations were given to white and colored pupils alike, that they have no information or knowledge as to whether or not infant petitioner failed said examination except upon information from defendants, and therefore, can neither admit nor deny such allegations but demand strict proof thereof if the same be material, they emphatically deny that said infant petitioner was not entitled, eligible or qualified to attend any high school provided by the Board of Education of Baltimore County, that Margaret Williams was required by law to attend the elementary school nearest to her residence, said elementary school was one of the unequal and inferior "one teacher" type schools, that said Margaret Williams satisfactorily completed the seven year elementary school course offered at said school, that in order to continue her education she was obliged to apply for free tuition to Baltimore schools, that there were no schools maintained in Baltimore County for the education of infant petitioner other than those mentioned in the answer as white high schools, that there were no high schools in Baltimore for the exclusive use of colored children that infant petitioner applied for said paid tuition and was instructed by the defendants to take an examination at the Catonsville elementary school, that Margaret Williams was not offered transportation to said Catonsville school, to take the examination, that she went to Catonsville on or about June 20, 1934, and there took an examination prepared by the Supervisors of white schools and given

by said Supervisors that said examination was given in an environment totally strange to infant petitioner and under circumstances created for the purpose of discouraging her from qualifying for said paid tuition, that Margaret Williams was informed that she had failed the examination, that she repeated the seventh grade in the same school, was duly certified as promoted, made application for tuition took another examination under the same circumstances and was again informed that she had failed, therefore, was not eligible for free tuition, petitioners allege that the system of requiring infant petitioner to apply for paid tuition and to take the examination as mentioned above for the purpose of obtaining an education outside the County was an unequal burden or discrimination place_ upon them by the defendants on account of their race or color, that the plan of providing eleven white high schools throughout the County and denying infant petitioner the right to attend one of these schools with transportation offered to her the same as other citizens was a denial of the equal protection of the laws under the 14th Amendment to the Constitution, that the system of requiring infant petitioner to leave the County and to be offered free tuition in Baltimore City upon the successful passing of the aforementioned examinations and to require Joshua B. Williams, Jr., to pay for the transportation of his daughter to and from Baltimore or to pay board and lodging in Baltimore City was not equal to the high school facilities offered other citizens of Baltimore County and, therefore, was in violation of the Constitution and laws of the State of Maryland, and in violation of the 14th Amendment of the Constitution of the United States that the said plan required petition_ to attend high school five years for the purpose of obtaining the same quality of education offered to other citizens in Baltimore County in four years amounted to a loss of one year of petitioner's life, and was an unreasonable unjust and unequal burden.

(b) That petitioner have neither information nor knowledge as to the allegation of paragraph (b) of said further answer setting forth the system of reciprocally providing for the attendance of pupils at certain designated schools in Baltimore County and Baltimore City, and, therefore, neither admit nor deny said allegations

but call for strict proof thereof, if material, these petitioners deny that there is any plan of providing reciprocally for the attendance of Negro high school students for the reason that there was no colored high schools in Baltimore County, that the plan of sending children to the colored highs schools of Baltimore City, was not based on any plan reciprocity but for the purpose of discrimination, they deny that the plan for the high school education of colored children of Baltimore County has promoted the welfare and convenience of said pupils, they allege that while the plan of providing reciprocally for the attendance of white students in the city and count_ was brought about because of geographical convenience the plan for colored students was brought about for the purpose of discrimination despite inconvenience, petitioners deny that defendants provide and have provided at reasonably accessible schools and high schools equal education_ advantages to white and colored pupils alike that the opportunities for high school education for the colored pupils of Baltimore County are not equal to those offered to white pupils for the reason that although there are eleven high schools admitting white students conveniently located in eleven different election districts throughout the County with transportation also offered these white pupils at a minimum costs petitioners are without any form of high school in said County, except those mentioned in the answer as white high schools. Petitioner, Margaret Williams and others of her race are forced to compete in examinations to have their tuition paid and those who are fortunate enough to be accepted by defendants are required to leave the County and to into the heart of Baltimore City, and there to attend school under an entirely different environment away from their homes and neighborhood, that at this time defendants refuse to either transport these pupils or to pay for the same, Petitioners admit that the colored population of Baltimore County is mainly centered around the territory contiguous to Baltimore City, and allege that the white population is also mainly centered around the territory contiguous to Baltimore City, and that largest white high schools of said county are located near Baltimore City, petitioners admit that there only 155 colored pupils attending the Baltimore City schools from Baltimore County but allege that this small number is caused

by the system of elimination set out above, that 729 colored pupils have completed the seven year elementary course in Baltimore County during the last five years that over this peroid the defendants have systematically excluded approximately sixty five per cent of the colored pupils completing the elementary course from obtaining a high school education petitioners deny that the Board had found no reasonable necessity or occasion to erected or maintain within the limits of Baltimore County a colored high school and allege that the colored taxpayers of Baltimore County have repeatedly petitioned the Board to do so but that said Board has always refused to consider the matter and on October 8, 1935, refused to either receive a petition for a hearing or to hear the colored taxpayers, that such action of the defendant Board has been arbitrary and unlawful petitioners emphatically deny that the defendants have completely discharged their duty to petitioner or the other colored pupils residing in Baltimore County, the petitioners admit that the defendants have established high schools for white pupils in Baltimore County and allege that in excluding the infant petitioner from these high schools said defendants have acted wrongfully and arbitrarily and in violation of the Constitution and laws of the State of Maryland and such action denies to petitioners the equal protection of the laws, these petitioners deny that there are approximately 2,000 white pupils qualified annually to attend high schools and allege that they are informed and believe and therefore, allege that the number is considerably smaller, they allege further that approximately one tenth as many colored pupils complete the elementary course as white pupils but that by the systematic exclusion of the Board less than thirty five per cent of these colored pupils are sent to Baltimore City.

Petitioners deny that the plan of providing high school advantages was not actuated by motives of economy and allege that not only is the plan of providing education and then making it impossible for petitioner or others to qualify for the purpose of depriving petitioners of the rights to the equal protection of the laws but also to refuse to give to the petitioner equal education_ facilities in Baltimore County.

Petitioners deny that the said plan for colored stu-

dents was determined after any deliberate and mature consideration of the requirements for equal educational advantages but alleg_ that said plan was for the purpose of refusing equal *a*ducational advantages to petitioners and others of their race, as to the allegation that this plan afforded educational advantages equal to if not better than any that the Board of Education could provide in a small high school in Baltimore County, these petitioners allege that such allegations are immaterial to their rights herein and allege further that said plan does not afford educational advantages equal to *to* those afforded other citizens and taxpayers of Baltimore County, petitioners are informed and believe and, therefore, admit that the Board pays $150. for senior high school pupils and $95 for junior high school pupils, and that high schools maintained under the Board of Education of Baltimore County averages $63 per pupil but allege that this figure does not include a capital outlay of more than $1,863,500.00 for the high school*d* maintained by Baltimore County, nor fixed charges or other expenditures but although approximately one tenth as many colored pupils complete the elementary course as white pupils that the current expenses (excluding all capital outlay) for white pupils in high schools is more than twenty four times that expended in tuition for colored pupils.

That as to all allegations in the answer filed herein which deny the allegations set out in the petition herein, these petitioners join issue. That as to all allegations of new matter contained in said answer and not expressly replied to in this replication are hereby denied.

And as in duty bound, etc.

MARGARET WILLIAMS, Infant,

JOSHUA B. WILLIAMS, JR.,

Father and Next Friend,

JOSHUA B. WILLIAMS, JR.,

Individually.

THURGOOD MARSHALL,

CHARLES H. HOUSTON,

Counsel for Petitioners.

MOTION NE RECIPIATUR.

(Filed May 9, 1936.)

To the Honorable, the Judges of said Court:

The defendants respectfully move this Honorable Court not to receive the replication filed by plaintiff in the above entitled case for the following reasons:

Plaintiffs have failed to comply with Section 5 of Article 60 of the Code regulating proceedings in mandamus cases in the filing of the said replication.

Said paper called a "Replication" is not a common traverse as known to the common law, but an elaborate attempt to overcome the averments of the answer to the Bill of Compiaint, and set up a new and different case from that made by the bill of complaint and that which was answered by the defendants.

WILLIAM L. RAWLS,

CORNELIUS V. ROE,

Solicitors for Defendants.

ANSWER TO MOTION NE RECIPIATUR.

(Filed May 22, 1936.)

To the Honorable, the Judges of said Court:

The petitioner answering the Motion Ne Recipiatur filed in the above entitled case say:

The grounds for the Motion Ne Recipiatur as set out by the defendants in their motion are not cognizable under a Motion Ne Recipiatur.

I.

The petitioner have fully complied with Section 5 of Article 60 of the Code.

II.

A Motion Ne Recipiatur cannot be evoked for the second reason set out in the motion filed herein, namely, that there has been a departure in the pleadings.

Wherefore, the Petitioners respectfully urge this Honorable Court to refuse the Motion Ne Recipiatur and to require the defendants to answer the Replication as required by Section 5 of Articl_ 60 of the Code.

THURGOOD MARSHALL,

CHARLES H. HOUSTON,

Attorneys for Petitioners.

DEMURRER.

(Filed July 2, 1936.)

Defendants' Demurrer to the replication filed by Petitioners and allege as grounds of their demurrer, that the replication constitutes a departure from the allegations of the petition, and that nothing is shown in said replication or in the replication taken in connection with the petition and answer to entitle the said Margaret Williams, infant plaintiff, to any relief in this case.

WILLIAM L. RAWLS,

CORNELIUS V. ROE,

Solicitors for Defendants.

MEMORANDUM.

(Filed Aug. 4, 1936.)

The petition for the writ of mandamus in the above entitled case, filed by Margaret Williams, infant, by her father and next friend, Joshua B. Williams, and by Joshua B. Williams, individually, alleges that Joshua B. Williams is a resident and taxpayer of Baltimore Coun-

ty; that his daughter lives at home with him and is fourteen years old; that she has been illegally and arbitrarily refused admission to the free public High School of the County by David W. Zimmerman, Principal of the Catonsville High School, that by rule of the Board of Education of the County upon satisfactory completion of the Elementary Scholar course the pupils are promoted and transferred to the free High School nearest their respective residences.

That the petitioner, Margaret Williams, attended one of the free elementary schools and satisfactorily completed the seven year elementary course and was duly certified by the lawful agents of the duly authorized agents of the Board of Education as promoted from the seventh to the eighth grade meaning thereby that she was qualified and eligible for admission into the first year of the free high school of the County.

That within the period for enrolling new students the petitioner accompanied by her father reported to the Catonsville High School and made formal application to the defendant, David W. Zimmerman, principal, for admission in the first year class of said High School, but that the said principal while admitting that the petitioner was educationally qualified to be admitted and had the proper residence nevertheless wrongfully and arbitrarily refused to receive her as a student.

The petitioner appealed to the Superintendent of Schools, Mr. Cooper, but he arbitrarily affirmed her exclusion. He then appealed to the Board of Education of the County and this Board refused to admit petitioner to the Catonsville High School or any other free high school in Baltimore County.

That the defendants wrongfully and arbitrarily excluded her and refuse to give her any education in the free schools of the County beyond the elementary course although they offer free High School education to the other residents of the County.

The petitioner then asks for the writ to compel the Board of Education through their agent David W. Zimmerman to admit the petitioner as a regular student in the first year class of the Catonsville High School.

The complaints in this petition were set out clearly and distinctly. It says that a child of a resident taxpayer who had completed her course of study in the elementary school of the County in a satisfactory manner and who had been duly certified by the duly authorized agents as qualified and eligible for admission to the High School was illegally and arbitrarily refused admission.

The answer to this Petition upon the charges set out in it, are that no teacher or principal is authorized to recommend or promote for entrance into a high school from any elementary school any pupil white or colored, except upon the successful passing of an examination that the petitioner did attend one of the elementary schools and at the end of the seventh grade presented herself to the proper authorities designated by the Board for an examination for promotion to the High School and took the same but failed to attain the required average: her average being 38¼ out of a possible of 100 with 60 as the minimum passing mark that the petitioner thereafter attended the seventh grade for another year and again presented herself for an examination but still failed to pass said examination her average being 244 with a minimum passing mark of 250 out of a possible of 390.

The answer denies that the petitioner was certified by the lawful and duly authorized agents of the Board of Education as promoted from the seventh to the eighth grade.

That the defendant Zimmerman denies that he told the petitioner or her father, that the petitioner was educationally qualified for her admission to the High School.

So that up to this time there is an answer to the petition and the case about ready for a hearing on the facts.

But the answer went further. It sets up new matter not suggested by the petition. The petitioners answered this in a replication at great length, replying in detail to all new matter set up in the answer. The defendants demurred; one of the objections being that the case set up by the petitioner in her replication is altogether different from that presented in the petition and is therefore a departure that ordinarily is not permitted in mandamus cases.

The defendants having pleaded, the statute, Section 5 of Article 60, says, "the petitioner may plead to or traverse all and any of the material averments set forth in said answer".

This the petitioner did. I will therefore overrule the Demurrer with leave to the defendants to take issue or traverse.

Having made this decision on the demurrer, the pleadings present an altogether different case than that presented by the petition. It opens a wide field of inquiry, but after all the petition must fail if it is not shown by evidence that the petitioner passed the required examination or tests prescribed by the School Board to enter the County High Schools. If the petitioner fails in this, all the other questions raised by the pleadings are moot questions and should not be considered in these proceedings.

I will, therefore, rule now that this question of fact will be heard first, and disposed of first, and other questions raised by the pleadings will be held in abeyance until that allegation of fact is disposed of.

FRANK I. DUNCAN.

REJOINDER.

(Filed Aug. 18, 1936.)

To the Honorable, the Judge of said Court:

The rejoinder of the respondents to the replication filed herein, insofar as the same contains new matter not heretofore admitted or denied in the answer hereinbefore filed by your respondents respectfully shows:

First: Answering the new matter contained in paragraph third of said replication these respondents deny that the system of providing five year high school training for colored students as alleged in the answer is an unequal burden or discrimination upon the petitioners or others on account of their race or color, that the twen-

ty four colored elementary schools are inferior, inadequate and unequal; that they, by rule or administrative policy, discriminate directly against the negro population of Baltimore County, or the petitioners, or that they have made it difficult for petitioner or others of her race to qualify for higher education. They deny that no provisions is made for the transportation of students required to go out of the County to obtain a high school education, that the parents of the infant petitioner would have no control of their child while out of the County; or that it would be inconvenient to follow the education of the child. They deny that the system of high school education at present available to petitioner is in any way unsuitable or inferior to that afforded the white population.

Second: Answering the new matter contained in paragraph Fourth of said replication these respondents deny that the purpose of the additional examination for colored pupils is to have their tuition paid in to Baltimore City; they deny that said examination is an unfair discrimination or is conducted under conditions which are set up for the purpose of discouraging rather than encouraging the colores pupils; they deny that any colored pupil who has completed the elementary course is not permitted to take such examination; they further deny that said examination is left to the arbitrary will of agents of the defendants; that the examinations are made out by supervisors of white schools unfamiliar with the training of colored pupils; that the system of examinations is any way an unequal burden or discrimination placed upon the petitioners or others of their race or color; that the school attended by the infant petitioner was unequal, inferior or inadequate or that the infant petitioner had satisfactorily completed the seven year elementary course.

Third: Answering the new matter contained paragraph eleventh of said replication these respondents deny that the system of examination given to colored pupils who complete the seven year elementary course is unreasonable, unequal and unfair, or that it imposes an unjust *buren* upon colored students; or that the same have been prepared for the purpose of excluding the larger part of Negro pupils desiring to attend high school and thereby limit the amount of money to be paid by the defendant

Board of Education for tuition; that said system arbitrarily and wrongfully denies the opportunity to the petitioner or a majority of Negro students completing the elementary course of obtaining a high school education; that said system is an unreasonable burden placed upon the infant petitioner on account of her race or color or that said system denies to her the equal protection of the laws under the 14th Amendment. These respondents further deny that the requirements for the taking of said examinations were arbitrary or unlawful, or for the purpose of denying the petitioners the equal protection of the laws, or in direct conflict or violation of the standards for County High Schools as promulgated by the State Department of Education. These respondents further deny that the infant petitioner was required to attend an unequal and unfair elementary school that she had satisfactorily completed the seven year elementary school course offered at said school; that the examination given her was given for the purpose of discouraging her from qualifying herself to attend said high school; that she was duly certified as promoted upon the completion of the seventh grade or that the system of education provided for colored pupils was unequal or discriminative or that said system was not equal to other high school facilities offered other citizens of Baltimore County.

(b) These respondents deny that the system or plan of sending children to the colored high schools of Baltimore City was for the purpose of discrimination, they further deny that the infant petitioner or others of her race are forced to take an examination solely in order to have their tuition paid in the city high school or that they refuse to pay the transportation of colored pupils; they deny that the_ have systematically excluded any colored pupils completing the elementary course from obtaining a high school education; they further deny that they have been arbitrary or unlawful in refusing to erect a colored high school in Baltimore County or that in excluding the infant petitioner from a white high school they have acted wrongfull or arbitrarily or in violation of the laws of the State of Maryland or that such action denies to the petitioner the equal protection of the laws. They deny that the plan of providing high school advantages was determined for the purpose of refusing equal

educational advantages to petitioners or others of their race.

As to all the allegations in said replication which deny the allegations contained in the answer, these respondents join issue.

WILLIAM L. RAWLS,

CORNELIUS V. ROE,

Attorneys for Respondents.

EXCEPTION.

(Filed Aug. 20, 1936.)

To the Honorable, the Judge of said Court:

The petitioners in the above entitled case hereby request this Honorable Court to grant them an exception to the following paragraphs on page four of the opinion overruling defendants' demurrer and filed August 4th, 1936:

"Having made this decision on the demurrer, the pleadings present an altogether different case than that presented by the petition. It opens a wide field of inquiry, but after all the petition must fail if it is not shown by evidence that the petitioner passed the required examination or tests prescribed by the School Board to enter the County High Schools. If the petitioner failes in this, all the other questions raised by the pleadings are moot questions and should not be considered in these proceedings.

"I will therefore rule now that this question of fact will be heard first, and disposed of first, and other questions raised by the pleadings be held in abeyance until that allegation of fact is disposed of."

CHARLES H. HOUSTON,

THURGOOD MARSHALL,

Counsel for Petitioners.

SURREJOINDER.

(Filed Aug. 28, 1936.)

To the Honorable, the Judge of said Court:

The Surrejoinder of the petitioners to the rejoinder filed herein respectfully shows:

First: Petitioners join issue with the allegations of the first paragraph of said rejoinder.

Second: Petitioners join issue with the allegations of the second paragraph of said rejoinder.

Third: Petitioners join issue with the allegations of third paragraph of said rejoinder.

THURGOOD MARSHALL,

CHARLES H. HOUSTON,

Counsel for Petitioners.

REQUEST FOR SUMMONSES.

(Filed Sep. 10, 1936.)

Mr. Clerk:

Pleas_ issue summons for the following witness:

Clarence G. Cooper, Board of Education, Court House, Towson, Maryland, to bring with him the following books, records and papers:

(a) Minutes of the Board of Education from 1926 to the present time.

(b) All petitions and letters from citizens of Baltimore County requesting improvement of high school facilities for Negroes from 1924 to the present time.

(c) All records of the appearance of citizens of Baltimore County before the Board of Education of Baltimore County requesting the improvement of high school facilities for Negroes from 1924 to the present time.

(d) Annual reports of Board of Education for the years 1927 to date.

(e) Course of study used in Baltimore County Public Schools.

(f) All examinations given to Negro pupils of the seventh grade in the elementary schools for the years 1926 to date.

(g) All records of results of said examinations.

(h) All examinations given to white pupils of the seventh grade in the elementary schools for the years 1926 to date.

(i) All records of results of said examinations.

(j) All record*d* and papers from the Cowdensville Colored Elementary School for the years 1933-1934-1935.

(k) All records showing the number of colored pupils throughout the County completing the seventh grade from 1930 to 1936.

(l) All records showing the number of colored pupils throughout the County passing the examinations given seventh grade pupils from 1930 to 1936.

MEMORANDUM.

(Filed Oct. 22, 1936.)

On March 14, 1936, a petition was filed by Margaret Williams, infant, by her father and next friend, Joshua B. Williams against David W. Zimmerman, the Principal of a high school in Baltimore County, Clarence G. Cooper, Superintendent of Schools for Baltimore County, and the members of the School Board of Baltimore County for the Writ of Mandamus.

The petition alleged the petitioner who is fourteen years of age, and the daughter of a citizen and taxpayer of Baltimore County, attended one of the uniform free elementary schools in Baltimore County and satisfactorily completed the seven year elementary school course

and was duly certified by the lawful and duly authorized agents of said Board of Education as promoted from the seventh to the eighth grade, meaning thereby that she was qualified and eligible for admission into the first year of the free high school nearest to her residence.

That the petitioner accompanied by her father and next friend made formal application to the defendant, David W. Zimmerman, Principal of the Catonsville High School in Baltimore County, to be admitted as a regular student in the eighth grade (first year class of said High School), that the said Zimmerman admitted that the petitioner was educationally qualified to be admitted but he arbitrarily and wrongfully refused to receive her into said High School as a student. The petitioner then appealed to the Superintendent of Schools and upon his refusal to admit her appealed to the County School Board and that the action of the Principal and Superintendent of Schools was approved by the said Board.

In their Answer the defendants deny that the petitioner satisfactorily completed the seven grades in the elementary course and that under the rules and regulations prevailing under the authority of the County Board of Education and said Superintendent, all pupils, white and colored, throughout the County desiring to attend a High School are required to take a uniform examination and to attain a prescribed average upon said examination, and that no Principal or Teacher is authorized to recommend or promote for entrance into a High School from any elementary school in the County any pupil white or colored, except upon the successful passing of said examination upon which and only upon which said Principal is authorized to recommend said pupil for entrance into a High School.

That the petitioner was a colored pupils and attended one of the colored elementary schools and that at the end of the seventh grade in compliance with the said rules and regulations the Petitioner presented herself to the proper authority as designated by the said Board of Education to conduct said examination on June 20, 1934, and took the same but failed to attain the required average her average being 38¾ out of a possible 100 with 60 as

the minimum passing point. That in year 1934-1935 to wit on June 20, 1935, the petitioner again presented herself to take the examination but still failed to secure the passing average, attaining a mark of 244 with a minimum passing mark of 250 out of a possible count of 390. And they say that no principal or other person acting under the Board od Education of the County was authorized to recommend any pupil from the seventh grade who had not successfully passed the said uniform examination.

The Defendants and particularly the said Zimmerman deny that the said Zimmerman admitted that the Petitioner was educationally qualified to be admitted but said that the said Zimmerman told the father of the Petitioner that he had no authority to admit the Petitioner into the Catonsville High School.

The Petitioner then filed a replication in which they attempted to on trial the entire educational system of the County; especially the method of conducting examinations and of promoting pupils from the elementary grades to the first year of the Highs Schools of the County.

The defendants then filed a motion ne recipiatur which was overruled and then demurred to the replication. The Court overruled the demurrer and said: "Having made this decision on the demurrer the pleadings present an altogether different case than that presented by the petition. It opens a wide field of inquiry, but after all, the petition must fail if it is not shown by evidence that the Petitioner passed the required examinations or tests prescribed by the School Board to enter the County High School. If the petitioner fails in this, all the other questions raised by the pleadings are moot questions and should not be considered, in these proceedings. I will therefore rule now that this question of fact will be heard first and disposed of first and other questions raised by the pleadings be held in abeyance until that allegation of fact is disposed of".

The defendants then filed their rejoinder and the Plaintiffs their surrejoinder, after excepting to the opinion of the Court above set forth.

The case was then heard and testimony taken and submitted on briefs filed by both parties.

After considering all the pleadings and evidence I am still of the opinion that there is but one question in the case for our consideration.

A. Did the Petitioner satisfactorily complete the seven year elementary school course, and

B. Was she duly certified by the lawful and authorized agents of said Board of Education as promoted from the seventh to the eighth grade meaning thereby that she was qualified and eligible for admission into the first year of the free high schools.

The contention of the Petitioner is that having completed her seven year elementary school course to the satisfaction of her teacher she is entitled to be admitted to the High Schools without any certification from the County School Board that she has satisfactorily passed the uniform examination prescribed by said Board and therefore entitled to be admitted.

This contention is largely based upon the language contained in the "Manual of Standards for Maryland County High Schools" issued by the State Department of Education in November 1927 as follows "The possession of an elementary school certificate signifying the successful completion by the pupil of the course of study prescribed for the elementary school is sufficient to entitle the pupil to enter an approved High School without examination".

The State Board of Education is one of the most important branches of the State Government. By Section 11 of Article 77 (Bagby's Code) "it is given power to determine the educational policies of the State and to enact by-laws for the administration of the public school system which, when enacted and published shall have the force of law". This section further provides "that it shall decide all controversies and disputes arising under the laws as to its intent and meaning and that their decision shall by final". It is not contended that the language employed in the Manual of 1927 under the heading "Admission by elementary school certificates", was ever enacted into a by-law, and not having been enacted as a by-law it has no binding force and is a mere

expression that might or might not be adopted by the Board of County School Boards. As a matter of fact it was never adopted or endorsed by the County Board and according to the testimony of the Secretary of the State Board of Education and the Superintendent of the County Board has been repudiated by the State Board. The contention of the Petitioner that the language in the Manual is binding upon the County School Board and that the examinations and tests adopted by the County Board are illegal raises a question that may be important.

Section 11 of the Code Article 77, quoted above says: "The State Board of Education is given power to determine the educational policies of the state" and "that it shall decide all controversies and disputes arising under the law as to its intent and meaning and that their decision shall be final."

There was surely a controversy and dispute between the Petitioner and the County Board over that expression in the Manual and was it not a question to be determined by the State Board to decide on appeal from the decision of the County Board before resorting to Mandamus proceedings?

By section 41 Article 77 of the Code of Public General Laws (Flack's 1935 Edition) all property theretofore vested by law in the Public School Authorities of any County is vested in the County Board of Education who are authorized, directed and required to maintain a uniform and effective system of Public Schools throughout their respective counties. By Section 43 Article 77 (Bagby 1924 Edition) it is provided that the County Board shall to the best of its ability cause the provisions of this Article the by-laws and policies of the State Board of Education to be carried into effect, subject to this article and to the by-laws and policies of the State Board of Education the County Board of Education shall determine, with and on the advice of the County Superintendent the educational policies of the County and shall prescribe rules and regulations for the conduct and management of the schools.

By this section the County Board of Education shall determine with and on the advice of the County Super-

intendent the educational policies of the County and shall pass rules and regulations for the conduct and management of the schools, and by section 192 of article 77 (Bagby), the County Board of Education of any county is given authority to establish High Schools in their respective counties when in their judgment it is advisable to do so, subject to the approval of the State Superintendent of Schools, and it is expressly provided that such High Schools shall be under the direct control of the several County Boards of Education.

So that the County Boards under the Statutes are given power to determine on the educational policies of the County and shall prescribe rules and regulations for the conduct and management of the elementary schools and in addition section 192 says that High Schools shall be under the direct control of the County Boards of Education.

Acting under this authority the School Board by and with the advice of the County Superintendent adopted a uniform examination for all pupils attending the elementary schools who had completed a seven year course, the result of this examination to determine whether the pupil had passed the seven elementary grades satisfactorily and had qualified to enter the High School. The petitioner in this case took this examination and failed as set out in the defendant's answer, and was refused admission to the Catonsville High School. It would be strange indeed if the principals of the many schools in this County could each examine their pupils, using only their own judgment and certify to their proficiency without even the supervision of the School Board or the County Superintendent. One teacher might be very lenient and pass the entire class, another might be the reverse and pass no one.

We feel that the uniform test adopted by the School Board was fair and reasonable and that the examinations were fairly conducted and that the teacher who undertook to promote the Petitioner without the approval of the School Board did so without authority.

The Petition will be refused.

FRANK I. DUNCAN.

ORDER OF COURT.

(Filed Oct. 23, 1936.)

This case coming on to be heard before the Court sitting as a jury, testimony produced upon behalf of both parties having been considered, together with the pleadings in the case, It is Ordered this 23 day of October, 1936, that the petition for the writ of mandamus filed in this case be and the same is hereby dismissed, the costs of the case to be paid by the petitioner.

FRANK I. DUNCAN.

STIPULATION.

(Filed Dec. 21, 1936.)

It is hereby stipulated and agreed by and between counsel for the respondent and counsel for the petitioner herein that the petitioner, Margaret Williams, by and through her counsel, Thurgood Marshall, did on September 27, 1935, address a letter to the State Board of Education, a copy of which is attached hereto and shall be taken as part of this stipulation. Enclosed with said letter was a copy of a letter of the same date addressed to the Board of Education of Baltimore County, said last named letter being the same introduced in evidence in this case and markes Plaintiff's Exhibit 4." Thereafter on November 14, 1935, a letter was addressed to the State Board of Education by Thurgood Marshall, a copy of which is attached hereto and shall be regarded as a part of this stipulation. Enclosed in said letter was a petition, a copy of which is also hereto attached and shall be regarded as a part of this stipulation. Thereafter on November 22, 1935, a hearing was had before the State Board of Edcuation, at which Mr. Marshall was heard on behalf of the persons signing the last named petition. Subsequent to said hearing a letter was addressed to

Thurgood Marshall, by the Secretary of the State Department of Education, a copy of which is attached hereto and shall be taken as part of this stipulation.

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
LEON A. RANSOM,
EDWARD P. LOVETT,
Counsel for Petitioner.

CORNELIUS V. ROE,
WILLIAM L. RAWLS,
Counsel for Respondents.

September 27, 1935.

State Board of Education,
2014 Lexington Building,
Baltimore, Maryland.

Gentlemen:

Enclosed please find a copy of a letter to the Board of Education of Baltimore County concerning the refusal of the officials of Baltimore County to admit the children of two residents and taxpayers of said county to the Catonsville High School.

The facts in this matter are set forth in the enclosed letter, and in view of the fact that the school term has already commenced, we are asking that the State Board of Education, which is vested with powers to determine the educational policies of the State, to investigate this matter to the end that these children shall not be denied the equal protection of the law guaranteed by the Constitution of the United States and the Constitutional laws of the State of Maryland.

Will you kindly give the matter your immediate attention and advise us of the action taken thereon.

Sincerely yours,

(Signed) THURGOOD MARSHALL.

STATE DEPARTMENT OF EDUCATION.
2014 Lexington Building
Baltimore, Maryland.

November
twenty-third
1935.

Mr. Thurgood Marshall,

Phoenix Building,

4 East Redwood Street,

Baltimore, Maryland.

My Dear Mr. Marshall:

At the meeting held on Friday, November 22, 1935, the State Board of Education instructed the Secretary to write you that it had given sympathetic consideration to your presentation of the need for high schools for colored pupils in Baltimore County. The Board however is of the opinion that it has no authority under the law to take action in the matter.

Sincerely yours,

ALBERT S. COOK,

Secretary.

Copies sent to members of the State Board of Education

Mr. Clarence G. Cooper.

Mr. William Lee Rawls.

THURGOOD MARSHALL
Attorney at Law
604 Phoenix Building
4 E. Redwood St.,
Baltimore, Md.

November 14, 1935.

State Board of Education,

Lexington Building,

Baltimore, Maryland.

Gentlemen:

The Board of Education of Baltimore County maintains according to its annual report twelve high schools designated "White high." No separate high schools are maintained for the education of Negroes in Baltimore County. It has been, and is still, the policy of the Baltimore County Board of Education to refuse to admit qualified Negro students to the "white high" schools of the County. The Negro residents and taxpayers of Baltimore County are without high school facilities in the County where, at the same time adequate high school facilities are maintained for all other races and classes in said County.

Repeated petitions and requests over a period of years have been made to the Baltimore County Board of Education requesting the establishment of High Schools in Baltimore for the education of Negroes. All such petitions have been denied.

On October 8, 1935, at the regular meeting of the Board of Education of Baltimore County a petition (copy of which is herein enclosed) was presented. The Board of Education refused to receive or consider this petition, and definitely refused to establish high school facilities in Baltimore County for Negroes.

The decision of the Board of Education of Baltimore County was unlawful, arbitrary and in violation of the

Constitution of the United States and the Constitution and laws of the State of Maryland.

Therefore, the Petitioners, whose names appear on the enclosed petition appeal to this Board to hear this petition and a representative of the petitioners and to require the Board of Education of Baltimore County to maintain the educational system of that County in accordance with the law, and to establish and maintain adequate high school facilities in Baltimore County for the education of Negroes equal to those maintained for other citizens of said County.

Will you please advise me of the date set for the next regular meeting of the State Board.

Very truly yours,

(Signed) THURGOOD MARSHALL,

Attorney for Petitioners.

To the Board of Education of Baltimore County:

The undersigned petitioners respectfully represent to this Board as follows:

1. They are citizens and taxpayers of the State of Maryland and residents and taxpayers of Baltimore County.

2. They file this petition on behalf of themselves and others similarly situated.

3. Baltimore County maintains a system of high school education for a group of its citizens and excludes petitioners and their children from said high school facilities maintained in the said Baltimore County on the sole ground of their color.

4. No provision is made by the said Board of Education of Baltimore County for the education of Petitioners' children or any other children of the negro race within Baltimore County. Your petitioners are advised and believe, and therefore, allege that the refusal of the Board of Education of Baltimore County to provide them with

equal high school facilities within the County equal to those maintained by any other class or group of citizens is a denial to them of the equal protection of the law and, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States and in violation of the Constitution and laws of the State of Maryland.

Wherefore your petitioners pray that the Board of Education of Baltimore County establish high school facilities for the Negro youth who are children of residents and taxpayers of Baltimore County equal to the facilities offered to any other class or group of citizens of Baltimore County.

Julia Jackson	Deshie Adams
Etta Johnson	Mr. and Mrs. James Jones
James Love	Mrs. M. Washington
Ellen Love	Mrs. M. E. Fisk
Mary A. Stevens	Mr. and Mrs. John Hasty
Malinda Maith	Rebecca Lomax
John Maith	Henry Ayers
John Adams	Annie E. Ayers.

NOTICE OF APPEAL.

Please enter an appeal to the Court of Appeals of Maryland from the judgment and order of this Honorable Court, in the above entitled case, passed on October 23, 1936, that the petition for the writ of mandamus be dismissed.

CHARLES H. HOUSTON,

THURGOOD MARSHALL,

LEON A. RANSOM,

EDWARD P. LOVETT,

Counsel for Petitioner.

(With an affidavit by Joshua B. Williams, Jr., one of the Petitioners, that the appeal is not taken for the purpose of delay.)

back. About a month later the Superintendent of Schools of Baltimore County informed me that she had failed and it would be advisable for her to take the seventh grade, complete the seventh grade again. I sent her back to Cowdensville school to complete the seventh grade. She completed it the second time and I was informed that she was promoted from the seventh grade a second time. I was informed by her report card again. (The report card was introduced in evidence and marked as Petitioner's Exhibit 1.) This is the report card for the year 1935. On the bottom of the report card is written "promoted to the eighth grade, June 21, 1935." She went to Catonsville and took the examination a second time. We were informed that was the ruling of the School Board. The School Board did not offer to pay her transportation and I provided transportation for her. There is no grade in the educational system of Baltimore County above the seventh grade in Cowdensville school. Education above the seventh grade is offered in a school at Catonsville They have a High School education. This school is maintained by the Board of Education and the taxpayers of Baltimore County. There is no high school education at the Cowdensville elementary school. I tried at the Catonsville High School for admission within a reasonable time and during the period of admission to this Catonsville High School. I presented my daughter and her record and tendered ourselves willing and able to abide by all the lawful rules of that school. I asked for admission of my daughter to such next higher grade at such school. She was refused admission by Mr. Zimmerman, Principal of the Catonsville High School. I showed him the report card and he said to me that would entitle her to enter any school, any high school. Well, I asked him, I said, well, why can't she enter this one? He says as far as he was concerned, he said he did not mind teaching anybody, but it was against the rules and regulations of the County, the Board of Education, and that I could see Mr. Hershner, the Superintendent, and he would inform me what to do. My daughter was present during this time and also Lucille Scott, my neighbor's daughter, and our Pastor, Reverend James E. Lee. They heard Mr. Zimmerman's statements. After she was refused admission I went into lawyer Marshall's office and asked

him about it. He applied on my behalf to the School Board. Nobody from the Board of Education of Baltimore County has offered me anything in the way of further education for my child beyond the completion of the seventh grade.

CROSS-EXAMINATION.

My daughter attended the Cowdensville school. She did not attend any other school in Baltimore County. She went one month to the Junion High School in Baltimore City in the year 1935. Apart from the Cowdensville School 21 she attended no other school in Baltimore County. I think she began school in 1926. She attended the elementary school and was in the seventh grade at the time we are now talking about. She attended the seventh grade from September, 1933, until June, 1934. In 1934 she attended the entire year. She was in the seventh grade. At the end of the year in June she received a report card from the Principal. I do not have this report card. The report card stated she had been promoted to the eighth grade. I know there is no such thing as an eighth grade in the Cowdensville school. As far as I know there is no eighth grade in any of the colored public schools in Baltimore County. The teacher told my daughter that she would have to go to Catonsville for an examination. They did not say what for. She went to Catonsville for that examination. She took the examination. After she took the examination I received a letter. I do not have the 1934 letter. I was informed that she failed in the examination. She went back to the seventh grade in Cowdensville in the fall of 1935. She repeated the seventh grade in the next year. In June, 1935, according to the Principal, she was promoted. I received this information on the report card. It said "Promoted to the eighth grade as shown on this card." (Indicating Petitioner's Exhibit 1). In June, 1935, she was notified to take an examination. I do not think she was ever told for what purpose she was to take the examination. I have an idea that it was to be an examination on what she had had in the seventh grade. I think she was examined for the purpose of determining whether she was fitted to go to high school. After she took the examination I got the letter that you have there. That letter told me the

information about the examination. Yes, that is the letter.

It is headed, "The Board of Education, Baltimore County, Towson, Maryland. August 8th." It looks like August 8, 1935.

"Miss Margaret Williams, Halethorpe, Maryland.

"Dear Margaret:

"You are advised that your score in the recent test for high school tuition was too low to secure approval of the Board of Education. Your score was 244 out of a possible 390 points. This score is the equivalent of grade 7.6, and is below the completion of the seventh grade standing. If you are not sixteen years of age, and have had only one year in the seventh grade, you should repeat the grade next year.

"Very truly yours,

"J. T. Hershner, Assistant Superintendent."

After receiving the information that she had failed in this test I took her to the Catonsville school. The letter read that if she was not 16 and had had but one year in the seventh grade, it would be advisable to take the seventh grade over again. She is not 16. She has had two years. She has been in the seventh grade a second time. She went to the high school in Baltimore City after she had had one year in the seventh grade in September, 1934. She went for one month. She went on the recommendation of her report card. On this here (Petitioner's Exhibit 1). She went to School 130. Corner of McCulloh and Lafayette Avenue. At the end of the month she was informed that her parents lived in the county and if she wanted to stay in the high school I would have to pay her tuition. As for her work, she done favorable work. She was told that she would either have to pay tuition or leave school. I did not see where it was any use to communicate this fact to anybody in Baltimore County. She went back to the seventh grade in Baltimore County and stayed there until the next June. She took the examination as I have stated and I was notified on August 8, 1935, that she had

failed the test for entering the high school. In September, 1935, I went to the Catonsville school for the purpose of admitting my daughter to the county high school. I knew it was a high school. I did not know it was a white school. I know it was a public school. I knew it was a school where white children went. She never went to any school in Baltimore County where there were white pupils. There were all colored children going to the school where my daughter went. I do not know whether any white children could have went there or not. I know they did not go there. As far as I have seen it seems that separate schools are maintained for white and colored pupils in Baltimore County. As a result of what the principal told me at the Catonsville school I took my daughter home and she did not go to the Catonsville high school. I was not present when my Counsel, Mr. Marshall, went before the Board. She did not return to any school in the year 1935 and 1936 because the letter I received stated if she had not had but one year in the seventh grade their advice was for her to repeat the seventh grade. My daughter was born September, 1921. In September, 1935, she would have been 14 years old, still under 16. According to the letter she was not eligible to return a third year to the seventh grade.

REDIRECT EXAMINATION.

To the best of my knowledge there is no eighth grade in Baltimore County in the so-called white schools. There is a high school in the so-called white schools in Baltimore County beyond the seventh grade. This is after completion of the seventh grade.

DAVID W. ZIMMERMAN,

a witness of lawful age, having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION.

My full name is David William Zimmerman, Principal of Catonsville High School, one of the defendants in this case. (Permission granted by Court to proceed on the

basis of cross-examination, on the ground that witness was an adverse witness.) Catonsville high school is one of the public high schools in Baltimore County maintained and operated by the Board of Education of Baltimore County. This high school receives state aid and is an approved high school, approved by the State Board of Education. In this high school I follow the standards for Maryland County high schools as prepared by the State Board of Education. I am the proper admitting officer of this school. I do not know where the Cowdensville elementary school is. I do know where the Arbutus elementary school is and after children graduate from the Arbutus school they apply for admission to the Catonsville high school which is the nearest public high school to the Arbutus elementary school. I do not know Margaret Williams, the infant petitioner. I have never seen her before. I have seen Joshua B. Williams. In September, 1935, during the time when I admit students to the high school, Joshua Williams appeared. The school was not over-crowded. Joshua Williams told me he would like to admit his daughter to this high school. He showed me her report card. I did not look at it. I looked at it, but I did not examine it. To my knowledge this report card (Petitioner's Exhibit 1) is not the report card. The report card he showed me had "promoted to eighth grade" on it. This has "promoted to eighth grade" on it but I did not notice it. I did not examine it carefully, but I did notice that it had "promoted" on it. It is the usual type of report card, but it is not the proper form. The report cards that we receive have on them "promoted to high school" with the signature of the principal beneath it. The principal writes on the bottom in her own handwriting "promoted to high school," and signs that. If Joshua Williams had been a white man, and had presented his daughter a white girl, and had handed me a report card like this and the only difference would have been on the bottom reading promoted to high school and over the principal's signature from one of our schools I would have accepted the pupil. If this parent and child had been Spaniards, I would have consulted the Board of Education before admitting her. If they were Russians I would accept them. If they were Japanese I would have referred it to the Board of Edu-

cation and Chinese also. I refused Margaret Williams because I had no jurisdiction over the colored race. In the first place I refused because the report card was not in due form. I did not tell that to Joshua Williams. I don't think I told him that I could not admit his child because of the ruling of the County Board, which was that colored children could not attend my school. I have jurisdiction over white pupils and any other but white I would always refer to the Board of Education. I called Mr. Cooper that evening and advised him that Mr. Williams had applied for admission. If the parent and child were Chinese, Spaniards or Japanese I would call the authorities over the phone while the parent was there and ask them. If I was real busy I would ask the parent to come back. I did not ask Joshua Williams to come back because I had no jurisdiction. I got the idea that I did not have jurisdiction over Negro children because I am principal of a high school, an approved high school for white pupils. The schools maintained for whites and colored have never had anything except whites or colored. Therefore if anybody other than white should apply for admission I happen to know there is an elementary school system in Maryland by practice. The school board has never told me in so many words who I could not admit. We have printed regulations. I do not have them with me. The reason I refused Margaret Williams was lack of jurisdiction. If she had been a white child who came to me, stating and with evidence of the fact that she was promoted to the high school, I would have admitted her. But I refused to admit Margaret Williams.

CROSS-EXAMINATION.

If a white pupil had come to me with a card of that kind, containing the statement "promoted to eighth grade" I would not have admitted that white pupil in the Catonsville High School.

CLARENCE G. COOPER,

a witness of lawful age, having been first duly sworn was examined and testified as follows:

My full name is Clarence G. Cooper and I am one of the defendants in this case. (Permission granted by the Court to proceed as cross-examination.) I am by law the Superintendent and Secretary and Treasurer of the Baltimore County Board of Education. I have administrative duties pertaining to the financial support of the schools, care of the buildings, their equipment, supervisory duties, supervisory leadership over the teachers and supervising the instruction therein. I keep the minutes of the Board and these minutes accurately represent all that transpires in the Board. I do not know of any official acts not recorded in those minutes. The respondents, members of the Board of Education, and I have full power and authority over the public school system in Baltimore County. Under this system I have a uniform elementary system of seven years throughout the county and a system of four year high schools throughout the county for white schools. These two systems for white schools are integrated. These are State aided schools and meet the requirements of the State Board and follow the standards of Maryland County high schools as published by the State Board of Education (the witness handed bulletins purported to be standards of Maryland County high schools.) These are the standards. (Bulletins marked Petitioner's Exhibit 2.) We have six senior high schools, one junior high school for three years work and one for one year's work, two for one year of high school work and two have been closed. I cannot estimate off hand the value of these high school (referring to Annual Report.) The total estimated value is $1,883,500. For the year ending July, 1935, the total current expenses for running these high schools was $336,594.88. The average cost per pupil for that year was $61.87 for the senior high, $61.44, for the group 2 high schools and the average of $61.95. That is for the year 1935. In my answer I alleged the system average of $63. per pupil. The Board of Education of Baltimore County offers transportation to the white high schools. Children who live within reasonable walking distance are not transported. The parents are required to pay 10¢ a day for transportation if the child is riding on a public bus. The Board of Education pays the balance up to 20 cents. We do not give certificates for the satisfactory completion of the seventh

grade in an elementary school. If the child passes the required examination the principal writes on the bottom of the report cards "promoted to high school." He must sign his name below that statement. He may also write "promoted." A child who has a card with the word "promoted" and the signature of the principal cannot enter high school. He must have "promoted to high school" with the signature of the principal. The difference is that they are promoted but not promoted to high school. The aim is to get those children out to go into industry or enter commercial work. In other words we "promote them out." We send a record to the State Board of Education showing the number of pupils satisfactorily completing the seventh grade. (The witness was shown State Board records.) From the figures on the colored elementary schools for promotions from the seventh grade the figures include the total number promoted both those going to high school and those promoted with the thought of going to work. When these reports mentioned "graduates" from the seventh grade that is what we mean. A pupil does not satisfactorily complete the seventh grade until passing the required prescribed test given to all children. The principals are authorized to promote out of school. They are passed if, in the judgment of the principal they will do better out of school than within school. This is left entirely to the principal. I do not decide who shall go to the high school and who shall not. We supervise the uniform examination and the superintendent passes upon a great many pupils. There is a uniform examination given. All children take the exact same examination. Colored children are required to take the same examination as the white children for promotion to high school. They take it under different conditions as to time and place. I think a Negro child is entitled to the same type of education as a white child. The examination is for the purpose of getting into high school. If the pupil fails in the examination in one subject or if he passes with low grades he may be promoted out without being eligible to high school. These examinations started in 1926. This is the same year we started paying tuition for the colored children. There was a connection between the two, quite a connection, because by the order of the Board we were to only pay for

colored children who were recommended by the Superintendent of Schools. The examination for white pupils was given prior to 1926. I have been Superintendent for 16 years. Prior to 1926 no provision was made for the high school education of Negroes. After 1926 Negro children who were recommended by the Assistant Superintendent of Schools were permitted to enter the City high school and the tuition would be paid by the Board of Education. The same examination is used for white and colored pupils. The passing mark, as a matter of fact is lower for the colored pupils. The examination is uniform. The requirements for achievement, that is, the percentage requirements are not uniform. By order of the Board of Education, the general average in a certain year was reduced to 50 provided none had an average less than 30 in any one subject. The payment of money into the Baltimore City schools is through the budget which is submitted November 1. We don't know how many will pass the examination the following June. If more colored children pass the examination than we had provision for we would transfer it from some other item in the budget. If a smaller number of children pass the money is reported back in our next budget. The question of actual expenditure for Negro education for high school depends entirely upon how many pass the examination and get in. If the number of children in the Catonsville High School were increased it might effect the current expenditures, but it would depend on whether another teacher would be needed. If 25 more Negroes would pass the examination than usually pass, they would cost the Board 25 times $95. or more. Prior to 1926 when we started the examinations we had an eighth grade. Approximately the same time we discontinued the eighth grade. According to the minutes the Board instructed the Superintendent to discontinue the eighth grade. The date is September 7, 1926. Reading from the minutes on the Board on the same page:

"The Board decided to pay tuition to the Board of School Commissioners of Baltimore City for colored pupils who have satisfactorily completed the work of our elementary schools and are approved by Assistant Superintendent Hershner. The Board reserves the right of discontinuance at any time payment to the Board of

pupils who are not maintaining satisfactory records in their studies, and will not pay tuition for a period longer than four years from the date of the pupil's enrollment. If a pupil should be assigned to the Junior High School by the school authorities of Baltimore City, his enrollment in said school will be considered a part of the four years high school education for which we are now obligated. The Board instructed the Superintendent to discontinue the 8th grade in the colored elementary schools."

The following year we started giving the examination to Negro children. The examination is not for the purpose of getting tuition. The Baltimore City authorities will not admit the children without the examination that Baltimore County gives. I don't know what Baltimore City does. I do not know of any colored students who are in Baltimore City who have failed the examination. Perhaps I did receive letters requesting transportation for colored pupils in Baltimore City High Schools and I wrote I could not because they were not there with my consent. Baltimore City does not require me to give this examination out here in the County. Reading from the minutes, page 311, July 12, 1927:

"The Superintendent reported that a county-wide examination to determine the qualifications of colored pupils for admission to the high schools of Baltimore City, according to the terms set out in the Minutes of this Board under date of September 3, 1926, was held at the Towson Colored School on June 23, 1927. The Board instructed the Superintendent to advise the pupils who made a general average of sixty per cent or more in the examinations that the Board would pay for their instruction in the colored high schools of Baltimore."

There is no mention of a white examination on this page of the minutes. I do not see mention any place in the minutes of the giving of a white examination and the marks and how many children passed. I do not recall any mention of these facts in the minutes. The examinations are given to the white children, as I said before, for an indefinite period of time, without any specific regulation of 1927 as to them. This specific regulation of 1927 concerned admission to high school. The

payment of tuition follows the approval of the Board of Education for the Baltimore City High School. I have no jurisdiction over the Baltimore City schools as to who they shall admit and who they shall not admit. We claim we have the right to give this examination, the same as we have for white children, to determine whether or not they are eligible for high school. They may go to some other adjoining county high school with that promotion card. The examination is given for the purpose of deciding whether or not a colored child is capable of being admitted to the Baltimore City school or to any high school.

Q. Well, now, this letter from Mr. Hershner which says that the test is the high school tuition—Mr. Hershner was wrong on that? A. No, a pupil may be admitted to the Baltimore high schools, and pay tuition for them, if they will successfully pass the examination.

Q. No, he says here, "Was scored in the recent test for high school tuition." A. That is right.

Q. The test for high school tuition? A. That is right.

Q. Well, as a matter of fact, isn't that what the test is for? A. No, the test is for eligibility for high school, whoever passes the test.

Q. If you fail in the examination, do you get tuition paid? A. No.

Q. The only way to get tuition paid is to pass the examination? A. That is right.

Q. Now, we have several more items here in the Minutes. Now, you said a minute ago that for the colored children they had to satisfactorily complete the seven years elementary course and be approved by the Assistant Superintendent. A. That is right.

Q. Now, that gives him certain discretionary powers, does it not? A. It does.

Q. Would it be possible for him to be arbitrary? Would there be any check-up on it? A. Well, there would be a possibility of him being arbitrary, yes.

Q. Yes. A. It is possible for any human being to be arbitrary.

Q. Yes. Now, we get down here to 1928, and we are going to ask you this, without going into the Minutes, suppose a negro child in Baltimore City High School, with your approval, and your paying tuition, should fail in the Eighth Grade, what would happen? Would you continue to pay that child's tuition? A. I do not recall what the Minutes say on that, our ruling on it.

Q. There has been a provision on that? A. Mr. Hershner could answer that question better than I could.

Q. Oh, Mr. Hershner? A. Yes. Mr. Hershner, I should say, is the supervisor of colored schools, and is very familiar with the details pertaining to their administration.

Q. But we still have certain facts here, and without going into the Minutes, we find that the percentage has fluctuated on the colored children, the passing mark, and at certain times it drops all the way down to 30. A. That is right. No, not down to 30.

Q. I think it said 30. A. An average of 50, not less than 30, in any one subject.

Q. Yes, that is right, the average is 50. Now, has the white average fluctuated at all, or has it been the same every year? A. The white average has been raised.

Q. The white average has been raised? A. In 1929——

Q. Now, Mr. Cooper, why did you lower the colored average? A. We lowered the colored average in order to deal more liberally with those going to high school.

Q. Do you think it is the fault of the pupil? A. It may be the fault of the pupil.

Q. Peculiar to colored pupils; is that correct? A. From the evidence of the examination, yes,

Q. That is right, that is your opinion of the examination. Now, I am going to ask you on broad, general terms, you examined them this year; didn't you, all through the colored schools, didn't you? A. Yes.

Q. Didn't they compare favorably with the white schools on the achievement tests? A. No.

Q. You think not? A. No, decidedly not.

Q. It is not a question that they are getting inferior education? Your schools are all right, aren't they? A. I hope so.

Q. You hope so, but do you know? A. Yes.

Q. Do you ever supervise any colored schools? A. Very seldom.

Q. Have you ever been to the school attended by Margaret Williams, in Cowdensville? A. Yes.

Q. How often during the years she was there, 1924 to 1929—— A. I do not recall any years she has been there.

Q. You do not have very much supervision in the colored schools? A. Very little.

Q. As a matter of fact, you do not know what they are being taught? A. Yes, I do.

Q. Of your own knowledge? A. I know what the course of study is.

Q. You know what the course of study is, and you assume that the course of study is used? A. I hold my assistants to that responsibility.

Q. That is right. Now, for example, do you know anything about these examinations, the examinations themselves? Do you prepare them? A. I help prepare them.

Q. You help prepare them. Do you include handwriting in it? A. No.

Q. In the 1935 test, that standard test, wasn't handwriting in there? A. It may have been in the standard test.

Q. Don't you know, as a matter of fact, that white children have handwriting books, but the negroes have not had any until this year? A. No, the negroes have had them.

Q. They have had handwriting books? A. Yes.

Q. I see. A. They have a new series of texts this year.

Q. Mr. Cooper, you are more or less qualified as an educator, are you not? I mean, you have studied education, and you practice it in your position; is that correct? A. Yes.

Q. Now, if it showed up that "A" group of children did not show up as well as "B" group of children on the *same* examination, wouldn't there be two possibilities, that the A-group of children was very dumb, or that the A-group of children had gotten inferior instruction? A. Or a difference in the course of study.

Q. Or a difference in the course of study. Now, if you rule out the difference in the course of study, and if both have the same course of study, there are only two points; isn't that correct? A. Yes.

Q. You could not say exactly that one or the other was correct, could you? A. No, I could not.

Q. Now, do you give examinations from the first to the second grade, and from the third to the fourth, and from the fourth to the fifth, and from the fifth to the sixth? A. We begin at the second grade to give examinations.

Q. I mean for the purpose of promotion, uniform throughout the county? A. Yes, very frequently we do. We do not do it every year.

Q. Oh, you do not do it every year. A. But practically every year.

Q. Does that determine whether you go to the next grade? A. When the examination is set by the County, county-wide.

Q. It is for that purpose? A. Yes.

Q. And all through the schools, they go along like that. Now, tell me this, you allowed them to lower the mark, in order to be more liberal to the colored pupils, and for those who wanted to go to school, is that correct? A. Wanted to go to high school.

Q. Yes, those who wanted to go to high school. Now, tell me this, have you ever sent any more children than you had money to pay for? A. No.

Q. Have you ever sent in almost as many? A. No.

Q. How much money do you usually have left over from that tuition money? A. I could not tell you that.

Q. You have no idea? A. I have no idea. We have never had a budget for negro high schools until last year.

We never budget tuition separately but we budgetted transportation costs for negroes separately: to the Baltimore City High School. We have been giving negroes transportation to the Baltimore City High School since January 1, 1936 but this had nothing to do with Margaret Williams, who applied in 1935 and who took the examination also in 1934. We did not offer her transportation. She was not entitled to it. According to the examination she was not eligible for high school. We did not offer transportation for those who passed the examination in that year. To the white students we offered transportation provisionally, that is, the pupil is required to pay ten cents. The Board pays the excess up to twenty cents. In 1934 and 1935 if the colored parent had agreed to pay ten cents on the transportation, we would have paid the balance. When Margaret Williams finished the seventh grade, what we would offer her in the line of education would depend on whether or not she could pass the required test for seventh grade children throughout the county. If she had successfully passed, we offered her admission to the City High School and the Board of Education to pay the tuition. Baltimore City High School is removed from Baltimore County and our Board has absolutely no jureisdiction over the Baltimore City High School.

A child in the Baltimore City schools would be controlled by the Board of School Commissioners in Baltimore City and a white high school child attending school in Baltimore County would be under the control of the Board of Education of Baltimore County. We maintain high schools for the white child up to and including grade eleven. We supervise and control the edu-

cation and the colored child up to and including grade seven. After grade seven, we have no jurisdiction over what the colored child will receive in the line of education. The white child goes through to the eleventh grade. We give examinations in some subjects as to whether the child is to graduate and receive a diploma. The reason we do not give an examination at the end of the eleventh grade and do give one between the seventh and eighth grades is that we feel we should test for the eligibility for the high school. My high school principals test whether or not they are subjects for promotion, for graduation. I leave the question as to promotion in the high schools to the principals. It is not left entirely to the elementary school principals. Between the seventh and eighth grades the uniform examination is prescribed for white and colored high schools. The examination is printed by instruction of the Board of Education. The white children do not have to go to a central location for this examination. It is given right in their own school. Their teacher is present when it is given. The teacher gives the examination. The teacher marks the examination. The examination is prepared by the supervisors and the superintendent and the assistant superintendent. We all prepare it together. We do not give the colored examination to the colored children in their individual schools. Seventy per cent of them are in their individual schools with their teachers present. In 1934 and 1935 I do not recall but I believe we gave the examination in three or four colored schools. A child living at Sparks, Maryland, would have to come to Towson to take the examination. The child would have to find his own transportation. I did not instruct any principals to send only those who had a fair chance of passing the examination. I think the Assistant Superintendent did. It was done with my approval. The supervisor and assistants administer the colored examinations. These are white supervisors. Mr. John T. Hershner is the only one who supervises colored schools. The white supervisors do not supervise in the colored schools, but go there in testing programs. In 1934 the examinations were marked by supervisors. In 1935 they were marked by employed high school or college graduates who knew nothing of Baltimore County. The reason we do not allow the col-

ored teachers to give the examination as we allow the white teachers to do is because the number of children in the seventh grade colored schools is so small that it is possible for us to bring the children to announced centers and examine them in an impersonal and uniform manner. We would be very anxious to do the same for white children but the number of white children makes it practically impossible for us to do it. We did not transport the colored children to these announced centers prior to 1936. We never had any requests for transportation. By giving the examination in announced centers it is given in an impersonal and uniform manner by people especially trained and without the personal element of the teacher. We hired other people to mark the papers because the task was too great for the superintendent. In 1935 the test was along achievement or standard test, which required detailed and very laborious work and we hired these people who had taken courses in educational measurements and were familiar with the marking and grading of those tests. By impersonal, I mean that the person giving the examination could go around the room but would not help with the examination. We allow the white principal to give the examination because it is impossible to do otherwise. In the schools where the colored children are given examinations, the principals are there but they are not allowed to give the examination because it is possible for us to give the examination in the desired manner. In the particular place for example, Towson, the principal is there. He helps give the examination. He does not help to mark them. He has nothing to do with the marking of the papers. We do not inform the principal how many passed and how many failed unless he asks and we inform the children and they, in turn, inform the principals. The white principal had some jurisdiction as to who would be promoted and who would not. The colored principal sends in his recommendation at the end of the year on a special blank prepared by the superintendent asking for the grades attained by the pupils during the year, and whether or not in his estimation, the principal's examination, the pupil is eligible for high school. This is done before the examination. So far as it is humanly possible to do, these examinations are keyed to the course of study. The prin-

cipal makes up a report card on which he says either "promoted" or "promoted to high school" at the end of the school year.

In the white schools the examinations are marked before the report card is made. The colored child receives his report card before the examinations are marked. He receives his report card from the principal. The white students receive their report cards from the principal. The colored principals have no knowledge of which colored children have passed prior to the closing of school. The colored principal has no authority to promote a student to high school. That authority rests in the hands of the assistant superintendent. For the white pupil, it rests in the hands of the principal. The negro principal cannot promote a child to high school without the approval of the assistant superintendent. A colored teacher should not mark on the report card "promoted to the eighth grade." They are instructed that colored children must take an examination for eligibility for high school. Regulations covering the promotion of colored children to the high school are sent out in letter form and they state that the principal cannot promote to high school without the approval of the assistant superintendent. The only regulations to the colored principals are that colored children must take the examination prescribed by the Board for admission to high school. The letter containing the regulations to the colored principals are in two letters. (Two papers handed to the witness.) This is a letter dated June 12, 1935. This is the letter sent in 1934. (Paper referred to marked "Petitioners' Exhibit #3.) According to this letter teachers are instructed to discourage pupils from taking an examination for free tuition to a high school if they do not have a fair chance of passing. The principal is familiar with the achievements of the pupil and it is left up to the principal to discourage pupils from taking the examination if they desire to do so. The white examinations are marked before school closes and is given before the colored examination. There is no special reason why we do not give the examinations to both groups on the same day. In 1935 it was around August when the colored children were informed of the results of the examination. We give the examination to the white

pupils with the idea of letting the principals use the result of that examination as a more or less measure as to whether the children will be promoted from the seventh grade with the instructions that they must refer all doubtful cases to the supervisor or superintendent. It is for the purpose of helping the principals to decide as to whether or not he shall promote the child.

Q. Yes, 1935. Now, do you give the examination to the white pupils with the idea of letting the principals use the results of that examination as a more or less measure as to whether the children will be promoted from the 7th grade? A. With the instructions that they must refer all doubtful cases to the supervisor or superintendent.

Q. And, is that not for the purpose of helping the principal decide also as to whether or not he shall promote the child? A. Yes.

Q. Then, why do you not give the colored principals the examination results in time for them to decide? A. In 1935 there was a different type of examination, and because of the nature of the examinations it was impossible for us to secure them so quickly.

Q. Well, did you secure the white ones in time? A. A different examination was given the whites in 1935.

Q. It was different from the examination given the colored? A. In June, yes. But the same examination was given—the examination that was given the colored in June, 1935, was given to the whites in January, 1935.

Q. Oh, well, the examination given to the whites in January, 1935, was that for admission to high school? A. It was not for admission to high school, but——

Q. Then, when that child, the white child in 1935, in June, had completed the seventh grade, what happened to that child? A. When he completed the seventh grade?

Q. That is right. A. If the principal recommended him to high school, he was admitted to high school.

Q. Did he have to take an examination? A. Yes.

Q. What kind of examination did he take then? A.

In June, 1935, the principals of the white schools set the examination.

Q. They set out their own examination? A. Yes.

Q. And it was a different examination, the June examination was different from the examination given to the negroes? A. In June, 1935?

Q. That is right. A. But the June examination given to the negroes was given to the whites in January, 1935, and was considered in promotion of the pupils of the white schools in 1935.

Q. Right, but that examination was not given for the purpose of promotion to high school in the white case? A. Not solely, but it was considered in the promotion.

Q. Well, was the examination given to the colored solely? A. Yes.

Q. Then there is a difference? A. To that extent.

Q. To that extent? A. Yes, in 1935.

Q. That is right. Then, would you call that a uniform examination, the one in 1935? A. Uniform except as to time and place of the examination.

Q. That is right, except as to the time and place and purpose. A. No, the purpose of the examination in 1935 was to measure the classification or the grade abilities of the pupils at the end of the mid-year.

Q. At the end of the mid-year, but you gave the colored theirs in June? A. Yes, in 1935. Will you allow me to explain that?

Q. Yes, please. A. On October 1, 1935, we received a letter from the State Superintendent of Schools, stating that the State Department of Education would provide, free of cost to the *ounties*, a state-wide examination for state-wide purposes, to be given in January, 1935—in October, 1934, I should say I received the instructions—to be given all schools, white and colored; and at the latter part of June, 1935—I beg your pardon—the latter part of January, 1935, the examination prescribed by the State Board of Education was given to all pupils in the white schools, from two to seven inclusive.

Q. Yes. Now—go ahead, I thought you were through. A. The achievements on that test, the achievements of the white pupils of all grades, especially in the seventh grade of the white schools, were so high that the principals of the white schools stated to us, in conference, at a principal's meeting, that they were just a little bit alarmed about reporting back to the parents the high standing of those pupils. Just about that time the Assistant Superintendent, Mr. Hershner, suggested that instead of giving the seventh grade examination, the progressive achievement test in the mid-year, in lieu of mid-year examinations, that we withhold the seventh grade examination, in fact, withhold all the colored school examinations until the spring. And I think we have records which would show that the State Department, or perhaps the supervisor of colored high chools consented to the postponement of the examinations, of the giving of the progressive tests until later in the year. Mr. Hershner, the Assistant Superintendent, also stated that he had conferred with the negro principals, and that they preferred an objective test, which this progressive examination is, rather than old type of essay type of examination, or paragraph examination, as we sometimes call it. We then called up the statistician of the State Department of Education, and asked whether or not, in her judgment, the giving of this progressive achievement test in June to the colored pupils to the seventh grade colored pupils, would be a fair measure of their ability to enter high school, or would measure their achievements in the seventh grade. We therefore, decided to give this test. And it was given in June, 1935.

Q. Now, there are a couple of questions, Mr. Cooper. Do you know the purpose of this examination? I mean, from the letter the State Board sent. Was it for the purpose of finding out what the child was doing, for the purpose of placing the child, or was it for the purpose of promotion? A. To measure his grade placement.

Q. That is right. Now, this examination was used in the white schools for that purpose; is that correct? A. Partly; and also used by the principals at the end of the year in evaluating whether or not a child was eligible for high school.

Q. Right; but the examination was not the sole criterion as to whether he would graduate? A. No, it was not.

The results of the test given in January, 1935 were so high that we deemed it a very liberal move to give the same examination to the colored schools in June, 1935. The average placement on the white examination was eighth grade ability in reading and comprehension, 9.5; in arithmetic and reasoning, 9.2; arithmetic fundamentals, 8.4; language comprehension 7.9. Ninety-eight point five (98.5) per cent of the pupils were above the score. In marking the examinations on a standard test, you minutely follow instructions. The achievement test was the Tiegs-Clark sent out by the State Board of Education. This examination given the white schools in January was for the purpose of placing the children in lieu of mid-year examinations. When it came time for the white child to complete the seventh grade and to decide whether or not he was eligible to go into high school, the principal took into consideration this examination plus what the child had done, in his personal knowledge of the records of the child in the school for that year. The colored child took a mid-year examination. I suppose they did. This examination was prepared by the principal of the school and the Board had nothing to do with the examination and did not see it. When the colored child reached June, the principal of the colored school had authority to promote him out, but not to promote him to high school. At this point the child had not yet taken his examination. The colored principal had no jurisdiction over the progressive achievement test. I do not know whether the principals were informed of the result of the examination. Later in the year perhaps the principal was. These principals are appointed by the Board. The achievement test for colored pupils is this progressive achievement test. The same test which was given to the white pupils in January was used as the sole criterion as to whether the colored child should be admitted to the high school in Baltimore City with tuition paid by our Board. The principal had nothing to do with it. This was true of the 1935 examination. The other examinations were essay-type questions, the same as those the white children took.

Q. Now, right there, would you show me the records you keep of the examinations given to white pupils, and how many passed and how many failed? A. We can not differentiate between those promoted and those promoted to high school.

Q. But you can in the colored schools, can't you? A. No, we can not. We have no records as to—we would have to work that out.

Q. If I show you that in here you have a record which says so many children graduated from the seventh grade. A. Promoted.

Q. Promoted? A. Yes.

Q. And then in your minutes it shows how many passed the examination, and you would know then. I would have an idea. I would know, yes.

Q. How would you find out about the white children, or, would you ever know? A. Well, we would have checked up with our high school principals as to how many children came into the high schools.

Q. Why do you take such special pains about the colored children in their examination, and how many passed and how many failed? A. It is not a question of special pains. It is a question, as I said before, upon administering the examination in a way we feel is fair, impersonal and uniform.

Q. Even for the question of keeping your records. I mean, as to whether or not—what difference does it make as to how an examination is given, as to how you shall keep your record of it? A. The record in the minutes to which you refer is submitted to the Board of Education, in compliance with the order of September 7th, I think it is, 1926, that the assistant superintendent shall recommend as to the eligibility of pupils, colored pupils who wish to enter the Baltimore City high schools.

Q. Then, can you tell me why the statement is made—it says number recommended; and he goes into detail as to the number who took them. And he had to lower their mark to get them through. A. Because we are asked for a complete report.

Q. Oh, I see, but the Board does not require a recommendation from the superintendent as to whether a white child is admitted, does it? A. It does not.

Q. The_, as a matter of fact, the requirement that the negro child not only meet the requirement of the Board that the white child meets, but also be recommended by the Assistant Superintendent, is an additional burden not placed on the white children; is that not correct? A. No, I don't think that is correct.

Q. Well, if a white child passes the examination, does that child automatically go into the high school? A. Not automatically; if he passes the examination, and if the principal records on that test, on the report that he is promoted to high school, he is eligible for high school.

Q. Now, if a negro child passes the test, is he eligible for high school? A. Which test?

Q. The uniform test that you mention? A. If he passes the test prescribed by the County Board of Education.

Q. He is eligible. A. ——given under the auspices of the Board of Education, he is eligible.

Q. Is he eligible, or does he not have to be recommended by the Superintendent always? A. The Assistant Superintendent bases his eligibility upon the basis as represented by the test.

Q. But he can not get in if the Assistant Superintend-does not recommend him; is that correct? A. The Assistant Superintendent recommends back to the Board of Education.

Q. My question is, the colored child can not get into the city school under your tuition paid unless the Assistant Superintendent recommends him. That is my question. A. Yes, plus the approval of the Board of Education.

Q. But that is not required of white students? A. No.

In compliance with the regulations of the County, September 1926, the superintendent approves all pupils eligible for high school after they have passed and met

the requirements prescribed by him for eligibility. We can tell how many white students were promoted but we cannot tell from our records how many were promoted to high school. In 1934 and 1935 78.01% were promoted but we do not know whether they were promoted to high school or out of school. The total number is 1657. The records of the number in the first year high school for this year did not show how many got in because there might be a number of repeators. The only way to check would be to contact the individual principals. We can always tell the number of colored children who have passed the examination from our records. According to our records, 128 colored children were promoted from the seventh grade in 1931. 89 appeared for the examination and 30 passed. In 1932, 158 were promoted. 52 out of 133 applicants were authorized to attend the colored high school. In 1933, 153 were promoted and 62 were recommended for high school. In 1934, 137 were promoted and 31 were recommended for admission to high school. In 1935, 153 were promoted and 64 passed the examination. I think the percentage of the number who passed the examination as against the number who were promoted from the seventh grade as between white and colored is lower for the colored. I think the explanation is the availability of the pupil. It might be possible that the pupil is receiving inferior instruction. There is also a possibility that the person who gave it, the examination, did not give it properly. There is a possibility that the person marking the tests did not mark them accurately except that this was not possible in 1935 under the progressive achievement test.

Q. That is what we want, those who were promoted to high school. Now, Mr. Cooper, these state standards here that your schools follow, and which have been marked for identification as Petitioner's Exhibit 2 for Identification, I will ask you to read from page 135, as to admission and graduation. A. Do you want it all?

Q. I mean, if you please, if you will just read this right here, down to that paragraph there, please, sir? A. "Admission by Elementary School Certificates.

"The high school in order to fulfill its function, should

articulate both with the schools below and with the schools above. The high school is not a separate institution, but an integral part of a common school course of eleven or twelve years. In general, for a pupil to enter upon the first year of high school work, he should have completed in a satisfactory manner the elementary course of seven (or eight) years.

"The principal test for entrance should be the ability to do the work of the high school. This is usually based on the character of the pupil's previous achievements, as shown in his daily work, tests, and formal examinations, these factors being taken as a whole.

"The possession of an elementary school certificate, signifying the successful completion of the pupil of the course of study prescribed for the elementary school, is sufficient to entitle the pupil to enter an approved high school without examinations."

Q. That is right. Now, being an officer of the State of Maryland—and that is admitted—you are acquainted with the educational laws of the State, are you not? A. Somewhat.

Q. Are you acquainted with the fact that these standards have the force and effect of law? A. That is not a mandatory thing, in my opinion.

Q. That is, in your opinion? A. Yes.

Q. Do you think, first of all, that as to the colored children, you are following that provision? A. We are not following the provision either for white or colored.

Q. That is right. You are not following the provision in the code. I mean in the standards. A. They are optional standards, as I interpret them.

Q. As you interpret them, you interpret them as optional. Now, you deny that the satisfactory completion of the seventh grade automatically entitles the pupil to admission to a high school; do you deny that? A. In Baltimore County, yes, because there is a special examination prescribed for entrance to high schools.

Q. Now, under just what authority was that exami-

school education is the rightful heritage of every American boy and girl of high school age and that 'it is the function of the high school to welcome every such boy and girl, and to adapt subject matter, methods and organization to the needs of such boys and girls."

"It should be remembered, too, that in a democracy the high school far from being a luxury, is a necessity, not only for the individual, but for society. The day is past when a free elementary education for all is adequate for the safety, welfare, and progress of our country. The formative period of life is the high school age; it is at this age that careers and life ideals will be developed, that the instincts will be turned to social welfare or to social outlawry, and that capacities for achievement will be discovered and developed.

"A high school, therefore, is not adequately fulfilling its function and the social responsibilities, unless it numbers in its enrollment every normal boy and girl of high school age in the community, and so satisfies with its curriculum, methods of instruction, and machinery of organization, the individual needs of the pupils that under any but extraordinary circumstances they will want to continue in high school, and receive the training which is essential to active, useful and reliable citizenship in a twentieth Century democracy."

There is nothing mandatory in that.

Q. But, Mr. Cooper, you said before you did not think they were in effect? A. There is no doubt this one was in effect. That is not a regulation that the Board of Education has to follow. It is merely a suggestion.

(Mr. Marshall) If your Honor pleases, I move that that be stricken out, that voluntary statement as to what these are. I submit that that should be stricken out, if your Honor please. I have not asked that.

(The Court) I overrule the objection.

(Mr. Marshall) Exception.

Q. (By Mr. Marshall) Now, Mr. Cooper, the book you just read from is entitled "Standards for Maryland

County High Schools," issued September, 1935; is that correct? A. That is correct.

Q. Now, did you consult the standards before you decided to give an examination to colored pupils? A. No.

Q. Did you consult the standards when you found that Margaret Williams had been refused admission to the Catonsville High School? A. No.

Q. Why was Margaret Williams refused admission to the Catonsville High School? A. Because she did not pass the examination prescribed by the Board of Education for admission to the high school.

Q. Now, I ask you the same question I asked Mr. Zimmerman. If Margaret Williams had brought to you a report card written on the bottom, "promoted to high school", and the principal's name signed under it, and she had been a white child, would you have admitted her? A. Let me have that question again.

Q. If Margaret Williams had brought you a report card, like her own, except that on the bottom would be written "Promoted to High School", and the teacher's name signed under it, and Margaret Williams had been a white pupil would you have admitted her? A. A white pupil who has recorded on the face of the report card "Promoted to High School", with the signature of the principal thereon, is eligible for admission to high school.

Q. That is right. Suppose, under the same conditions, Margaret Williams had applied, and she had been a Chinese child, what would have happened? A. I would have referred the matter to the Board of Education.

Q. Right. And the same for a Japanese? A. Yes.

Q. Then, did you refuse Margaret Williams because she had failed in the examination, or did you refuse Margaret Williams because she was a white child and had no right to attend the Catonsville High School. A. Colored child.

Q. I mean she was a colored child? A. We refused Margaret Williams admission because—in fact, the question did not come up to us specifically whether she should be admitted or not.

Q. It did not come up? A. No.

Q. Why not? A. It was not presented to our Board, as I recollect it.

Q. Didn't I present a letter and petition to your Board? A. The Board did not receive your letter and petition; they rejected it.

The minutes will tell what was done with your petition. You came out there on one case on October 8, 1935. I remember a letter sent me requesting me to admit Margaret Williams, a registered letter. I referred the letter to the Board of Education. I do not recall what happened to the letter after that. Then a letter was sent to the Board, registered. I do not recall what action the Board took on this. The minutes of October 8 have nothing to say about the admission of Margaret Williams. These letters were referred to our attorney. So far as the Board acting on it, her application is still pending. If I am tendered in open court her application as a first year student in the Catonsville High School under my authority as superintendent, I would not admit her. I would refuse it, yes. Because she is not eligible for high school and secondly because she has not passed; she did not pass the required examination prescribed by the Board of Education. If she had passed the examination, I would not have admitted her to Catonsville High School because separate schools and separate educational facilities are provided for negro and white children. When Margaret Williams finished the eighth grade——

Q. Well, when Margaret Williams finished the seventh grade she, as a citizen and a resident of Baltimore County, was entitled to some form of education; and what did you as a superintendent offer her, along with the other colored children?

(Mr. Rawls) Your Honor, I am going to object to that.

(The Court) I sustain the objection——

(Mr. Marshall) I want to put this question right, so they can object, and your Honor rule.

Q. (By Mr. Marshall) When Margaret Williams com-

pleted the seventh grade elementary course in 1934, what did the State or the County Board of Education offer her in the line of further education at public expense?

(Mr. Rawls) I object to that.

(The Court) That has been decided. I sustain the objection.

(Mr. Marshall) And, if your Honor pleases, exception.

(The Court) Yes.

Q. (By Mr. Marshall) Now, then, in 1935, after Margaret Williams had gone back to the seventh grade and had completed the seventh grade, what did the Board of Education of Baltimore County offer her in the line of further education at public expense?

(Mr. Rawls) Same objection.

(The Court) And I sustain the objection.

(Mr. Marshall) The same exception.

The Board of Education offers all students educational opportunities above the seventh grade who meet the requirements prescribed by the Board. Margaret Williams stood in the same position as any white as well as colored child. The white child took the progressive achievement test in January 1935 and the Negro took it in June. The white child was graded by examination plus principal and the colored child was graded solely by examination; the progressive achievement test which had been given to the white child. The white child passes the examination and then the principal promotes her besides. The colored child has to take the examination, pass the examination and then be recommended by the superintendent before he can go to high school. The colored child took the progressive test in June, 1935 with a lowered standard than prescribed by the test. The lowered standard was 250 points instead of 260 points and they had to be recommended by the assistant superintendent. If Margaret Williams had passed the examination, we would have paid the full five years' tuition for her in high school. If she had gone into the high school and had failed the first year, the question as to whether

we would pay her tuition would be based upon the recommendation of the assistant superintendent after a close examination of her report cards for the Baltimore City work. If she had a very low standing, we might refuse to pay her tuition further. The Board has been very liberal. I do not recall anyone having been, or any action by the superintendent in refusing to pay tuition. The ruling of the Board is set out in the minutes of 1926, reserving the right to refuse to pay tuition if the child fails. If a white child fails in some instances we put the child out, but this is not a settled rule. It would not matter except as to the number of children whether a white child stayed in or not so far as expense to the County is concerned. If there is one colored child and that colored child fails, the Board saves $150.00. The Board has never been interested in the matter of saving money on the tuition of colored children; in regard to paying tuition in Baltimore City. We have been as liberal as we can possibly be in regard to that. I do not know the percentage of negro to white population in the county. The course of studies taught in the County is uniform as far as I know to white and colored. I do not visit colored schools. The assistant superintendent endeavors to enforce the same uniform course of study. I sit in with the assistant superintendent while the examinations are being prepared. We accept his recommendation. In 1935, we gave the achievement test and in the past June, 1936, we gave the essay-type test. In the places in the minutes where we mentioned the fact that there were so many students passed out of so many "contestants," this was a very poor word. It should have been applicants. This statement appeared in the minutes from the minutes of July 10, 1931. We find the Board approved the successful number of colored applicants for high school tuition in Baltimore City. This also is poorly worded. These minutes are read to the Board and approved by the Board. If the Board had recommended any changes, they would have been there.

CROSS-EXAMINATION.

I have seen the report card offered in evidence this morning during the petitioners' testimony, the first time I had seen it. I had not seen Petitioners' Exhibit #1 be-

fore this time. In the case of a seventh grade white pupil, it is necessary for the principal to make the notation on the report card in his own handwriting "promoted to high school," with his signature below the statement and the date. The principal is required by the superintendent through instructions and letters sent out repeatedly to do that. In the case of white pupils this must be done. In the case of colored pupils, the report card would not show anything as to the right of the child to be admitted to high school. That is the uniform, universal practice of the school department. The eligibility of a colored pupil to enter high school is determined by the passing of the prescribed examination set by the Board of Education or the superintendent. That is a pre-requisite to the right to attend high school. The pupil would receive evidence of this eligilibity by a letter from the assistant superintendent or the superintendent stating that he is eligible and directing, listing the names of the high schools in Baltimore City to which he might apply. That form was used in this case in the letter we have read, August 8, 1935. That letter was sent that the pupil was not eligible. It gave the result of this examination and stated she would not be eligible to high school. That eligibility depends upon the passing of the examination given under the direction and supervision of my office. If the pupil successfully passes that examination, she is notified by letter that she is eligible for admission to one of the Baltimore City High Schools and that the Board of Education will pay her tuition. At various times we have considered the record of the pupil as submitted by the principal of the school and there have been occasions when we have promoted, or had decided to promote, even though the pupil failed the examination. But in case the pupil passes the examination, then the passing automatically entitles her to attend high school. The only variation is in some cases where the pupil has failed and we have given consideration to other facts. By lowering the standard, we have admitted other children. We always recommend for high school pupils who pass the examination. This is the invariable rule. There is no signature on this report card. The name of the teacher is written above, Violet M. Taylor. I do not know whether this is her handwriting or not. But the state-

ment "promoted to the eighth grade" is not signed by the teacher. I have never seen any notation as "promoted to the eighth grade" before. I have seen hundreds, perhaps thousands, of these cards but I do not recall ever having seen a notation of this kind. It would mean nothing to me. It would have no meaning to any school official in Baltimore County. There is no eighth grade in the public schools of Baltimore County now. If the pupil had successfully completed the seventh grade and if she were a white pupil, she would enter one of the first year white high schools. The first year of high school; and if she were a colored student, she would be eligible for the first year, or, in Baltimore City it would be the eighth year of the Baltimore City Schools. We do not have an eighth grade in Baltimore County. The grade that would correspond to the eighth grade would be the first year in high school. When Margaret presented her card to the principal of the Catonsville High School, if she had been a white pupil she would not have been admitted to the school. Her card would not be evidence of her right to attend that school. She was treated precisely as a white child would have been treated if she had applied to the Catonsville school with this card or a similar card. There has been no instance where a colored pupil successfully passed in the examination has been refused admission to a high school. I recognize the name, Violet M. Taylor, as one of the teachers. These report cards are given to the pupil. They would not come to my department at all. The cards are made out by the principal and handed to the individual pupil. At the end of the year all pupils are supposed to get some sort of card like that. The examination given in June, 1934, was the old fashioned essay or paragraph form of examination prepared by the supervisors, the assistant superintendent and myself. It was a uniform examination given to white and colored alike. In the white schools in the year 1934, the pupil who failed in the examination could not be promoted by the principal without the approval of the superintendent or the supervisor. That was the uniform rule applied as far as I know, throughout the system. In 1934, the white pupil and the colored pupil both had to pass the same examination before either could be promoted. The difference in the examination between the white and colored

pupils was that the colored pupils took the examination at designated centers and the white pupils took the examination in the respective schools. They took the same examination though. The grading was uniform. The grading was as uniform as it could possibly be. We sent out and gave a weight to the examination questions so there would be as little variation as possible. The passing mark for white was 70% in each subject and the passing mark for the colored was 60% in each subject. The colored pupils had a 10% allowance in the marking. Unless each passed, no principal had authority to recommend to high school. The examination in 1934 was perhaps different as to time. One was given in the centers and the other was given in the schools. The colored pupils were marked by supervisors in 1934 and the white pupils were marked by their principals or teachers, in some instances, the principal was the teacher. With these exceptions, the examination was uniform. In 1935, we gave the so-called standard test to the white seventh grade pupils in January. This was given in pursuance of some recommendation of the State Board of Education. The result of the examination indicated that it was an easy examination for those students. They passed it with marks so high that it indicated it was not a difficult examination for those pupils. In some places 95½% passed. This would be an unusual result in an ordinary school examination—unusually high. The same examination was given to the colored pupils in June, 1935. The colored pupils made a much poorer showing. I do not know the difference in percentages, but I am certain that a larger number of colored pupils failed than white. This was the same examination given in other counties in Maryland about the time. I think it was given a month or two earlier, than June in the other counties. It was given to both white and colored pupils. I do not have the results clearly as to the comparison between the white and colored pupils, but I am confident it showed the white schools are very much higher in achievement. I do not have the figures. Mr. Hirshner has them. The test given in 1935, this so-called standard uniform test, is known as the objective test. The gradings are not dependent upon the judgment of the marker. The answer is true or false; or right or wrong. In theory you could

practically conduct that examination like the marking of a ballot at election. The grading or marking could as well be done by any person familiar with the key. There is not any chance of error in my opinion, when the tests are checked. This is assuming that the paper is honestly marked. I have before me the answers of Margaret Williams in June, 1934, and June, 1935—the first being the old form of examination and the 1935 examination being the standard type. (Examinations introduced and marked Defendant's for Identification #1 and #2.) I obtained these from Mr. Hirshner. They have been in our custody. They were in the City office of the Board of Education in Baltimore City. The City office is located in Baltimore City because it is the population center of Baltimore County. These examinations were collected in the four or five colored schools and brought to the Baltimore City office. They were examined by the supervisors in 1934 and examined under the direction of the supervisor and specially trained people as assistants, college graduates, I might say in most cases, 1934. It took about seven people and in 1935 it took considerably longer. We had 128 papers in 1934. We collected the colored pupils in these four or five school centers and had them take the examination. It is desirable to do the same for white pupils but we could not do it because we could not handle the situation. The white school population, in round numbers, is 24,000. We have, in round numbers, 2,000 colored pupils in our schools. About one-twelfth of the white population. In the colored seventh grade in round numbers we had 200 and in the white seventh grade in round numbers 2,000. I could not say the average since 1926, but I would say approximately 50 pupils entered the high schools per year. Last year a total of 158 in the high school in all the five years. The size of our ordinary white schools in the county for secondary schools are from 500 to 1,250. There is a difference in efficiency between a small and a large high school. It is impossible for a small school to offer the various types of subject matter that a large school can offer. It is also difficult to obtain efficient instruction in a small school. I think this is an accepted principle in education. These 158 pupils would not be enough to provide the facilities that you properly should have in a high

school. I think they get better educational opportunities in Baltimore City then our white children get in Baltimore County. If I had the choice I would not erect a high school in Baltimore County as against sending them to the larger schools in the City. I am inclined to believe that the colored schools in Baltimore City rank better perhaps than any other schools south of the Mason and Dixon Line. I feel that in Baltimore County we are acting for the best interest of our colored pupils when we send them to those schools. That has been our only and sole purpose in sending the colored pupils to schools in Baltimore City in order to give them better educational facilities. I am not aware of any discrimination in the giving of those examinations against the colored pupils which I would call an unfair discrimination. I think they are treated as fair as the white pupils. If there is any discrimination, it would be in favor of the colored children. I think it applies to the liberal treatment in the marking of the papers, the essay type, but it generally applies in the progressive achievement test as well as in liberality in regard to the time and the giving of the test. The passing mark has been repeatedly reduced in order to give high school opportunities to more colored children. In the 1934 examination, Margaret Williams received the following grades: 34% out of a possible 100% in Geography, 21% out of a possible 100% in History, 61% out of a possible 100% in English, 37% out of a possible 100% in Arithmetic. This would indicate that she was unprepared at that time for admission to high school, a very low grade. I would rate her as unsatisfactory with the exception of English. Others were very unsatisfactory. In the 1935 examination, she obtained a score of 244 points out of a possible 390. That would indicate that she was not eligible for eighth grade work, or first year high school work. It would indicate it very clearly according to the standards of this test. This would be true according to both examinations. I know of the two letters sent here in August, 1934 and 1935. I know now that she failed in both examinations and that she was so notified. Upon examination, the highest colored school population in Baltimore County is at Towson, Sparrows Point and Turners, which is in the same vicinity as Catonsville. The center of the population would be in Baltimore City.

It would be very much more convenient for the colored children to attend school in Baltimore City. I would say this would be in regard to 90% of the population. Attendance at Baltimore City schools is more convenient than attendance at some county school. I should say the longest distance in Baltimore County that white students attend high school is 11 or 12 miles. We have a few pupils who attend that distance. I should say the average distance would be 5 to 6 miles and that is frequent, very frequent. These are children between the ages of 12 and 17. I think the colored children are perhaps a year or two higher in grade generally.

REDIRECT EXAMINATION.

We base our examinations on the course of study and we base our instructions on the course of study. We make modifications in the course of study in the colored schools and the white schools to meet the individual needs wherever we can, but we do not change the basic fundamentals of our courses of study in either school. We endeavor to give the same quantity and quality of examination to white and colored children. A large high school is better than a small one and this is also true of the elementary school. With equally good teachers in the grade school, we do more teaching in quality in a grade organization school than we do in a one-teacher school. The teachers in the colored schools have the same certificates as the white teachers and the same qualifications as far as I know and they are supposed to do the same kind of teaching as the white teachers. I cannot account for the poor marks of Margaret Williams' examination and the good marks on her report card. I do not know whether the teacher is making a deliberate falsehood. She is my agent, appointed by me, and supervised by my other agent, Mr. Hirshner. So far as I know, she is acting as a qualified teacher should act. I never sent for Margaret Williams' record from Miss Taylor. It never occurred to me to go in and check a teacher where the child had twice taken the seventh grade and was unable to pass the examination. Mr. Hirshner no doubt checked up on the teacher and does check up on teachers. If Mr. Hirshner allows her to remain there, I assume she is putting over her job properly. (The witness shown two letters, one

sent to him and one sent to the Board.) I received these letters. (Papers referred to marked Petitioners' Exhibit 4 and 5.) The white principals make notations on the report cards as to whether or not the child is promoted to high school. There is no possible way that Margaret Williams could have on this card "promoted to high school" with the principal's name signed under it. It is absolutely impossible. If she had passed the examination, she would not have had that put on her report card. We refused her admission because we do not admit colored children to white schools, and in the first place, she was not eligible. In the case of colored children, before we pass them we consider the records of the principal. We do it before we pass them and afterwards. We do not go over the records until after the examinations are given. If the child fails, we might help him out. All these records show from the principal is whether he recommends the child for promotion. (Papers referred to marked Petitioners' Exhibit #6.) We never receive an actual record of the child showing the actual subject marking, prior to passing an examination for seventh grade pupils. We cannot produce one of these records for 1934 and 1935, but we can produce it by tomorrow. After the child has passed the examination, we mail the letters saying that "you have passed the examination, and you are entitled to admission into the high schools in Baltimore City" and that entitles her to admission to the Baltimore schools. She could not take that letter and get in the Catonsville High School because it does not pertain to the Catonsville High School. It pertains to the Baltimore City Schools and it pertains to Negroes. When a colored child leaves the Baltimore County and goes to the Baltimore City schools, the next grade he goes to is the eighth grade. There is such a thing as an eighth grade in Baltimore City, but not in Baltimore County. The colored children go to school in Baltimore City but not in Baltimore County. "Promoted to the eighth grade" would not necessarily mean something to somebody in Baltimore City. If a white child had presented a report card in the same form as this one (Petitioners' Exhibit #1) I would have refused to accept the child because the card is not properly endorsed. I would make her get it signed by the principal. I did

not send word to Margaret to that effect. There was no occasion to send it to her because she had been notified by her teacher that she would not be admitted to the high school without passing the required examination. When I saw the photostatic copies of this report, it meant nothing to me in regard to her examination. I refused to admit her. I knew she had failed when I refused. I did not refuse except to inform Mr. Zimmerman. The matter was referred to the attorneys without any action of the Board. We did not answer the letter. The examinations given the white pupils in 1934 and 1935 are in the offices of the high school. We cannot get the white examinations because they are not kept more than six months in schools. We have the colored examinations, but we do not keep the white ones. We do not keep the colored ones for an indefinite period. We keep the colored ones and not the whites because they are small in number from the standpoint of storage and the whites are not transferred from the respective schools to the central offices. The supervisors and superintends see the white examinations at the schools. They are never forwarded to our office. The reason there are only 158 colored pupils in the Baltimore City schools is because they fail to pass the required examination. The local colored principals have the option to encourage or discourage children from taking the examination but they may still go, even though they are discouraged. The white children travel an average of five, six and seven miles and some go as far as eleven. Some travel by our transportation and some furnish their own. The center of the colored population is in Baltimore City and I think the center of the white population would be perhaps in Baltimore City too. We have small high schools in Baltimore County that offer one year's work. One of them offers two. Most of them have been failures. The largest white high schools are in close proximity to Baltimore City. The auditorium in the Catonsville High School seats 500 people and would seat the seventh grade pupils in that district surrounding Catonsville High School, but you cannot satisfactorily conduct an examination in an auditorium. We do not have enough disinterested persons to administer an examination in the classrooms. The examiners do not examine white children. The principals do. It is to the

best interest to have disinterested persons give the examination. In the white schools the principals give them but we would like to have the conditions different.

Q. (By Mr. Marshall) Going to the extreme, if a principal gave an examination and told the answers to the pupils and that examination was sent in to your office to be marked, is there any way that the markers could know whether that was done of not?

Now, they do want you to answer that.

(Mr. Roe) We object to the question.

(The Court) I sustain the objection.

(Mr. Marshall) And we take an exception.

Q. (By Mr. Marshall) One more question, to keep the record straight. I show you this letter, and ask you if you remember it (handing letter to witness)? A. Yes, I do.

Q. And that included a letter from Mr. Hirshner, is that correct? A. Yes, that is right.

Q. (By Mr. Marshall) Now, Mr. Cooper, again we want the record to show that in the subpoena to you you were requested to bring with you all records of the white examination; is that correct? A. That is correct.

Q. And that you are unable to produce those records? A. We have the records. We can, perhaps, produce the records and what the pupils' scores were; but as to the papers we can not, no, absolutely impossible.

Q. You are unable to produce the papers? A. We do not hold those in the schools. We have no space for them. We hold them for a period of six months, and they are subject to the inspection of any one interested, a parent or any interested person, but not longer than that.

Q. And you mentioned a little while ago that you held the colored papers for a little while, but do not hold them forever. Approximately, how long do you hold them? A. I don't know. I don't know whether we have them back farther than 1933 or '34.

Several times we lowered the marks for colored pupils. The Board instructed us to raise the examination because the examinations were not a true measure of the students' ability. We lowered it to deal more liberally with the colored pupils. In the achievement test, we lowered the passing mark. We reduced the points from 260 to 250. In 1933 we had a resolution by the Board that the colored children had to attain the same percentage as the white children, namely 70%. When we lowered the mark in 1935, we did not put that in the minutes.

HENRY M. WARFIELD,

a witness of lawful age, having been first duly sworn, testified as follows:

"I am president of the Board of Education of Baltimore County and one of the respondents in this case. I have been president about three years, occupying such office in September, 1935. I do not recall receiving a letter personally from Thurgood Marshall requesting admission of Margaret Williams to the Catonsville High School, but I did see such a letter addressed to the Board at a Board Meeting. The minutes of the Board on page 325 which show that Attorney Thurgood Marshall appeared before the Board with a petition to establish high schools for Negroes and that the petition was rejected are correct. At that Board Meeting we stated that we would not accept the petition. I do not recall what action the Board took on the letter referring to the application for admission to the Catonsville High School on behalf of Margaret Williams. We would reject an application for admission to the Catonsville High School on behalf of Margaret Williams if such application should be tendered now because that is a white high school, and further because she did not pass her examination.

Under our rules it is impossible for any Negro child to be admitted to the Baltimore City High School, with our Board paying the tuition, without the recommendation of Mr. Herschner. I am not sure about the requirements for the admission of white students into the high

schools in Baltimore County, but I believe that they must pass an examination and receive a recommendation from their principal. I am not sure as to what the recommendation is.

While I cannot recall definitely what was done with the application of Margaret Williams, I do know that the Board did not consider and did not intend to admit her to the Catonsville High School. They refused her at that time, and speaking personally, so far as I am concerned, she is still refused.

I did not on October 8, when Mr. Marshall appeared before the Board, make the statement that I and the Board did not intend to spend one cent more on the education of Negroes in this county."

JOHN T. HERSCHNER,

a witness of lawful age, being first duly sworn, testified as follows:

"I am Assistant Superintendent of the Schools of Baltimore County; my official duties include general supervision of the colored schools, some administrative duties pertaining to repairs and some other administrative duties relating to the placement of children in some of the schools. I have been in charge of the colored schools since 1900. Superintendent Cooper and the Board are in charge of the white schools; I have nothing to do with the administration of the white schools so far as admission to class and graduation are concerned; I do not know how instruction is supervised in the white schools. There are seven supervisors for the white schools and I am the only supervisor for the colored schools. There are twenty-four schools under my charge, all of them elementary schools. I recommend the employment of teachers in the colored schools. I have visited the Cowdensville Elementary School a number of times during 1933-34-35.

There are no colored high schools in Baltimore County. The Baltimore County Board of Education provides for

the education of colored children in Baltimore City High Schools, if they meet with the requirements of the Board. Five years of high school education are provided in the Baltimore City High School. The Baltimore County Board of Education has been paying for five years in the city high schools, since June, 1934. The white students in Baltimore County receive four years of high school education, receiving a diploma at the end of the fourth year. I do not know whether Baltimore City High Schools grant the Negro students of Baltimore County a diploma at the end of four years or not.

Every Negro child in Baltimore County may go to high school when he so desires, "if he has completed satisfactorily the tests". This test is set forth by the school authorities for entrance into high school. Every seventh grade Negro child in Baltimore County may take that test. I wrote the letter addressed to Mrs. J. Hasty at Overlea, Maryland (Petitioner's Exhibit No. 9), which includes that statement that the principals are instructed by us not to recommend pupils who do not have a fair chance to pass the examination. I also wrote the letter addressed to Mr. C. G. Cooper, President of the Board of Education, Court House, Towson, Maryland (Petitioner's Exhibit No. 10), which included the statement that principals were instructed to send only those applicants (to the examination for admission to high schools), who had a reasonable chance of success. At our regular teachers' *meetins* of Negro teachers we discussed these problems and because there are a number of these Negro children who could not possibly pass the examination and for that reason we do not want to encourage them, we felt it futile in some instances, if they were low grade, and could not possibly pass, for them to make the attempt. But we did instruct the principals that we wanted every child who had any chance whatever to get into that school to come. We left it to the judgment of the principals to determine if a child had any possible chance of passing the examination; although they were instructed at our teachers' meetings to send all the children if they wanted to go. I do not know whether similar instructions were given to white principals about their students. While I may have used, in my letters to the principals, the phrase that they were "instructed by us not to recommend pupils

who did not have a fair chance", that may have been badly worded. What I intended to convey was that they should "discourage" those who could not pass the examination. It would involve time and expense to send the children who had no possible chance to pass. By expense, I mean expense to the patrons and not the taxpayers of Baltimore County.

I expected the principals to determine the children who had a fair chance of passing by their general class work and their examinations in the class rooms. I never gave distinct instructions to the principals of the Negro schools how they should determine whether or not a given child could or would have a fair chance of passing the examination.

I and the principals and teachers in the Negro schools do our best to see that every child in Baltimore County is advanced to the seventh grade and make the same effort to get the child beyond the seventh grade. No teachers are instructed not to allow children in grades other than the seventh to take the examinations to determine whether or not they shall be promoted to the next succeeding grade. That instruction applies only to promotion out of the seventh grade and is conditional and even there the principals are encouraged to let all students go if they want to. I do not have any written instructions to the colored principals in Baltimore County showing this fact. It was only discussed in meetings.

Q. If a principal in a colored high school had a large number of students taking this so-called county-wide examination, and a very small number of those children were able to pass that examination, would that fact be considered by you as having any connection at all with that principal's ability to administer his school problems?

(Mr. Rawls) I object.

(The Court) I sustain the objection.

(Mr. Ransom) Note an exception, please.

The examinations which are given to the Negro children in Baltimore County are made up by the super-

visors of the white schools under the instructions of the Superintendent, and I am not in on it. I did not assist in drawing the 1935 examination, for that was the "standard test" and Mr. Cooper and I selected it as the test for the examination for promotion to high school in the colored schools. I do not think that it was given to the white pupils for that same purpose. The 1934 test was of the essay type and the supervisors of the white schools prepared that and I was in consultation with them. I do not think I was present when the test for the white pupils was prepared in 1934. I do not recall how many copies of this examination I had printed in 1934.

I do not recall when the examinations for the colored schools were made up probably in April or June; Superintendent Cooper had charge of them. I have no knowledge of when the examinations for the white schools are made up.

I do not know what happens to a high school student in the white schools of Baltimore County who fails one subject during the course of the year, but it is a part of my job to keep tract of the Negro children of Baltimore County for whom tuition is paid into Baltimore City High Schools. I get reports from the principals of these schools to find out how many have failed. We wrote a number of Negro pupils about the regulation of the Board of Education of Baltimore County to the effect that if the student did not satisfactorily perform his work during the year in the high school, his tuition would be no longer paid, in order to stimulate their interest to keep up their work, that that would possibly apply. I think we enforced it in one case this year. I wrote the teachers of the high school that we could not continue his tuition.

Q. Are you familiar with the regulation of the Board of Education of Baltimore County to the effect that if the student does not satisfactorily perform his work during the year in the high school his tuition shall be no longer paid? A. Well, that was—we wrote a number of these pupils, in order to stimulate their interest, to keep up their work, that that would possibly apply. But we did not enforce it, except I think there is one case this year, a child, that talking with the teachers of the high

school, that had been in school, and done very poorly last year, and failed badly.

Q. What do you intend to do about that, or what have you done? A. Well, I wrote them that we could not continue, I did not think we could, and did not see how they could carry the work.

Q. Do you know how many subjects that child did poorly in last year in high school?

(Mr. Rawls) May it please your Honor, there are 24,000 in that, and we will be here until——

(Mr. Ransom) There are not 24,000 from Baltimore County for whom tuition is being paid.

(Mr. Rawls) I object.

(The Court) You can get the benefit of anything you want in the way of an exception by simply stating your proposition. But I am not interested now in finding out anything about the system of high schools in Baltimore City, or the children sent from Baltimore County. What I want to know is whether this child had a right to go to the high school. And I am going to limit it to that, gentlemen. I must do it in the interest of time. I am going to eliminate anything outside of that. All of these things you are going into now I do not consider material. If you were going into the whole case, you might have a right to do so. But I eliminated all of that in my opinion. Of course, if I am wrong in that, I am wrong in everything.

(Mr. Ransom) If the Court pleases, before the Court rules on that particular matter, I want to say I am not trying to prove anything about the system in Baltimore City. I am talking about the system in Baltimore county.

(The Court) Yes, but the trouble is that the child has not gotten there yet. What you say is that the child was entitled to go and had passed all of the necessary tests, and then she was illegally not permitted to go.

(Mr. Ransom) If the Court pleases, I fear that the Court is laboring under a misapprehension. The Court mentioned a few moments ago the fact that we had al-

leged that the girl had passed the examination satisfactorily. We have never so alleged. We do not allege that the child passed any examination. As a matter of fact, we merely said that the girl had satisfactorily completed the seven years of elementary work in the system, and that she was entitled to admission to the high school system. Respondents in their answer set up the fact that they had an examination out there. And in our reply to that answer we denied that there was an such uniform examination; and we asserted on the contrary that it was a mere pretense on the part of Baltimore County Board of Education to prevent the negro children from obtaining a high school education. Now, the theory of our case is that there is no examination necessary, and that there is no uniform system of giving an examination to determine eligibility for admission to the high schools; and that if such an examination was given, then it was merely for the purpose of reducing the number of students for whom Baltimore County pays tuition in the City high schools. And in this case, of course, to make it pertinent, to exclude the petitioner. That is the theory of our case.

(The Court) I get your point; but I am not going into that at all. I am going to stand on my opinion that it is necessary for you to show that this child was kept out of that school arbitrarily, and that there was no examination. I am going to decide that the School Board of Baltimore County has the right to make tests, examinations. You can not get away from that; I do not think you can.

(Mr. Ransom) I want to except to that statement or ruling of the Court.

(The Court) All right.

(Mr. Ransom) I am also excepting to the overruling, or rather, to the sustaining of the objection to the last question that was asked of the witness.

(The Court) All right.

The schools in Baltimore County closed on June 21, 1935. They closed on June 22, 1935. We gave the examination for admission to the high schools to the colored

seventh grade pupils on June 15, 1934. We gave it on Thursday, June 20, 1935.

This report card for Margaret Williams (Petitioner's Exhibit No. 1) is the official report card used in the Baltimore County schools, furnished by the Board of Education to all the principals, both white and colored. The words "promoted to Eighth" on this card, I suppose mean promoted to the eighth grade. By the term "promoted" I understand that in Baltimore County we have two grades of promotion, "one to high school", as stated yesterday by the superintendent, and another, "promoted." "Promoted" simply gives promotion from the seventh grade, giving the child the right to leave school to work, but does not promote him to high school. I suppose the distinction is that they are promoted from, they are promoted to. The words "promoted to eighth grade" on Margaret Williams report card do not mean that she was promoted to the next higher grade, but simply promoted. She could leave the system or repeat the grade if she wished. If she had repeated the seventh grade and was given this card with the words "Promoted to the Eighth" on it, this was the act of the teacher without authority. The teacher did not have authority to promote her to the eighth grade. I gave this teacher and other teachers in the colored schools instructions about promoting out and promoting to. Those instructions were similar to the instructions set out in the regulations by the Board of Education and the Superintendent of Schools for promotion to high schools and promotion. I do not recall whether those instructions were in writing, but I did discuss the provision of the Board with them in their teachers' meetings. That provision is that in the promotion to high school the children were required to pass a certain standard examination as set out by the superintendent of the Board. I never authorized the colored principals to promote the children to high school. I do not know whether the white principals were so authorized or not. My instructions to the principals were that there would be a stated (standard?) examination for children who wanted to go to high school and there would be promotions to those who had completed the standard grade of work as best they could, to pass out of the elementary school. The Negro

principals are permitted only to promote and not to promote to high school. They can recommend those who shall take the examination for promotion to high school, but cannot promote them of their own accord.

The teacher had no authority to write anything except "Promoted" on the report card in the blank space provided. She could write "Promoted to Completion of Seventh Grade" if she wished. After the teacher had marked "Completed the Seventh Grade", the petitioner could have returned and repeated the grade if she wished because some of the students did not do work which would justify their promotion to high school. Looking at the report card of Margaret Williams, I should say that with credits such as are indicated on that card, her teacher would probably rate her as a fair pupil. There are seventeen subjects on that card and, with the exception of two, her credits are all "A's" or "B's", with a predominance of "A's". The teacher should rate her as a very good student, which is what she has done. Margaret Williams should have been encouraged to take the examination. The teacher who taught Margaret Williams is fair, being strong in teaching, but weak in administration.

The examinations in 1935 were given to the Negro students in five centers—Catonsville, Reisterstown, Towson, Sparrows Point and Turners. I suppose the examinations for the white students in 1935 were given in their schools. The standard test that we used in 1935 was received from the Board of Education. This test was sent out by the State Board to be used throughout the entire state to test all students. I first saw the tests some time early in the year. Superintendent Cooper and I decided that we would give them to those applicants for high school in June. My instructions to the colored principals were to discourage those who could not possibly pass from taking the examination, but still if they wanted to take the examination, they could do so. No colored principal has ever sent all of his students in the seventh grade to take the examination.

Q. When did you give this test to the other grades in the colored schools?

(Mr. Rawls) I object.

Q. Aside from the seventh.

(Mr. Rawls) I object.

(Mr. Ransom) If the Court pleases, that is very material. If there was one examination given, the same examination given to all the students, it becomes very material, as to the time when the examination was given to other students before it was given to the particular applicant.

(Mr. Rawls) I object; may it please the Court, they are talking about grades from 2 to 7, and we are only concerned with the seventh. They are different examinations, as I understand it, entirely different examinations.

(The Court) Yes, confine it to the seventh.

(Mr. Ransom) I except to the ruling, if the Court pleases.

(The Court) Yes.

Q. (By Mr. Ransom) Mr. Hershner, was this same examination used for testing more than one grade in the system in Baltimore County? A. Yes.

(Mr. Ransom) Now, if the Court pleases, I will ask the witness at what time this examination was given to the other students?

(Mr. Rawls) I object.

(The Court) I sustain the objection.

(Mr. Ransom) I except to the Court's ruling.

(The Court) Yes.

The course of study for both white and colored students in Baltimore County is made up by the Superintendent of Schools and the supervisors and experts.

I have not authorized any modifications of this course of study for the Negro schools. We try to follow it. We use the same text books in the colored schools as are used in the white schools We teach hand-

writing and have books for it in the colored schools and had them quite a long time before 1936. We do not have a penmanship instructor within the colored schools. Penmanship was one of the subjects upon which the petitioner was tested in the standard achievement test in 1935. The possible score that she might have made on penmanship is 15, while her actual score was 6, being a difference of 9 points. Her total actual score on the examination was 244. The passing mark for the examination was 260, but we did reduce it, on my recommendation to 251, the difference of 9 points, which might have been allowed for spelling or handwriting, which would have passed her.

The reason we reduced the passing score in the colored schools from 260 to 251 was that there were so few who had passed the higher standard. My recommendation was made after the papers had been graded. This test is a standard achievement test devised by Ernest W. Tiegs of the University of Southern California and Willis W. Clark, Director of Administrative Research, Los Angeles County Schools. The manual which accompanies the test states the standard or grade which the child should make on the completion of the seventh grade. This manual says that the standard for a grade placement of 7.9, that is for the ninth month of the seventh year, should be a score somewhere between 255 and 259.

I do not know whether a report card, marked as the petitioner's was, with "Promoted to Eighth" grade on it, would be sufficient to entitle the holder of the card to admission to the Baltimore City High Schools without examination if she paid her own tuition. Such a card would be no evidence that the Baltimore County Board of Education had passed her as a student equipped to attend high school. The Board of Education of Baltimore City does not require us to give an examination in Baltimore County. I do not know whether Baltimore City High Schools inquired of us whether or not a child had satisfactorily completed the elementary work in our school system when that child made application for admission to the Baltimore City High School and indicated his intention to pay his own tuition. We have a red card that indicates the grade standing which we use for trans-

fers. If an inquiry were made of us, we might answer that she had completed the seven years elementary work, but not taken such an examination. It would depend upon whether or not the inquiry were made. This red card is an elementary school record given to the pupil when that pupil transfers to another school to show his grade standing, his attendance record and the date of his entrance in the school system. That card is given to the student only if he calls for it and wishes to transfer. We have a similar white card which is held by the teacher in the school. If the student did not apply for his transfer card and an inquiry were made of us for the student's record, we would write the principal of the school telling her to send the transfer card. The teacher or principal keeps these records. She could write on it, if she wished to, that the child had graduated. That has been done on the two cards that have just been shown to me. The transfer card that I now hold belongs to Margaret Williams and the penciled handwriting on that card is mine. It says "Failed in the Examination" and I put it there last Saturday, I think. I obtained this card from the Cowdensville School after we were instructed to get all the papers from that school and I merely made these notations on each of the cards to show what had happened to the children. There is no place on the card for the teacher to indicate that Margaret Williams ever took the examination and either passed or failed. I do not recall ever having notified the teachers of the schools which of their students passed and which failed in the examinations, but I did notify the students. I think I may have sent notices to the teachers in 1935, but I am not sure. I do not recall whether or not I have a copy of any such notification. In 1934 three students from the Cowdensville School took the examination and one passed it. In 1935 four took it and one passed it. The annual report in 1934 shows that there were three students in the seventh grade and all three were promoted out of that grade. In 1935 four were promoted and one failed. The school is small, having an average attendance of twenty to twenty-one. The annual report refers in 1934 to these three as "graduates". The term "graduates" means there that they have satisfactorily completed the course according to the teacher's judgment.

I, myself, have given examinations to colored pupils for promotion to high school, giving one in 1934 at Sparrows Point, in 1935 at Towson and again at Towson in 1936. The other examinations during those years were given by the supervisors and persons authorized by the Superintendent. No colored school teacher or principal has ever been authorized to give any of these examinations to the colored students. They have been instructed to be present at the examination and to help distribute the papers. None of them could give any instructions as to the examination. Such colored teacher could help in the arrangement of the pupils in the class room and when there was an overflow, he could remain in the overflow room to see that "conditions were favorable". I cannot answer whether there are any white principals in Baltimore County especially trained to give examinations. Some of the colored principals have had experience in giving examinations, but I do not know whether any of them are trained specifically for giving such tests. However, their qualifications for certification are the same as those of white teachers.

In giving the examinations I know what students were authorized to take them, because the principals reported the names of those who would be there. Many came who were not named. The principal had to report all of the seventh grade pupils and if they came and took the examination, it was all right. I think the principal gave me a separate list of those whom he recommended for the examination. I did not know all the seventh grade pupils in 1934 and 1935 either by sight or by name. The child, when he came to the examination, did not bring a report card or record of any sort from the principal. Miss Grace gave the examination at Catonsville in 1934. Miss Nellie Gray gave the examination at Catonsville in 1934. She was formerly one of the supervisors and is now principal of the white elementary school at Catonsville. I think that she gave the same examination to the white students in her school and then to the colored students under my supervision. The duties of Miss Gray do not include supervision of the Negro schools in the county. She has been present at some of the Teachers' Meetings with me, but I do not recall that she has ever been present

before any of the Negro pupils. I do not think that Miss Gray has ever done any work among the colored students.

The purpose of the examination given to the seventh grade pupils in the colored schools is for admission to the high schools of Baltimore City and to determine whether or not the student has completed the course of study prescribed by the Board of Education of Baltimore County. The teacher, yes, the teacher in the seventh grade gives an examination of her own making and choosing to her pupils at the end of the year to determine whether or not they shall be promoted out. The student might get "A's" and "B's" and the teacher might certify that she had satisfactorily completed the work of the seventh year and yet not be able to do the work of the high school. I remember one case in which the teacher was urging two children to go to high school and I said it was useless to encourage children like that to go to high school. The thing to do was to carry them along and finally let them get through the grade so that they could get their permits to go to work. One of these children was in the third grade and the other was in the fifth and they were not doing satisfactory work there. I do not know whether they were getting "A's" and "B's" or not. If a child is incapable of doing satisfactory work, it would be the teacher's duty to require him to repeat the work of that particular grade and if after repetition the child was still unable to do satisfactory work, all that we could do is promote him along to the seventh grade and then I would say promote, not graduate him out of the seventh grade, in order to comply with the compulsory attendance law.

The teachers and principals make up the records of the colored elementary school which are submitted in a report to the State Board of Education. They come into our office and we make up the reports from these records. We mark them in the last column as graduates. The figures in the column which refer to the students as being promoted and in the column which refer to them as graduated are the same, but they were probably not to be interpreted the same from our point of view. To me, the term "graduated" would mean that the child is capable of going on to high school. It would not always mean

that. In this case he would have to take the examination to determine that. I pay very little attention to the word "graduated". I think there should be some change in the reports going to the State Board. The examination given by the County Board for admission to high school is given to determine whether or not the child has completed the work according to the standards of the Board of Education for the seventh year. The teacher gives the examination for that same purpose. The teacher does not always make and choose that examination herself. Sometimes they are made up by the teachers and sometimes by the supervisors of the white schools and the school authorities. I do not think there is any duplication of purpose in these examinations. The reason is because the teacher could not promote those children who took her examination to high school. They can only be promoted on our examination. The teacher is required to give an examination in order to mark the students promoted or not promoted. Its purpose is to see if they have completed the work of that grade satisfactorily. My recollection is that prior to 1935 the children who took the examination for promotion to high school did not have to take the examination submitted by the principal. The teacher would recommend those who took our examination on the basis of their class work throughout the year. The teacher might give the child a card certifying that he had been promoted and our office might send the record to the State Board of Education that he had been graduated without his having taken the teacher's examination. I do not recall a single case in which that has been done, however. I have never given any instructions to the colored principals not to give examinations to those students who were going to take the high school examination. I do not recall ever having discussed it with the teachers. If a child did not take the teacher's examination and the teacher recommended her or him to us for permission to take the high school examination and that child failed our examination, I do not know how the teacher should mark his or her promotion card. I have never given any instructions in a case like that. I do not put any confidence in or accept the teacher's certification that the child has completed the work of the seventh grade for admission to high school. We would

probably accept that certification that the child has satisfactorily completed the work of the seventh grade according to the teacher's judgment. But I would not rely upon the teacher's judgment to the extend that I would say that having done the work of the seventh grade satisfactorily, the child is presumably capable of going on and doing the work of the eighth grade.

After the examinations for admission to the high school are given, they are marked usually by the supervisors or by a committee appointed by the Superintendent. These are not always the same persons who give the examination. After the papers are marked, the grades are sent to the office of the Board of Education. They are filed in my office. I do not think I have them as far back as 1926. I know that we have them as far back as 1932. We have not held all of them because of lack of storage space in the basement of the Court House. The law only requires us to keep them for six months, but we do keep them longer than that. After the grades were in the office prior to 1936 I sent out personal letters to the student notifying him or her of the results of the examination. I always examine the results before sending the notices.

After the child has passed the examination, if he is recommended by me, he can be recommended to the Baltimore City High School. My recommendation is based upon the standard marks for the examination set by the Board of Education upon my recommendation or that of the Superintendent. On several occasions I felt we ought to reduce the standards. I felt we ought to get through more children. I recommended a reduction of the average grade from 60 down to 50 and on one occasion to 30. I did this because I felt we ought to get more children into high school. My recommendation that the child shall be promoted to high school, after he has taken the examination, is based solely upon the results of the examination. I only consult the principal in order to ascertain the standards or grades of the children. I do not recall how long I have been doing that. The records from the principals contained in 1936 for the first time a place for the teacher to answer the following question: "Do you recommend the pupil's admission to high school?" This

question appears on the record for 1936 (Petitioner's Exhibit No. 6). It does not appear on the record for 1934 (Petitioner's Exhibit No. 11). It does not appear on the record for 1935 (Petitioner's Exhibit No. 12). In 1934 there is a paragraph in my letter of May 10 which says, (addressed to the principals) "Star names of pupils who are recommended for high school." The same statement appeared in my letter of 1935. The instructions on the records that we gave to *to* the teachers in those years read "Record names of all seventh grade pupils and star those who expect to take the scholarship examination for free tuition. The star was for the purpose of letting us know how many would take the examination.

I know a Mrs. Hasty. I had an interview with her after the examination for admission into high school. I did not make a statement to her to the effect that there must be an effort made to discourage too many of these colored children from taking the examination because I did not want them getting into high school at too early an age. I did not say that I was making this statement because I knew of one student who was only eleven years old and ready for high school. I may have discussed the question of children's getting into high school too young, but I did not say, so far as I recall, that I was discouraging young children from going to high school.

If the petitioner, Margaret Williams, had passed the examination given, either in 1934 or in 1935 to determine her eligibility, I would not recommend that she be admitted to the Catonsville High School because that is a school for white students only. We have separate schools for colored students.

CROSS EXAMINATION.

There are twenty-four colored schools in Baltimore County under my supervision. The examination given in the colored schools in 1934 was the same examination given in the white schools in 1934 to determine whether or not the student was eligible for promotion to the high school. That examination was made up by the supervisors of the white schools, the Superintendent and myself.

I heard the testimony that the examination in 1935 was given to the white schools in January and to the colored pupils in June of 1935. The examination was provided by and given at the suggestion of the State Department of Education. The teachers mark "Promoted" on the report card of a colored pupil may represent at least two classes of students—one being those who have satisfactorily and successfully, in the teacher's judgment, completed the seventh grade, and the other class those who are promoted for the purpose of having them leave the seventh grade. The word "Promoted" would not indicate to which of these classes the student belonged. Ordinarily, the teacher's examination preceded the examination given under the supervision of the Superintendent. The notice which appears on my circular of June 10, 1935, reading "All seventh grade pupils will take the regular scheduled examination for pupils, which begins Friday, June 14, which is authorized to those who are recommended by the principal as eligible for high school, refers to the regular examination in the classes. All pupils took that examination. It was for the purpose of instruction. The examination for admission to high school was held on June 20. That examination was the same for both white and colored schools. The same is true for 1935. I might have some students listed as promoted from the seventh grade who would be taking the seventh grade over again the following year. This plaintiff repeated the seventh grade in 1935 after she had taken the examination in 1934. We have approximately 200 children in the seventh grade in Baltimore County. A goodly number of them would be repeating the seventh grade. I would guess that there might be fifty repeaters. I think that would be a low estimate.

The committee which marked the papers in 1934 was composed of the seven white supervisors. I did not mark any of the papers myself, but I was there and the committee consulted me in regard to these colored applicants. That was in 1934. In 1935 a special committee arranged for and planned by Superintendent Cooper did the marking of the uniform tests. The members were persons trained to do that type of work. No consideration other than the successful passing of the examination entered into the recommendation for admission to high

school. I make the recommendation to Mr. Cooper and he in turn, makes it to the Board. I have always recommended every pupil who successfully passed the examination. Recommendation follows automatically upon passing. Mr. Cooper has always taken my recommendation. I have recommended "some below that", and the Board has approved some of them. The purpose of my statement in my letters to the principals, which read "Star names of pupils who are recommended for high school", was to get the principal's judgment on the applicants appearing upon the list of those who were taking the examination.

RE-DIRECT EXAMINATION.

If a principal should say that he did not recommend a particular student for examination and the student should take the examination and pass, I would recommend him for the high school, despite the principal's judgment. The test given by me to the colored pupils of the seventh grade in 1935 was provided by the State Board of Education for the purpose of determining the achievements of the pupils and to determine the teaching as done by the principals in the schools. I do not know what instructions from the State Board accompanied the tests. I did not pay much attention as to whether or not the State Board requested that the examination be given within a certain period. I think it was intended by the State Board that the examination be given to all of the students in the seventh grade, white and colored, throughout the state. We gave it to all excepting those who failed to appear for that seventh grade examination. They were privileged to appear if they wished. The same thing applied to the white schools, I suppose.. I testified on cross examination that I knew that the test was given to the white children in January, 1935. It was not optional with them whether or not they could take the examination. They had to take it, but some may not have been present. The Negro children in Baltimore County could refuse to take the examination. I have urged them to attend such examinations and insisted that they be present, if there was any possible chance of passing. I am not an expert, but I am familiar with that type of

examination. I have given a number of them. Its purpose is to analyze the weakness of both the student and the teacher. If this examination were not given to all the colored students in the seventh grade in 1935, the teachers or the principals of the colored schools or I, as supervisor could still determine in what subject these children were deficient so that they would not have any possible chance of passing the high school examination from the teacher's knowledge of the student's general class room work and his ability to do it. I would not ask the teacher to discourage such deficient children from taking the examination. I would ask the principal to encourage all to take the examination who had a "ghost of a show."

I testified that there are two recommendations before the Negro child can get into the high school. I recommend to the Superintendent and I suppose he passes that recommendation on to the Board. My recommendation alone would not be sufficient to entitle the child to admission to high school. On cross examination I testified that I did recommend some colored students who had *take* examination and failed. By that I mean some who fell below the standard set out by the Board of Education. In 1935 the standard set by the achievement test was 260. I recommended that all who had scored above 251 be admitted for *for* free education in the Baltimore City High Schools. What we did was to lower the passing score finally established. I have never recommended anyone who has not met the minimum passing score in any examination since 1926. It is true that automatic recommendation follows passing the examination, automatic failure to recommend follows not passing the examination."

DAVID W. ZIMMERMAN,

having been previously qualified, resumed the stand and testified as follows. "I gave this achievement test in my school in January, 1935. Some of my children failed this test. Those who failed remained in the same grade, but there was some reclassification within the sections

RE-DIRECT EXAMINATION.

The reason we would hold such a child back would be because the mark on the final examination was so low that we did not deem it advisable to promote him. It would depend upon the score in the achievement test—how high it was in comparison with the final examination that we gave. We may have promoted some who made a score of 9.5 in the achievement test and failed in the June examination, if the latter failure was not by a very large margin.

RE-CROSS EXAMINATION.

I do not recall definitely whether we had a child who failed the June examination and still was promoted after having passed the January examination.

DR. FRANCIS M. WOODS,

a witness of lawful age, having been first duly sworn, testified as follows. "I am director of the colored schools in Baltimore City. The only requirement set up by the Baltimore City Board of Education for admission into the eighth grade of a student from Baltimore County, or any other county, is that the student must have a report card signed by the principal indicating that the seventh grade has been completed. If a student came to me from Baltimore County with a report card like that of the petitioner, (Petitioner's Exhibit No. 1), marked "Promoted to the Eighth Grade" and signed by the principal, she would be admitted to our eighth grade. We would require nothing from the other officials of Baltimore County unless she were applying for free tuition. In that event, we would require a statement from Mr. Herschner. However, if she or her parents were paying her tuition, we would require nothing more.

VIOLET MAY TAYLOR,

a witness of lawful age, being first duly sworn testified as follows. I am principal of the Cowdensville Elementary School, which is a public elementary school in Baltimore County. I have a certificate from the State Board of Education. I have been teaching in Cowdensville about six years. I know Margaret Williams. The report card of Margaret Williams (Petitioner's Exhibit No. 1) is in my handwriting. The signature in my handwriting. The signature "Violet May Taylor" is mine. I promoted Margaret Williams in June 1934 when she was in the seventh grade. She took an examination given in Catonsville. My promotion of Margaret Williams was based upon that examination. It was based upon my work in school with her. I have never been officially informed, either by the Board of Education, or any official thereof, as to Margaret's marks at the Catonsville examination. I have never seen her copy of that examination. I had nothing to do with the giving of that examination. After Margaret took the examination in 1934, she came back to me and repeated the seventh grade. I gave her the same course of study given to the other pupils in that grade. In June, 1935, I marked her card "Promoted" again. Margaret's name was listed on my report to the County Superintendent, both in 1934 and 1935 as being promoted. It was also included in those years in the list marked "Graduates" in the end column of the sheet. By "Graduates" I meant those completing seven years work. Margaret Williams satisfactorily completed the seven years elementary course and was a good student so far as I was concerned. I gave Margaret an examination in 1934 before promoting her to see from that and her school work together, whether she was qualified to pass the seventh grade.

At one time I received instructions from Mr. Herschner to discourage those whom I thought would not be able to pass the examinations for free scholarship to the high school. I think I recall receiving a letter from Mr. Herschner in 1934 with a form in it to be filled out concerning the examinations. I remember being requested to put a star beside certain names. I understood that

to mean to star those whom I thought would be able to gain a free scholarship to the high school.

I put the figures on Margaret Williams report card (Petitioner's Exhibit No. 1). I put those Roman numbers on the front of it. I did not see any erasure on the card. I use Roman figures most of the time in marking the grades on these cards.

CROSS EXAMINATION.

This mark was put on the card in June, 1935. There was no blank on it when it left my hands. I do not recall that the card was returned to me and that I was requested to fill something in the blank. I do not recall that when it first left the school, it had only "Promoted" on it and that the space in which the V and the three III's now are was blank. I do not recall that the card was returned to me by anyone with the request to fill in the blank. There is no eighth grade in Baltimore County. As a rule when students leave my seventh grade, they go to the eighth grade in the city. I have never been instructed to mark my cards otherwise. I fill in all my seventh grade cards that way. I have never seen any other cards in the colored schools in Baltimore County than my own. I would not write the word "Promoted" on the card because "Promoted" was already on the card. I have been instructed that is the custom ordinarily in the seventh grade. I have never seen it on any other cards. I do not have any pupils in the seventh grade who are promoted merely so they can go to work. I have five seventh grade students. I have never promoted a pupil merely to enable him to leave school. I have had only two pupils to repeat the seventh grade in seven years. I have never known any student to be recommended for free tuition from the Baltimore County Board to the Baltimore City High Schools who had not successfully passed the examination.

ELIJAH L. GWYNN,

a witness of lawful age having been first duly sworn testifies as follows. I am principal of the Loreley Elementary School in Baltimore County. I have been principal

for five years. When a child has completed the seventh grade satisfactorily in my school, I have promoted him to the eighth year. The report card shown to me (Petitioner's Exhibit No. 13) does not bear my signature. It was signed by one of my seventh grade pupils for me. The words "Promoted to the Eighth" are in my writing. A child who had satisfactorily completed my seventh grade would be included in the number marked on my report to the County Superintendent as promoted. He would also be listed in the column "Graduates". In the last two years I have given an examination before the students completed the seventh grade. By "Promoted to the Eighth Grade" I mean that the student has completed the common schools. So far as I had authority, I approved the seventh grade education. I had ninety-nine students in my school last year. In 1935 I had three graduates. None of them took the test for high school. I do not know why they did not take it. I told them about it four or five days before the examination.

Q. "Did you encourage them to go? A. Well, I left it to them. I told them about the examination and told them when it would be and told them that if they wanted to take it to go ahead.

Q. And if they did not, it was all right? A. I cannot say I did. I told them to tell the parents about it. I left that to the parents. I was instructed by Assistant Superintendent Herschner to send all who had a chance to make it and if some children did not have any possible chance to make it to discourage them. I have been requested for quite a few years to recommend those pupils for admission to high school if they had a possible chance of making it. I would promote a person whom I would not at the same time recommend for examination, if he were an over-age child. He could not stay in the school forever and would have to be moved along. If he were of lawful school age, I would not promote him."

CROSS EXAMINATION

I have been teaching in the Baltimore County public schools about twenty years. I am principal of No. 22 in District 11. I have twelve students in the seventh grade

this year. Practically every year I have had students take the examination for high school with the exception of two or three years. I have had very good success with my students in passing the examination. I saw the papers for the test given in 1934. In some respects it was a fair test. The unfair thing about it was changing the environment of the children. Taking them out of their school puts them at a disadvantage and affects their marks. Even when seven out of eight of my students passed the examination, I think they would have had better marks if the examination had been in their own school. I do not think there was anything unfair about the test itself or the marking. I did not see the 1935 test. When I said that "Promoted to Eighth" written on my report cards was a mistake, I meant that it should have been "Promoted to High School." I did not have any authority to promote a student to high school in order to allow him to attend at the expense of the Baltimore County Board.

RE-DIRECT EXAMINATION.

In 1934 I did not send any students for the examination. Upon a written request I obtained a statement from the School Board about the percentage of my students who passed the examination. I think they commended me on the fact that so many of my pupils passed the examination. They said I was working satisfactorily. A copy of the 1934 examination was sent to my school. I received it about the same day the children would take the test. My children took the test at Towson. In 1934 I provided the transportation to Towson for some of them. Those whom I did not take had to get over the best way they could. The County Board did not offer any transportation to them. I think the 1934 examination was a fair test so far as I know. I am not very well acquainted with tests. When I went over it, I did not consider that I had covered all of the substance of that examination in my seventh grade. I know there were some questions in it that were not covered in the seventh grade. We do not have much handwriting taught in the seventh grade of our school. I cannot write myself and I cannot teach it. Before this year we had some old copies of books on teaching of handwriting in our school

and we tried to use them. I have never had anyone to take the examination for admission to high school whom I did not recommend.

(Annual Reports of the Baltimore County Board of Education admitted in evidence and marked Petitioners' Exhibit #14—Annual Report for 1935 Petitioners' Exhibit #15.)

M. ANNE GRACE,

a witness of lawful age produced on behalf of petitioners having been first duly sworn was examined and testified as follows:

I am employed by the Board of Education of Baltimore County as a Supervisor in the elementary schools. I visit the teachers in their classrooms, conduct meetings, work on courses of study and help frame tests. I have not visited the colored schools in my official capacity. I have been in one or two of the schools with Mr. Herschner but not to visit the schools as a Supervisor. When there with Mr. Herschner, I was not there for the purpose of supervising. I am not acquainted, of my own knowledge, with the methods of instruction used in the colored elementary schools in Baltimore County. I have never been in the Cowdensville colored elementary school. As to the method of instruction used in the Cowdensville elementary school, my only knowledge is, insofar as I know, they follow our course of study. I have met the teachers in meetings and have given suggestions as to what they may do—discussed different things with them in the meetings. I help prepare the examinations. And gave the one in Catonsville in 1934. That examination was the essay-type. I did not help prepare that examination. I wrote the questions after they had been compiled and discussed them with the other supervisors and in conference with Mr. Hirshner. I do not remember Margaret Williams in the 1934 examination. I know the name on the paper, but I do not remember her. I administered the 1934 examination in Catonsville. I had control of it. Mr. Fletcher was there in and out of the room and he gave any assistance that he could

but he did not have any part to do with the actual giving of the examination except certain manual acts of passing out and so forth. The examination was marked at the City office by the Supervisors. I was there. We all marked the papers. Each of us marked certain subjects, which means that we marked all the papers from all the schools. The white examinations were not marked at the City office. I did not take part in the giving of the white examination in 1934. The standards used for marking the colored papers were that we used the answers we expected the children to give judging from the textbooks they had in use and the course of study in use. The Cowdensville school uses the same book orders that we have. I cannot actually say that they use these books except I know they use the same book order we have and they use the same books. When we marked these examinations for the colored children, we did not have any record whatever of the individual child. We could not take into consideration the child's record. The records did not come to our knowledge in any way. We had no information whatever concerning the child's classroom work except that she was sent to take the examination or she appeared of her own accord. The only factor that entered into the marking of this examination is what was actually said on the examination. We marked just as leniently as we possibly could. We considered the fact that the children sometimes could not express themselves in the way in which they liked and so if the answer showed that the child understood the question, we gave credit for it. We tried to be just as fair as we possibly could. The only factor even in this question of being lenient was based on what was on the examination paper. If the answer showed any evidence that the child understood and had tried to give the right answer, we gave credit for that. I did not give the 1935 colored examination because I was doing some other work. When we were called into consultation on the colored examination, we all discussed the questions together. The principals of the schools gave the white examinations in the seventh grade. The same examination was given. It was prepared by the same people, the Supervisors of the elementary schools. These examinations were discussed before they were printed.

CROSS EXAMINATION.

I have been discussing the 1934 examination. I did not participate in the preparation or the giving of the 1935 examination. In 1934 the same examination was given to white and colored pupils—in June, 1934. I did not participate in making the questions, but I was present at the conference when the questions were discussed. Mr. Hirshner was not present at the conference but they were taken to the City office, to the Towson office, for Mr. Hirshner to look at and read over. The questions were always submitted to Mr. Hirshner insofar as I know. I have not attended meetings at which both colored and white teachers were present. I have attended meetings with Mr. Hirshner on quite a number of times with the colored teachers and discussed certain subjects. I have also given them mimeographed material that I have prepared, or my teachers have prepared or some of the other Supervisors; as aids to help them in their instruction. The course of study is the same. The same textbooks are used in white and colored schools—the same book order is used.

Q. Miss Grace, this examination of 1934 that you gave, what have you to say with respect to the fairness or otherwise of that examination? A. I think it was very fair, Mr. Rawls.

(Mr. Marshall) If your Honor pleases——

(The Witness) It was based——

(The Court) Just a moment. What is the objection?

(Mr. Marshall) If your Honor pleases, the question is, did she think it is fair; and I want to know whether she is in a position to know.

(The Court) Well, she is with the supervisors, and a teacher in the public schools. I think that is all right.

(Mr. Marshall) At this point, if your Honor please, we make a formal motion to have her answer stricken.

(The Court) All right, overruled.

(Mr. Marshall) Exception.

Q. (By Mr. Rawls) All right, go ahead, proceed with your answer. A. Well, would you ask the question again, Mr. Rawls, please?

Q. Yes. What have you to say with respect to the fairness or otherwise of the examination that you gave in June, 1934, to the colored pupils? A. I think it was a very fair examination. It was based on the work that they had been taught in the class rooms, and it was very fair, indeed. We studied the examination questions very carefully before they were printed.

Q. And it was your purpose to make it fair, was it? A. To make it just as fa(i)r as possible.

(Mr. Marshall) Now, if your Honor pleases, to keep the record straight, I make my same motion, that these answers be stricken from the record.

(The Court) Same ruling.

(Mr. Marshall) Exception.

(Mr. Rawls) That is all, your Honor.

RE-DIRECT EXAMINATION.

I have worked on the book orders for the colored schools at times to see that the teachers were ordering books enough for their schools and I think I could safely say that those books were ordered for the Cowdensville school. In fact, I worked on all of the book orders for the colored schools just about 1934 and I know the same books were ordered for the colored schools that were ordered for our schools—the white schools. I do not know that these books were delivered. I was not present when the examinations were prepared. The only way I know that the white Supervisors prepared the questions in the examination is that they were submitted at the conference. I happen to be secretary of the Supervisors' conference and I know these questions were submitted by each Supervisor. Each Supervisor prepared the questions from the textbook and the course of study. They handed them in in their own handwriting. We use the same course of study

in the colored and white schools. I cannot say whether there are any modifications of the course of study for colored schools. There was no consideration left open for the modification in the course of study in the preparation of the examinations. The examination was based on the course of study and the textbooks. The colored children were required to pass each subject of their examination. I do not know the passing mark required, but I helped mark the papers and submitted the records. We did not take into consideration what mark was necessary for passing. We sent the report to the Towson office, Mr. Cooper's and Mr. Hirshner's office. We sent in the records on each subject exactly as they were made. In my opinion, a child we passed the examination and yet made a mark of 30 in arithmetic, has failed. Arithmetic is a very important subject, history is also important.

RE-CROSS EXAMINATION.

Seventy out of a possible hundred would be a passing mark in arithmetic. Thirty out of a hundred would be a very poor mark.

NELLIE B. GRAY,

a witness of lawful age, produced on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

I am at present Supervisor of elementary instructions and principal of the Catonsville elementary school. I held the same position in June, 1935. In June, 1935, I gave the examination to the colored pupils of Baltimore County at Catonsville. I have never supervised the colored elementary schools. I have visited them during the last ten years but have not supervised them. I have been in the Cowdensville elementary school but not to supervise. The 1935 examination was a standard test prepared or advised by the State Department. I do not have a seventh grade in the Catonsville elementary school. I have a seventh grade in a school under my control at Westchester. The principal of that school gave the examination in January. I do not know what happened to the

pupils who were failed. I know that Cowdensville children were present at the Catonsville examination. I do not remember Margaret Williams as such. Mr. Fletcher, principal of the Catonsville school, assisted in the giving of the examination. I had the manual when I gave the examination. (Witness handed "Manual for Directions"). This is as near as I remember the manual. (Manual marked Petitioners' Exhibit No. 16.) We were given specific instructions and training in giving the standard test. We followed the manual. I did not take any part in the grading of these tests. I was not consulted at all. I do not recall ever having seen the examination papers again. I was not consulted concerning any pupil whom I tested. I did not know anything concerning the classroom work of the children in Cowdensville or any individual child. I did not know the classroom record of any pupil. In the Westchester school, instructions were given to give an examination in June. I did not recall anything about the white elementary examination in June, 1935. The examination in June to the white schools, the seventh grade pupils, was for the purpose of promotion to high school. The examination in June, 1935, to the white seventh grade pupils was for the same purpose. All of our examinations in the grades are for the purpose of promotion—to see whether they have completed the grade.

Q. Is there any difference in your mind between the promotion from the seventh grade and the promotion to high school? A. Well, you understand we have the two types of promotions; one is the promotion to high school and one is promotion.

Q. Just plain promotion. Now, this examination that is given in June is for the purpose of what? I mean, distinguishing between the two promotions you have just mentioned, which one is the examination in June to determine? A. Well, it is to determine whether the child has completed the grade.

Q. Well, if a child passes, is that child just promoted or promoted to high school? A. If he passes the examination, he is promoted to high school.

Q. If he fails the examination, what happens? A. Well, it depends. He may repeat the grade.

Q. If a student should fail the examination by six points, say, and should be a very good pupil, would he necessarily fail? A. I can not say.

Q. You do not know, do you? A. I really do not know, there are so many things to be considered.

Q. Then, the examination is not the sole guide as to whether he shall be promoted to high school or not, is it? A. Not in the white schools.

Q. That is right. They also take into consideration the class-room work and all; is that correct? A. And the recommendation of the teacher.

CROSS-EXAMINATION.

I really do not know whether in the case of colored children they may be promoted without passing the examination. I do not know whether the rule is different in the colored schools. I know that the examination has been the prerequisite for promotion the past year and has been in various years. I really do not remember the exact wording of the directions we had in 1934 and 1935. Exceptions were very rare. In that case, the teacher would appeal to the Superintendent and the Supervisor. And the Supervisor would grant a promotion. It was a matter of careful consideration. I do not know about the colored schools. I am both principal and Supervisor. I am principal of the elementary school at Catonsville and supervise four schools in the Catonsville section.

RE-DIRECT EXAMINATION.

The Cowdensville school is not among these schools and I do not supervise the Cowdensville school.

ELIZA MERRITT,

a witness of lawful age, produced on behalf of petitioners, having been first duly sworn was examined and testified as follows:

I am attendance officer in the Baltimore County schools, visit the schools to learn something of the attendance, confer with the teachers concerning attendance and problem case of children, visit the homes of parents and I am responsible for the keeping of records of attendance in our schools. It is a part of my duty to make out the reports of Baltimore County, summarize the principal's annual reports of enrollment, attendance and promotion. (Witness shown principal's annual report for 1935.) I made this report out as well as one for 1934. (Books marked Petitioners' Exhibits No. 17 and No. 18.) In these reports there is a place for promotion and non-promotion, another for not promoted and a far column "graduates." The sum total of promotions from the seventh grade in the colored elementary schools appear in the column "graduates." There is no distinction in this book between the figures "promotion from the seventh grade" and the figures for "graduates." This book is for high school as well as elementary and of course, we have our graduates from fourth year high school. The reason I included in the group "promoted" the same figure as in the column "graduates from the seventh grade elementary school," is that in the promotions column we make up these reports from the teachers individual reports and the teacher marks the child promoted or retained and whether promoted to high school or promoted from the seventh grade to go out to work, they were all counted in that column. On the teachers individual report, the teacher showed no difference. They were all according to the teachers report and the teachers judgment of a child marked promoted or retained. There is nothing in the colored teachers seventh grade report to show whether or not the child is promoted to high school or promoted to go back. The same is true for the white schools. The same figures appear in the 1935 report. When I make up my report to the School Board, I do not know how many are promoted and how many are promoted to high school. In my duties as attendance officer, I know that the age limit for compulsory attendance is 16. I try to enforce the attendance laws as to the colored children also. A colored child 15 years of age who has once repeated the seventh grade and who is unable to qualify for high school education, offtimes wants to go to

work. If the child did not want to go to work and wanted to go back and repeat his grade I think he could still go back again. I would not require this. I should say not after a child had been in the seventh grade for two years and had repeated his grade and had attended regularly and applied himself. Then I would say that it is of little value for him to go back. The 16-year law says that the children shall be in school, but if they have been through the grades and had two years in the seventh grade, as I said, we do not compel him to go back. The child has been promoted so that he may go out to work; and usual thing is that they would rather and would like to. (Witness shown a letter from the Board of Education of Baltimore County, dated July 24, 1934.) I have seen this letter. The second paragraph reads: "Any pupil who fails to receive the required average for the free tuition to attend high school and who has had but one year in the seventh grade, may repeat the seventh grade, if he or she has not reached the age of 16. I would not urge a child below the age of 16 to repeat the seventh grade if he had had two years in the seventh grade."

Q. (By Mr. Marshall) Would you in your position as attendance officer refuse to permit the girl under the circumstances we have been mentioning, to repeat the seventh grade the second time?

(Mr. Rawls) I am going to object, may it please the Court.

(The Court) I sustain the objection.

(Mr. Marshall) Exception, please.

Q. (By Mr. Marshall) Did you have any part in the preparation of the — first of all, I ask if you are acquainted with the letter from the Assistant Superintendent advising the teachers to discourage pupils from taking the examination for free tuition, and stating that pupils under fourteen years of age, should repeat the grade?

(Mr. Rawls) I am going to object to that. It is not the letter, and it is not a fair statement of the letter. I object to it.

(The Court) Let me have that question.

(Question read by the reporter.)

(Mr. Rawls) The letter, may it please the Court, appears in two forms. One is that they were to discourage students who had no possibility of passing the examination, and the other, I think in form, had no fair chance of passing the examination. There is all the difference in the world in that kind of a letter and the statement of the question. I object to it, and ask that even the question be stricken from the record.

(The Court) I sustain the objection.

(Mr. Marshall) Exception, please.

Q. (By Mr. Marshall) Miss Merritt, are you acquainted with the letter from J. T. Hershner, Assistant Superintendent, stating that, under date of May 10th, 1934, stating that teachers should discourage pupils from taking the examination for free tuition to high school, if they did not have a fair chance of passing it, pupils under fourteen years of age should repeat the grade if not successful in the examination.

(The Court) Isn't that the same question?

(Mr. Rawls) The same question, may it please the Court.

(The Court) I sustain the objection.

(Mr. Marshall) Exception.

BESSIE C. STERN,

a witness of lawful age produced on behalf of petitioners having been first duly sworn was examined and testified as follows:

I am Statistician of the State Board of Education. I consider examinations and different kinds of tests. In the year 1935, there was a standard test sent out to the schools in the State. It was a progressive achievement test by Tiggs and Clark. The purpose of this examina-

tion was to check the work of the pupils in the schools of the counties of the State in the tool subjects. It was for the purpose of survey and for diagnostic purposes. It was for many purposes. For the purpose of having the State Department survey the work of the various county schools and the counties were advised to use the results of the test for diagnostic purposes to follow up the remedial work. That is the suggestion we sent out. By remedial work I mean teachers and supervisors study the results of the tests and find out what errors have been made by pupils and find out what the class difficulties are, and what the individual difficulties are and try to help the pupils to overcome those difficulties. The norm used in these examinations is to see how well our children compare with the standards set up by the authors of the test. I went into the Tiggs-Clark test before we took that one. The test is made in California, I think in Los Angeles. I think four or five schools were used to test reliability. They base the results on 1,100 pupils, I think in the California schools. They were supposed to be representative pupils. I have not seen the California course of study. We studied the test and we thought it was a very good, fair test and we thought it was a good way to check up on our courses of study and our own work, by finding out how we checked up against other places. I think the examination was given to the white students in Baltimore County in January, 1935. According to the testimony, it was given to the colored pupils in June, 1935. When the examination was sent out by the State Board, we did not say anything about using it for the purpose of promotion. It was a discretionary matter with the counties. When we sent the examination out, we indicated the purposes of the examination. We sent out suggestions for the giving of this test which was for the purpose of surveying the work in reading, arithmetic and language in the schools from the second grade to the seventh or eighth. There were no geography and history questions except those included in the reading test. All of the counties in the State used that test. I think the examination is a very good test and our results show for instance, in June, that only about 10% of the colored children pass certain phases of that test. It would be possible for 50% to fail. I think that we would find very

few counties in which 50% of the colored children would reach the norm. The norm was based on 1,100 students in California—Negro, Chinese, Mexican and white children.

Q. (By Mr. Marshall) Do you know of your own knowledge whether there are any one-teacher schools in Los Angeles?

(Mr. Rawls) I object.

(The Court) Sustained.

A. There are probably not.

Q. Are there to your knowledge any? A. I don't know.

(Mr. Rawls) Objected to.

(The Court) Sustained.

(Mr. Marshall) Exception.

We only went into the question of the schools used for testing the reliability of this test by the knowledge that they have good schools in Los Angeles. They are supposed to have the progressive course of study and to do work that is well recognized over the Country. I cannot discuss what is meant by the word "progressive." When I said progressive, I meant in a very general way.

CROSS-EXAMINATION.

Mr. Cooper telephoned me and asked me if I thought that the progressive achievement test would be a fair test to use with his seventh grade pupils and I told him I thought it was a very good test. That was all I said to him. We were not concerned with the question as to whether the test was a fair test for high school purposes. I don't know whether or not it was used in other county schools as a test for high school. We get records of promotion and in most of the counties, the pupils who are promoted to high school are counted graduates, but that was not true in Baltimore. I regarded the test as a fair test. We did not check in detail as to whether the course of study in Baltimore County schools comprehended the questions contained in that examination. We wanted something general to check our own work against. I

know the course of study in Baltimore County schools in general and I thought the test would be comprehended in that course. It had been given in places other than Los Angeles. When it was given in June, 1935, it had been used with about 70,000 children in the counties in January, the white children. Not in the seventh grade, but in grades up to the seventh. It has been used in other States but I do not know just what States. It is an accepted test available for use throughout the Country. I could not say whether or not this particular test had been used in a number of States. I know it was being used because we selected it and probably other people selected it. The results of the examination in Maryland indicated that our children were doing very good. A little higher percentage of them reached the norm than had been expected. I think the colored children did better in that test than they have done in most tests that we give. I think the seventh grade colored pupils did better than they have in some tests that we have given, but of course, the colored results are never very high. A small percentage of colored children reached the standard as they went up through the grades. This is based on examinations all over the State. Many of the colored children make excellent scores. In individual cases, we have colored pupils who make as high a mark as the white, but the percentage of them who do it is very much smaller. In a number of cases, the individual marks are as high in one race as in the other. The white children fall off as they go to the higher grades, but not to the same extent as the colored children. The norms of this examination and the scores for this examination are based on the 1100 pupils. So far as the reliability of this examination is concerned, despite the fact that it might have been given to six million pupils, the reliability of it as to these norms as published *her* does not change until they publish another one, until they change the score. We can make our own norms. We often do. First in selecting this examination we did not actually consider the Baltimore County course of study. In stating over the phone that I thought the examination was a fair examination, I did not consult the course of study in Baltimore County. We were selecting a test for the state as a whole and all parts of the state did not use the Baltimore County course of study.

We were trying to select a test that was general in nature, that would fit all parts of the state. In giving my opinion that this examination would be a fair examination for promotion, I was considering that we had chosen it as a fair test in general for all of the grades. Since the white pupils had done so well in it, it seemed that it would be a perfectly fair test for Mr. Cooper to use. I was not consulted on the point that the examination itself was to be the sole criterion for promotion, all I was asked was whether it would be a fair test to use with seventh grade pupils. I think it would have been a very rare exception that a pupil would have been promoted to high school in the white school who had a mark so low as that would probably have not been promoted. I think it would be a matter of discretion with the Superintendent as to whether the examination would be the sole criterior. I thought it was as good a test, a standard test, as was available at that time. In January, the children were probably marked on a norm of 7.5 and if they took the examination in June, they would be required to make 7.9 or 8. In June, they would be required I think to make 7.7. I think they actually took 7.7. In going over the colored examinations in June, 1935, I found that a large percentage of the colored children were below the score in language. They were quite low in the first test in reading but they were farthest below in the language test. The test included spelling and handwriting in "language." The colored pupils were very low in this subject. The white pupils were too. They were not as low as the colored percentage. The norms used are left to the discretion of the county. I did not study the book of the authors of this examination, before we went into it.

EMILIO CRUZ,

a witness of lawful age, produced on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

I live in Lutherville and attended the Lutherville colored elementary school. I finished the seventh grade

there. After I finished the seventh grade, I had to take the examination in 1934. I failed. I went to high school and had to pay my own tuition. I went to high school, the Booker T. Washington High School. When I went to the Baltimore City school, I presented my report card and was admitted. I am still in the Baltimore City school. I went into the eighth grade and I am in the Baltimore City school now. I am in the tenth grade. I took the examination prescribed by the Baltimore County Board of Education and failed.

MRS. CARRY FRANCES HASTY,

a witness of lawful age, produced on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

I live in Overlea, Baltimore County, and I have children of school age. In 1934, my boy came out of the seventh grade and I didn't know at that time how the examination was given or when it was given so I went to Mr. Hirshner and asked him about it. I took the boy's papers. He said the boy did not take the examination and he did not want to look at the papers. I told him I did not know it in time. He said nothing could be done. He said, "Send him back to the seventh grade." He later said "Send him out into the business world." I asked him what he could do with a seventh grade education in the business world and he said they were trying to discourage early graduates anyway. At the time, he said there was a little colored girl eleven years old ready for high school and that was entirely too young.

THOMAS G. PULLEN, JR.,

a witness of lawful age, produced on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

I am State High School Supervisor for the central district that includes Baltimore County. Along with Mr.

Fontaine, I prepared the standards for Baltimore County high schools in 1935. In the particular statement in these standards it encourages the admission of everybody who can profit by it. It also encourages that the schools be of such a nature that they can take care of all of the children. There have never been any recommendations since I have been in the Department to encourage the giving of examinations for the purpose of admission to high school. I can identify Petitioner's Exhibit No. 2 for identification. (Petitioners' Exhibit No. 2 for identification marked Petitioners' Exhibit No. 2.) The requirement for admission to high school is the satisfactory completion of an elementary school course. I should judge that satisfactory completion means that they have satisfied the people operating the schools that they are qualified to do high school work. We have nothing to do with the elementary promotion. When the local school authorities state that a pupil is qualified to go into high school, we accept that regardless of how they arrive at their conclusion. I presume that these recommendations were read to the State Board of Education.

CROSS-EXAMINATION.

The book I have here is made up of a copy of the State laws and certain by-laws of the State Board of Education and also in part of minor suggestions. These suggestions are neither laws nor by-laws. The report of 1927 contains the suggestion that the students be promoted and that they not be required to take an examination. We eliminated that particular paragraph in the report of 1935. It was only a suggestion at that time. It was not compulsory so far as I know. I have no direct knowledge of the examination given during the year 1935. I am not familiar with the results of the examination. The 1935 report states "Superintendents and principals will understand that suggestions, recommendations and standards as set forth in the earlier edition, relating particularly to the provisional functions and responsibilities of the high school principals remain in full effect," also "It is definitely understood that the revised standards as set forth herein supersede the former requirements and are to be used by Superintendents and principals as

a substitute for them." I do not think this bulletin revoked the provisions in the other one. Reading from the 1927 standards, a part of Petitioners' Exhibit No. 2, "The possession of an elementary school certificate, signifying the successful completion by the pupil of the course of study prescribed by the elementary school is sufficient to entitle the pupil to enter an approved high school without examination. This is not included in the 1935 standards. I think it was merely a suggestion even in 1927. If it is left out of the 1935 standards, I presume it was revoked. The entire section was re-written pertaining to admission. One of the requirements for high schools receiving State aid is that they follow the standards. I think you will find the requirements listed. The school must operate 180 days; that is, the white schools. They must have a minimum of two teachers. These are the major requirements. I do not know that it is the law that they should follow the rules on admission, but proper practice would demand that. We would not approve a school that was taking in everybody coming from the elementary schools. When we go into a high school, we look over the records, the elementary records of these children. They are presented by the different schools for admission to that particular high school. The School Board does not send the record to each school. They come from the different schools, that is, an elementary school sends its record to a high school. There are two cards kept in the elementary school. One is kept in the school and the other is sent to the high school denoting satisfactory completion. The County School Board has everything to do with it in its rules and regulations. The only credential we require in the high school, is a record from the elementary school showing the completion of that work. This is not directly from the School Board. The State Board of Study does not operate the schools in any county. They are all operated by the local school board. The reports showing the completion of the seventh grade, or maybe the eighth grade, makes the admission valid. It has to come from the school, but it is not necessarily signed. The principal has to tell us that he has gotten these records from the school. We do not accept the child's report card as evidence. The State Board of Education has supervisory powers over the elementary and high school systems in

the qualification of any witness to answer a question until I know what it is.

(The Court) That is the point you make. He does not know what you are going to ask him about.

(Mr. Ransom) If the Court pleases, I am going to ask him a number of questions about education, particularly in Baltimore County.

(The Court) Ask the question, and then I can rule.

(Mr. Ransom) If the Court pleases, I am not setting myself up as an expert on Maryland law. As I understand the law in Maryland, the qualifications of one who is tendered as an expert must be admitted by the Court before I can ask the questions. I am asking them, if the Court will admit Dr. Davids is an expert on this particular subject.

(The Court) Tell me what you want to ask him.

(Mr. Ransom) If your Honor pleases, I am going to ask him first of all as to the methods used in the various counties, and to compare them with the method used in Baltimore County as admission to high school, as to white and colored children. I am going to ask him as to the comparative abilities, *determine* from his statistical studies of white and colored children in Baltimore County. There is testimony here with regard to the results of certain examinations. I am going to ask him a number of questions relative to the particular tests that were used in determining whether or not the petitioner in this case was entitled to enter high school. And such further questions as may cast some light on the testimony that has been offered in the case so far. Now, the specific questions that I intend to ask, as I say, will be developed from time to time as Dr. Davids' testimony goes along. I am offering him as an expert.

(The Court) There is the offer, Mr. Rawls. You have heard the offer.

(Mr. Rawls) Yes, sir. I object to it, may it please the Court.

(The Court) I will sustain the objection.

(Mr. Ransom) Note an exception.

(The Court) You will remember, gentlemen, as I said repeatedly, that I am going into the question about what is alleged in the original petition, that this child was not permitted to go to the high school, and that it was, to use the language in the petition, that it was illegally and arbitrarily refused. I do not think a comparison between the races figures in this case at all.

(Mr. Ransom) Now, if the Court pleases, again for the purpose of the record, I must state that we respectfully beg to differ from the Court as to the theory of the case.

(The Court) Well, of course, that is a matter that will have to go higher up. I have given you my views about it.

(Mr. Ransom) Yes, sir. Now, if the Court pleases, one of our contentions is that the examination, if such was given during the period of 1934 and '35, was an unfair test and examination, and was in and of itself an arbitrary attempt on the part of the County Board of Education, of Baltimore County, to discriminate against the infant petitioner and others of her race, to prevent her from having the benefits of higher education, so far as the high school is concerned. Now, that is one of the things that we beg leave to submit to the Court's consideration which, of course, as the Court says, is beyond the scope of the examination.

(The Court) I sustain the objection to that.

(Mr. Ransom) And further we beg leave to submit evidence to the fact that the system of sending children away from their home county for the purpose of education is an arbitrary discrimination. Now, unless I can go into those questions, I will have to ask for an exception to the Court's ruling.

(The Court) Oh, yes, you have that exception. I sustain the objection. I do not want it to be understood that he is not competent to testify to anything he testifies to, but that is not in this case.

(Mr. Ransom) Do I understand the Court to say that

the Court does not dispute or cast any aspersions upon Dr. Davids' qualifications?

(The Court) Oh, I do not know anything about Dr. Davids. This is the first time I ever saw him. He undertakes to testify. And he has degrees, he testified, from Hopkins, on certain subjects. And I know he earned them.

(Mr. Ransom) Is the Court willing to admit, for the purpose of that record, that Dr. Davids is an expert on the subject of comparative differences in education provided for the various counties in the State of Maryland?

(The Court) No, sir. I am not passing on that. I am excluding the testimony.

(Mr. Ransom) Note an exception to the failure to admit Dr. Davids' qualifications, please.

(By consent of Counsel the examination papers of Margaret Williams are admitted as the questions and answers of the said Margaret Williams, petitioner and marked Petitioners (?) Exhibits No. 19 and No. 20.)

My experience in teaching has been in Northwestern University, Syracuse University and I substituted at Hopkins. I taught education. I spent two summers at Columbia University studying education. I spent four years at Johns Hopkins University studying education. My dissertation at Johns Hopkins on the subject of the differences between Negro and white education was accepted by the controlling Board of that institution as a partial requirement, for the degree of Doctor of Philosophy. The balance of the requirements were residence and study.

(Mr. Ransom) If the Court pleases, at this time I again make the tender of Dr. Davids as an expert on education.

(The Court) Is that the same offer you made before?

(The Court) I never heard this question presented just in this way before. As I intimated, and I think I said so, when the question came up before recess, that there should be some question propounded to the witness, and it might be that there would be no objection to the question.

(Mr. Rawls) Exactly, precisely.

(The Court) But if there is an objection for the reason he is not an expert to talk on that subject, it will be time enough to rule upon the question then.

(Mr. Rawls) Precisely.

(The Court) But the first thing is to ask some question which may not be objected to.

(The Court) I just do not agree with you on that. Just ask your question, and then if they are objected to I will rule on them.

(Mr. Ransom) I am willing to follow the Courts suggestion, but for the purpose of the record take an exception to the ruling.

(The Court) What I have ruled on?

(Mr. Ransom) You have ruled that he could not be admitted as an expert, as a preliminary question. As a preliminary question the Court has ruled he can not be admitted as a qualified expert.

(The Court) That is right.

(Mr. Ransom) I take an exception to that.

Q. What, in your opinion, Dr. Davids, is the validity of that examination as the basis for promotion from an elementary school to a high school? A. Why, that involves a pretty thorough discussion of the purpose of the test. These tests—this, in particular, was devised for not one but several purposes. Primarily it is a remedial or diagnostic test. It is designed to not only reveal deficiencies in the elementary education in the tool subjects of the person taking the test, but of the system itself, for the purpose of not only remedying the education of the pupil, but of remedying deficiencies in the system. Now, the validity of the test as a requirement as an entrance examination is open to a great deal of question, I think. In the first place, a test to be valid for any such purpose should only be constructed by the use of very extensive samplings of the curriculum used in the education of the person tested. Now, manifestly, that was not done. This was accepted as a test de-

veloped, constructed after extensive sampling of the curriculum, the Los Angeles County school curriculum. I think it is open, therefore, to question of its validity on that particular point. I think that is the principal reason why you question its validity.

Q. Isn't there another objection to its use? You said on a number of points. For the purpose of promotion. A. That involves the criteria used in scoring.

Q. Will you explain to the Court what you mean by that, Dr. Davids? A. Well, if one should adopt the norms, for instance, which are used here as a basis for scoring, he might be very unfair. He probably would. That is to say, if a child, in order to enter the eighth grade, is compelled to pass with a score on this examination which is equivalent to the norm for a pupil of 7.9, and would miss that, say, by a month or two, I think that would be entirely too rigid a requirement.

Q. Now, at that point, allow me to interrupt you just a moment, Doctor. A. If I may suggest——

Q. Go ahead. A. If I may suggest how that might be used as one of the entrance criteria fairly, it might, perhaps, have been so used. If all those who had taken this test, if their scores had been entered upon a frequency curve, and then some reasonable criterion adopted in accordance with what we know of the frequency curve, and that 7, or at the most 10 per cent, were failures, then it would have a good deal of validity. But evidently not. From what I could see, that has not been used.

Q. Now, then, Doctor, you have been in the court room during the progress of this trial, have you not? A. Well, some; not altogether.

Q. Have you heard the testimony as given in this court room as to the grade made by this particular petitioner, and the norm set up for that petitioner? A. I do not recall exactly what it was, no.

Q. Assuming that the testimony was to the effect that the norm that petitioner should have reached in this test was 260, and that petitioner made actually 244 total score points, what would be your opinion as to the correct-

ness of marking that child as having absolutely failed to have shown that she was capable of entering the high schools of Baltimore City? A. You have the score——

(Mr. Rawls) Wait a minute. I think I shall have to object to that question. That is merely substituting the opinion of the witness for the duly constituted authorities, it seems to me, and that is a question to be determined from facts and not from opinion.

(Mr. Ransom) Now, if the Court please, at this time I renew the statement and the offer that I made earlier during the course of the examination of this particular witness as an expert on this subject, and I am asking him for his expert opinion.

(Mr. Rawls) I am not objecting to it on the ground that he can not testify to it as an expert; I am objecting to it on the ground that no one would be permitted to testify to it.

(The Court) I sustain the objection.

(Mr. Ransom) If the Court pleases, we note an exception.

Q. (By Mr. Ransom) Dr. Davids, I hand you the Petitioner's Exhibit 16, and ask you if you are acquainted with the nature of this exhibit and its purpose (handing exhibit to witness). A. Yes. This is an explanatory manual containing the norms of this particular test.

Q. Now, I will ask you to turn to the tables showing the norms for this particular test, and to tell the Court what is the norm for a child who has reached the end of the seventh year in an elementary school? A. Well, regarding 7.9 as the end, or 8.0 as the end?

Q. I will ask you, what should be the norm for a child who is in the ninth month of her seventh year and has not yet been promoted or graduated from that class? A. Well, according to this test it should be not less than 255 score.

Q. Now, then, if that score were dropped from 255 to 250, arbitrarily dropped from 255 to 250, and the child actually made a total point score of 244, what should be her grade placement?

(Mr. Roe) Just a minute, I object.

(Mr. Rawls) I will have to object to that, your Honor.

(Mr. Ransom) On what ground?

(The Court) Read the question, please. I did not quite get it.

(Question read by the reporter.)

(Mr. Rawls) My objection is that the question answers itself. She undoubtedly failed. That is the very hypothesis of the question.

(Mr. Ransom) If the Court pleases, I am not asking whether she failed. I asked, according to this manual what her placement was.

(The Court) I think you are right about that. I overrule the objection.

(Mr. Ransom) Read the question.

(Question read by the reporter.)

Q. (By Mr. Ransom) Considering that there had been a drop in the norm. A. Well, the question is not very intelligible to me. If we are going to drop five points like that, then you no longer have this table at all to depend upon. You have departed from this table of norms, and it is impossible to assign—if the question were put, however, as a basis of promotion, it might be something different; but on the basis of grade norms, once you get away from those, you get away from those. And I do not see what you could do.

Q. Assuming, Doctor, that it had been testified that there had been a grade drop, norms dropped from 255 to 250, or rather from 260 to 250. A. As a passing mark?

Q. As a passing mark; and then the child was notified she had made a grade placement of 7.6, would that be correct according to the manual that you have in your possession? A. Well, it is a complicated matter to figure that out. You get away from it, you see, by rather arbitrarily deducting from it, and then you try to get back to the scale of grade years and months that have been

calculated by a very complicated mathematical process; and I find myself unable to say as to that at all.

Q. Your position is, if I understand you correctly, that having arbitrarily abolished your norm, you can no longer use the scale for grade placement? A. Not accurately, no.

Q. Thank you. A. I mean by that that you can have an arbitrary scale that might be perfectly acceptable in a school system, and all that, but you can no longer say that you are within the framework of this scale. You are not.

Q. Exactly. A. You are in the framework of a new scale that you yourself are building.

Q. Now, Doctor, what would be your opinion of the use of the total sum made by a student on that examination, as a basis for promotion from the seventh to the eighth grade, or from the seventh grade to a high school, on that alone, using that alone? A. I have already said that I do not consider this to be a valid system as an entrance examination to anything in Baltimore County. In this particular environment, the relationship to this particular curriculum does not follow the instruction as a basis of exclusion.

Q. Assuming, Doctor, that this test was used in January of 1935 in the white schools, the white seventh grade in Baltimore County, and that after the results were known from that examination remedial work was given to the pupil who had taken the examination, and that the results of that examination plus an additional test given by the teachers in the white schools, in the seventh grade, plus their class-room work, was used as the basis of determining whether or not the white pupils should be admitted to the high schools, and comparing that with the fact that this test was given in June, 1935, to the negro pupils, and was used as the sole criterion for determining whether or not they should be admitted to the colored high schools in Baltimore City, would you say that the test provided a means of discrimination?

(Mr. Rawls) I object to that.

(Mr. Ransom) If the Court pleases, Mr. Rawls this

of white and colored pupils in the matter of entrance to high schools. I think the testimony is prefectly clear and undisputed in those particulars. And I think the witness, if he is asked the question, ought to have it recite the testimony as it actually appears, and not based on a hypothesis that is foreign to the facts of this case.

(Mr. Ransom) If the Court pleases——

(The Court) Pardon me just a moment. I have no recollection of any testimony in the case that after that examination in January in the white schools, that there was anything remedial done to straighten out the pupils on the examination.

(Mr. Ransom) If the Court pleases, the principal of the Catonsville High School, Mr. Zimmerman, was recalled to the stand and asked that question for that specific purpose; and he testified that remedial work was done wherever it was needed. That was when we recalled him to the stand on the second day of the hearing.

(Mr. Rawls) I do not recall any such testimony.

(Mr. Ransom) And, of course, there is plenty of testimony, including that of Miss Stern this morning, to the effect that an examination—I am not sure now whether it was Miss Stern or one of the supervisors—that examinations were given in June to the white students that were made up by the teachers or the principals themselves, and were not a part of this examination. The testimony, if I am not mistaken, of Mr. Zimmerman is to that effect. And he was recalled expressly for that purpose; and he so testified.

(The Court) Have you the testimony of Mr. Zimmerman as to that?

(Mr. Rawls) I am sure, may it please the Court, that there is not a scintilla of evidence here that they considered class-room work in the treatment of the white students, except in the rare instances where an appeal was made to the superintendent; and that was permitted in those extraordinary cases alone in both white and colored.

(The Court) Wait until we get the testimony. He is looking for it now.

(Mr. Rawls) Yes. I might suggest, may it please the Court, that that question undoubtedly is improper, because it excludes from the hypothesis of it the fact with reference to the results attained in the January examination of the white pupils. I mean no one could possibly, on the very face of it, give a fair answer to the question that is attempted to be asked, without also weighing the fact that in the January examinations the results of the white pupils, from the white pupils, showed that they could have easily passed it by an overwhelming majority.

(Mr. Marbury) Less than 10 per cent failed.

(Mr. Rawls) Less than 10 per cent of them failed. So, manifestly, may it please the Court, we are wasting time in listening to an answer that does not contain one of the controlling factors of the question, of the issue.

(Mr. Ransom) If the Court pleases, I am at a loss to understand how counsel for the opposing side can say that the question can not possibly be asked unless it contains as a fact how many passed. I did not ask the witness how many passed and how many failed. And I am not concerned with it at the present time. I merely want to know the ability of using the test in two different manners that I have outlined in my question, as a basis for promotion. Now, whether they passed or whether they did not pass is immaterial to me at present. I may want to ask some questions about that later. But I, at least, think it has nothing to do with this question. And as to the waste of time, I wish to call the attention of the Court to the fact that the objection to the question was interposed by counsel for the other side.

(The Court) I am waiting to hear this testimony.

(Testimony referred to then read by the reporter.)

(The Court) Gentlemen, I will permit the question, I will overrule the objection.

(Mr. Rawls) I think I will reserve an exception.

Q. (By Mr. Ransom) Will you answer the question? Do you wish it read again? A. I wish it reread, yes, sir.

(Question read by the reporter.)

(The Witness) Yes.

(Mr. Rawls) I move to strike out the answer, may it please the Court, in order to preserve the record.

(The Court) Overruled.

(Mr. Marbury) And exception noted.

(Mr. Rawls) Note an exception.

Q. (By Mr. Ransom) Now, Doctor, assuming the same facts as stated in the previous question, with the exception that no particular remedial work was given after the examination given to the white students in January, 1935, would you still say that the use of the test as the sole criterion for the promotion of negroes to high schools in Baltimore City was a discrimination? A. On simply a lot of mathematical averages, yes.

(Mr. Rawls) May it please the Court, may I note an objection and exception to the question and answer?

(The Court) Very well.

(Mr. Rawls) And I move to strike it out, may it please the Court.

(The Court) Very well, overruled.

(Mr. Rawls) And exception.

Q. (By Mr. Ransom) Doctor, what, in your opinion, should be the basis of determining whether or not a student is capable of being promoted from the seventh grade to the first year of the junior high school system?

(Mr. Rawls) I object to that, may it please the Court.

(The Court) On what ground, Mr. Rawls?

(Mr. Rawls) May it please the Court, is this witness to sit here and dictate to the School Board, in whom the law has vested the power to determine a matter of that kind, without the slightest basis for stating his difference

of opinion? Your Honor has the testimony here that this Board in authority have inaugurated a certain policy and a certain rule. Now, if there is any fact that can aid your Honor in determining whether or not that was an arbitrary determination, that is one matter; but to permit the witness, simply out of his mind, and with no basis in fact disclosed, to say that he differs from the State authorities, why, you are simply letting him decide this case.

(Mr. Ransom) If the Court pleases, counsel for respondents in this case have stated that the Board of Education has the authority. And I do not want to enter into argument at this time, and I won't, but since he is stating his objection, where he assumes that the Board has such authority, I want to say that it has been consistently denied throughout the course of the proceedings and throughout the course of the evidence, your Honor, that the Board has no authority to establish such an arbitrary rule. Now, I am merely asking the doctor, the witness, as an expert what, in his opinion, should be the basis, a valid basis for promotion from one portion of an integrated school system to the next higher portion. I am not asking him to say whether the Board is right or wrong. That is for the court to determine.

(The Court) I am going to sustain the objection to that question.

(Mr. Ransom) And the Court will please note an exception?

(The Court) Yes.

(Mr. Ransom) If the Court pleases, for the sake of the report, I wish it to appear that if the witness had been allowed to answer the previous question, I would then have followed the question up with further questions to determine the facts upon which he had based the answer that he would have given.

(The Court) Proceed.

Q. (By Mr. Ransom) Now, then, Dr. Davids, again for the sake of keeping the record straight, I will ask you what, in your opinion, is the value of a total score made under a progressive achievement test as the sole basis

of promotion from one portion of an integrated school system to the next.

(Mr. Rawls) I object.

Q. That is, from the elementary system to the junior high.

(Mr. Rawls) I object, may it please the Court.

(The Court) Sustained.

Q. (By Mr. Ransom) Now, Dr. Davids, are you familiar with the results obtained in Baltimore County, as well as throughout the rest of the State, in this 1935 achievement test, as given under the auspices of the State Board of Education, and published in their annual reports for that year? A. I am familiar with the annual reports published by the State Board, yes.

Q. Have you studied the report, that portion of the report for the year 1935 which shows the result of this progress achievement test given in Baltimore County? A. Yes, the few figures that are there in those five classifications, I have seen them.

Q. Do those figures show that the negro students in Baltimore County are less capable of learning the standard materials provided in the course of study in Baltimore County than the white students?

(Mr. Rawls) I object.

(The Court) Sustained.

(Mr. Ransom) If the Court pleases——

(The Court) I have sustained the objection to that several times. You ought not to bring any questions of that sort up.

(Mr. Ransom) If the Court pleases, may I address one remark to the Court?

(The Court) Yes.

(Mr. Ransom) That is in line with the question that Mr. Rawls asked of Mr. Cooper, what was the opinion that he drew as to the relative abilities of white and negro children on the basis of that particular test. If

the respondents are permitted to go into it, I respectfully ask that we have the right to submit evidence to the contrary.

(Mr. Rawls) May it please the Court, I have denied several times in this case that I ever asked such a question. Certainly not intentionally; if I did it, I must have been unconscious, because I have no recollection whatever of ever addressing any such inquiry to anybody. My whole inclination is against such a comparison. What I did, may it please the Court, was to ask the results, and I think the results were put in the record, but as for attempting to——

(The Court) Gentlemen, whether it was asked before or not, we will not go into it any further. We will certainly not consider it in determining this case. I sustain the objection.

(Mr. Ransom) Note an exception.

At this time, then I respectfully move the Court, if I understand counsel for the respondents correctly, with counsel's permission, to strike from the record all reference to opinion as to the relative abilities of white and negro students in Baltimore County, brought out in his cross-examination.

(Mr. Rawls) May it please the Court, I think my statement is a sufficient answer to that. I am not conscious of any such statement. If it is to the effect that the whites have more capacity to pass an examination, I am perfectly willing for it to go out; but it is like asking——

(The Court) Well, if it is in, it will go out.

(Mr. Rawls) Yes.

(Mr. Ransom) Yes, sir, that is it.

Q. (By Mr. Ransom) Doctor Davids, in your study of educational provisions made for whites and negroes throughout the State of Maryland, have you discovered whether or not in any counties of the State of Maryland whites and negroes do attend the same school system.

(Mr. Roe) Objected to.

(Mr. Rawls) I object.

(The Court) I sustain the objection.

(Mr. Ransom) Note an exception.

Q. (By Mr. Ransom) Doctor, in your experience with these progressive achievement tests and your knowledge of them, from a study of them, would it, in your opinion, make any difference if the child had never before taken such a test, and had been used only to the essay type of examination, and when given this progressive achievement test, he was given the test in a new environment, by a teacher whom he had never seen before as a teacher, and under strange circumstances so far as his school room is concerned.

(Mr. Rawls) I object to that, may it please the Court.

(The Court) I sustain the objection.

(Mr. Ransom) Note an exception. Your witness.

CROSS EXAMINATION.

By Mr. Rawls:

Q. This progressive test that was given in January, 1935, in the white schools, have you any information as to the results of that examination? A. In Baltimore County, only as published in the State records.

Q. I mean, have you consulted the records to find out what that was? A. Meaning by records the State reports?

Q. I mean the information that is contained in the reports as to the results attained, or obtained, from those examinations in the white schools of Baltimore County? A. In so far as the summaries in the State reports, yes.

Q. What does it show to be the result in the white schools in Baltimore County? Consult the records, if you want to. A. Do you want them in terms——

Q. Not percentage, but what was the proportion? A. The white students passed—this refers, however, to all, as evidently there were a great many other grades besides the seventh grade.

Q. I am speaking of the seventh grade entirely. A. No, sir, I do not have them as such.

Q. Well, are they contained in the State report separately? A. No, the only report that I have been able to find has been on another basis, 12,682 tests.

Q. Suppose I told you that the percentage of those pupils in the white schools in Baltimore County, in the seventh grade, who passed was——

(Mr. Rawls) I want to get that proportion correct, your Honor.

Q. (By Mr. Rawls) That eighty per cent of the pupils in the white schools in Baltimore County had passed by a mark above the required passing mark, what would that indicate as to the fairness of that examination in testing the achievement of the pupil, with respect to its being a severe test or an easy test.

(Mr. Marshall) If your Honor pleases, we object to that question, on the same objection put forth by Mr. Rawls before, that that is a fact that is not in evidence. In other words, I do not remember that 80 per cent figure.

(The Court) Well, I think it was put the other way; probably eight or ten per cent failed.

(Mr. Rawls) I asked Miss Stern. She understood. She gave the figure 80 per cent.

(The Court) It may have been reversed.

(Mr. Rawls) It may have been.

(The Court) That is all right, I think.

(Mr. Marshall) Your Honor, I do not recall that.

(The Court) Well, I think that is the evidence. If it is not there, we will get it in.

(Mr. Marshall) Yes, but for the purpose of the record, there is an objection.

(The Court) All right.

(Mr. Marshall) And an exception.

(The Court) Take the exception.

Q. (By Mr. Rawls) What is the answer to that question? A. Well, on that hypothesis, which is merely a hypothesis——

Q. Well, for your purpose it is. A. Yes. I would still say that it was too severe a test, because tests ought to be so arranged that not more than ten per cent in gradation should fail.

Q. You think that ten per cent in any group is excessive, or everything above ten per cent is excessive. A. All I go on is the general information, or fall in what we call the normal curve, as the Missouri system, for instance, of examination, is based very definitely upon that, and whatever the scores are, and whatever scale they may be using, they are spotted upon a distribution curve; and it is then assumed that the upper seven per cent, or thereabouts, are exceptional, and that the lower seven per cent are definitely failures.

Q. If you have eighty per cent who attain above the required mark, isn't that, in your judgment, a fair examination to that group of pupils? A. Well, my only answer to that would be, if I may be hypothetical, if it is a fair question, then a great many white pupils in the other counties were most unfairly treated.

Q. Well, isn't the percentage of 80 regarded in educational circles generally as being a fair proportion? A. No, it is too severe, too rigid.

Q. That is your judgment, isn't it? A. Yes. And I think judgment generally would conform to that.

Q. You think it would? A. Yes.

Q. You think that Mr. Cooper and Miss Stern and the other people who have testified in this case, when they regarded that passing mark as a liberal passing mark, you differ in judgment from them, do you?

(Mr. Marshall) If your Honor pleases, I object to the question, on the ground that he is calling upon one witness to give his opinion and his idea about another witness. Under the general rule, that is not admissible.

(The Court) The testimony of the other witnesses is in, Mr. Rawls.

(Mr. Marshall) Yes, sir.

(The Court) And this gentleman's testimony is in. Let is go without any comparison.

Q. (By Mr. Rawls) The number 260 that was required for the June examination, what is your testimony with respect to that, that it was too high, too severe a requirement? A. I do not remember testifying to that.

Q. Well, was it? Was it too severe? A. Well, as I am saying, the test was not for the purpose of forming an excluding and passing test. It was a remedial test. And using a remedial test as a screen to exclude those who are unfit to go further is an improper use of the test.

Q. You differ in judgment, then, from those who used it for that purpose? A. Decidedly, decidedly.

Q. And you think that 260, a pupil who did not attain 260, or, as the testimony here shows, a colored pupil who did not attain above 250, you think that that is too severe a test? A. Well, when you stop to think that the manual states that the reliability of this test is 97.1 for the whole test, and as low as a reliability of 95 plus, that means to say that the makers of the test themselves have established by mathematical procedure that there is an error of from three to five per cent either way. We don't know, see. Now, certainly, that ten per cent of the total score of 260 at 10 points less is less than the margin of error, the probable error that may be in this thing.

Q. You think that when they allowed the colored pupils a margin of 10 points over the whites in the passing mark, or 9 points over the whites, you think that that was not enough?

(Mr. Marshall) If your Honor pleases, I hate to object, but I do not think that the Doctor has testified to that. If you remember, the statement was it was 255 to 259. The colored was 250. I do not see where he gets his ten points.

(Mr. Marbury) The whites, as testified to by Mr. Cooper, had 260, and the colored 250.

(Mr. Marshall) The manual is right there, and the Doctor has read from the manual, 250 to 255. And 250 was required for the colored. And Mr. Rawls has said——

(Mr. Marbury) 260 is the testimony.

(Mr. Rawls) 260 is the testimony as to what was used in the schools in Baltimore County?

(The Court) That is my recollection.

(Mr. Marshall) If your Honor pleases, I just want to make this one statement as to what the testimony is, and what this witness has testified from the manual, as to what the manual says. Now, if Mr. Rawls wants to bring out the point as to what Mr. Cooper said, all well and good; but he testifies what he says, and Dr. Davids testifies what he says.

Q. (By Mr. Rawls) This test in Baltimore County, you assume for the purpose of answering my question, was 250 and above, above 250 given in June, but the examination given in June of 1935, didn't that allow a far greater margin of error than any suggested in that manual? A. No, I think that is just about, probably about the same amount.

Q. In other words, you think 255 is the equivalent of 250? That is your mathematics, is it? A. The question again, please?

Q. You think that 250 is the same as 255; is that your judgment?

(Mr. Marshall) If your Honor pleases, is that a fair question, sir?

(The Court) Cross-examination, gentlemen.

(Mr. Marshall) All right.

A. If you are at all familiar with the theory of probable error in statistics, 250 is often taken as the same as 255.

Q. You think it is? A. Why, that is as near as you can come to it. In artillery fire, artillery fire allows for probable error that much.

Q. If you keep going down 5 per cent for each probable error, you get down to zero after a while. A. Oh, no, that is an absurdity.

Q. Sure, it is an absurdity, but it is no more of an absurdity than saying you work out the fair probability of error as five points, that it is logical to make that five points ten points, isn't it? A. Oh, no, I did not say that.

Q. Why did you stop at ten points? Why wouldn't you make it fifteen points? A. Because by mathematical procedure these tests have been found to have a spread of error over from 3 to 5 per cent. Therefore, in interpreting them, and if a person taking an examination had failed within from 3 to 5 per cent, one would say, well, perhaps, the fault had been in the instruction, and, therefore, we will decide the matter in favor of the human individual. That is the difference.

Q. If you had considered that probability of error when you fixed your passing mark at 260, and you considered that range of error as being 5 points, then there would be no justification, would there, for varying from that 5 points, would there? A. Well, I imagine that whatever justification one would take in using a test like this for the purpose for which it was necer designed is arbitrary throughout, anyway.

Q. In other words, you think the whole thing is wrong? A. Yes, I do.

Q. You think the whole method is wrong in giving that examination? A. As the sole entrance examination, yes.

Q. And you would say that as to any examination, would you? A. Well, I would say that the most thorough study or secondary education in the United States was the secondary survey of the United States Government, and only about 11 per cent of American high schools depend upon an examination for promotion to high schools.

Q. Don't you know that in the State of Pennsylvania

it is the recognized method of promotion? A. No, I don't know that.

Q. You don't know that? A. No.

Q. Don't you know that there are several States in which the examination is the sole method of determination of entrance into high school? A. I only know that the only authoritative survey is the survey of the United States Bureau of Education upon the subject; that is all I know.

Q. Can you deny, or do you deny that it does prevail as the method of entering high school in several of the States? A. Yes—I do not deny that, but in the majority of the States I do deny that.

Q. You do deny that in the majority of the States it is used as the exclusive method? A. Yes.

Q. You do not know about Pennsylvania? A. I deny that in the majority of the counties in Maryland it is used that way.

Q. The counties in Maryland? A. Yes.

Q. Do you know how many in Maryland do use it? A. It has only so far been brought into evidence that Baltimore County is using it.

Q. I am asking you of your own knowledge now. Are you sufficiently familiar with the public schools in Maryland to say in how many counties it is used as the sole method of promotion into high school? A. I have said that it has so far been brought in evidence only.

Q. I am not talking about evidence. I am talking about what you know about it. A. That is all I know about it.

Q. You do not know anything except what you heard here? A. Yes, sir.

Q. And you are not able to say whether it is used in any other county or not? A. Precisely.

Q. Now, this examination in 1934, have you seen that examination? A. If you show me what you have in mind, I will tell you.

Q. Well, that was exhibited to you, I thought, this morning, during your examination. A. This is——

Q. That is 1934. A. That is only one sheet of the questions.

Q. There are four sheets here, if you will examine it. You will see that there are four sheets here, with the answers attached. That is the complete examination. A. Yes, I have gazed over this.

Q. You have gazed over this? A. Yes.

Q. Did you just gaze at this other one that you have been testifying about? A. Well, must we have an exact definition of the word "gaze"?

Q. You are testifying, purporting to testify, as an educational expert on these examinations, and I am asking you if you have examined that paper. A. Yes, I examined that.

Q. And these questions, for the purpose of forming an opinion, for the purpose of testifying? A. Yes, I have examined it.

Q. Now, that examination in 1934 was a different type of examination from the one in 1935, wasn't it? A. Oh, yes, radically different.

Q. Radically different, you think? A. Yes.

Q. Is it a severer examination, or not, than the one in 1935? A. Well it is not as scientific an examination, as good an examination. I could not say how severe it is without a reexamination, point for point, of these questions against the curricula, which I do not have.

Q. You do not think it is an accurate method of ascertaining the requirements of the child, the achievements of the child, as the one in 1935, do you? A. Well, the essay type is notoriously unreliable.

Q. With even this type, however, is it or not a fair examination, assuming you are using the essay type, is that examination a fair examination of seventh grade children? A. You mean as fair as an unfair examination could be?

Q. No, I am talking about a fair examination, as compared to any examination.

(Mr. Marbury) Is that particular one?

Q. (By Mr. Rawls) Is that particular examination a fair examination? A. This essay?

Q. Yes. A. Well, I have said that I do not think, and I think educational thinkers agree that essay types are not fair.

Q. In other words, you would cut out that type of examination altogether as being unfair? A. Yes.

Q. You think so. You think both of them are unfair then? A. I think in the purpose, in the way in which it was used it was unfair, yes.

Q. You think for the purpose of ascertaining whether or not a child had successfully done seventh grade work, you think those examinations were not fairly reflective of that purpose. A. As a test of whether they had or had not done seventh grade work in the County of Baltimore, yes, it was unfair.

Q. In what way? A. Because, as I said, it is not a valid test.

Q. It is not a valid test to you. You do not think from your viewpoint that indicates the achievement of the child? A. No, not with reference to the curriculum of the County.

Q. Well, now, with respect to that, what do you know about the curriculum of Baltimore County? Have you ever taught in the Baltimore County schools? A. No.

Q. Have you ever been inside of a Baltimore County school? A. Yes.

Q. When did you go in one? A. Oh, just casually visited them.

Q. Yes. A. Not to study them, I will admit that.

Q. You are not familiar with Baltimore County schools at all? A. No.

Q. Now, how do you propose to answer that is not

a fair test of the Baltimore County curriculum if you have not made any examination of the Baltimore County curriculum? A. For the same reason——

Q. You can not do it? A. For the reason that it was not devised from samplings of the Baltimore County curriculum. That is right on the test itself, that it was devised in California.

Q. What samplings of the Baltimore County curriculum have you made in order to ascertain that? A. Well, I have not made any.

Q. You have not made any, and yet you, on that stand, are swearing that that is an unfair examination, because it does not reflect the seventh grade work in Baltimore County. A. I am simply basing an opinion upon the mathematical impossibility that it would be.

(Mr. Rawls) May it please the Court, I move to strike this witness' testimony from the record. It seems to me that he has demonstrated that he is absolutely incompetent to testify with respect to the matters that he has sworn to on that stand.

(Mr. Ransom) If the Court pleases——

(The Court) Let it stand. Anything further, Mr. Rawls?

(Mr. Rawls) I note an exception, may it please the Court. No further questions.

Q. (By Mr. Rawls) There is one other question. This examination in which she got 244, that was 11 points below the allowance that was made for any possible error in that examination, wasn't it? If 255 was the mark prescribed, then she was 11 points below that mark, wasn't she? A. Yes.

Q. And even if you had allowed 11 points, or 10 points, in addition to the 5 points that we already allowed in the manual itself, she would have failed, wouldn't she? A. That would have depended upon the judgment of the person, of course. If I had been giving the tests, no.

Q. Now, let me ask you, did the marking of that 1935

examination depend upon the judgment of the person marking the examination? A. The marking did not depend. It is supposed to be as nearly abjective as anything could be. And it is objective in the sense that it is either there or is not there. But the interpretation of the final result is subjective.

Q. Now, the question of whether or not the pupil has attained the passing mark is a mathematical matter, isn't it, under the 1935 examination? A. The passing mark as set by——

Q. As set, as established by whatever the passing mark is, but the ascertainment of that on that paper is a matter of mathematics, isn't it? A. Yes.

Q. The judgment of the marker does not enter into that at all? A. No. That is, as to the finding of a point on that scale, the judgment does not enter.

Q. Precisely. In other words, whether you are going to set 255 as a passing mark, or 250 as a passing mark, or as you would have it, as low as 244 as a passing mark, that is a matter of judgment, isn't it? A. Yes.

Q. That is a matter of judgment, but in the particular case of that test it was judgment based upon actual experience, wasn't it, with children in taking that examination? A. Based upon California children in Los Angeles County, yes.

Q. Yes, 1100 children, wasn't it? A. Yes.

Q. And wasn't that examination used generally throughout the United States? A. If you mean generally, sporadically here and there, it was. But the weakness of that particular thing is brought out by the fact that States like Illinois and Indiana developed their own achievement tests, because they realized that certain factors of environment enter into not only the making of the test but in the taking of the test.

Q. That test — now, follow my question — that test had been used quite generally, had it not, in the United States, in different States of the United States? A. I can not say as to that.

Q. You can not say. Well, do you know or not? A. No, I don't know.

Q. You don't know. Well, now, you do know that the manual prescribed 255, you say, in reading it, as the allowance for the five points margin for error, didn't it? I understand your testimony to be that. A. No, I did not get you. Will you please repeat that?

Q. You read a mark from that manual, or a number, my recollection is 255, which was an allowance of five points below the prescribed 260; am I correct about that? I may be wrong. A. No, there is nothing like that in there. The prescribed 260 for passing is simply a local matter. There is nothing said about that in the manual.

Q. Well, doesn't the examination itself fix 260? A. No, 255 to 260 would place the child at the achievement grade level of 7.9. That is all it says.

Q. Now, 7.9, why do you take 7.9 for the seventh grade in Baltimore County? A. I never took it for that.

Q. Well, who did take it? A. I don't know.

Q. Well, where do you get 7.9 from? A. There is 7.9 on here, which corresponds to the figure mentioned. But as to the test itself in Baltimore County, I do not know anything about that.

Q. You don't know? A. No.

Q. You did not know at the time this examination was taken what point it should be, whether 7.9 or 7.10? A. No. I understand that the mark was set at 260 on this examination, but I did not know that they set any mark at 7.9.

Q. Well, there never was, was there? A. I thought you said it was.

Q. No, I understood you to testify just a moment ago that it was 7.9, didn't you? A. No, I testified that a score on this test of 255 to 260 on the schedule of norms used, located the pupil at the achievement grade of 7.9.

Q. 7.9? A. On this score, that is all.

Q. Precisely. A. Yes.

Q. You do not know, though, whether Baltimore County at the time that that examination was taken was at 7.9 or not, do you? A. No.

Q. Suppose—— A. Now, be clear. What do you mean by Baltimore County being at the point 7.9 at that time?

Q. I am talking about the point you are talking about. You say on that manual that 7.9 would give you the figure 255, is it, 260? A. That is——

Q. In other words, if you assume—let me be perfectly fair to you—if you assume that at the time this examination was taken that the pupil's status was the 7.9 status, then translated into numbers that would be 255. A. Somewhere along there.

Q. 255 to 260. A. That is to say, if some one were using these synonymous terms, he would mean when he said 7.9, he would mean what this scale gives between 250 and 260, or if he were using 255 to 260 on this scale, he would mean the same thing that the scale meant at 7.9; that is all.

Q. Well, suppose I tell you that in Baltimore County at the time this examination was given that the status of the pupil was at 7.10, would that increase.

(Mr. Marshall) If your Honor pleases, there is no testimony of that seven point ten.

(The Witness) You mean 8.

(Mr. Marshall) I do not remember that.

(The Court) I do not remember that. I know somebody testified about seven point 9 to seven point 10. I do not know who it was.

(Mr. Rawls) Yes, your Honor. Let me see if I can not translate that into something we can understand.

Q. (By Mr. Rawls) What does that seven point nine mean? A. In terms of this score?

Q. Yes, in terms of that score. No, I do not mean in terms of the score exactly; I mean with respect to

the time that the child is taking the examination. A. It has no connection that I can see, because this examination was given at two different times, wasn't it?

Q. I am assuming now that it was given in June of 1935 to the colored children; and you say according to the scale that would place the child at 7 point 9, would it? A. If the scoring was 255 to 260 on this scale.

Q. Yes, but suppose you had a 10 months school year, doesn't that seven point nine mean that they have nine months schooling? A. Well, these tests are usually developed on the basis of nine months schooling, which allows a one percentage point.

Q. Suppose I tell you in Baltimore County it is ten months schooling? A. Yes.

(Mr. Marshall) If your Honor pleases, I am perfectly willing to let it come in, I mean that line of testimony, but I thought that these hypothetical questions were supposed to assume facts already in evidence.

(Mr. Rawls) Not on cross-examination, may it please the Court.

(The Court) Yes, that makes a difference, that makes a difference.

(Mr. Marshall) Unless he is going to follow it up, I mean, you have got a blank statement there.

Q. (By Mr. Rawls) In other words, if you have a ten months course in Baltimore County, according to the scale, that would give you a higher mark for passing at the end than if you had a nine months course, wouldn't it? A. Will you repeat that question again, please?

Q. If you have a ten months course in Baltimore County, translated into time, doesn't that give you a passing mark of 260? A. I still fail to get the point you are driving at. If you mean to readjust the age grade, or the grade placed here for the ten months, rather than nine months school——

Q. Precisely. A. ——the 8.0 would probably correspond to the norm of the——

Q. What is the norm at 8.0? A. I think it is just the next five points swing.

Q. It would be 260?

(Mr. Marbury) 260 to 265.

(Mr. Ransom) May it please the Court, we object to testimony coming from counsel here.

Q. (By Mr. Rawls) 260, is that right? A. Yes.

Q. That is correct.

(Mr. Marbury) Let him look at it. 260 to 265.

Q. Do you know where to find that on that paper that I handed you? A. This?

Q. Yes. Do you know how to read that sufficiently to answer my question? A. Yes, but the norms are not on here.

Q. You swear that the norms are not on this paper that I hand you and that you are now looking at? A. The schedule of norms is not on there, no.

Q. In other words, you can not ascertain the norms? You do not know how to ascertain the norms from that paper that I handed you? A. No. I do not think you can either, can you?

Q. You are testifying here as an expert, aren't you? A. I never called myself an expert, no.

Q. Well, that is what your counsel called you. He probably sees now he made a mistake.

(Mr. Marshall) Now, if your Honor pleases, we hate to be facetious, but these statements are going in the record.

(The Court) Just a minute.

(Mr. Marshall) This record has got to ge kept open.

(The Court) Just a minute.

Q. (By Mr. Rawls) Do you swear that the norms are not ascertainable from the paper that I now hand you? A. They are ascertainable, but they are not there

in schedule form. They can be obtained by the use of the profile.

Q. Do you know how to ascertain the norms from that paper that I am handing you? A. Yes. Not readily.

Q. Yes, what? A. Not readily. Yes, I can ascertain it.

Q. But a moment ago you told me you could not. A. I said they were not there in the schedule. They are not. They are there on the profile form.

Q. But they are there to a man familiar with the examination just as readily as the paper you now hold in your hand.

(Mr. Marshall) If your Honor pleases, in deference, we feel a sort of duty to the witness in putting him on the stand, and I object here to any brow-beating of the witness, and that is all that is going on now.

(The Court) I do not understand it that way. The gentleman is able to take care of himself.

(Mr. Marshall) Yes, but I think it is quite fair.

Q. (By Mr. Rawls) You have undertaken to criticize this examination. Isn't it true that when I first got you on cross-examination that you were not sufficiently familiar with it to know that the norms were ascertainable from the paper I just now handed you? A. Oh, no, I was familiar with it. I understood you to mean that the norms were presented in these forms, with these intervals.

Q. Yes. A. They certainly are very difficult of quickly ascertaining them on this chart here.

Q. You think it is difficult to ascertain from this paper the norm for the particular—— A. In the terms of these intervals that you have been using, yes.

Q. Not readily ascertainable from this paper, the examination paper itself? A. Not very readily, no.

Q. You did not know it was on there until I called your attention to it, did you? A. Certainly I knew it was on there.

Q. And you think you so testified? A. I certainly do.

Q. Now look at that——

(Mr. Marshall) If your Honor pleases—just one moment, Mr. Rawls—for the purpose of keeping the record straight, all through the testimony he has been pointing to one paper or the other, and the record will not show which he is talking about. Could we read into the record which is which that he was speaking about?

(Mr. Rawls) I have deliberately taken up each paper when I referred to it, and I called one the examination paper and the other the manual.

(Mr. Marshall) Mr. Rawls, you may have meant to, but you did not.

(The Court) It can be easily designated.

(Mr. Marshall) Refer to the examination paper and the manual.

Q. (By Mr. Rawls) You have been asked if the norm for a ten-months period was not ascertainable from the examination paper itself. You recall I asked you that. A. Yes.

Q. And your first answer was that it could not be ascertained from it, wasn't it? A. I do not recall exactly what I said. I was thinking in terms of ready ascertaining. I myself can hardly see these.

Q. I know, but I can not remedy that. You have been told that Baltimore County, to assume that Baltimore County has a ten-months course. A. Yes.

Q. Now, looking at the examination paper, what would be the norm for the ten-months course? I can give you a magnifying glass, if you want it.

(Mr. Marshall) Your Honor, could that be stricken from the record?

(Mr. Rawls) No; I mean that seriously, for the witness to read it. I do not mean that facetiously. The Court has a magnifying glass there.

(The Court) Give it to him, Mr. Crane.

(The Witness) These are so fine.

(Mr. Rawls) It is so fine, your Honor. I am serious about that.

(The Court) Yes, I have a glass. It will be here in a minute. Just suspend for a moment.

(A short recess was then taken.)

Q. (By Mr. Rawls) At the time of the adjournment, I had asked you to look at the norm upon that examination paper itself, as distinguished from the manual, which would correspond in the seventh grade to 8.0 grade, assuming that to be the correct grade at the time this examination was given in June, 1935. A. Yes.

Q. What would that norm be? A. You mean the grade norm?

Q. Yes, the grade norm. You are assuming the grade norm of 8.0. A. You want the grade norm in numbers? Q. Yes, in numbers. A. It would be 260.

Q. 260 to what? A. 265.

Q. 260 to 265. A. Yes.

Q. And what is indicated by the 260 to 265? Isn't that the margin of error that you have spoken of? A. Well, it is a margin of error, yes, but not sufficient to take care of three to five per cent of error.

Q. Three to five per cent. Of course, not three to five per cent of 260, but isn't there a margin of five points upon your norm? A. Yes.

Q. And you found that upon that examination paper there; it is there very clearly, isn't it? A. Yes, in very small print.

Q. Small print, but it is ascertainable from that examination paper. A. I think you need a ruler to do it.

Q. Yes. And it took you a little while to find it, didn't it? A. Yes, I could not see it.

Q. You could not see it. As a matter of fact, you

did not know it was there until I told you, did you? A. Well, I knew it was on there, yes. I do not profess to know every item on that thing.

Q. Now, then, if you assume the 8.0 for the ascertainment of the norm, and you say it is between 260 and 265, and you were incorrect in your testimony, at least your testimony that 255 to 260 would have been the correct norm for the Baltimore County schools.

(Mr. Marshall) If your Honor pleases, that question is unfair. His other question is based on the assumption that the Baltimore County school system is 8.0. Now, he comes back and says, when you said that the Baltimore County School system was between 255 and 260, you are wrong. He is putting a hypothetical question upon a misstatement of facts.

Q. (By Mr. Rawls) If that assumption is correct, you were wrong in your statement. A. Well, these tests have been developed with the idea of presenting steps of difficulty or areas of difficulty intervening between actual grade steps. For instance, between 7.0 and 8.0. And then, for the purposes of final statement by mathematical numbers, they have been divided into nine steps in between. Now, you might assume that the intention of the makers of the test was that 7.9 would represent the completion of either a nine month or ten month term.

Q. In other words, you think that a nine months course is just as good as a ten months course? A. Well, nobody knows that.

Q. Well, that is the basis of your testimony, isn't it? A. Nobody knows exactly whether it is or not.

Q. In other words, you are basing your testimony on the theory that a ten-months course is not any better than a nine-months course; is that correct? A. I am saying that the makers of this test based their test upon the completion of the year's work, whether it is nine months or ten months.

Q. You say that their basis is identical for a nine and a ten months course? A. Well, as far as we have any idea—I have no information about that.

Thereupon—

NELLIE B. GRAY,

resumed the stand and testified as follows:

DIRECT EXAMINATION.

By the Court:

Q. Miss Gray, won't you kindly step up. I want to ask you a question before you leave. How many children were in the group at Catonsville in 1935? A. It seemed to me that every desk had one child in it. That would be about thirty or thirty-five. I can not tell exactly.

Q. Well, now, how many schools did that represent? A. I am not real sure. I think there were three. Mr. Fletcher is here, I believe, the principal of the school. He would know probably better than I. I think there were three there. I believe it was Halethorpe, Cowdensville and Catonsville.

Q. You think about thirty-five were there? A. Yes.

Q. Would you give me the proportion of those that went to high school? A. I would not know that, Judge.

(The Court) That is all.

(Examination of witness concluded.)

(Mr. Marshall) Your Honor, the statement is in the Minutes of the number of the children who took the examination and the number who passed.

(The Court) That is all right.

(Mr. Marshall) It is in the Minutes, your Honor.

NELLIE B. GRAY,

recalled to the stand and testified as follows: Pursuant to questions from the Court:

I do not know exactly how many children were in the group at Catonsville in 1935. I think there were about

thirty or thirty-five. I think they came from three schools. I believe they were Halethorpe, Cowdensville, and Catonsville. I do not know what proportion went to high school.

REV. JAMES E. LEE,

a witness of lawful age, produced on behalf of Petitioners, having been first duly sworn was examined and testified as follows:

My name is Rev. James E. Lee. I live at Arbutus. Cowdensville is the name given to the community. I am pastor of the church there. I know the Petitioner, Joshua Williams and also his daughter, Margaret Williams. On September 12, 1935 I made a trip with Mr. Williams and his daughter to the high school at Catonsville, of which Mr. Zimmerman is the principal. I went into the office and saw Mr. Zimmerman. Mr. Zimmerman who was on the witness stand is the same gentleman I am speaking of.

A. On the morning of September 12th, Joshua Williams came to where I live and asked me if I would not go with him to Catonsville on that day, for the purpose of taking his daughter to school. I told him I would, since I did not have anything to do that morning. So we went to the high school. And it was about the hour of the beginning of the morning session. The two girls, Margaret Williams and Lucille Scott, with Joshua Williams and myself, went into the office of Mr. Zimmerman. There was, perhaps, one teacher and his stenographer or secretary in the office. The card of Margaret Williams' promotion and of Lucille Scotts promotion was handed to Mr. Zimmerman, and he was asked if those cards would entitle the students to go to high school, or be admitted to high school. He replied that they would. The question was asked Mr. Zimmerman by *Josehu* Williams, "if that is true, I came here then to enter my daughter." Mr. Zimmerman replied that he had no objection to teaching white and colored, but that the regulations of the County were against the girl being allowed to enter, and Mr. Williams was to see Mr. Hershner. That is the conversation that took place in Mr. Zimmerman's office.

(Mr. Marshall) Your witness.

(Mr. Rawls) No questions.

(The Court) That is all.

(Examination of witness concluded.)

(Mr. Marshall) If your Honor pleases, we have the record card here of Margaret Williams, and with the consent of counsel on the other side, we will admit this in the record for the purpose of showing the girl's age. I might call the Court's attention to the fact that on the record it appears there is an erasure, or a number pressed over. It is either 20 or 21, the year 1920 or 1921 that she was born.

(Card referred to marked "Petitioners' Exhibit No. 21.")

(Mr. Rawls) My recollection is that the father testified to '21.

(Mr. Marshall) Now, if your Honor pleases, at this time, in our pleadings and orally in the case we called for the white examinations, and we again call for the white examinations that were given in the years 1934 and 1935, and we are calling upon the other side to produce them.

(Mr. Marbury) It was testified that they were destroyed.

(Mr. Rawls) It has already been testified, I think, your Honor, that they are not kept for more than six months, and that the papers for the entire examination for 1934 and '35 are not available.

(The Court) Proceed.

(Mr. Marshall) Therefore, if your Honor pleases, we just want to call the attention of the Court to the fact.

I think when Mr. Cooper was on the stand he testified as to the letters sent to the colored principals before the examination was given. And we ask for the letters from the white principals. And we want to know if copies of those have been found yet. You remember, there was a letter sent to the colored principals telling them about the

examination and all, and I ask if the same type of letter was sent to the white principals, and if so, to produce copies.

(Mr. Rawls) I do not know what the fact is, your Honor, I will have to get the—

(Mr. Marshall) The letters that were sent to the colored principals, addressed to the colored principals.

(Mr. Rawls) For what year?

(Mr. Marshall) 1934 and '35.

(Mr. Marbury) They would not be the same type, because they did not conduct the examination in the same way.

(Mr. Rawls) Obviously not.

(Mr. Marshall) All right.

(Mr. Marbury) Well, you said that there is no such letter.

(Mr. Rawls) I don't know.

(Mr. Marshall) Your Honor, the only statement I want in the record is that they are not produced.

(Mr. Rawls) We do not know that there are any.

(Mr. Marshall) Very well.

(Mr. Rawls) We will have to get the facts on that. We are perfectly willing to put Mr. Cooper back and let him testify whether there were any such letters.

(Mr. Marshall) Very well.

(Mr. Cooper) What kind of letter?

(Mr. Marshall) Any kind of letter that was sent to the white principals about the examination. You remember we were talking about the colored examination. It is just for the purpose of the record. I mean, we can go right ahead, and if they are produced we can put them in with your consent, Mr. Rawls.

(Mr. Rawls) All right; we can go ahead and look them

up and see what they are, and give them to you, if there are any.

(The Court) All right.

(Mr. Marshall) Your Honor, at this point I want to call to your attention that the examination papers of Margaret Williams have been mismarked by the stenographer as Petitioners' Exhibit. They were Respondents' Exhibits.

(Mr. Roe) They were put in by consent.

(Mr. Marshall) We can take care of that later on. We will introduce these, if there is no objection.

(Mr. Marbury) What dates are those?

(Mr. Marshall) June 15, 1935, and May 23, 1934.

(Mr. Marbury) That is right.

(Papers referred to marked "Petitioners' Exhibits Nos. 22 and 23.")

(Mr. Marshall) If your Honor pleases, that is the petitioners' case.

(The Court) Petitioner closes.

DR. ALBERT S. COOK,

a witness of lawful age, produced in behalf of respondants, being duly sworn was examined and testified as follows:

I am Superintendent of Schools for the State of Maryland, under the State Board of Education. I have been Superintendent for 16 years and prior to that was Superintendent of schools of Baltimore County for 20 years. I am not as familiar with Baltimore County schools now as I was then. They are under my general supervision. I am familiar with the general set-up of the Baltimore County schools. I am familiar with the public school systems generally in the United States and I have studied administration for 36 years off and on. I have attended Columbia University to study administration. White and

colored teachers attend Columbia University. That is the great clearing house of educational information in this Country. I am familiar with the system in Baltimore County of sending children from the seventh grade into high school. I have learned more about it during the trial than I knew before. They give a special test for the purpose to both white and colored schools. I assume that this is made the criterior for promotion. I assume this is the general rule. It is followed in other places. I do not know just where. I remember that Kent County, for example, used one of the standardized tests, as far as I know, as a basis of promotion from elementary to high school. The County superintendent did not need to get my permission in order to do it. My assistant, Mr. Huffington, is familiar with the details for the colored schools. There are others but I do not recall which ones because I did not give it any study. I remember at one time that it came up at an administration meeting of superintendents and some mentioned that they were giving tests of some sort at most of the high schools.

Q. Are you familiar with the practice in other states in that respect? A. Well, not very, except that I happened to be in Pennsylvania a few years ago, attending, speaking at one of the sessions of the State Teachers' Association there, which I am going to do again this year; and a professor from the University of Pittsburgh made a report on high school promotions; and that report—I remember just the substance of it—I reported to our people here when I came back. He said that in the counties, particularly in the rural districts—they have the township system there, not the county system—and if a township does not have a high school in it, then the children must take the examination, in order to be certified to the adjoining township, or town, or borough where there is a high school. He said that of the rural high school children in Pennsylvania—I think he stated most of the counties—there are sixty-seven in all—you know, I am a native of Pennsylvania.

Q. I know you are. A. Green Castle. But only 70 per cent of the children that could take it, that were eligible to take the examination took it, and he found in general of the 70 per cent that took it only 70 percent passed the

examination, meaning that 70 per cent of 70 is 49 per cent, so that only 49 per cent of the children in the rural districts of most of the sixty-seven counties of the State at that time were getting into the public high school; and this year we find that half of them failed to graduate.

(Mr. Marshall) If your Honor pleases, I did not want to stop the testimony until I found out just where Dr. Cook was going, but at this point I move to strike out the answer to the entire question, because it is obviously hearsay, as to what somebody said up in Pennsylvania.

(The Court) I overrule the objection.

(Mr. Marshall) Exception, please.

By Mr. Rawls:

Q. Dr. Cook, you are familiar with the standard test that was given in 1935 in Baltimore County, are you not? A. Well, it just depends on what you mean by familiar. I know about it, but I am not an expert in that field.

Q. I understand. A. I do not attempt to do everything in the department.

Q. Do you know whether that test was used in other places than Baltimore County? A. Well, of course, they were using it. We bought enough to supply the whole State. We used it in all the counties of the State.

Q. And did your department have any discussion with Mr. Cooper with reference to its use in Baltimore County? A. Nothing except what Miss Stern testified about.

(Mr. Marshall) If your Honor pleases, I object to anything Miss Stern knows about it. Miss Stern was on the stand, and there is most certainly no excuse for him to testify what Miss Stern said.

(The Court) He testified all he knew about it is what Miss Stern testified.

(Mr. Marshall) I must object to any testimony, as to that line of testimony.

By Mr. Rawls:

Q. Dr. Cook, in your opinion as an educator, do you

think that the examination that was given in Baltimore County in June, 1935, to the colored pupils, and the one that was given in January to the white pupils, that they were a fair test of the achievement of those pupils?

(Mr. Marshall) If your Honor pleases, by the testimony of the witness he disclaims any knowledge of being an expert in the field of testing, and claims his knowledge in the field of an administrator, and as an administrator, and admitting he is not qualified as an expert on testing, and I object to any opinion testimony from him concerning the fairness of that or any other examination.

(The Court) There are a great many young men in Baltimore County that have taken the test from him. He was a member of one of the high schools.

(Mr. Marshall) But they were not giving progress achievement tests during that time.

(The Court) I think he is competent to testify.

(Mr. Marshall) Objection and exception.

(The Court) Very well.

A. Are you speaking of the achievement test that was given in 1935?

By Mr. Rawls:

Q. Yes, sir. A. Of course, I do not know what that other test was. I did not see the other test.

Q. I am only speaking now—you never saw the examination in 1934? A. No.

Q. But you did see the standardized test that was given in June, June 20, 1935, to the colored children, and which had been given in January of the same year to the white children? A. May I make a statement in reference to these tests that we give?

Q. All right. A. Miss Stern, who is the expert in the Department in that field, is getting tests, all the new tests that come out, that we can possibly find out about all over the United States, wherever they are made. They are usually made at the universities. We buy printed copies,

and have them in the office. In the elementary field, Miss Stern, as Miss Simpson, of the elementary schools, and Miss Wiedefeld, who is supervisor of Elementary Schools, and those three go carefully over and annotate these tests, and they keep a record of that from time to time, and before they really choose they select some office, one according to their judgment, to do anything we want to do with that particular test; and then we very frequently call in some of the nearby supervisors, some of our outstanding supervisors, to check up; and sometimes we even give those tests to a small group of children outside of the State somewhere, to find out a little bit more about them. In other words, it is all handled very, very carefully. And that group made the decision. I have nothing to do with the decision. I accept their judgment, as I always do with my experts in their field.

Q. And what was their recommendation? A. Their recommendation was that they thought it was a splendid test, and the testimony of teachers over the State that I spoke with last summer was the same.

(Mr. Marshall) If your Honor pleases—

(The Court) Don't go too far.

(Mr. Marshall) Thank you, your Honor.

By Mr. Rawls:

Q. And looking at the test yourself, what is your judgment about it? A. I accepted their judgment.

Q. You accepted their judgment? A. Yes.

(Mr. Marshall) If your Honor pleases, we again put in the same objection as to his opinion as to that examination.

(The Court) Overruled.

(Mr. Marshall) Exception.

With reference to the administration of County schools, I believe the law says that the State Superintendent of schools and his assistants have supervisory control over

a great many things and of course, admission and promotion from the elementary school to the high school is one of them, but that control is only supervisory. We feel that the Counties have the initiative in all of these things. If we exercise any supervision it would be in the nature of suggestions, if we thought that something was going on that perhaps was not just what it should be or there would be a discussion between a member of my department and he reported it to me and I thought it was safe and worthwhile, I would discuss it with the superintendent myself or put it on the program for discussion at one of our provisional conferences but that is a matter within the authority and control of the local Board. It is the policy of the State not to butt in. The statement in the 1927 standards for Maryland high schools on page 135 which reads: "The possession of an elementary school certificate signifying the successful completion by the pupil of a course of study prescribed by the elementary school is sufficient to entitle the pupil to enter an approved high school without an examination" does not appear in the last statement of standards. We have a great many bulletins. These are provisional bulletins issued from year to year. When a bulletin is issued that is a definite rule of the Board and is passed as a by-law. It has the full force and effect of law. These other bulletins are provisional bulletins gotten out by the department and not brought to the attention of the State Department. Since the Secretary of the Board and the State Superintendent is executive officer for the administration of the schools, they are not by-laws. The statement just mentioned was omitted from the new bulletin because I found that a number of County Superintendents did not think it should be in there. It was not a good way to do it and they were not following it. There was nothing compulsory about it. The quotations from law in these bulletins are binding and some quotations from the by-laws are binding. This however, is a statement that is neither a by-law nor law. Some of it is philosophy of education and some of it is, of course, idealistic. Of course, we feel we have the right to put some ideals in these bulletins. That statement is not binding upon a local Board. I would not consider it as standard even if it was a by-law. It would be a regu-

lation. If 16 units are required for examination, I would consider that a standard. A minimum of 180 days would be a standard.

CROSS-EXAMINATION.

I did not prepare these standards. The high school supervisors did, but I read them over before they were published. They must have my approval. I omitted that statement I mentioned. I do not remember whether it was in there when it came to me. I do not know whether we omitted any other items. I called the attention of the high school supervisors to it. The reason I am so confident about omitting this one is because we had a discussion on it. We might have discussed some of the other provisions. We probably did. I do not know. It was not as a result of these discussions necessarily that I took it out. In the discussion the County superintendents believed there ought to be an examination given pupils. The 1927 bulletin is 216 pages and the 1935 bulletin is 49 pages. If you will let me have the bulletins, I will explain what sections were left out. The bulletins were shorter because we were short of funds. There are three bulletins, as a matter of fact. I ordered the provision of the 1927 bulletin left out of the 1935 bulletin. I am not an expert on standard achievement examinations. The purpose of the standard achievement examination was to check on the school system of the State. We keep a record of how each county stands and give each county its own record, but we do not give them the records of other counties. They are also used as diagnostic tests, of course, they also assist in setting standards. When children take these examinations, they become familiar with standard tests and that is a part of education. Some people believe that no examination is worth anything and I have come to the conclusion they are also unfair. But, at the same time, we believe that the children must go up against examinations all the time and therefore I believe in examinations written as well as oral. The State Board has repealed the by-law at the request of the county superintendents. We have left it to the county superintendents to determine

how it is to be done. The examination was sent out for the purpose of helping the counties, helping the schools and for diagnostic purposes. We had nothing to do with using the examination for promotion purposes. I had no idea about using it for promotion purposes. You do not have an idea about a thing you are not going to do and have nothing to do with it. The examination was put out by the State Board for the purposes stated. The purpose of promotion was not included in the purposes for which the examination was sent out. I had nothing to do with promotion. It was sent out to the county superintendents for the purposes mentioned. I do not know of my own knowledge of the time the examination was to be given. If the examination is given to less than 50% of the seventh grade in a particular county I could not conceive of that happening throughout the test. We would ask them to examine the whole grade and that was our purpose.

PETITIONER'S EXHIBIT NO. 2.

February 1923:

ADMISSION AND GRADUATION.

A. Admission by Elementary School Certificate:

The high school, in order properly to fulfill its functions, should articulate both with the schools below and with the schools above. It is not a separate institution, but an integral part of a common school course of eleven or twelve years. In general, for a pupil to enter upon the first year of high school work, he should have completed in a satisfactory manner the elementary course of seven (or eight) years.

The principal test for entrance should be the ability to do the work of the high school. This is usually shown by the character of the pupil's previous achievement, as shown in his daily work, tests, and formal examinations, these factors being taken as a whole.

The possession of an elementary-school certificate, signifying the successful completion by the pupil of the course of study prescribed for the elementary school, is sufficient to entitle the pupil to enter an approved school without examinations.

Through school organizations and a systematic scheme of promotions is an essential part of the educative machinery, it can not be too strongly emphasized that a high school education is the rightful heritage of every American boy and girl of high school age. "It is the function of the high school to welcome every such boy and girl, and to adapt subject matter, methods, and organization to the needs of such boys and girls."

It should be remembered, too, that the high school in a democracy is a necessity, not a luxury. It is a necessity, not only for the individual, but for society. The instincts and the capacities for learning are the largest natural resources the world has. The capital of civilization is latent in its children and in its youth.

The day is past when a free elementary education for all is adequate for the safety, welfare, and progress of our country. Good elementary schools are necessary, but they can not furnish enough education. The formation period of life is the high-school age; and it is at this age that careers and life ideals will be determined, that the instincts will be turned to social welfare or to social outlawry, and that capacities for achievement will be discovered and developed.

A high school, therefore, is not adequately fulfilling its function and its social responsibilities unless it numbers in its enrollment every normal boy and girl of high school age in the community, who find in the curriculum offered and in the methods of instruction and the machinery of organization, a satisfaction of individual needs and an adaptation to individual capacities which will induce them, under any but extraordinary circumstances, to continue in high school, and to receive the training which is essential to active, useful and reliable citizenship in a twentieth-century democracy.

November 1927:

ADMISSION AND GRADUATION.

ADMISSION BY ELEMENTARY SCHOOL CERTIFICATES.

The high school, in order to fulfill its function, should articulate both with the schools below and with the schools above. The high school is not a separate institution, but an integral part of a common school course of eleven or twelve years. In general for a pupil to enter upon the first year of high school work, he should have completed in a satisfactory manner the elementary course of seven (or eight) years.

The principal test for entrance should be the ability to do the work of the high school. This is usually based on the character of the pupil's previous achievements, as shown in his daily work, tests, and formal examinations, these factors being taken as a whole.

The possession of an elementary-school certificate, signifying the successful completion by the pupil of the course of study prescribed for the elementary school is sufficient to entitle the pupil to enter an approved high school without examinations.

Though school organizations and a systematic scheme of promotions are an essential part of the educative machinery, it cannot be too strongly emphasized that a high school education is the rightful heritage of every American boy and girl of high school age. "It is the function of the high school to welcome every such boy and girl, and to adapt subject matter, methods, and organization to the needs of such boys and girls."

It should be remembered, too, that the high school in a democracy is a necessity, not a luxury. It is a necessity, not only for the individual, but for society. The instincts and the capacities for learning are the largest natural resources the world has. The capital of civilization is latent in its children and in its youth.

The day is past when a free elementary education for all is adequate for its safety, welfare, and progress of

our country. Good elementary schools are necessary, but they can not furnish enough education. The formative period of life is the high-school age; and it is at this age that careers and life ideals will be determined, that the instincts will be turned to social welfare or to social outlawry, and that capacities for achievement will be discovered and developed.

A high school, therefore, is not adequately fulfilling its function and its social responsibilities unless it numbers in its enrollment every normal boy and girl of high school age in the community, who find in the curriculum offered and in the methods of instruction and the machinery of organization, a satisfaction of individual needs and an adaptation to individual capacities which will induce them, under any but extraordinary circumstances, to continue in high school, and to receive the training which is essential to active, useful, and reliable citizenship in a twentieth-century democracy.

PASSING EXAMINATIONS NO SUBSTITUTE FOR HIGH SCHOOL TRAINING.

A diploma or certificate of work from an approved school represents instruction and training, not the mere passing of examinations. Attention is called to the fact that the pupil must do his work regularly in the class room, not merely pass examinations. Summer work taken under non-certificated tutors by pupils who have failed will not be credited in the total number of unit credits earned by a pupil. The practice of giving special examinations at the opening of the fall session for the benefit of pupils who have failed to make use of their opportunities in the regular class-room work of the previous year is to be discouraged as setting a premium on loafing and idleness. The rule governing approval implies that unit credits are awarded in accordance with the number of prepared recitations, and recitations mean class work, not tutoring or home study followed by examinations. Were diplomas of schools to be granted only on passing examinations for either all or a part of the necessary credits, the teachers of a school would constitute a mere examination board, not a teaching body. Passing examinations is not getting an education.

September 1935:

POLICIES REGARDING PUPILS.

ADMISSION AND CLASSIFICATION OF PUPILS.

1. Admission by Elementary School Certificates.

The high school, in order to fulfill its function, should articulate both with the elementary schools and with institutions of higher learning. The high school is not a separate institution, but an integral part of a common school course of eleven or twelve years. For a pupil to enter upon the first year of high school work, he should have completed in a satisfactory manner the elementary school course in the school system from which he has come.

It can not be too strongly emphasized that a high school education is the rightful heritage of every American boy and girl of high school age and that "it is the function of the high school to welcome every such boy and girl, and to adapt subject-matter, methods, and organization to the needs of such boys and girls."

It should be remembered, too, that in a democracy the high school, far from being a luxury, is a necessity, not only for the individual but for society. The day is past when a free elementary education for all is adequate for the safety, welfare, and progress of our country. The formative period of life is the high school age; it is at this age that careers and life ideals will be determined, that the instincts will be turned to social welfare or to social outlawry, and that capacities for achievement will be discovered and developed.

A high school, therefore, is not adequately fulfilling its function and its social responsibilities unless it numbers in its enrollment every normal boy and girl of high school age in the community, and so satisfies with its curriculum, methods of instruction, and machinery of organization, the individual needs of the pupils that under any but extraordinary circumstances, they will want to continue in high school, and receive the training which is essential to active, useful and reliable citizenship in a twentieth-century democracy.

PETITIONER'S EXHIBIT NO. 3.

BOARD OF EDUCATION OF
BALTIMORE COUNTY.

Towson, Maryland,
June 12, 1935.

To the Principals of the Colored Schools:

The annual examination for the pupils of the seventh grade will be held on Thursday, June 20. The purpose of this examination will be to determine the eligibility of the pupils for instruction in the high schools of Baltimore City. The examinations will be held at Catonsville, Reisterstown, Towson, and Sparrows Point. The principal will instruct the applicants to attend the center in which the home school is listed. If it is more convenient for a pupil to attend another center, approval must be obtained from this office.

CATONSVILLE SCHOOL—Catonsville, Cowdensville and Halethorpe.

REISTERSTOWN SCHOOL—Rockdale, Chattolanee and Reisterstown.

TOWSON SCHOOL—Hereford, Shane, Blue Mount, Cuba, Sparks, Lutherville, Towson, Shepperd, Chatman, Loreley and Long Green.

SPARROWS POINT SCHOOL—Turners, Bengies, North Point, Walters, Sparrows Point and Cottage Grove.

The examination will begin at 9 A. M. All applicants must be students of the seventh grade now enrolled in the schools of the County. Please report the full name and address of each applicant. A formal blank is enclosed for the report of all seventh grade pupils. Star the names of the pupils who are recommended for high school.

Teachers should discourage pupils from taking the examination on Thursday for free tuition to high school

if they do not have a fair chance of passing it. Pupils under 14 years of age should repeat the grade if not successful in the examination. These who are 14 and under 16 may repeat the grade if parents insist upon school attendance.

Very truly yours,

J. T. HERSHNER,

Assistant Superintendent.

PETITIONER'S EXHIBIT NO. 4.

September 27, 1935.

Board of Education of

Baltimore County,

Court House,

Towson, Maryland.

Re: Application of Margaret Williams and Lucille Scott to the Catonsville High School.

Gentlemen:

On September 13, 1935 written applications were made to Mr. Clarence G. Cooper, Superintendent, Board of Education of Baltimore County, by registered mail to have Margaret Williams and Lucille Scott admitted to the Catonsville High School. Copies of these letters are enclosed herewith.

Both Miss Williams and Miss Scott are of lawful school age and are children of citizens and taxpayers of the State of Maryland and residents of Baltimore County. Miss Williams and Miss Scott have both been duly promoted from the seventh grade of the elementary school located at Cowdensville, Baltimore County. They are both desirous of completing their education and applied to the nearest high school to their residence located in Catonsville, Baltimore County. They were,

however, wrongfully and arbitrarily refused admission although application was made in proper form by their parents who tendered the girls, with their records, ready, willing, and able to abide by any lawful rules applicable to applicants to said school.

Upon the refusal of the principal to admit the girls, application was made to the Superintendent, Clarence G. Cooper, who has refused to take any action in the matter. The arbitrary actions of the officials of the Board of Education of Baltimore County were unjust and unreasonable and contrary to the Constitution of the United States and the Constitution and laws of this State. We, therefore, appeal to you as the governing body of the Baltimore County educational system to accept the applications of Misses Williams and Scott and to admit them to the Catonsville High School.

Will you please give this matter your prompt attention because of the fact that the school term has already commenced and advise us of the action taken on this appeal and these applications.

Very truly yours,

TM:M Thurgood Marshall.

Copy to State Board of Education.

PETITIONER'S EXHIBIT NO. 5.

September 13, 1935.

Mr. Clarence G. Cooper,
Superintendent,
Board of Education of Baltimore County,
Court House,
Towson, Maryland.

Dear Sir:

On behalf of Joshua Williams, Cowdensville, Baltimore County, Maryland, application is hereby made to you as the superintendent of the schools in Baltimore

County to admit Margaret Williams to the nearest high school to her residence, namely, Catonsville High School, located at Catonsville, Maryland, and operated and maintained by the Board of Education of Baltimore County.

Margaret Williams is of lawful school age and daughter of Joshua Williams, a citizen and taxpayer of the State of Maryland, and a resident and taxpayer of Baltimore County. Said Margaret Williams was promoted from the seventh grade of elementary school located at Cowdensville, in Baltimore County, in June of 1935. On September 12, 1935, Miss Williams, with her father, applied to the Catonsville High School for admission as a regular high school student. She tendered her record and was ready, willing and able to abide by all lawful rules for the admission of students to said high school. However, the principal of said school unlawfully and arbitrarily refused admission to this applicant.

Margaret Williams, by her father, Joshua Williams, is hereby making this formal application to you as superintendent of the schools of Baltimore County to admit her to the said Catonsville High School.

A copy of her school record is herein enclosed, and said Margaret Williams is ready, willing and able to abide by and to comply with all lawful rules for admission of students to said high school.

Will you please advise us at your earliest convenience of the action taken on this application.

Very truly yours,

Thurgood Marshall,

Attorney for Joshua Williams.

TM:M

PETITIONER'S EXHIBIT NO. 6.

SEVENTH GRADE PUPILS ENROLLED JUNE 1936

Name of Pupil	*Name of Parent*	*Mailing Address*	*Age*	*Rating of Pupil's class work A. B. C. D. E.*	*Do you recommend Pupil's admission to high school*
Alice Bacon	Lena Bacon	Douglas Park	12	D	No
Martha Brown	Martha Brown	Harristown	13	D	No
Audrey Boston	Martha Gaither	158 Winters Ave.	13	B	Yes
Nellie Coleman	Mable Coleman	42½ Winters Ave.	14	D	No
Gertrude Fields	Rosie Fields	10 Main Ave.	12	D	No
Anna Harrison	Anna Harrison	Harrisontown	12	D	No
Florence Johnson	William Johnson	165 Winters Ave.	12	A	Yes
Dorothy King	Fannie King	Harrisontown	14	C	Yes
Helen Lumpkins	Helen Lumpkins	70 Melrose Ave.	13	D	No
Lillian Page	Susie Page	185 Winters Ave.	12	B	Yes
Julia Redmond	Berttie Smith	148 Winters Ave.	12	C	Yes
Aileen Smith	Anna Smith	146 Winters Ave.	14	B	Yes
Julia Smith	Anna Smith	146 Winters Ave.	12	B	Yes
Janie Smith	Bell Smith	64 Winters Ave.	14	C	Yes

PETITIONER'S EXHIBIT NO. 9.

BOARD OF EDUCATION

of

BALTIMORE COUNTY,

Towson, Maryland.

June 22, 1935.

Mrs. J. Hasty,

Overlea, Maryland.

My dear Mrs. Hasty:

The examination for high school permits was held on Thursday of this week at Towson School. The principals of our schools were all notified to this effect. They in turn were required to make the announcement to the pupils. They were, however, instructed by us not to recommend pupils who did not have a fair chance to pass the examination. It was suggested to them that they advise the parents to send those children back to the seventh grade.

Very truly yours,

J. T. Hershner,

JTH:GH

Assistant Superintendent.

PETITIONER'S EXHIBIT NO. 10.

BOARD OF EDUCATION OF
BALTIMORE COUNTY, MARYLAND.

Towson, Maryland.

December 16, 1933.

Mr. C. G. Cooper,

Superintendent, Board of Education,

Court House,

Towson, Maryland.

Dear Mr. Cooper:

I wish to present some facts as Assistant Superintendent and supervisor of colored schools which I think should be given in answer to the petition of the "Taxpayers of Baltimore County and parents and patrons of colored school."

My intimate and personal knowledge of the management, maintenance and supervision of both white and colored schools leads me to say that the remarks of the speaker must have been based upon information which was, in the main, inaccurate. Every question raised in the petition or by the speaker had been answered frankly on a number of occasions in private interviews with parents, at parent-teacher association assemblies or in discussions at teachers' meetings. Several members of the committee knew the facts well enough to know that the colored schools of Baltimore County have been supervised and maintained in an equitable and efficient manner.

The facts are:

1. Buildings.

In 1920, the majority of pupils were located in rented buildings of the poorest kind. A rented room at Cuba is the only one at this time. Buildings of modern con-

struction house the pupils in the large centers and a number of two-room structures are equal to or surpass those used by white pupils. A number of portables have been converted into permanent buildings for one-room schools.

Sparrows Point and Chattolanee have steam heat plants. All other rooms are heated with sanitary stoves with three exceptions which have Vulcan Egg stoves.

2. Books and stationery.

A comparison of costs of books and stationery covering a period of ten years, from 1923 to 1932, inclusive, is given to answer the charge that old books have been transferred to colored schools, the inference being that new books were purchased for white pupils to displace those supplied to colored schools.

Variations of grade enrollment, closing of schools and change of texts gave an excess supply of good books. This supply has been used by the supervisors of white schools for white pupils. The needs of colored schools have been supplied from this stock and I shall continue the practice in order to economize in the costs of books. In spite of this fact the average cost of books for each colored pupil for ten years was $1.17 and $1.07 for a white pupil.

The per capita cost of stationery for the same period was 47.4 cents for colored pupils and 45.0 cents for white pupils.

One of the perplexing problems of school administration has been to make colored pupils care for books and stationery. A few years ago I warned teachers that I would recommend the dismissal of a teacher who could not supervise economically and efficiently the use of supplies.

3. Educational opportunities.

In 1916 the majority of colored teachers held second and third grade certificates. All teachers in the colored schools of Baltimore County today hold first grade certificates.

The yearly session is usually one hundred and ninety-five days. This is not exceeded in any other county of the State or by Baltimore City.

The State report of 1932 shows the average pupil load for each colored teacher was thirty-six and for each white teacher forty-one.

4. High schools.

In October of this year, Catonsville enrolled nineteen pupils in the seventh grade, Towson seventeen, Turners thirty-six and Sparrows Point twenty-five. Any well-informed school man knows that a good grade high school can not be maintained at any one of these centers.

In 1926 the Board answered this question wisely in the interest of the graduates of the seventh grade when arrangements were made with the Board of Education of Baltimore City to care for them in the City high schools. The cost of tuition is $95.00 each year for a junior student and $150.00 for a pupil enrolled in the senior high school. There are this year thirty-eight students enrolled in Douglass High and ninety-three in the junior high schools. The cost of tuition is $14,535, which will vary somewhat from this amount, depending on the number of withdrawals during the year and promotion at the end of the first semester. Complaint is made about tuition for the fifth year. The City schools have six years of elementary education, three years of junior high and three years of senior high. Baltimore County has seven years of elementary work and a four-year high school course. Pupils must enter the eighth year of junior high in the City from our seventh grade. The Board pays for four years of high school and the parents must pay $150.00 for the fifth year. Some of the students withdraw at the end of the fourth year because the parents can not pay. The Board considered this question several years ago and decided they could not give five years of high school education to colored pupils when white pupils were receiving four. I made an address at the parent-teacher association of Catonsville some time ago, at which time I was asked whether or not the Board would pay for the fifth year if the parents would pay for the first year. I stated that I would

recommend it if the Association made the request, but in doing it they should know that the Board would save money for the reason that a small proportion of pupils who enter the eighth year remain and graduate.

5. Examinations for high school entrance.

In 1927 the Board decided to hold seventh grade examinations for entrance to high school. These tests are held in four centers: Towson, Catonsville, Reisterstown and Sparrows Point. The subjects given are spelling, arithmetic, history, geography and English. The standards required that year were an average mark of sixty or better and a minimum of sixty in each subject. Few could make the minimum grade. A committee of parents petitioned the Board and the requirements were lowered to fifty and thirty.

White pupils took the same test. They were required to take literature in addition to the five subjects and to score a higher mark for high school admission.

The questions were made and the answers were marked by the supervisors of white schools. I had general supervision of the examination of colored pupils and know that the tests were fair and that the answers were marked very liberally. This statement is made for the reason that I have heard that the implications from time to time that colored supervisors would be more in sympathy with pupils of the race. The speaker for the committee laid emphasis on the large number of failures in the examinations. One hundred and thirty-five seventh grade pupils took the examination in June 1933 and sixty-three passed it and were granted free tuition to the eighth grade of the junior high schools in Baltimore City. Principals were instructed to send only those applicants who had a reasonable chance of success. All seventh grade pupils, however, came from two of the large schools and many from the smaller schools who did not have good seventh grade ability. The result was a large number of failures.

Patrons of schools should keep in mind that many pupils cannot carry high school studies. To allow all to enroll means a waste of the taxpayers' money and the

loss of time and money to parents who might profit to advantage if children were placed at work. A case in mind is given to illustrate this point: A few years ago two pupils in a small school were preparing for high school. The parents were very cooperative with all activities of the school. They were anxious to give the two older children a high school education. The teacher did not have the courage to dissuade the parents from their course. During my visit I learned about it and tested the pupils. I found that one had about third grade ability and the other fifth. I wrote the parents and stated frankly that the children had received about all the schools could offer in the way of instruction, and advised withdrawal for work. The parents accepted my advice.

One paragraph in the petition gave the impression that the pupils of Cherry Heights, Fullerton, must take an examination.

The children from this settlement were required to walk to Putty Hill. The school could not average twelve and was closed. Arrangements were made for them to attend the Caroline Street school. The Board paid $75.00 a year for each pupil attending and the street car fare from Overlea.

Mrs. Julia Jackson who was a member of the committee had three pupils in the elementary schools, two of whom passed through high schools without examination by our Board. She knew that paragraph was not true from personal experience.

This group has grown from the usual number of seven or eight to fifteen. Arrangements were made in November, 1933 to transport them, with twenty-four others who were being transported from the vicinity of Rossville to Loreley. The saving to the Board is approximately $1,000.

6. Home Economic and Manual Arts.

These subjects are eliminated from the curriculum of both white and colored elementary grades. This is in line with the best practice of schools throughout the

country. Assistant Superintendent William R. Flowers is authority for the statement that this work is not given in the fifth and sixth grades of Baltimore as stated in the petition. It is provided in the vocational schools for pupils who cannot profit by the usual course prescribed for pupils of the elementary schools.

7. Compulsory attendance.

Reference was made to poor enforcement of school attendance. The first attempt at enforcement occurred in 1912-13. The average attendance of colored pupils in that year was 60% and white pupils 76%. In 1933 the percent of colored pupils in yearly attendance was 88.5 and in white schools 91.2. When we consider all of the factors which affect school attendance we think the figures speak favorably of compulsory supervision.

As a final word, I wish to say that Baltimore County has a splendid group of colored teachers who are loyal and devoted to their tasks. I believe too that the classroom instruction will compare favorably with any other similar group in the State.

Respectfully submitted,

J. T. HERSHNER,

JTH/ETC

Assistant Superintendent.

PETITIONER'S EXHIBIT NO. 11.

SEVENTH GRADE PUPILS.

June 1934.

School Catonsville Principal_____

(Record names of all seventh grade pupils and star those who expect to take the scholarship examination for free tuition. Those who do not take the scholarship test should take the regular seventh grade examination.

This report is due on or before June 1st.

Full name of student	*Address*	*A. B. or C. Pupil*	*Name of Parent*
Gertrude S. Page	185 Winters Ave.	C*	Susie Page
Ethel L. Coe	15 Shipley Ave.	C*	Frances Coe
Miriam Talbott	103 Egges Ave.	C*	Gerry Talbott
Marjorie Jackson	26 Jones Ave.	C*	Earnest Jackson
Mary Butts	Old Frederick Road	C*	Ida Butts
Irvin Williams	151 Winters Ave.	C*	Geo. Williams
Lafayette Johnson	108 Shipley Ave.	C*	James Johnson
Bernice Boston	166 Winters Ave.	C*	Cora Boston
Margaret Sterrette	20 Rich Ave.	B*	Thomas Sterrette
Isaac Matthews	22 Rich Ave.	C*	Isaac Matthews
William Smith	Maryland Home	B*	Hawthorne Smith
Geo. Williams	151 Winters Ave.	D	Geo. Williams
Agnes Allen	140 Winters Ave.	D	Agnes Allen
Sarah Johnson	165 Winters Ave.	C*	Henry Johnson
Harriet Goodwin	100 Winters Ave.	D	Mary Goodwin
Ruth Williams	129 Winters Ave.	D	Mary T. Williams
Senobia Williams	129 Winters Ave.	D	Mary T. Williams

PETITIONER'S EXHIBIT NO. 12.

SEVENTH GRADE PUPILS.

June 1935.

Principal Charles Fletcher School No. 21 District 1. Record names of all seventh grade pupils and star those who expect to take the scholarship examination for free tuition on Thursday, June 20.

This report is due on or before June 17.

Full name of pupil	*Address*	*A, B or C Pupil*	*Name of Parent*
*Eleanor Barnes	412 Taylor Ave.	A	Mrs. Bessie Barnes
*Audrey Boston	158 Winter's Ave.	C	Mrs. Cora Boston
*Florence Brown	3 Jones Ave.	A	Mrs. Pauline Brown
*Jeanette Coe	17 Shipley Ave.	C	Mrs. Estelle Coe
Nellie Coleman	42½ Winter's Ave.	D	Mrs. Mable Coleman
*Jeanette Holland	22 Lee Wood Ave.	C	Mrs. Irene Holland
Mildred Matthews	Oella Ave., Ellicott City	D	Mrs. Annie Matthews
*Lucille Narl	18 Melrose Ave.	C	Mrs. Julia Narl
*Alexina Smith	18 Wesley Ave.	C	Mrs. Joeanna Smith
Aileen Smith	146 Winter's Ave.	D	Mrs. Annie Smith
*Carrie Williams	182 Winter's Ave.	C	Mrs. Matilda Williams
Emilyn Gross	Harristown, Catonsville	D	Mrs. Blanche Gross
*Leroy Holmes	2 Fairview Ave.	C	Mrs. Helen Holmes
Chas. Smith	164 Winter's Ave.	D	Mrs. Mary Smith
*Asbury Rideout	210 A. Winter's Ave.	C	Mrs. Ella Rideout
*Frederick Howard	10 Roberts Ave.	C	Mrs. Isbell Byrd
*Hawthorne Smith	Box 61A, Ellicott City	A	Mrs. Hawthorne Smith
Sterlyn Williams	Rolling Road, Ellicott City	D	Mrs. Nettie Williams

PETITIONER'S EXHIBIT NO. 22.

White Schools, Supv., M. Ward.

BOARD OF EDUCATION
OF
BALTIMORE COUNTY, MARYLAND.

Towson, Maryland,
June 14, 1935.

Circular Letter #10
1934-1935

To the Principals:

1. Grading of Seventh Grade Pupils.

Please bear in mind that seventh grade pupils who wish to enroll in the high schools must present their report cards to the principals of the high schools on June 20th. You will enter the following on the reports of seventh grade pupils who successfully meet the grade requirements, "Promoted to High School", record the date, and sign your name below the words, "Promoted to High School". If you feel that certain seventh grade pupils who failed to meet the prescribed requirements should be given a chance to prove their ability to carry high school work, you may enter the following on their reports, "Promoted to High School on Trial". This should not be done, however, unless you are reasonably sure that the pupil will be able to continue his work. It is far better for the schools and the pupils concerned to have them repeat the seventh grade than to have them dropped from the high school after three or four weeks' trial.

High School principals have advised me from time to time during the year that the beginning high school pupils last September were a superior group. I am inclined to believe that the rigid standards we set up last year for seventh grade pupils were partly responsible for this. I hope that you will not let the bars down this year because we have placed the full responsibility for promotion upon you and your teachers. I

know that you will deal fairly with each and every pupil and I do not object to giving certain pupils the benefit of the doubt. You must not, however, promote pupils in the seventh grade to high school in order to avoid an unpleasant issue with disgrunted parents. Our high schools should not be compelled to handle, even for a few weeks at the beginning of the year, boys and girls who have not satisfactorily mastered the studies prescribed for the seventh grade. I am depending upon you to use your best judgment and the full force of your character in making these decisions.

2. Suggestions for Helping to Work Out Next Year's Plans.

You can help me a great deal in the making of appointments and assignments if you will be good enough to write me before July 1st in regard to the following:

(a) If you think that you will need additional assistants next year, kindly specify the grades or the high school subjects in which they will be needed.

(b) If, on the other hand, you feel that you can do without the services of one or more assistants now on your staff, please advise me and suggest the teacher or teachers that might be transferred. Please keep in mind that our school population is not growing very much and we should not be too liberal in our assignment of assistant teachers for the coming year.

(c) If you have any suggestions in regard to changes in subject matter or the organization of your school, please give me the benefit of your thought.

(d) Please feel free to make any suggestions for the betterment of the system. I assure you they will be carefully considered and fully appreciated. Do not hesitate to make unfavorable criticisms if you feel that they will help to strengthen our school organization.

3. Filing Reports.

All records must be filed and checked before salary checks can be issued to you and your assistants.

4. Marking of Attendance on Last Two Days.

Perhaps I should remind you that you may record your pupils' attendance for Thursday, June 20, and Friday, June 21, as of Wednesday, June 19.

This will facilitate the making of your report.

Yours sincerely,

C. G. COOPER,

Superintendent.

PETITIONER'S EXHIBIT NO. 23.

BOARD OF EDUCATION OF
BALTIMORE COUNTY.

Towson, Maryland,

May 23, 1934.

Circular Letter #12

1933-1934

To the Principals:

1. Federation Meeting—Maryland Pageant.

Are you advertising the meeting of the Federation of Parent-Teacher Associations at the Towson Normal School on Friday evening June 1st? The Maryland Pageant by our high schools should be seen by a representative group of parents from each and every school community. I hope that you will urge your patrons to attend. The teachers of course should also be in attendance. Will you please announce that children will not be admitted to the Normal School on June 1st. I am inclined to believe that we are going to have a very large crowd of people and if school children, either high or elementary, are admitted, there will be very little space for the patrons and teachers. I am very sorry it is necessary for us to ask that the children be excluded.

The teachers and supervisors in charge of the pageant, however, feel that we should make this request.

Will you also please announce that the pageant will begin promptly at 8:15. The business meeting of the Federation will be held after the pageant. We will endeavor to hold until 8:15 four or five rows of front seats for the delegates or alternates. Please see to it that the delegates get this important announcement.

2. Examinations.

Examination questions in history, geography, English and arithmetic for pupils above the third grade will be sent to you from this office. The questions in these four subjects will be printed and a copy will be furnished for each pupil. Teachers will make examination questions for the remainder of the subjects taught in the various grades, and give the examinations according to the schedule that will be sent to you early in June. The answer papers written by the pupils should be preserved at the school for at least six months and be open to the inspection of any interested person.

I shall advise you at a later date in regard to the weight that the June examinations should be given in the grading of your pupils in grades below the seventh. I am ready now, however, to say that the seventh grade pupils must attain an average of 70% in each of the four subjects, namely, history, geography, English and arithmetic, in order to obtain recommendation for admission to our high schools. I think that we have been dealing a little too liberally with the seventh grade pupils. Pupils who are not able to do work of at least a 70% grade in these four subjects should not be admitted to high school this year. They can well afford to spend another year in the seventh grade. If any of the seventh grade teachers or principals feel that my position in this matter is not fair, I shall be glad to hear from them.

3. Registration of Beginning high school pupils.

Beginning high school pupils will be registered at the various high schools on Thursday, June 21, from 9 A. M.

to 1 P. M. Your cooperation in the registration of these pupils has made it possible for us to provide better educational opportunities for them earlier in the school year and has also enabled us to reduce school costs.

If you are not conversant with the courses offered in the high schools, please get in touch with the principal of the high school that serves your community.

Seventh grade pupils' report cards should be ready at the close of the school on Wednesday, June 20. They will need them on Thursday, June 21, when they register at the nearest high school.

School coaches may be used over the regular routes to transport seventh grade pupils to the high schools for registration.

4. Blanks for textbook and stationery inventories and orders.

Blanks for testbooks and stationery inventories and orders will be mailed to you in the near future. They must be in our office before 12 o'clock on Saturday, June 23. This is necessary in order to prepare specifications for bids that will be opened at the July meeting of the Board.

5. One Session.

Beginning Friday, June 15, all schools, high and elementary, will be conducted on a one session plan. The schools will open as usual at 9 A. M. and close at 1 P. M. A rest period of 15 minutes may be given in the morning; I suggest from 11 to 11:15.

Yours sincerely,

C. G. COOPER,

Superintendent.

MINUTES OF THE MEETING OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY— SEPTEMBER 7TH, 1926.

The regular meeting of the Board was held on September 7th with Messrs. Shoemaker, Hamilton, Jordan and Coblentz in attendance.

The minutes of the July meeting were read and approved.

The Board approved the list of teachers recommended for appointment by the Superintendent.

The Superintendent was authorized to purchase White chassis to be used on the Philadelphia Road-Cowenton Chase route.

A delegation from the Federation of Parent-Teacher Associations of the colored schools requested the Board to give their children better opportunities for high school education, and urged the appointment of a colored supervisor of schools.

The Superintendent advised the Board that the Superintendent of Baltimore City Schools had informed him that the Board of School Commissioners of Baltimore City would permit colored pupils of Baltimore County to attend the colored high schools of Baltimore if the Board of Education of Baltimore County would agree to pay $80.00 per year for each pupil admitted to the Senior High Schools and $50.00 per year for pupils admitted to the Junior High Schools.

The Board decided to pay tuition to the Board of School Commissioners of Baltimore City for colored pupils who have satisfactorily completed the work of our elementary schools and are approved by Assistant Superintendent Hershner. The Board reserves the right to discontinue at any time the payment of tuition of pupils who are not maintaining satisfactory records in their studies, and will not pay tuition for a period longer than four years from the date of the pupil's enrollment. If a pupil should be assigned to the Junior High School by the school authorities of Baltimore City, his enrollment in said school will be considered a part of the four

years of high school education for which we now are obligated. The Board instructed the Superintendent to discontinue the eighth grade in the colored elementary schools.

MINUTES OF MEETING OF BOARD OF EDUCATION OF BALTIMORE COUNTY JULY 12TH, 1927.

"The Superintendent reported that a county wide examination to determine the qualifications of colored pupils for admission to the high schools of Baltimore City, according to terms set out in minutes of this Board under date of September 7th, 1926, was held at the Towson Colored School on June 23rd, 1927.

"The Board instructed the Superintendent to advise the pupils who made a general average of 60% or more in the examination that the Board would pay for their instruction in the colored high schools of Baltimore."

MINUTES OF THE MEETING OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY JANUARY 28TH, 1928.

"The Board instructed the Superintendent to advise the principals of the colored schools that an examination will be given in the subjects prescribed for the pupils of the seventh grade on or after June 11th, 1928. The purpose of this examination is to determine the eligibility of pupils for instruction in the high schools of Baltimore."

"The Board ruled that tuition will not be paid to the School Commissioners of Baltimore for pupils who fail to attain a grade of 60% in each subject, and further ruled that the tuition of pupils now attending the colored high schools of Baltimore will not be paid for the school year beginning September, 1928, if said pupils do not satisfactorily complete the work prescribed in the high schools."

MINUTES OF THE MEETING OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY JULY 10TH, 1928.

"The Superintendent reported the results of the examinations given to the colored pupils who wish to attend the Baltimore City High Schools in September, 1928. It was found that fifteen of the pupils had obtained an average in excess of fifty per cent and the Board authorized the Superintendent to notify said pupils that their tuition in the city high schools would be paid."

MINUTES OF THE MEETING OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY JULY 2ND, 1929.

"The Superintendent reported that 103 colored pupils who wished to enter the high schools of Baltimore City in September were examined on June 14th and reported that 20 of the said number had made an average of 60% in the examination. The Board instructed the Superintendent to recommend for high school enrollment in Baltimore City all pupils who had made a general average of 50%; provided, however, that there must not be a grade less than 30% in any subject in which the pupils were examined. This modification of the requirements added 17 pupils to the eligible list, making a total of 37 pupils."

MINUTES OF THE MEETING OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY JULY 5TH, 1932.

"Mr. Hershner also submitted a written report of the examination given to students of the seventh grade in the colored schools of the county. Fifty-two of the 133 applicants were authorized to attend the colored high schools of Baltimore City."

MINUTES OF THE MEETING OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY JULY 11TH, 1933.

"The results of the examination given to the seventh grade pupils of the colored schools were submitted, and sixty-two of the pupils who were recommended by the Assistant Superintendent were authorized to attend the high schools of Baltimore City with the understanding that the Board of Education of Baltimore County would pay the tuition.

"Upon motion of Mr. Reynolds, seconded by General Warfield, the Board unanimously ordered that in the future colored pupils must attain a general average of seventy percent in the elementary subjects in which they are examined in order to obtain the Board's authority or approval to attend Baltimore City high schools."

MINUTES OF THE MEETING OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY JULY 19TH, 1934.

"The report of the examinations of colored pupils for free tuition in the Baltimore City High Schools was submitted and the Board authorized the payment of high school tuition for 31 of the 112 pupils who took the examination."

MINUTES OF THE MEETING OF THE BOARD OF EDUCATION OF BALTIMORE COUNTY JULY 16, 1935.

"The Superintendent reported the results of the examination of colored seventh grade pupils for free tuition to attend Baltimore City High Schools. The Board accepted sixty-four pupils whose scores ranged from 251 points to 325 points as eligible candidates for the high schools."

MINUTES OF MEETING OF BOARD OF EDUCATION OF BALTIMORE COUNTY OCTOBER 8TH, 1935.

"Attorney Thurgood Marshall and a representative of the Afro American appeared before the Board with a petition to establish high schools for negro youth.

"Mrs. Francis Coe requested by letter that the Board pay tuition to the School Board of Baltimore for Dorothy Coe who is enrolled in the senior class of the Douglas High School. The Board refused to grant the request because the pupil did not enter the Douglas High School with the approval of the Board of Education of Baltimore County."

MINUTES OF MEETING OF BOARD OF EDUCATION OF BALTIMORE COUNTY JULY 7TH, 1936.

"The Superintendent reported the results of the county-wide examinations in arithmetic, English, history and geography, given to the seventh grade, white and colored pupils, and the results of the Unit Scales of Attainment tests given to the seventh grade colored pupils on June 9, 10, and 11. After a careful study of the scores obtained by the seventh grade pupils in these the principals of the colored schools, the Superintendent and the Assistant Superintendent recommended the approval of ninety-two colored pupils for enrollment in colored high schools in Baltimore on September 8, 1936."

We hereby agree that the aforegoing Bills of Exceptions are correct.

THURGOOD MARSHALL,
CHARLES H. HOUSTON,
LEON A. RANSOM,
EDWARD P. LOVETT,
Attorneys for Appellants.
CORNELIUS V. ROE,
WILLIAM L. RAWLS,
Attorneys for Appellees.

The aforegoing bills of exceptions are hereby approved this eighteenth day of March, 1937.

WM. H. LAWRENCE,
Judge.

State of Maryland, Baltimore County, to wit:

I, C. Willing Browne, Jr., Clerk of the Circuit Court for Baltimore County, do hereby certify that the aforegoing is a true transcript of the record of proceedings in said Court, in the therein entitled cause, in conformity with the rules of the Court of Appeals relating thereto.

(Seal.) In Testimony Whereof, I hereto subscribe my name and affix the seal of the said Circuit Court this 18th day of March, 1937.

C. WILLING BROWNE, JR.,
Clerk of the Circuit Court for Baltimore County.

Appellants' costs, $45.70.
Appellees' costs, 6.00.
Record, 45.00.

April Term, 1937

No. 28

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Margaret Williams, infant, by Joshua B. Williams, Jr., her father and next friend, and Joshua B. Williams, Jr., individually

vs.

David W. Zimmerman, Clarence G. Cooper, Henry M. Warfield, et al.

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Bond, C.J., and Urner, Offutt, Parke, Sloan, Mitchell, Shehan, Johnson, JJ.

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Opinion by Bond, C.J.

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To be reported.

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Filed May 26 1937, 1937.

A Negro child and her father, a resident and taxpayer of Baltimore County, appeal from a dismissal of their petition for the writ of mandamus to compel the school officials to admit the child to the Catonsville High School, a public school maintained in the county for white children only. Admission to that school, under any conditions, was refused because of the child's race and color. The county makes provision for high school education of colored children in Baltimore City, and it is answered that this child would have been given equal facilities for her education there if she had been qualified to avail herself of them, but that she was not qualified. In reply, it is contended for the petitioners that the child had all the qualification that the officials might require, that she was held unqualified upon a test unauthorized by law and not provided for children of both races equally; and further, if she is found by the court to have been qualified for high school education, that she should be admitted to the Catonsville School because of its convenience, because the law of the state does not authorize a separation of the races such as the officials are making, because the petitioners have a legal and constitutional right to the educational facilities within the county, and because, even if a provision of access to like education in the city might afford them all their rights, the provision as arranged and as administered does not afford them.

The county and the city are separate governmental units, and the county territory extends around that of the city for a distance, measuring through the center of it, of about thirty miles.

The number of white children in the county is about ten times that of the Negro children, and the great majority of the latter live in the thickly-populated centers near the city, the remainder of the county being sparsely settled by them. Elementary teaching through seven grades is provided by the county school authorities for children of both races; four years of high school training within the county is provided for the whites only. The difference in number and distribution of the colored children render different arrangements for them inevitable if they are to be educated separately. Many of the colored elementary schools are so small that each is conducted by one teacher, teaching all grades and all subjects. Other colored elementary schools, including that attended by the child Margaret Williams, have larger staffs, with principals. It is testified that high schools cannot be conducted as efficiently for small numbers of pupils as for the larger groups, and that this leads to a preference for an arrangement for high school education of colored children of the county in the nearby city schools. Negro children desiring to take an eighth grade and high school course are therefore sent to the city schools upon payment of their tuition by the county. The city schools have eight grades in the elementary department, and four in the high school, twelve in all from the beginning of a child's schooling until graduation from the high school, and therefore one more than the county schools provide, but the eighth grade for county colored children is provided in the city high schools. The county pays tuition for [redacted] four years additional teaching in the city.

Joshua Williams, with the child, Margaret, lives in the county close to the southwest boundary of the city, and about equally distant from Catonsville, in the county, and the nearest colored high school in the city. The city school could probably be reached more easily by public conveyance. The child finished the seventh grade in the county elementary school near her home, in June 1934, when she was thirteen years old, and upon passing an examination given at her school received from the principal a card certifying that she was "promoted to the eighth grade", and was recommended as a "very good student;" and she was officially listed as a graduate of the primary school. She took another examination given by county officials at Catonsville to test her qualifications for sending her to the city high school, but her marks were below the requirements, totaling 38-3/4 out of a possible 100, with 60 as the minimum for passing, and the county superintendent of schools recommended that she repeat the seventh grade in the primary school. She nevertheless went to the city high school and was admitted on presentation of the card from her principal, without examination by the city officials, the city schools requiring none. But her tuition not being paid either by her parents or by the county, she returned a month later to repeat the seventh grade. Again, at the end of another year, given a card marked, "promoted to the eighth grade", and included in the list of graduates, she again took the examination at Catonsville preliminary to being sent to the city high school, and her marks totalled 244 out of a required minimum of 250 and

a possible 390. The minimum required had been lowered to suit colored children, who commonly did not attain the same results from their elementary teaching. It was in this situation that application for admission to the Catonsville school was made and refused.

The question whether the child had all the qualification that was lawfully required for high school education is, of course, a foremost one, for if she was not duly qualified to avail herself of any provision made for it by the county her admission to any could not be compelled. It is evident that her principal in the county and her teachers in the city were satisfied of her ability to take the course. The meaning of her principal's certificates that the child was promoted to the eighth grade is clear, although the words were not exactly those prescribed for certificates, but it is denied that the principal had any authority to decide upon a child's admission to the higher course. For this, the respondents contend, the county authorities regularly, and lawfully, require children, both white and colored, to pass the test of the general, uniform examinations. This requirement by the county, the petitioners regard as a device for keeping down the number of colored children going to the city schools, and the expense to the county. They deny that it is given to both races alike, and assert that it is given to the colored children under conditions that deny equal opportunity to them.

It should be observed that the appropriate remedy for exaction of a test not authorized to be given to the colored children at all would seem to be, not admission to the school for whites, but payment

of tuition in the city colored schools without the examination requirement. And the remedy for refusal to admit the child after her failure of a test which is authorized by law but defective would seem to be, not admission without a test, but a better test to determine whether she is qualified. For error of the authorities in either respect correction would not be by the remedy sought now, admission to the white children's school. Separation of the races is normal treatment in this state. Code, art. 77, secs. 114, 200 to 203, 211 and 256. And given the settled policy of separation, the petitioners' primary right is to separate facilities substantially equal to those provided for white children. Admission to the white school could be required only upon a showing that the equality of treatment is not obtainable separately. Univ. of Maryland v. Murray, 169 Md. 478. And see 45 Yale Law Journal, 1296.

But the court finds a predominance of the proof leading to the conclusion that for a number of years the same carefully prepared examinations have been given to both white and colored children as prerequisites to admission to the high schools. There are some differences in administration. While white children are examined at the elementary schools familiar to them, the colored are gathered in central places at a distance from home for many, and strange to them. There is testimony that the white children, too, would be gathered in central places except for their too great numbers. The elementary school work of the white children is considered

in preparing examinations and determining the children's fitness, while the school work of the colored children is unknown to the examination officials; [redacted]

It would seem possible, however, that these minor differences may arise from differences in the number and attainments of the children of the two races, and in the efficiency of the schools for the one and the other, and of their teachers. The rating of the colored children on the examinations has, as stated, been according to reduced standards, and the evidence would not support a finding that they suffer a disadvantage in the requirement. The officials seem to the court to have been endeavoring to treat both races fairly, and equally, to the best of their ability, and the inequalities pointed out seem insufficient to show unconstitutional discrimination against colored children in the examinations. Possibly there might be, under some circumstances, inequalities encountered in dealing with the two races separately that would render the maintenance of the separation inconsistent with the constitutional requirement of equal protection of the laws, but the allowance of separate treatment at all involves allowance of some incidental differences, and some inequalities, in meeting practical problems presented. And it is the opinion of the court that the differences here amount to no more. Inequalities in the separate elementary school teaching are complained of as having an effect to deny the colored children equal opportunities to qualify for the examinations, and thus equal

access to the high school course, but this could not be remedied by admitting to a high school a child who is not fitted for it. The remedy would have to be one reaching farther back.

The only ground for questioning the authority of the officials to exact the test of the examinations before sending a child to the city schools is that of instructions given in a "Manual of Standards for Maryland County Schools," issued by the State Department of Education, of which the State Board of Education is the head, (Code Art. 77, sec. 2), in 1927. It declared that the test for entrance in a high school "is usually based on the character of the pupil's previous achievments, as shown in his daily work, tests, and formal examinations, these factors being taken as a whole," and that, "The possession of an elementary school certificate signifying the successful completion by the pupil of the course of study prescribed for the elementary school is sufficient to entitle the pupil to enter an approved high school without examination." This manual had not been modified at the time of Margaret Williams' exclusion from the high school, and it can cause no surprise that it aroused suspicion of irregularity and partiality in excluding a child with a certificate of fitness from her school principal, because she failed in an examination. But it appears clearly enough that this instruction was not followed, but so far as it might ever have been binding, was superseded by custom, and that the examination was a test systematically given, and given to all alike. The State Superintendent of Schools testified that the instruction in the manual was intended to be provisional only, and not binding on the local board of edu-

cation, and that the tests were regularly prepared with great care, after study and inquiry, and comparison with the tests elseqhere out of the state, and this was done by experts in the State Department, apparently with the full knowledge of the State Board of Education, which has power to determine the educational policies of the state. Code, Art. 77,,see. 11. This development cannot now be held unlawful because of variance with the previous manual to which it did not conform.

Allowing all possible force to the contention that colored children were not accorded equal treatment in the examinations, this court is of opinion that consideration of the evidence now produced discloses differences of only a minor importance, as stated, and that these are not such as would justify issuance of the writ of mandamus. And as this conclusion disposes of the appeal, the consideration of the grounds of complaint need go no further.

Order affirmed, with costs.

little parks, trees, birds, flower beds, and ample grounds. Inside there should be sunshine, pure air, comfortable seats, tasteful furnishings, a good library, a workshop and a joyous life." (Colegrove—*The Teacher and the School.*)

I. The School As a Social Center:

Education should be democratic in fact as well as in name. As this tendency toward democracy persists, it is fitting that the school become more closely identified with the life of the community. Expressing this another way, the traditional school should become truly socialized. The socialized school will deal with the life of the child in such manner as will best promote his own present and future good, as well as the present and future good of other persons in his own and other communities. In short, the school should serve as the center of all activities that contribute to the upbuilding of the community; the aim in the conduct of the school should be to bring about natural reactions between the two factors in the educational process, the child and his environment, thereby promoting in each child the highest intelligence and efficiency and the greatest capacity for service.

The socialized school should be so conducted as to make it a means of bringing the parents into closer relations through their common interest in the children, and the use of the school house as a meeting place for local organizations of a civic or charitable nature should be encouraged.

J. The Tone of the School:

The spirit of a high school as manifested in the general attitude of the teachers, the pupils and the community is an important consideration. These three factors must be working together in harmony if successful results are to ensue. An increasing enrollment each year is one of the best evidences that the spirit or *morale* is on a high plane. The tone of the school is also shown in the acquired habits of thought and study, the spirit of industry, co-operation, courtesy, and good will on the part of the principal, teachers and pupils. It is probably true that the most vital and determining quality of a school is its tone or atmosphere—the spirit which pervades it. No high school that is not satisfactory from this standpoint, as evidenced by careful and sympathetic supervision, will meet with the approval of the State Department of Education.

K. Preparation of Teachers:

All teachers of academic, special, or vocational studies, must meet the requirements of the State school law in regard to academic and professional preparation.

L. Permanency of Teaching Staff:

There must be evidence of a determination on the part of the county school authorities to *secure* by adequate salaries and other policies *the retention* of the services of *successful* principals and teachers.

M. Building and Equipment:

Regulations regarding the size and arrangement of the building, its fitness for high school work, the amount and character of equipment and supplies, and the necessary library and laboratories, are made by the State Board of Education. The greater part of these are specified in detail in various sections of this Bulletin, and should be carefully studied by Superintendents and Principals.

State aid will not be allowed on account of the employment of any teacher unless the department to which such teacher is assigned is adequately equipped and the quality of instruction is satisfactory.

Admission and Graduation

A. Admission By Elementary School Certificate:

The high school, in order properly to fulfill its function, should articulate both with the schools below and with the schools above. It is not a separate institution, but an integral part of a common school course of eleven or twelve years. In general, for a pupil to enter upon the first year of high school work, he should have completed in a satisfactory manner the elementary course of seven (or eight) years.

The principal test for entrance should be the ability to do the work of the high school. This is usually shown by the character of the pupil's previous achievement, as shown in his daily work, tests, and formal examinations, these factors being taken as a whole.

The possession of an elementary-school certificate, signifying the successful completion by the pupil of the course of study prescribed for the elementary school, is sufficient to entitle the pupil to enter an approved high school without examinations.

Though school organization and a systematic scheme of promotions is an essential part of the educative machinery, it can not be too strongly emphasized that a high school education is the rightful heritage of every American boy and girl of high school age. "It is the function of the high school to welcome every such boy and girl, and to adapt subject matter, methods, and organization to the needs of such boys and girls."

It should be remembered, too, that the high school in a democracy is a necessity, not a luxury. It is a necessity, not only for the individual, but for society. The instincts and the capacities for learning are the largest natural resources the world has. The capital of civilization is latent in its children and in its youth.

The day is past when a free elementary education for all is adequate for the safety, welfare, and progress of our country. Good elementary schools are necessary, but they can not furnish enough education. The formative period of life is the high-school age; and it is at this age that careers and life ideals will be determined, that the instincts will be turned to social welfare or to social outlawry, and that capacities for achievement will be discovered and developed.

A high school, therefore, is not adequately fulfilling its function and its social responsibilities unless it numbers in its enrollment every normal boy and girl of high school age in the community, who find in the curriculum offered and in the methods of instruction and the machinery of organization, a satisfaction of individual needs and an adaptation to individual capacities which will induce them, under any but ex-

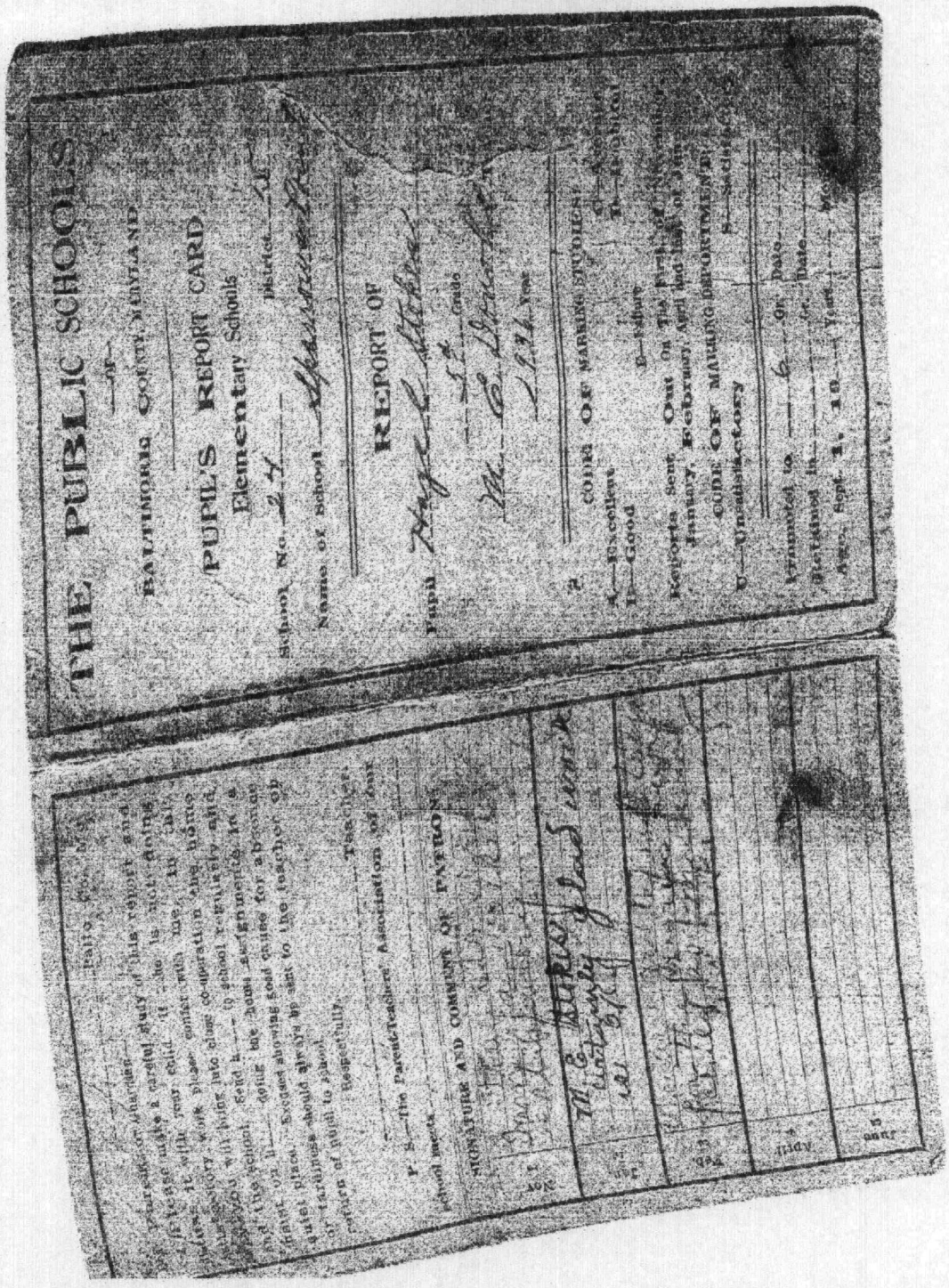
traordinary circumstances, to continue in high school, and to receive the training which is essential to active, useful, and reliable citizenship in a twentieth-century democracy.

B. Graduation:

A diploma or certificate of work from an approved school represents instruction and training, not the mere passing of examinations. Attention is called to the fact that the pupil must do his work regularly in the class room, not merely pass examinations. Summer work taken under non-certificated tutors by pupils who have failed will not be credited in the total number of unit credits earned by a pupil. The practice of giving special examinations at the opening of the fall session for the benefit of pupils who have failed to make use of their opportunities in the regular class-room work of the previous year is to be discouraged as setting a premium on loafing and idleness. The rule governing approval implies that unit credits are awarded in accordance with the *number of prepared recitations,* and recitations mean class work, not tutoring or home study followed by examinations. Were diplomas of schools to be granted only on passing examinations for either all or a part of the necessary credits, the teachers of a school would constitute a mere examination board, not a teaching body. Passing examinations is not getting an education.

Confusion may arise in the minds of some high school principals at this point. The results of examinations have some times been inadvertently accepted toward a diploma in lieu of class-room work under approved conditions. It can not be said too strongly that the school is a *place of training* and is maintained by the public for this purpose. Examinations are a *part* of the administrative routine, but can not be accepted *as a substitute* for training.

The granting of unit credits toward a diploma or certificate should in all cases be based on effort and attainments indicated by results of class work throughout the term and of examinations *combined,* the pupil's regular work in class for the term or year counting at least twice as much as the examination in any given subject.



Sample of report card used in the black elementary schools of Baltimore County circa 1936

Courtesy of Louis Diggs

SCHOLARSHIP AND ATTENDANCE.

Studies, Etc.	Periods 1 Sept. Oct.	2 Nov. Dec.	3 Mid Yr. Sum.	4 Feb. Mar.	5 Apr. May	6 Yr's. Sum.
Reading—Oral	A	A	A	A	A	
Reading—Silent	A	A	A	A	A	
Literature	A	A		A	A	
Handwriting	A	A	A	A	A	
Spelling	A	A	A	A	A	
Composition——Oral	A	A		A	A	
Composition——Written	A	A		A	A	
Grammar	A	A	S	A	A	
Arithmetic—Problem Solving	A	A		A	A	
Arithmetic—Abstract	A	A	S	A	A	
History	B+	A	S	A	A	
Nature Study	A	B	B	A	A	
Geography	A-	B	S	A	A	
Hygiene	B	B		B	A	
Civics	A	A	A	A	A	
Industrial Arts						
Drawing						
Music						
Sessions Tardy						
Days Absent	0		0	0	0	
Days Present	34		93	58	190	
Total Possible Days	34		93	63	190	
Deportment	S		S	S	S	

WHY PUPIL IS FAILING.

(To Be Filled In Only If Pupil Is Failing)

Improvement would probably follow if attention is given to the point checked.

Poor Attendance						
Homework poorly prepared						
Does not try						
Does not follow directions						
Too many outside interests						

CITIZENSHIP.

A Check Below Means That Trait is not Satisfactory.

"KEEP THE SLATE CLEAN."

Habits and Attitudes	Periods 1 Sept. Oct.	2 Nov. Dec.	3 Mid Yr. Sum.	4 Feb. Mar.	5 Apr. May	6 Yr's. Sum.
Obeys Willingly and Promptly						
Does not interrupt others						
Attentive to work						
Works well independently						
Works well with others						
Neatness in care of books						
Neatness in care of Sch. Rm.						
Respects school property						
Makes wise use of time						

STANDARD TESTS.

Subjects	Month	Standard	Class Median	Pupil's Score

Mary Ovington - concerned about increasing racial violence, she called a conference, which led to the formation in 1909 of the NAACP

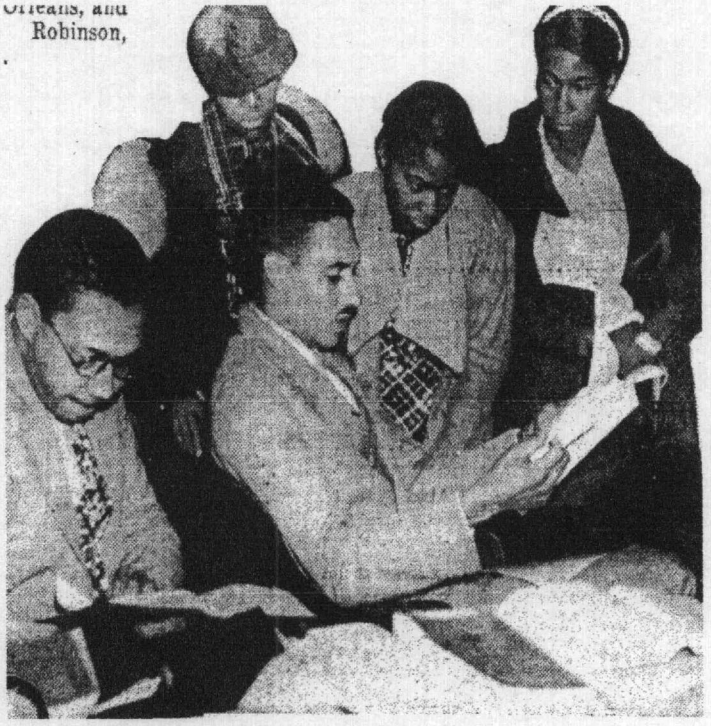
Photo: Library of Congress

Margaret Williams Circa 1934

Photo: Courtesy of Louis Diggs

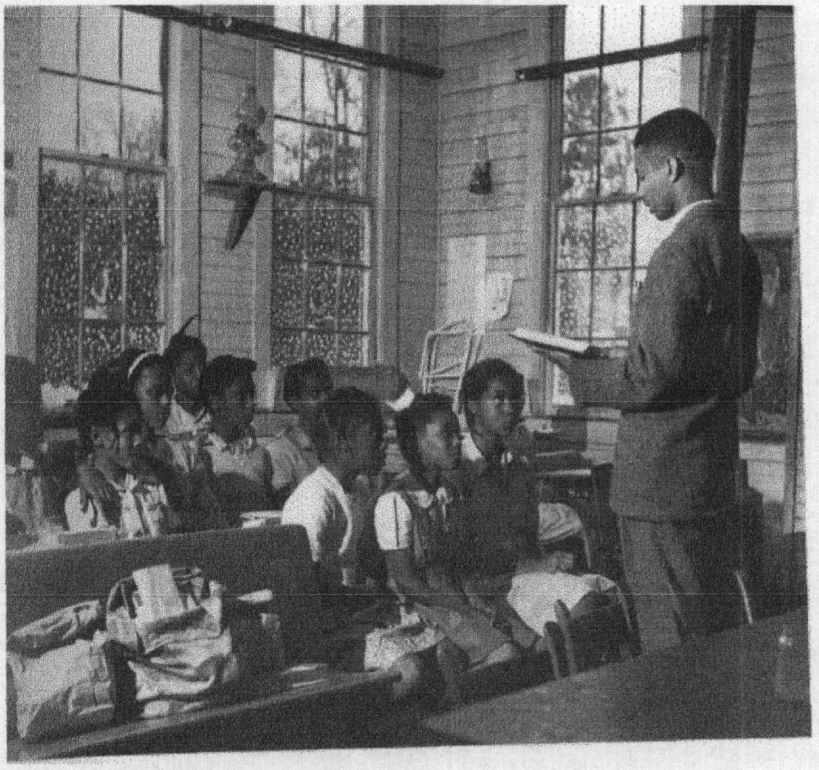
From left: Charles Houston, Thurgood Marshall and Edward Lovett circa 1933

Photo: © Afro-American Newspapers
From: "Thurgood Marshall, American Revolutionary" by Juan Williams



From left: Leon Ransom, Thurgood Marshall, Margaret Williams, Lucille Scott and Margaret's mother, Mildred.

Photo: © Afro-American Newspapers
From The Afro, September 26, 1936, pg 17



A typical one-room schoolhouse of the 1930's and 40's

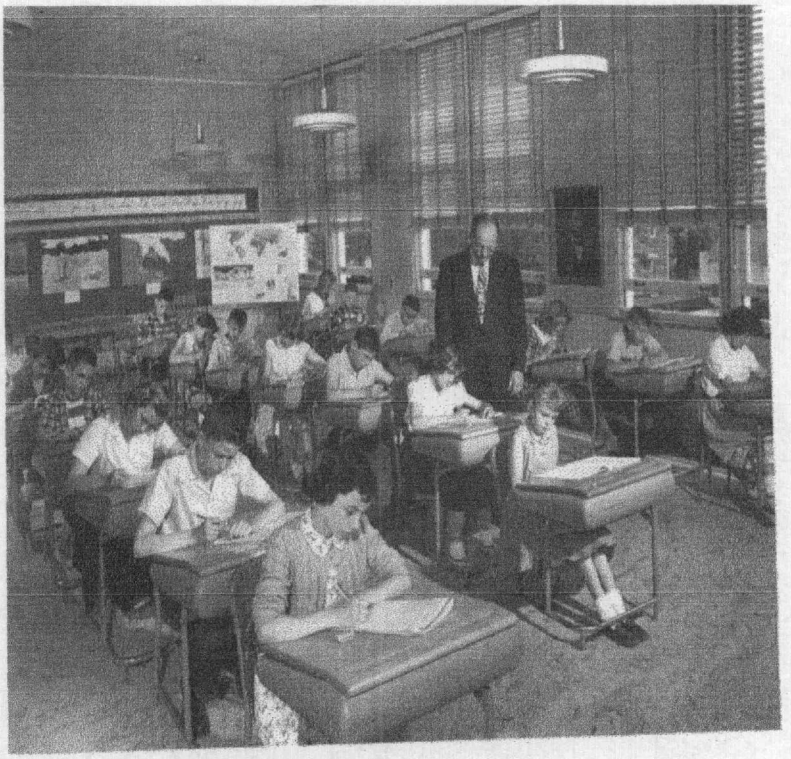
Most schoolhouses, by all reports, weren't quite this nice, especially in the rural South.

Photo: "the Struggle For Equal Education" by Clarence Lusane

A classroom in a white elementary school of the same era.

This single classroom is larger than most one-room schoolhouses of the day.

Photo: "the Struggle For



Thurgood Marshall as a young child in Baltimore, Maryland

Photo: Howard University
From "Thurgood Marshall, Supreme Court Justice" by Joe Nazel

Thurgood Marshall's parents, Norma and William Marshal

Photo: Howard University
From "Thurgood Marshall, Supreme Court Justice" by Joe Nazel

COUNTY SCHOOL CASE MAY BE TAKEN TO SUPREME COURT

All Baltimore Awaits AFRO Film June 3

"Children of Circumstance," Ready for Premiere.

A NIGHT OF FAME FOR MOVIE STARS

"Proud of Picture," Director Says.

The New York laboratory of Gramercy Pictures is working overtime to complete the cutting and editing of "Children of Circumstance," the all - colored motion picture produced by the AFRO-AMERICAN and United Theatres, which will have its premiere showing at the Harlem Theatre on June 3.

Director Ben Parker, who is

The Representative from Chicago Winds Up

Congressman Arthur W. Mitchell throwing out the first ball at Anacostia ball park. This game marked the opening of the baseball season between the Aztecs of Southwest and the Anacostia ball team of Southeast. In the picture, standing in front, left to right: Manager Morris of the Aztecs, and Leonard Mason, manager of Anacostia. The little girl is Mamie Jean Wilson. Seated, left to right: Mr. Green, president of the Anacostia team; T. A. Waters (just barely visible). Congressman Mitchell, Mrs. Martha Ellis, secretary Birney Community Center; J. A. Watson, and Robert J. Mason.

Appeals Court Upholds School Ban on Girl, 16

Pupil Requested Admission to Lily-White High.

COUNTY STATES SHE'S INELIGIBLE

N A A C P Instituted Case in 1935.

ANNAPOLIS, Md. — Refusal of the Baltimore County Circuit Court to issue a write of mandamus to compel the admittance of Margaret Williams, 16, of Cowdensville, into the lily-white Catonsville Public High School was upheld by the

Continued on page 22, col. 7

Tanner Dies in Paris

Afro American – Late City Edition

May 29, 1937

Appeals Court Upholds School Ban on Girl, 16

(Continued from Page 1)

Maryland Court of Appeals, Wednesday.

Possibility of an appeal being made in the United States Su-

Loses Case

MISS WILLIAMS

preme Court against the ruling of the appeals court was disclosed, Thursday.

"Future action in the case will depend upon the national officers and legal advisers of the NAACP," declared Mrs. Lillie M. Jackson, president of the Baltimore branch. "Although the State court upheld the decision of county court against the girl Wednesday, the Baltimore branch will not give up its fight for equal educational opportunities for all colored persons in Baltimore County," she said.

The case had been fought to the high court by Thurgood Marshall, Baltimore; Edward P. Lovett, Washington; Prof. Leon A. Ransom of Howard Law School, and Dr. Charles H. Houston, special counsel, all retained by the Baltimore N.A.A.C.P.

Made Request in 1935

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Made Request in 1935

Miss Williams, a product of the county elementary schools, sought admission to the Catonsville school on September 12, 1935, accompanied by her father, Joshua Williams, Jr. This was refused and her father filed a petition asking a writ of mandamus in the county court.

Attorneys for the girl contended that she had all the qualifications that officials might require, and that she was held to be unqualified at an examination unauthorized by law and not provided for children of both races equally.

The county contended that on June 20, 1934 and in June 1935, Miss Williams had failed to attain the average necessary for eligibility to enter the Baltimore City high school, where provision is made for colored county high school pupils. Equal facilities would have been accorded here, it was argued.

Writ Denied in October

Judge Frank I. Duncan denied the writ, at Towson, in October, 1936. He based his decision upon the argument that the girl had failed to pass two prescribed examinations for entry into the Baltimore City school, where tuition is paid for pupils who pass the tests.

In taking the case of the appellate court N.A.A.C.P. counsel argued among other things that:

Neither the Maryland Constitution nor statutes authorized the exclusion of a petitioner from the Baltimore County high schools solely on account of race or color;

Paying of tuition for certain pupils in Baltimore is not equivalent to equal educational opportunities;

Refusal to admit her was in violation of the due process of law as guaranteed by the Fourteenth Amendment of the U.S. Constitution.

Six Highs for Whites

It was also emphasized that while Baltimore County had no high school for colored high school students, there are for whites: six senior highs; one

Baltimore Sun- Evening edition

May 26 1937

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NEGRO LOSES APPEAL FROM SCHOOL BAN

High Court Upholds Decision Barring Girl From Catonsville Institution

[By the Associated Press]

Annapolis, May 26—The action of the Baltimore County Circuit Court in refusing to issue a writ of mandamus to compel the admittance of Margaret Williams, Negro, into the Catonsville High School was affirmed today by the Court of Appeals.

Chief Judge Carroll T. Bond, speaking for the appellate court, declared that the opinion disposed of the appeal and "the consideration of the grounds of complaint need go no further."

Mandamus Writ Filed

The Catonsville High School is a public school maintained in Baltimore county for white children only. When the Negro girl applied for admission she was refused.

Her father, Joshua B. Williams, Jr., filed a petition asking a writ of mandamus in the county court. He sought to compel school officials to admit her.

The county makes provision for high education of Negro children in

[Continued On Page 14, Column 1]

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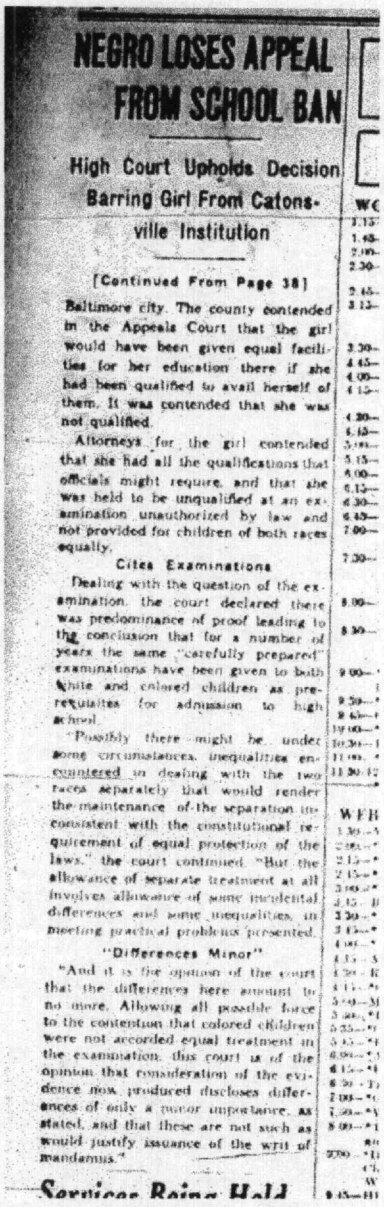

NEGRO LOSES APPEAL FROM SCHOOL BAN

High Court Upholds Decision Barring Girl From Catonsville Institution

[Continued From Page 38]

Baltimore city. The county contended in the Appeals Court that the girl would have been given equal facilities for her education there if she had been qualified to avail herself of them. It was contended that she was not qualified.

Attorneys for the girl contended that she had all the qualifications that officials might require, and that she was held to be unqualified at an examination unauthorized by law and not provided for children of both races equally.

Cites Examinations

Dealing with the question of the examination, the court declared there was predominance of proof leading to the conclusion that for a number of years the same "carefully prepared" examinations have been given to both white and colored children as prerequisites for admission to high school.

"Possibly there might be, under some circumstances, inequalities encountered in dealing with the two races separately that would render the maintenance of the separation inconsistent with the constitutional requirement of equal protection of the laws," the court continued. "But the allowance of separate treatment at all involves allowance of some incidental differences and some inequalities, in meeting practical problems presented.

"Differences Minor"

"And it is the opinion of the court that the differences here amount to no more. Allowing all possible force to the contention that colored children were not accorded equal treatment in the examination, this court is of the opinion that consideration of the evidence now produced discloses differences of only a minor importance, as stated, and that these are not such as would justify issuance of the writ of mandamus."

Services Being Held


BALTIMORE
LUTHERVILLE
TOWSON
PARKVILLE
PIKESVILLE
WOODLAWN
CATONSVILLE
ARBUTUS
BROOKLYN
Owings Mills
Brooklandville
Stevenson
Garrison
Rockdale
Villa Nova
Hebbville
CROSBY RD
EDMONDSON AVE
FREDERICK
MONTGOMERY
ANDOVER
Herwood
Catonsville High School
Margaret Williams' Home
Douglass High School

Transcript of phone interview with Louis Diggs
November 27, 2002
10 am – 11:15 am

(Introductions, permission to record and purpose statement)

JK: I believe this was Thurgood Marshall's (TM) first case?

LD: It was his absolute first exposure

JK: Everything I'm reading... I'm finding reference to Margaret Williams (MW) and Lucille Scott (LS), but LS was never named as a plaintiff in this case.

LD:I don't know why Lucille was not. It was strictly Williams v. Zimmerman. I thought it would be Williams v. the Board of Education....

JK: Do you have any idea how Ms. Williams... went about connecting with TM and the NAACP? Do you know if they sought out TM or if this was a case where the NAACP sought them out?

LD: It was my understanding from talking with Ms. Williams sister... and LS... they indicated that they had no idea TM was going to approach general counsel of NAACP about it. They concurred from what I understand from talking to them about it... but it was initiated by TM

JK: So they sought out TM's services and he in turn took it to the NAACP?

LD: Mr. William's.... Margaret's father, sought out TM

JK: Now I know in a couple of the interviews with LS and MW ... they say that it was TM that took them to Mr. Zimmerman at the school... but in the record there is absolutely no record of TM being in the presence of the girls and taking them to Mr. Z. The only reference Mr. Z. and Mr. Williams make is that Margaret was with her father and a local minister. Do you know anything about that? Is it a given that it was TM that took them up to the school?

LD: That's a very good point. In my interviewing... I never thought to ask... for sure both of the girls were taken by hand by TM to confront the principal.

JK: There were a few requests that black high schools be furnished in Baltimore County. It was then, in 1926 that they began this program of providing tuition to Douglass.

LD: No. I don't doubt that. Because as I go throughout the various communities documenting the various [black] communities of Baltimore County... The very senior people that I interview indicated that the parents from the community and the PTA often protested to the board of commissioners for either high school program for the children or

for them to pay the tuition to school 130... Booker T Washington junior high school because they needed another year or 2 before they qualified for high school and then on to Douglass. I got that from quite a few people.

JK: - I see in the record that there are several different petitions to the school board over the years about that issue and then that issue was reopened by TM as a result of this case. As far as the high school - lacking any high school in Baltimore County for blacks- what was... obviously, there was no provision for high school before 1926 - what about those who didn't get into Douglass?

LD: It was my understanding... and from the many interviews I have conducted... they either had relatives and went to stay with them so they became eligible to attend Douglass.... Or they paid their way

JK: Do you have any idea what the tuition was?

LD: - Yes, ma'am. There was someone I interviewed not too long ago in Sparrows Point

(Searching for the information)

I remember he told me about the tuition his parents had to pay....

JK: Now, Douglass was used for students from all over Baltimore County?

LD: Not necessarily. Some of the students from Sparrows Point and Turner Station went to Dunbar.

JK: Well, what I found in the public school directories from 1936 and 1937 ... the only black high school listed was Douglass as a black jr. and sr. high school. All the others were listed as vocational and occupational schools. Was Dunbar at that time serving as a black high school?

LD:I remember this one person... more than one... saying that when they finished at Bragg... here's one right here... this gentleman's name is Howard Flornoy (sp?) who came from Turner Station... he said that "there was one other exception in my family. My youngest brother, Leroy, who attended Bragg high school in Sparrows Point ... in 1940 the Sparrow's Point high school was opened. I was able to go to Dunbar. Jr. and sr. high school in Baltimore City. I graduated from Dunbar in 1943" But... what I'm thinking is that when they went to Dunbar, it wasn't in the very early years. In the 30's it seems they all went to Douglass...

JK: Maybe what they did....I believe that at the time, Dunbar was listed as a white high school ....?? I think that was in the 1936/37 directory... It makes me wonder if maybe this case didn't spur them to take a little more action... provide something more... rather than face another case...

LD: You mean, from TM???

JK: Yes

LD: Oh, there's no doubt. That was what? 1937 when the appeal came about? And it was 1939 when the school board offered the curriculum to those three black high schools. That was less than two years later. So that was obviously the straw that broke the camel's back...

JK: Now, you say the curriculum was offered to three black high schools. Were those high schools in the city??

LD: No, No, No... they were in Baltimore County.

JK: So then, 1939 was the year that the black high school opened in Baltimore County??

LD: Yes, that was the first year. Bannekar, Bragg and Carver out in Towson. Bannekar is in Catonsville. Bragg high school, which was in Sparrows Point and Carver high school, which is in east Towson. There were no new schools. They merely extended the curriculum and took the elementary schools and eventually expanded them to absorb the high school curriculum.

JK: So there were no new facilities?

LD: No new facilities.

JK: Now, what were the elementary schools like?? I know MW and LS ... their recollections are of the one room schoolhouse... was that typical of the elementary schools?

LD: That was typical

JK: So by expanding the curriculum they were just giving the teachers more materials to use as the students got older? You're not necessarily providing a "high school" to these kids??

LD: Right, but... now remember all of the one-room schoolhouses in the county did not offer a high school curriculum. Like... the kids, if they wanted to go to high school, they were then bussed from the surrounding areas to what I think was a larger elementary school that could absorb that extra curriculum. Like Bannekar which is located up on Wesley avenue... was a relatively large school... Bragg certainly was... Bragg was an all brick school... it was a two or three stories elementary school, they could have absorbed it very easily. So was carver in Towson. I believe that's why those schools were selected... because they could absorb the extra students.

JK: Okay. Now, when they were bussed was the county paying for buses?? Because I know that at this time... 1936, 1937... there was no transportation being provided to black students but there was a provision of... I believe the students had to pay 10 cents a day and the county picked up the rest for the white students. After this case was filed they then began assisting black students with transportation. So when you say that they were being bussed in, was this a provision that the county was making??

LD: Yes, I'm almost... I'm positive it was... and again, my information is gathered from the interviews I was conducting. But I'm pretty sure that people much older than MW... they said that they were actually bussed into elementary school ... before there were even high schools. You know, out in the county, there was no way for busses to connect to take the children from way in the furthest parts of little areas of the county into an area where school was being held. I recall specifically out on Bond Avenue... Amy Milligan who is much older than MW... her father was being paid... The question is who was paying him??... to bus the children from Chattolanee over to the schoolhouse on Bond Avenue.

JK: So he picked up the children and took them in??

LD: Her father was picking up the children in some kind of little bus. Bu then again... the question is, it could have been the parent's themselves... paying to send their children over there to school.

JK: I know one of the issues about the high school testing was sending the black children to central locations for testing instead of testing them in their home schools. And one of the issues was that none of those students was provided transportation or any stipend for transportation.

LD: I'm not sure if that was true in every case. I definitely recall in Sparrows Point people saying they remember when people from the school board would come to Bragg and administer the tests to them.

JK: Yes. I know in 1936 they began assisting with transportation to get the students to the test sites. I not sure at what time... It was probably around the same time ....1939... that they were providing... I mean once they began putting the high school curriculum into the schools that that was probably around the same time they started testing in those schools rather than the central location. Because prior to that they had been taking the students and sending them to 5 central locations. And I know MW had to go to Towson and she no provision for transportation. It says in the record that a neighbor took her down there and Mr. Williams went down and picked her up.

LD: I see.

JK: So I know at that tome they weren't making any provision to get the students to the test sites.

LD: That's right

JK: Which was one of the issues... it was discriminatory simply because the testing wasn't done in the home schools, it wasn't by anyone familiar to the students or anyone that was familiar with the students curriculum. And the burden of taking the students out of a familiar school and putting them in an unfamiliar area. And the response of the school board was "gee, we'd like to do this with all of the white students, too but there are just too many of them so it's easier to give it in their schools."

(Discussion of the white testing in January v. the blacks testing in June, the test being the sole criteria for blacks, white remedial work etc...)

JK: I have a question about Edward Fletcher... there were three... MW, LS and Edward Fletcher (EF) at the seventh grade level in that school... and all three took the test. My understanding is that EF was the only one who went on to high school. After that exam... unfortunately, I have found no reference to whether he actually passed the test. Because there are reverences... in Margaret's interview... about comments by the superintendent... about not letting the girls go on...

LD: Right...

JK: Because they were just expected to go on and have babies...

LD: That's exactly right... I have that in my interview with Margaret..

JK: There's no point in letting the girls go on because they're just going to have babies and they don't need an education, anyway. So whether EF actually passed the exam or if they passed him on and let him go, I don't know... Another issue is the court found that... they had made a provision for black students that you were supposed to pass with 260 or greater... but they allowed the black students to slide by with a 250... and MW scored 244 the 2nd time she took the exam.

LD: You know... I was searching for something while I was talking with you and I did find what the kids were required to pay per quarter to attend Douglass and Dunbar. This is from a lady... Charlotte Harvey... she was born July 23, 1912... on high street in Sparrows Point and she says "The county PTA ... demanded that the county board pay for high school education for the African American students the white students had high school for a long time. That helped our cause. We were able to take the Baltimore county test. About seven of us passed it. We were then qualified to go to Dunbar or Douglass high school in Baltimore. But before the dust settled, we were required to pay the $37.50 per quarter for attendance at Douglass high school and $33 per quarter for attendance at Dunbar high school. Eventually, this money was returned to our parents." She graduated from Douglass in 1931.

JK: The tuition that was paid... she said she passed the test went to Douglass and still had to pay the tuition but the tuition was then reimbursed back to her parents??

LD: That what she said.

JK: In the case, part of what the board of education is trying to say that this was not a test for tuition, this is test for admission... that anyone who qualifies to get into Douglass...they'll pay the tuition for them, so this is an admission test, not a tuition test. But Douglass required no tuition test at all. You simply had to be a city resident or agree to pay the tuition.

LD: Yes.

JK: So, are you aware... how many, if any, Baltimore County students who didn't pass the test just went ahead and paid the tuition?? Obviously, this tuition isn't coming back to them.

LD: No, I don't have a feel for how many. In my interviews I just ask about how they go about getting their educations.

JK: I would assume that 37 dollars a quarter... in 1937 that was a significant amount...

LD: It was a lot then

JK: What would be your feel for how many of the students could afford to pay... I mean, especially families that may have had more than one student??

LD: Well, I would overlook Turner's Station and Sparrows Point because the men working at Bethlehem steel they were making a decent salary. Plus, most of these people... they only had to pay, like $12 a month... even though they weren't making an awful lot of money they worked long hours and they accumulated quite a bit... that's why I know that $37.50 for people in that area... that wouldn't be a big deal. Now, that wouldn't be true in Halethorp or east Towson where most of the workers were domestic... not making much money at all. They probably couldn't come up with 37.50

JK: So what about those students that didn't? They just didn't continue school??

LD: Obviously...

JK: They didn't... they were just put out into the work world and it's "fend for yourself??"

LD: oh yes. I definitely got that in a whole lot of interviews... just had to go out into the world after having those 6 years of school. And an awful lot of cases... the kids had to go out anyhow and not go out to school just to keep the family going... some of them had an awful lot of siblings...the mothers couldn't work for taking care if the siblings... the father

wasn't making much at all ... the youngsters, especially the young boys, has to go out at a very young age to supplement the income to keep the family going.

JK: Typically what kind of work would it be?? Domestic? Labor?? Slinging bricks... ?

LD: Well, if you were around the city there was one kind of work but if you weren't near the city where there was no transportation...those men were either farmers or workers on large estates doing menial jobs... working in the schools, cleaning churches... that kind of thing... those that were able to migrate to the city were able to find different jobs...or those that were in the county where there were some sort of manufacturing or labor intensive jobs... but I don't think that was typical in Baltimore County...back then it is... was not a... it was just a small county...

JK: Rural??

LD: Double rural. It was just large estates all over the place and the large estates required people to take care of the grounds.

JK: What about...there is reference in MW interview about the oblate sisters and going to St. Francis to continue her education.

LD: Yes...

JK: How common was it for students to take that route??

LD: That was not a common...not from my understanding. Especially youngsters in the county. Maybe it was different in the city. But out in the county I don't believe there were very many that went into... I remember the interview I did with MW and even though she has Alzheimer's she had a remarkable recall way back in the past... she just couldn't recall some immediate things. I do recall her saying... and her sister gave me a picture... in the 30's of her father having a very large touring car. She said her father took her to school everyday. And there were definitely not many African Americans who had that ability... not back then. Her father was, to me, exceptional.

(Requesting permission to use some of the photos)

JK: This is one of the first school desegregation cases, which did eventually lead to...

LD: Yes.... The first one.

JK: Which leads me to another question... were there others in Md.?? Are you familiar with whether there were or not??

LD: I am not.

JK: So this may have been the only Md case? I know this was the first leading to Brown... this is the only one I'm familiar with ... I still have a question about whether other counties were providing high school to black students

LD: That I do not know...

JK: Just a few more questions... you left high school in 1950. You were a Baltimore City student... in 1950... was that exam still being given??

LD: I don't recall having to take any exam...

JK: Not for Baltimore city students but are you familiar with if any county students were still required to take the exam in the fifties??

LD: You know, I did not get that impression from my interviews. Honestly, I don't think it was a requirement after they opened the high schools in the county for blacks.

JK: And that was 1939.

LD: 1939

JK: so they may not have been at that point requiring that exam.

LD: I think...If I remember from the various interviews I have done... it is just the fact that they ....if a ... there were no more exams because they were offering the high school curriculum in the county. If parents wanted their child to go to Douglass they had to pay whatever tuition was required

JK: So there wasn't this question of tuition between the county and the city any longer?

LD: No. No.

JK: Okay.

LD: I have the impression that all of that stopped....

JK: When they opened the county schools... Well, I think that's about it for now... oh, just one more thing... In several places there is a reference to the AME church... is that what was being used as the school house or was that a separate building?

LD: No, that was the schoolhouse at one time... the schoolhouse was eventually built on Garrett Avenue. It's still there. It's been converted into a home. But it's still there. The church was... actually before 1872, when Baltimore County became involved with providing public funds for the education of black children, the churches were... they were holding their own schools. The people were paying themselves what little they could to educate the children. And once the county got involved, they said you must first provide

the facilities and it just mushroomed from there. Everyone was either a church or, like, a Masonic hall and eventually they started building little buildings and then the county built them and when integration came along, they sold the buildings and people converted them into homes. I encountered quite a few of those.

JK: The vision I have is the rural shack with the pot belly stoves and the wooden benches along the walls...how far off of reality would that impression be??

LD: No far off at all, Not at all

JK: I was afraid you were going to say that.

LD: I could take you to one of two right now, that still exists today. You go up into Piney Grove there's a one-room schoolhouse.

(Discussion and getting directions to Piney grove)

JK: And Mildred is still living in the house at Garrett Avenue.

LD: She's still living there. I'll try to get her on the phone and then get back to you.

JK: Thank you very much. I'll look forward to hearing from you.

(End of interview)