Rec'd Oct 14

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

District Court of the United States

FOR THE

EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

CIVIL ACTION FILE No. 631

MARGARET SMITH, an infant, by Henry Smith, her father and next friend, ET AL,

Plaintiffs

v.

SCHOOL BOARD OF KIND GEORGE COUNTY, VIRGINIA, and T. BENTON GAYLE, Division Superintendent,

Defendants

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon

HILL, MARTIN AND ROBINSON,
Attorneys at Law,

plaintiff's attorneys, whose address is

623 N. Third Street,
Richmond, Virginia,

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

FILED OCT 22 1946
C. K. MORAN, Clerk
Sara T. Carlton
Deputy Clerk

C. K. MORAN, *Clerk of Court.*
By Sara T. Carlton *Deputy Clerk.*

Date: OCT 14 1946

[Seal of Court]

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

7—1615

631

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

MARGARET SMITH, an infant, by Henry Smith, her father and next friend,

VERA JEAN SMITH and LANDON B. SMITH, JR., infants, by Rev. L. B. Smith, their father and next friend,

MATTHEW V. BUMBRY, an infant, by Matthew L. Bumbry, his father and next friend,

LAWRENCE PARR and MABLE PARR, infants, by Irene Dunlop, their mother and next friend,

CELESTINE MAIDEN and MELVINE MAIDEN, infants, by Eva Maiden, their mother and next friend,

MARY SCRANAGE and PANSY SCRANAGE, infants, by Addie Scranage, their mother and next friend,

MARIE PARKER, an infant, by Eunice Parker, her mother and next friend,

LEWIS H. BEVERLY, an infant, by Mrs. James M. Beverly, his mother and next friend,

MARTHA SMITH, an infant, by George A. Smith, her father and next friend

and

HENRY SMITH, REV. L. B. SMITH, MATTHEW L. BUMBRY, IRENE DUNLOP, EVA MAIDEN, ADDIE SCRANAGE, EUNICE PARKER, MRS. JAMES M. BEVERLY and GEORGE A. SMITH,

Plaintiffs,

v.

SCHOOL BOARD OF KING GEORGE COUNTY, VIRGINIA, and T. BENTON GAYLE, DIVISION SUPERINTENDENT,

Defendants.

FILED JUL 14 1946

E. K. MORAN, Clerk

Sara J. Carlton

Deputy Clerk

CIVIL ACTION NO. 631

COMPLAINT

1. (a) The jurisdiction of the court is invoked under Section 24(1) of the Judicial Code (28 U. S. C. A., Section 41 (1), this being a suit which arises under the Constitution and laws of the United States, viz., the Fourteenth Amendment of said Constitution and Sections 41 and 43 of Title 8 of the United States Code, wherein the matter in controversy exceeds, exclusive of interest and costs, the sum of $ 3,000.00.

(b) The jurisdiction of this court is also invoked under Section 24 (14) of the Judicial Code (28 U. S. C. A., Section 41 (14), this being a suit authorized by law to be brought to redress the deprivation under color of law, statute, regulation, custom and usage of a State, of rights, privileges and immunities secured by the Constitution, and of rights secured by the laws of the United States providing for equal rights of citizens of the United States, and of all other persons within the jurisdiction of the United States, viz., Sections 41 and 43 of Title 8 of the United States Code.

2. Plaintiffs further show that this is a proceeding for a declaratory judgment and injunction under Section 274 d of the Judicial Code (28 U. S. C. A. Sec. 400) for the purpose of determining a question in actual controversy between the parties, to-wit: The question of whether the custom and practice of defendants in denying, on account of race and color, plaintiffs and other Negro school children similarly situated residing in King George County, Virginia, the right and privilege of enrolling in, attending and receiving instruction in an accredited high school maintained and operated by defendants, who maintain and operate accredited high schools for white children similarly situated, is unconstitutional and void in violation of the Fourteenth Amendment to the United States Constitution, the laws of the United States and the Constitution and laws of the Commonwealth of Virginia.

3. Plaintiffs are citizens of the United States and of the State of Virginia, and residents of and domiciled in King George County therein. They are tax-payers of said County, of the State of Virginia and of the United

Nothing was cut off

States; are Negroes, and bring this suit in their own behalf, and allege that there is a common question of law and fact affecting the rights of all Negroe residing in King George County, Virginia, similarly situated, and a common re lief is sought and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, therefore bring this suit also on behalf of all other persons, citizens and residents of King George County, State of Virginia, similarly situat and affected, as will hereinafter more fully appear.

4. Defendant School Board of King George County exists pursuant t the Constitution and laws of the State of Virginia as an administrative depa ment of the State of Virginia discharging governmental functions (Constituti of Virginia, Article IX, Section 133; Code of Virginia, Chapter 33, Sections 611, 653a1-656, 666, 672), and is declared by law to be a body politic. Defendant T. Benton Gayle is Division Superintendent, and holds office pursuant to the Constitution and laws of the State of Virginia, as an administrative officer of the free public school system of Virginia (Constitution of Virginia, Article IX, Section 133; Code of Virginia, Chapter 33, Section 611). T. Benton Gayle is made defendant herein and is sued in his official capacity.

5. The State of Virginia has declared public education a State function. The Constitution of Virginia, Article IX, Section 129, provides:

> "Free schools to be maintained. The General Assembly shall establish and maintain an efficient system of public free schools throughout the State."

Pursuant to this mandate the General Assembly of Virginia has established a system of free public schools in the State of Virginia accord to a plan set out in Chapters 33 and 35 of the Code of Virginia of 1942 and

the present time continues to fail and refuse to equip or maintain any of the aforesaid facilities or equipment for the use of plaintiffs or any other Negro children or any other persons similarly situated, other than the white childr of King George County, mentioned above.

9. That the only high school which defendants have provided and ar maintaining for plaintiffs to attend in King George County is a school which is unaccredited by the State Board of Education and which has none of the abo mentioned advantages.

10. That in addition to the above-mentioned discriminations, defendants maintain and operate a large amount of space for the physical education and development of the white school children, while not maintaining or operating any space for the physical education and development of the colored school children, including plaintiffs.

11. That the buildings, school facilities and equipment operated a maintained for the education of the white school children is of the most mod type and design, and that the buildings, school equipment and facilities for the colored school children is of eld, worn-out and dilapidated construction and design and is not in any manner comparable to that maintained for the white school children.

12. That the average salary paid the teachers of the colored schoc children is approximately $ 1050 a year, and that the average salary paid th teachers of white school children is approximately $1400 a year; that the teachers employed by the School Board for the colored children are of less experience and qualifications than the teachers employed by said School Board of white teachers because of the discrepancy in the salaries paid.

13. That the individual infant plaintiffs, the individual parents who are plaintiffs, and all other Negroes in King George County, are thereb being wilfully discriminated against by the defendants, on account of their race and color, and further that they are being deprived of their rights

guaranteed by the Constitution and laws of Virginia and of the United States.

14. That public education is being offered and provided for the white children of said County from the 1st through the 12th grade in said County, while such educational opportunities as are provided for Negroes are only offered from the 1st through the 11th grade, and as one result these Negro children, upon the completion of said courses cannot enter college unconditionally.

15. Plaintiffs and those similarly situated and affected, on whose behalf this suit is brought, are suffering irreparable injury and are threatened with irreparable injury in the future by reason of the acts herein complained of. They have no plain, adequate or complete remedy to redress the wrongs and illegal acts herein complained of other than this suit for a declaration of rights and an injunction. Any other remedy to which plaintiffs and those similarly situated could be remitted would be attended by such uncertainties and delays as to deny substantial relief, would involve multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience not only to the plaintiffs and those similarly situated, but to defendants as governmental agencies.

16. There is between the parties an actual controversy as hereinbefore set forth.

WHEREFORE, plaintiffs respectfully pray the Court that upon the filing of this complaint, as may appear proper and convenient to the Court, the Court advance this cause on the docket and order a speedy hearing on this action according to law, and that upon such hearings:

(1) This Court adjudge and decree and declare the rights and legal relations of the parties to the subject-matter here in controversy, in order that such declaration shall have the force and effect of a final judgment or decree.

(2) This Court enter a judgment or decree declaring that the policy, custom, usage

and practice of defendants in establishing, maintaining and operating an accrdited high school available for instruction for white school children, together with an adequate library, courses in the sciences and economics, and adequate bus facilities for the white school children, while failing to provide, establish or maintain such school facilities and instruction for Negro school children in King George County on account of their race and color, is a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, and is therefore unconstitutional and void.

(3) This Court issue a permanent injunction forever restraining and enjoining the defendants and each of them from denying, failing or refusing to provide for Negro school children of King George County on account of race and color, courses of study, modern facilities, adequate bus transportation and opportunities for physical and cultural development as are provided for white school children of King George County, similarly situated.

(4) This Court issue a permanent injunction forever restraining and enjoining the defendants and each of them from making any distinction on account of race and color in providing for the public education of Negro and white school children of King George County.

MARGARET SMITH, an infant, by Henry Smith, her father and next friend,

VERA JEAN SMITH and LANDON B. SMITH, JR., infants, by Rev. L. B. Smith, their father and next friend,

MATTHEW V. BUMBRY, an infant, by Matthew L. Bumbry, his father and next friend,

LAWRENCE PARR and MABLE PARR, infants, by Irene Dunlop, their mother and next friend,

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LEWIS BEVERLY, an infant, by Mrs. James M. Beverly, his mother and next friend,

MARTHA SMITH, an infant, by George A. Smith, her father and next friend,

and

HENRY SMITH, REV. L. B. SMITH, MATTHEW L. BUMBRY, IRENE DUNLOP, EVA MAIDEN, ADDIE SCRANAGE, EUNICE PARKER, MRS. JAMES M. BEVERLY, GEORGE A. SMITH,

Plaintiffs,

By Martin A. Martin
Of Counsel.

OLIVER W. HILL
623 N. Third Street
Richmond, Virginia

MARTIN A. MARTIN
623 N. Third Street
Richmond, Virginia

SPOTTSWOOD W. ROBINSON, III,
623 N. Third Street
Richmond, Virginia

Counsel for Plaintiffs

State of Virginia,

County of King George, to-wit:

I, Oliver W. Hill, a Notary Public for the State at Large, do hereby certify that Rev. L. B. Smith personally appeared before me in my State aforesaid, in the County of King George, and made oath that the allegations contained in the foregoing complaint, which he makes of his own knowledge are true, and that all other matters therein stated he believes to be true.

Given under my hand this 7th day of October, 1946.

My commission expires 22nd day of October, 1946

Oliver W. Hill
Notary Public.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ARTHUR M. FREEMAN, et al	:	
	:	
v.	:	Richmond Civil Action #644
	:	
COUNTY SCHOOL BOARD OF CHESTERFIELD COUNTY, et al	:	
	:	
MARGARET SMITH, an infant, etc., et als	:	
	:	
	:	
v.	:	Richmond Civil Action #631
	:	
SCHOOL BOARD OF KING GEORGE COUNTY, VIRGINIA, et al	:	
	:	
ALICE LORRAINE ASHLEY, an infant, etc., et als	:	
	:	
	:	
v.	:	Newport News Civil Action #175
	:	
SCHOOL BOARD OF GLOUCESTER COUNTY, et al	:	
	:	

These three cases involve charges that the school boards of Chesterfield, King George and Gloucester Counties have discriminated against the plaintiffs on account of their race and color in violation of the Fourteenth Amendment to the Constitution of the United States.

The plaintiffs in case No. 644 are colored school teachers employed by the School Board of Chesterfield County, who claim that by reason of their race and color they are paid a salary less than that paid comparable white teachers employed by the Board of that County.

Cases Nos. 631 and 175 involve plaintiffs who are colored pupils in the public schools and the parents, next

friends and guardians of colored pupils in King George County and Gloucester County, respectively. The complaints in those cases are similar in substance and allege that the school boards of those counties have discriminated against the plaintiffs on account of their race and color in that the public schools maintained for the colored children are greatly inferior in construction, equipment and facilities, instructional personnel, libraries and transportation service to those provided for the use of white children.

While the factual issues presented in cases Nos. 671 and 175 differ from case No. 644, the legal questions involved are the same.

The legal principles applicable to the instant cases have been exhaustively set forth in numerous decisions of the Courts. Two of the leading cases from this Circuit are Alston et al v. School Board of the City of Norfolk, et al, 112 Fed. (2d), 992, decided June 18, 1940, and Mills v. Board of Education, 30 Fed. Supp., 245, from the District of Maryland, decided November 22, 1939, by Judge Chesnut. Also applicable are the views expressed in Reynolds v. Board of Public Instruction for Dade County, 148 Fed. (2d), 754, and Morris v. Williams, 149 Fed. (2d), 703. While it is true that those cases involved alleged discrimination with respect to salaries of colored teachers, there can be no serious contention to the effect that the principles there set forth do not apply with equal force to discrimination in providing inadequate facilities. Missouri et rel. Gaines v. Canada, 305 U.S., 337; Ada Lois Supuel v. Board of Regents of the University of Oklahoma, Supreme Court, Law Ed. Adv. Opinions (1947-48), Vol. 92 (No. 7, page 256).

The legal principles are so well settled by the cases cited and the long line of decisions of other courts that I do not deem it necessary to enter into a discussion

of the law. No doubt exists that the governmental authorities of the state may not discriminate against any person or class on account of race or color. Missouri ex rel. Gaines v. Canada, supra; Ada Lois Supuel v. Board of Regents of the University of Oklahoma, supra. It follows that when a state, as has Virginia, provides at public expense free educational opportunities for its children, those provided for members of one race must be of substantially the same type as those provided for members of another race. In view of this the only real controversy relates to the factual situations presented in specific cases.

The facts concerning the three actions will be separately discussed.

ARTHUR M. FREEMAN, et als v. COUNTY SCHOOL BOARD OF CHESTERFIELD COUNTY, et al - Richmond Civil Action No. 644

Prior to 1941, the defendant school board maintained separate salary schedules for white and colored teachers and principals, under which the salary scale for colored teachers was substantially less than that of the white teachers. In that respect the situation in Chesterfield County prior to 1941 was almost identical with the facts in the Alston case. In 1940 the salary of each colored teacher was increased in the amount of $100. per year as a result of protest by colored teachers and other citizens of the county. Thereafter the school board abolished the separate salary schedules and established a schedule applicable to all teachers of the county, in which no reference is made to the race or color of the teacher and upon its face the wchedule applies to all teachers alike.

A further controversy arose in 1946, at which time the school board took the position that no discrimination existed. This action was subsequently filed.

The salary schedule in effect for 1946-1947 fixes minimum salaries for various positions ranging from $1250. to $1900. per annum. It is practically conceded that prior to 1941 discrimination existed. Therefore the question presented is whether discrimination is at present practiced and is likely to continue.

Numerous statistics were filed in evidence. It is shown that for the years 1942-43 and 1945-46 no white teacher received less than the highest salary received by a colored teacher. For the year 1946-47 only 9% of the white teachers received salaries lower than the highest salary paid any colored teacher.

While it is true that the salaries paid colored teachers have been consistently increased, those paid white teachers have increased also. 96% of the white teachers received salaries above the minimum level set for the salary schedule, whereas only 36% of the colored teachers received salaries above the minimum. 91% of the white teachers received salaries equal to or higher than the maximum paid colored. There appears during this period a consistent increase in the number of colored teachers holding degrees. In 1943-44 the percentage was 39 for colored and 35 whites. In 1945-46, 52% of the colored teachers held degrees compared with 27% of white teachers. In 1946-47 the percentage of the colored teachers remained the same as compared with 29% for white teachers. The average salaries for 1947-48 are as follows:

White male principals	$3625.00
Colored male principals (only one)	2300.00
White female principals	2413.12
Colored female principals	1829.00
White male high school teachers	2508.33
Colored male high school teachers	1850.00
White female high school teachers	1969.92
Colored female high school teachers	1920.00
White male elementary teachers	2600.00
White female elementary teachers	1939.50
Colored female elementary teachers	1769.79

There are four white male principals, whose salaries range from $2550. to $4550. There are eight white female principals, whose salaries range from $2125. to $3080. The salary range of the thirteen colored female principals is from $1650. to $2000., only two of them being in the higher bracket. One of those has had twenty-three years' experience all in Chesterfield County, and the other has had twenty-one years' experience, sixteen being in the county. The lowest paid white female principal has had twenty-three years' experience, twelve being in the county. The salary range of the one hundred white female elementary teachers is from $1700. to $2125. There is only one white male elementary teacher and his salary is $2600. There are no colored male elementary teachers, but the twenty-four female colored elementary teachers received from $1700. to $1900. While there is, of course, a variation as to the length of teaching experience and employment in the county system, the disparity is not sufficiently great to deserve consideration. There is only one colored male high school teacher and his salary is $1850. There are six white male high school teachers, one of whom is paid $1900., one $2250., one $2550., two $2750., and one $2850. There is one white female elementary supervisor, whose salary is $3350., and one colored female elementary supervisor, whose salary is $2800. The rating of the various teachers is suggested by the Division Superintendent and adopted by the Board. The Superintendent testified that in making his recommendations he takes into consideration the factors set out in the schedule and endeavors to give consideration to the qualifications of the various individuals based upon his knowledge and observation of the teachers, a considerable number of whom have been employed by the county for many years. Upon its face the test provided by the schedules

appears fair and reasonable and a practical manner of determining qualifications. At the hearing I was favorably impressed with the arrangement. However, upon a analysis of the facts I have reached the conclusion that the test as applied is not free of discrimination. There are employed in the school system 195 members of the instructional personnel, not including two elementary supervisors and one visiting teacher. The Superintendent does not claim to spend a great deal of time in the company of any of the teachers. There is no method of conducting examinations and rating the teachers such as is described in the case of Reynolds v. Board of Instruction for Dade County, supra, but upon the contrary the entire responsibility is placed upon one person, the Division Superintendent, who has at best a difficult and trying position in discharging the many other duties devolving upon him.

Upon the whole, it appears from the evidence that there is a discrimination existing in Chesterfield County between salaries paid white and colored teachers. The lower salaries consistently paid the colored teachers over a period of years. coupled with the admitted discrimination which existed prior to 1941, lead me to the conclusions that the discrimination existing is due solely to race and color of the plaintiffs.

A declaratory judgment and injunction in accordance with the views here expressed will be entered.

MARGARET SMITH, an infant, by Henry Smith, her father and next friend, et al v. SCHOOL BOARD OF KING GEORGE COUNTY, VIRGINIA, and T. BENTON GAYLE, Division Superintendent - Richmond Civil Action No. 631

At the trial of this case considerable evidence was introduced concerning the buildings, facilities and equipment furnished the white children as compared with

those furnished the colored children. There are a number of school buildings provided for the white children and a number for the colored children. It would appear that some of the buildings occupied as elementary schools by the white children are about on a par with those furnished the colored children. For example, there does not seem to be any marked difference between the Madison white school and the Lamb's Creek colored school, either as to interior or exterior. On the other hand, the Shiloh elementary white school appears in a marked degree superior to the Welcome elementary colored school. The white elementary school at King George is obviously superior to the colored elementary school located at the King George Training School.

There are only two high schools in the county, the one for white children at King George and the King George Training School for colored children. The greatest difference appears to be between these two. The fact that the King George School is constructed of brick while the Training School is frame, is not of itself material. Along with the other evidence in the case there was a number of photographic exhibits, a casual look at which clearly shows a marked difference in the appearance and construction of the two buildings from an exterior view. With respect to the interior the evidence discloses that the King George school has running water, modern toilet facilities, a central heating plant, a comparatively modern cafeteria and a gymnasium. The Training School has outside toilets, a cafeteria greatly inferior to the one at King George, no gymnasium and no central heating plant, the rooms being heated by stoves.

The evidence shows that the library, laboratory and laboratory equipment furnished the white children are superior to those provided for the colored children. While there was some uncertainty in the evidence as to the value

of the books in the libraries of the respective schools, it is clear that for the years 1943-46, inclusive, there were at least four times as many volumes in the white library as in the colored. It does not appear that there was any such equipment in the elementary schools, either white or colored, but King George high school had laboratory equipment for the years 1943 through 1946 valued at approximately $2500., while the Training School (colored high) had no laboratory equipment worthy of mention. There appears an inequality in the type of classes offered to the white children and those offered the colored, in that some classes taught in the white high school are not offered at all in the colored high school. It is apparent that certain science classes can not be offered advantageously in the colored school because of a lack of equipment and that certain business classes can not be offered there to advantage for the same reason.

While the values of the sites and buildings used for school purposes do not necessarily determine the value of the instruction received, it does throw some light upon the question involved. In annual reports the State lists the following valuations for the sites and buildings in King George County: The 1943-1944 report gives the value of sites and buildings used for white schools to be $236,000., and of furniture and equipment to be $12,000. For the same year the value of sites and buildings used for colored schools is placed at $18,000., and furniture and equipment valued at $3,000. The figures for this particular year, however, are to be considered in light of the fact that one of the buildings and equipment included is a school building erected in King George County by the Federal Government for white children and owned by the Government. This particular building is not included in the reports for subsequent years and therefore the later reports more

accurately reflect the situation with respect to values.

The report for 1944-1945 places the valuation of $101,000. on buildings and sites and $12,000. on furniture and equipment used for white children, against $22,200. for buildings and sites and $3,000. for furniture and equipment provided for colored. For that year the school enrollment consisted of 744 white children and 461 colored children.

The 1945-1946 report gives a value of white buildings and sites of $102,173. and of furniture and equipment therein of $13,500. Compared with this are the colored school buildings and sites valued at $24,200. and furniture and equipment of $4,000. The school population that year was 797 white as compared with 454 colored.

With respect to the allegations of the complaint that the plaintiffs are discriminated against because the King George Training School is not an accredited high school while the King George white school is accredited, it is my view that this question is so closely interwoven with the situation respecting buildings, equipment, facilities and other related matters as to be practically covered by what has been said.

There is an allegation respecting discrimination in salaries between the white and colored teachers, it being alleged that such discrimination results in less experienced and qualified teachers being employed to instruct the colored children. It is to be borne in mind that this is not an action concerning salary discrimination as such by the teachers, but an allegation by the children of a lack of qualified teaching personnel. There was not a great deal of evidence introduced upon this question and I do not feel in a position to pass upon the question of whether a discrimination exists in respect to salaries as such. That question is not involved here but in my opinion the evidence

fails to show that the plaintiffs are furnished inexperienced, unqualified teachers.

It is not the function of the Court, nor within its power to dictate to the school authorities what type of buildings and equipment shall be provided nor what courses of instructions should be offered. Mills v. Board of Education of Anne Arundel County, supra, and Reynolds v. Board of Public Instruction for Dade County, supra. The sole question with which the Court is concerned is whether the opportunities to obtain an education provided for all the school children for whom the authorities are responsible, are substantially equal. In undertaking to arrive at a proper determination of that question the Court is called upon to consider evidence as to the courses offered and the buildings, laboratory equipment, library facilities and other related elements provided by the school authorities.

Upon a consideration of all the evidence introduced pertaining to the school system in King George County, it is clear that the opportunities afforded the colored children are not substantially equal to those furnished the white children. The testimony of the Division Superintendent, Mr. Gayle, one of the defendants, is significant. In response to a question by counsel he stated in substance that it has been generally felt and believed that the types of instruction offered the two races were given with the view of equipping white and colored children for different types of future employment.

It should be added that in elaborating upon that statement he apparently indicated a realization that such position is untenable.

A declaratory judgment will be entered and an injunction granted in this case in accordance with the views here expressed.

ALICE LORRAINE ASHLEY, an infant, by A. W. ASHLEY, her father and next friend, et al v. SCHOOL BOARD OF GLOUCESTER COUNTY, VIRGINIA, and J. WALTER KENNY, Division Superintendent - Newport News Civil Action No. 175

As before stated, the allegations of the complaint filed in this action closely resemble those in the King George case. In discussing the factual situation attention will be first given to those allegations which are not sufficiently supported by evidence to require much discussion.

While there is evidence to the effect that some of the colored children are required to stand on the bus while going to and from school, this situation appears to prevail also in the case of the white children. The same observation applies with respect to heat in the school buses generally. It appears that they are about uniformly heated and while it may be true that the bus service in the county is not altogether adequate it must be remembered that this is not the issue before the Court. The only issue here is whether equal facilities are provided. It appears that the bus service furnished the children ofboth races is approximately equal.

There is an allegation to the effect that the colored children are discriminated against by being furnished teachers and principals with less qualifications than those furnished white children due to smaller salaries and a greater turnover among the colored teachers due to unsafe and unhealthy working conditions. As in the King George case, the question here is not whether the teachers are being discriminated against in the matter of salaries since the question of salary is only incidental in this connection as is the allegation concerning unsafe, unhealthy and unfavorable working conditions. The evidence does not disclose that the colored teachers and principals in Gloucester

County are less qualified to discharge their duties than the white teachers and I find no discrimination between the races upon that point.

Turning to the other matters of alleged discrimination, it would appear that while the factual situation is not identical, to a marked degree, the same situation exists in Gloucester County with respect to school buildings, heating facilities and equipment as exists in King George County. In some particulars the inequalities appear less pronounced but at the same time substantial.

There are seven colored schools in Gloucester County as compared with four white schools. It would seem that some of the colored schools compare favorably with some of those provided for the white children. For example, Severn school provided for white children seems to be fairly comparable to Bena-Hays colored school. The Court does not undertake to compare all the characteristics of the two sets of schools but in dealing with the over all situation presented, it is obvious that the buildings, equipment, facilities and sites furnished the colored children are substantially inferior to those furnished the white children. Again using the valuation of properties as one of the measures of comparison, it appears that for the years 1943 to 1947, inclusive, the value of buildings furnished white children has been at least twice the value of those provided for colored children, and for the greater portion of the time the valuation of the former has been considerably more than twice that of the latter. The school attendance for those years follows:

1943-44	-	white 1300;	colored 723;
1944-45	-	white 1241;	colored 817;
1945-46	-	white 1259;	colored 690;
1946-47	-	white 1275;	colored 704.

In this connection the fact that there are several colored schools and only four white schools becomes signifi-

cant. In arriving at a valuation of buildings consideration necessarily is given to type of construction, heat and plumbing installations, laboratory facilities, recreational facilities and other related matters. This is rather forcefully illustrated in the interior and exterior views portrayed by phytographs filed as exhibits.

Of interest also is the per capita cost of instruction of the two principal white schools, Achilles and Botetourt, as compared with such cost of operating the Gloucester Training School, which is the principal school operated for colored children. From 1943 to 1946, inclusive, the average annual cost was as follows:

Achilles		Botetourt		Gloucester Training	
High	Elementary	High	Elementary	High	Elementary
$80.14	$39.58	$81.63	$43.08	$51.49	$22.78

With respect to library, laboratory equipment and furniture and fixtures, the situation is again quite similar to that in King George and it is obvious that that furnished the white schools is superior to that in the colored schools.

Considering the evidence as a whole and without undertaking to further enlarge upon it in this memorandum, I am led to the conclusion that there is discrimination against the colored children by the school authorities for Gloucester County in the particulars here enumerated.

A declaratory judgment and injunction in accordance with the views here expressed will be entered.

I desire to make it clear that the Court is not undertaking to supervise or direct the proper authorities with respect to what steps must be taken to eliminate the discrimination. The scope of this opinion is limited by the authority of the Court to find from the evidence and legal principles applicable whether unlawful discrimination exists and whether the plaintiffs are entitled to injunctions against its continuance.

I am aware of the familiar contention that the financial difficulties facing the counties in their efforts to equalize facilities and opportunities for the races are so great as to raise a doubt as to their ability to do so; and that the greater portion of the tax burden falls upon the white population. While I am not unmindful of the practical problems presented, a superficial consideration of these suggestions is sufficient to bring a realization that under the prevailing law neither has any bearing upon the legal and factual questions here involved.

It is intended that the findings of fact and conclusions of law here expressed be in compliance with Rule 52 of the Federal Rules of Civil Procedure, but it is suggested that counsel in each case prepare and submit separate and more explicit suggested findings of fact, if they so desire, along with drafts of proposed orders to be entered in each case.

STERLING HUTCHESON
United States District Judge

April 7, 1948