IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 191

DOROTHY E. DAVIS, ET AL.,
Appellants,
v.
COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL,
Appellees.

Appeal from the United States District Court for the Eastern District of Virginia

REPLY BRIEF FOR APPELLANTS

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MISCELLANEOUS

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ARGUMENT

I.

THE DECISIONS OF THIS COURT UPON WHICH APPELLANTS RELY ARE CONTROLLING

Appellees assert that the cases relied upon by appellants (Appellants' Brief, pp. 9-11) are not in point and that *Plessy* v. *Ferguson,* 163 U. S. 537, and *Gong Lum* v. *Rice,*

275 U. S. 78, control here (Appellees' Brief, pp. 13-15). We stand on our brief in chief that the *Plessy* and *Gong Lum* cases are not controlling here (Appellants' Brief, pp. 13-15).

Appellees argue that different legal considerations obtain as between (a) "situations where the parties seeking relief were wholly denied the right in question without being afforded 'separate but equal' treatment" and (b) those "where coordinate facilities or opportunities are provided" (Appellees' Brief, p. 14). In this vein they attempt to distinguish *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337, and *Sipuel* v. *Board of Regents,* 332 U. S. 631.

The difference claimed is constitutionally irrelevant. Provision for Negroes of facilities unequal to those afforded whites is as much a denial of the equal protection of the laws as is a total failure to provide for Negroes facilities which are afforded whites. The consequences of the *Gaines* and *Sipuel* cases are unchanged by provision for separate but educationally unequal facilities and opportunities. *Sweatt* v. *Painter,* 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637.

Appellees seek to dismiss the *Sweatt* decision as inapplicable on grounds that (a) "the considerations relative to education at the graduate level are entirely different from those bearing on the high school" and (b) "the Court there found inequality because of circumstances which have no substantial bearing here." (Appellees' Brief, p. 15). They claim that the *McLaurin* case "was a case of manifest harshness, and the facts there presented provide adequate distinction here." (Appellees' Brief, p. 15). Neither of these grounds affords adequate distinction. In both of those cases this Court's effort was to determine whether the practice complained of in fact resulted in a denial of equal educational opportunities. Here the record discloses, and the District Court found, that equal educational opportunities are not available. Certainly, the legal issue is the

same where segregation diminishes the Negro's share of the benefits of a high school education as where segregation diminishes his share of the benefits of a graduate education.

II.

THE LONG CONTINUED ENFORCEMENT OF EDUCATIONAL SEGREGATION IN VIRGINIA IS IRRELEVANT.

Appellees suggest that the fact that racial segregation in public education has been Virginia's practice for more than eighty years is important (Appellees' Brief, pp. 2, 17, 21). The evidence of appellees shows that Negro students have been victimized by discrimination at least since 1918 (R. 394-400). Appellees concede that discrimination of this kind violates rights secured by the Fourteenth Amendment (Appellees' Brief, p. 29). Eighty years of such discrimination could not make that practice valid. Similarly, the duration of the segregation practice is irrelevant to a determination of its constitutionality. "Illegality cannot attain legitimacy through practice." *Inland Waterways Corporation* v. *Young,* 309 U. S. 517, 524.

Indeed, most of the racially invidious practices which this Court has stricken down had existed for many years: exclusion of Negroes from public graduate and professional schools, *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337; *Sipuel* v. *Board of Regents,* 332 U. S. 631; *Sweatt* v. *Painter,* 339 U. S. 629; residential segregation by court enforced restrictive covenants, *Shelley* v. *Kraemer,* 334 U. S. 1; systematic exclusion of Negroes from jury service, *Hale* v. *Kentucky,* 303 U. S. 613; *Pierre* v. *Louisiana,* 306 U. S. 354; *Patton* v. *Mississippi,* 332 U. S. 463; restrictions upon the right to vote; *Lane* v. *Wilson,* 307 U. S. 268; *Smith* v. *Allwright,* 321 U. S. 649; segregation of interstate passengers by statute or carrier regulations, *Morgan* v. *Virginia,* 328 U. S. 272; *Henderson* v. *United States,* 339 U. S. 816. See

Atlantic Coast Line Railroad Co. v. *Chance*, 186 F. 2d 879 (CA 4th 1951), cert. denied 341 U. S. 941, 198 F. 2d 549 (CA 4th 1952), cert. denied ..... U. S. ..... (November 10, 1952).

III.

THE DISTRICT COURT SHOULD HAVE ENJOINED THE ENFORCEMENT OF THE SEGREGATION LAWS

Appellees contend that even though the physical high school facilities for Negro students are presently unequal to those for white children, this inequality will be remedied by September, 1953, and that the District Court was correct in suspending appellants' constitutional rights until then (Appellees' Brief, pp. 36-39).

Under even their own concept, appellees are constitutionally obligated to provide equal facilities. For many years they have disregarded that obligation and now seek to avoid the consequences. Their strenuous effort to remedy the present conditions serves but to emphasize the gravity of current physical inequalities.

Appellants cannot concur in appellees' statement (Appellees' Brief, p. 33) that "equality now exists for all practical purposes as to curricula." Comparison of present curricula in the three high schools in the county, as set forth in their respective Preliminary Annual High School Reports for the 1952-53 session, now on file in the State Department of Education of Virginia, discloses that there are a number of courses now taught in one or more of the white high schools which are not taught in the Negro high school. And it is apparent that equalization of physical facilities will not eliminate other educational inequalities which are inherent in the practice of segregation.

Proof that appellees have drafted and placed in motion plans seeking to equalize the physical facilities is no bar to a decree enjoining segregation in the public schools. Denial of prompt relief cannot be reconciled with the pronouncements of this Court. Since the right to the equal

protection of the laws is "personal and present," appellants cannot be denied the only effective relief that is presently available. *Sipuel* v. *Board of Regents,* 332 U. S. 631; *Sweatt* v. *Painter,* 339 U. S. 629.

IV.

APPELLEES' PREDICTIONS AS TO THE CONSEQUENCES OF DESEGREGATION ARE BELIED BY EXPERIENCE.

Appellees say they do not seek "to threaten or to coerce" (Appellees' Brief, p. 29), but the consequences which they assign to desegregation can hardly be termed an appeal to reason. Similar predictions were made in the brief of eleven southern states, including Virginia, *amici curiæ* in support of the respondents, in *Sweatt* v. *Painter,* 339 U. S. 629, where it was said (p. 11):

> "Briefly summarized, the Southern States know that intimate social contact in the same schools will lead to withdrawal of public support of the schools, to physical and social conflicts, and to discontent and unhappiness for both races."

Despite this prediction, desegregation has taken place in universities and colleges in the South, including Virginia, without these consequences.

Efforts to conform existing patterns to the Constitution have almost invariably been accompanied by forecasts of dire consequences. The evidence derived from observations and systematic study of situations of desegregation is summarized and analyzed in the Appendix to Appellants' Brief (pp. 13-17). It potently demonstrates that appellees' claims are unfounded.

Appellees say that desegregation experience at the university level affords no precedent for high school desegregation because the former involved too few Negroes and claim that the problem becomes acute when Negroes con-

stitute a substantial portion of the school population (Appellees' Brief, p. 30). The experience of integration in the armed services furnishes concrete evidence that this position is without merit.

The President's Committee on Equality of Treatment and Opportunity in the Armed Services found that "in the relatively short space of five years the Navy had moved from a policy of complete exclusion of Negroes from general service to a policy of complete integration in general service."[1] On January 1, 1950, the Negro enlisted strength in the Navy was 15,747 out of a total of 330,098, or 4.7 per cent, of which total 6,647, or 2 per cent, were in general ratings.[2] The Committee reported that[3]

> "Confronted by the Navy experience, some military officials maintained that it did not provide a reliable basis for generalization because of the relatively small number of Negroes involved. If, these officials suggested, Negroes had comprised 7 to 10 percent of the men in general service rather than 2 percent, the Navy experience might have been quite different.
>
> "The Committee was skeptical of this argument, but it could not gainsay it without concrete evidence to the contrary. The experience of the Air Force has supplied that evidence."

On January 31, 1950, after the first eight months of its integration program, there were 25,702 Negroes in the Air Force of whom 74 per cent had been integrated.[4] The number of integrated units totaled 1,301; the number of predominantly Negro units remaining was only 59.[5] The Committee reported that experience bore out the conclusion that[6]

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[1] *Freedom to Serve*, Report of President's Committee on Equality of Treatment and Opportunity in the Armed Services (1950), p. 23.
[2] Id. at 24.
[3] Id. at 33.
[4] Id. at 43.
[5] Id. at 43.
[6] Id. at 44.

> "Integration of the two races at work, in school, and in living quarters did not present insurmountable difficulties. As a matter of fact, integration in two of the services had brought a decrease in racial friction."

Integration is now the official policy of the Army, where Negroes constitute 9 to 10 per cent of the total enlisted personnel.[7] The success of integration in the armed services furnishes conclusive proof that, irrespective of the number involved, desegregation can occur even in areas where there is far more personal association than in schools.

Appellees also discount successful desegregation in universities on grounds that immaturity of the student and stronger parental influence place the high school in a special category (Appellees' Brief, pp. 28-29). Here again the claim is refuted by experience. Recently, desegregation has taken place at both the elementary and secondary school levels in areas where segregation had existed for long periods of time.[8] Speaking of desegregation recently occurring in a Baltimore high school, Maryland's Governor Theodore R. McKeldin said[9]

> "For a long time, * * * the City of Baltimore opposed the employment of Negro policemen. But when a number of Negroes were assigned to police duty, * * * 'the evils which had been predicted did not materialize—the heavens did not fall and there was no increase in racial tension.'
>
> "Similarly, * * * the established practice in the Baltimore public school system had been to segregate the two races. When the school board decided to open the doors of a high school to eligible Negroes because in no other way could equal facilities be established, * * * the 'lurid' predictions of racial conflict failed to

[7] Id. at 61-63.

[8] For a review of a number of instances of recent elementary and high school desegregation, see Note, Grade School Segregation: The Latest Attack on Racial Discrimination, 61 *Yale Law Journal*, 730, 740, notes 44-47 (1952).

[9] As reported in *N. Y. Times*, November 10, 1952.

materialize, and experience is showing that white and Negro youths get along harmoniously.

"'The fact is that in this instance, as in the case of other prejudices, * * * what was considered an immutable pattern was found when challenged to have no validity either in social justice or the feelings of the community.'"

The short answer to the claim that desegregation will cause many Negro teachers to lose their jobs (Appellees' Brief, p. 30) is that the rights asserted by these appellants are personal to the complaining students and parents and can in no wise be affected by such consideration. The fallacy in the argument is even greater. The Fourteenth Amendment, which prohibits racial discrimination in the payment of teachers' salaries, *Alston* v. *School Board,* 112 F. 2d 992 (CA 4th, 1940), cert. denied 311 U. S. 693, would likewise forbid racial discrimination in the employment of teachers. Moreover, we invite the Court's attention to the experience in New Jersey where desegregation increased the job opportunities for Negro teachers.[10]

[10] "Until recently, most opportunities for colored teachers in New Jersey existed in the areas where segregated schools were located. This is shown by a study of the figures regarding the number of colored teachers employed in New Jersey in 1945-46. In that year, there were 455 elementary and 24 secondary colored teachers in the public schools for a total of 479. At that time, of these, 395 elementary and 20 secondary, for a total of 415 teachers, were engaged in the nine counties that maintained segregated schools. A recent study shows that today in these same nine counties, there are 391 elementary and 34 secondary, for a total of 425 colored teachers in these same areas. On the other hand, while there was a total of 479 colored teachers in all the public schools of the State in 1945-46, today the same study shows 582 elementary and 63 secondary for a total of 645 or a state-wide gain of 166 colored teachers during the last six years. It would seem from further examination of the figures that while teachers did not lose their jobs as the result of integration, there was a temporary slow-up in hiring additional colored teachers in some of the districts involved. The figures for the State as a whole, however, show a decided gain in this field of employment. As a result of the same recent visits referred to earlier by staff members of the Division to all of the school districts involved in the New Jersey program, reports indicate a very healthy attitude toward employment of all future teachers on merit and not on race." Joseph L. Bustard, The New Jersey Story: The Development of Racially Integrated Public Schools, 21 *Journal of Negro Education,* 275, 284 (1952).

It bears repeating that none of the dire predictions made to this Court by the proponents of segregation and discrimination have ever materialized. It is evident that the issues in this case should be examined free of the pressures and restraints which appellees seek to inject.

V.

APPELLEES' ASSERTIONS AND CONCLUSIONS AS TO THE COUNTY AND STATE EDUCATIONAL SITUATIONS AND EFFORTS TO EQUALIZE EDUCATION FOR NEGROES ARE ERRONEOUS.

Appellees labor to demonstrate their good faith and assert that they have in the past attempted and now are effecting county-wide and state-wide educational equality for Negroes (Appellees' Brief, pp. 18-21, 34-35). This does not meet the issue in this case or disprove appellant's thesis that educational inequality is an inseparable concomitant of educational segregation. Furthermore, the true picture in the county and the state is not what appellees draw.

A. The County Picture

The District Court found that the Negro high school is inferior to the white high school as to buildings, facilities, curricula and buses (R. 622, 624). The evidence demonstrated that the differentials are substantial and themselves rendered it impossible for Negro students to obtain a high school education equal to that afforded white students (R. 80-120; 122-131).

Appellees attempt to escape indictment on this count by pointing to the fact that the 1951 enrollment of Negro high school students was 223 per cent of the 1941 enrollment while during the same period the white high school enrollment declined 25 per cent—an increase they contend was unexpected (Appellees' Brief, pp. 4, 34). The smaller 1941 Negro high school enrollment did not justify the dis-

criminations which for many years have been made against those Negro students who were in school. *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337. Nor does the contention that the increase was unexpected bear scrutiny. Virginia requires its school boards to take a quintennial census of all persons of school age residing in each county and city, and to gather statistics relating to the interests of education in their respective districts.[11] The published school census figures show that in Prince Edward County the potential Negro school enrollment—children between 7 and 19 years of age—has greatly exceeded the potential white school enrollment for a number of years:[12]

	Census Year			
	1935	1940	1945	1950
Negro	2,948	2,298	2,296	2,252
White	2,040	1,929	1,639	1,537
Negro/White Ratio	1.4	1.2	1.4	1.5

It is evident that excesses of such size and duration were reflected at both the high school and elementary school age levels and refute the contention that the increase was unexpectable.

The history of high school education in Prince Edward County is one of gross discrimination against Negro students. In 1918, when the present Superintendent took office, there was a high school for white students (R. 394). It was not until 1927 that any such provision was made for Negro students (R. 394). In that year, a Negro combination elementary-high school was provided (R. 394). This

[11] Virginia Code, 1950, Sec. 22-223 to 22-229.

[12] 20 Annual Report of Superintendent of Public Instruction No. 3, September 1937, Table IX, Summary of School Census, 1935, at p. 137; 24 Annual Report of Superintendent of Public Instruction No. 3, September 1941, Table 20, School Census, 1940, at pp. 224-225; 30 Annual Report of Superintendent of Public Instruction No. 3, September 1947, Table 56, School Census, 1945, at pp. 264-265; 33 Annual Report of Superintendent of Public Instruction No. 3, September 1950, Table 57, School Census, 1950, at pp. 266-267. These reports are published annually by the Commonwealth of Virginia, an appellee here.

school was not accredited by the State until 1931 (R. 397). Unlike the Farmville High School for whites, neither this school nor its successor, the Moton High School, earned regional accreditation (R. 119). Although white high school students have been afforded gymnasium facilities since 1927 and cafeteria facilities since 1936, no such facilities have yet been afforded Negroes (R. 401-402). The Farmville High School, constructed in 1936, was designed to accomodate more than twice its then enrollment, but the Moton High School, constructed three years later, was designed to accomodate only 25 more students than its enrollment at the time of construction (R. 401-402). Free school transportation has been afforded white students since 1924, but was not afforded Negro students until 1938 (R. 395). These are among the many inequalities that have existed through the years.

Appellees point to plans for the new Negro high school which they urge will, upon completion, provide better facilities than those now provided white students (Appellees' Brief, p. 35). This ignores the plans for new white construction in the county. When all the presently proposed new construction is completed (D. Ex. 96, R. 359), $2,187.50 per white high school student will be invested in white high school property while only $1,792.11 per Negro high school student will be invested in Negro high school property—a ratio of 82 cents per Negro student for every dollar invested per white student (R. 577; P. Ex. 102, Table 17, R. 573). Thus, the superiority of Negro facilities will only be temporary, and the familiar pattern again will obtain.

This is the picture in Prince Edward County, present, past and future. The single theme portrayed is that segregation in public schools inevitably perpetuates inequality.

B. The State Picture

Here appellees contend that "substantial inequality no longer exists" (Appellees' Brief, p. 18). Even if such

were the fact, it would be irrelevant to this case, which involves the personal constitutional rights of Negro high school students in Prince Edward County. But such is not the fact.

The Present Picture:

This is the present situation in Virginia as to physical facilities (Pl. Ex. 102, Table 14, R. 573):

	1950-51	
	White	Negro
Enrollment:	464,330	160,811
Percentages:	74%	26%
Value of School Property:	$	$
Sites and Buildings:	170,285,836	36,199,490
Average per pupil enrolled	366.73	225.11
Negro/White ratio		.61
Furniture and Equipment:	17,245,525	3,551,166
Average per pupil enrolled	37.14	22.08
Negro/White ratio		.59
Busses:	5,170,621	1,207,082
Average per pupil enrolled	11.14	7.51
Negro/White ratio		.67
Total School Property:	192,701,982	40,957,738
Average per pupil enrolled	415.01	254.69
Negro/White ratio		.61

Thus, for each dollar invested in each category per white student, the investment per Negro student is 61 cents in sites and buildings, 59 cents in furniture and equipment, 67 cents in busses and 61 cents in total school property.

The State Supervisor's Study:

Appellees emphasize the District Court's finding that in 63 of Virginia's 127 cities and counties high school facilities for Negroes are equal to those for whites and that in 30 of these 63 counties and cities they are or soon will be better than those for whites (R. 619; Appellees' Brief, p. 19). This finding was predicated upon the conclusions ex-

pressed by the State Supervisor of School Buildings based upon a study he made (R. 349; D. Ex. 10, R. 341). While this study considered only school sites, buildings and physical equipment, and did not embrace curricula, instructional personnel, and other educationally significant factors (R. 347), appellants submit that neither the study nor the conclusions drawn therefrom are valid.

The witness admitted that he did not inspect the entirety of Virginia's facilities for this purpose (R. 346) and that the compilation consisted of "ideas, of records, people, State Department personnel, architects on the outside." (R. 347). While the study embraced proposed, as well as existing, construction of Negro schools, it did not take into account proposed construction of white schools (R. 346).

According to the latest published report of the Superintendent of Public Instruction,[13] there are two or more accredited white high schools but only a single accredited Negro high school in 25 of the 50 counties and 2 of the 13 cities included in the Supervisor's list, and 13 of these 25 counties have from 4 to 9 accredited white high schools. In these situations the white high school facilities were averaged and the average compared with the Negro high school facility (R. 348-9). Since the caliber of the better white facilities is reduced when averaged with the poorer white facilities, some of the white students are afforded facilities superior to the average. This method of measuring equivalency of facilities has been condemned. *Corbin* v. *County School Board of Pulaski County,* 177 F. 2d 929 (CA 4th 1949); *Carter* v. *School Board of Arlington County,* 182 F. 2d 531 (CA 4th 1950).

Examination of the aforesaid report also reveals that in 17 of the counties and 5 of the cities on the Supervisor's list the Negro high school is not accredited by the Southern

[13] XXXIV Annual Report of the Superintendent of Public Instruction No. 4, September 1951, Table 7, Accredited High Schools, at pp. 39-64; Table 9, Qualified High Schools, at p. 94; Table 11, Certified High Schools, at pp. 98-102. See note 12.

Association of Colleges and Secondary Schools, while at least one white high school facility in each of such areas is; that in 3 of the counties and 2 of the cities in the list there is either no Negro high school or the Negro high school is not accredited by the State, while there is at least one white high school in each of such areas which is so accredited; and that in 7 of the counties and 2 of the cities on the list there was at least one white high school offering work through the twelfth grade, but the Negro high school program offered work only through the eleventh grade.[14]

Literary Fund Allocations:

Appellees emphasize the approximately 65 million dollars allocated by the State Literary Fund for school construction in the State (Appellees' Brief, p. 19). Specific projects have been approved for 69 of Virginia's 100 counties and 22 of her 27 cities, and approximately 71 per cent of this sum is to be spent on white schools and 29 per cent on Negro schools (D. Ex. 108, Table XVII, R. 426). Even this large expenditure, when added to the value of the present sites and buildings, will increase the ratio of investment from the present 61 cents to only 74 cents per Negro student for every dollar invested per white student (P. Ex. 102, Table 15, R. 573). Since no time has been set for the completion of these projects, it cannot be estimated when even this ratio will be realized (R. 576). Even if all of the proposed Negro projects were completed and no additional monies whatever were invested in the white schools, the amount of money invested in sites and buildings per Negro student would be only $343.30 (P. Ex. 102, Table 15, R. 573), as compared to $366.73 already invested per white student (P. Ex. 102, Table 14, R. 573).

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[14] XXXIV Annual Report of the Superintendent of Public Instruction No. 4, September 1951, Table 7, Accredited High Schools, at pp. 39-64; Table 9, Qualified High Schools, p. 94; Table 11, Certified High Schools, at pp. 98-102. See note 12.

The Four Year Program:

Appellees also point to the so-called four-year plan proposing expenditure of some 263 million dollars for new construction and improvements, of which 71.7 per cent will be spent on white projects and 28.3 per cent on Negro projects (Appellees' Brief, p. 20). These projects are planned for 99 counties and 25 cities (R.430). The money for this program is not now available (R. 484). Even if available and the entire program completed by 1956, the amount invested in sites and buildings would be only 79 cents per Negro student for each dollar per white student (P. Ex. 102, Table 16, R. 573). Even if funds were available to enable the State to continue the program after 1956 at the same ambitious rate, investments in buildings and sites per Negro and per white student would not be equal until the 1963-64 school session (R. 567).

Expenditures For Instruction:

Appellees point to an increase in the total amounts spent in 1950-51 for instruction in regular day schools of 123 per cent in white schools and 161 per cent in Negro schools over the expenditures for 1943-44 (Appellees' Brief, p. 19). In 1943-44 only 85 cents, and in 1950-51 only 89 cents, was spent per Negro student for each dollar spent per white student (R. 574; P. Ex. 102, Table 13, R. 573). Thus, the increase during this eight year period was only 4 cents per Negro student (R. 575). Even if the percentage increase favorable to Negro schools continued at the same rate obtaining during the 8 year period, expenditures for instruction would not be equalized to school population ratios for twenty years, or until the 1972-73 school session (R. 575).

Appellees also point to the fact that the expenditures for 1950-51, when the school population ratios were 74.3 per cent white and 25.7 per cent Negro, were 76.4 per cent

for white schools and 23.6 per cent for Negro schools (Appellees' Brief, p. 19). But at no time during the eight year period has the ratio of expenditures in Negro schools equalled the ratio of Negro students to the total school population (D. Ex. 108, Table II(a), R. 426; D. Ex. 109, Table I(a), R. 440). The difference between these ratios has ranged from 5.4 per cent in 1943-44 to 2.1 per cent in 1950-51 (D. Ex. 108, Table II(a), R. 426; D. Ex. 109, Table I(a), R. 440). The difference in 1943-44 was 20 per cent, and in 1950-51, 10 per cent, of the entire amount spent for Negro instruction (D. Ex. 108, Table II(a), R. 426). Equalization of the ratios of expenditures to the school population ratios would have necessitated the addition in each of the eight years of more than a million dollars to the appropriations for Negro schools (D. Ex 108, Table II (a), R. 426).

Teachers' Salaries:

Appellees assert that the average annual salary of Negro elementary teachers is somewhat larger than that of white teachers, although the average annual salary of Negro high school teachers is smaller than that of white high school teachers (Appellees' Brief, p. 18). A more accurate picture is obtained by comparing the per capita costs of salaries per student in average daily attendance. For 1950-51 these were $78.49 for whites and $73.15 for Negroes in elementary schools, and $148.21 for whites and $130.07 for Negroes in high schools (P. Ex. 102, Table 14, R. 573). Thus, for each dollar spent in each category per white student, the expenditure per Negro student is only 93 cents in elementary schools and 88 cents in high schools (P. Ex. 102, Table 14, R. 573). Since the per capita costs of salaries are substantially greater for white teachers than for Negro teachers, both on the elementary and the high school levels, the inescapable inference is that the average student load of Negro teachers is larger than that of white teachers.

The state-wide picture thus emerges as a futuristic projection of inequality despite its grandiose design, and affords little hope that Negro students will receive equality of education in Virginia in the forseeable future under the system of separate schools.

CONCLUSION

We respectfully submit that, for the reasons stated herein and in appellants' initial brief, the decree of the District Court should be reversed.

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