IN THE

Supreme Court of the United States

October Term, 1952

No. 191

DOROTHY E. DAVIS, BERTHA M. DAVIS and INEZ D. DAVIS, ETC., *et al.*,

Appellants,

VS.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

BRIEF FOR APPELLANTS

ROBERT L. CARTER,
OLIVER W. HILL,
THURGOOD MARSHALL,
SPOTTSWOOD W. ROBINSON, III,
Counsel for Appellants.

ELWOOD H. CHISHOLM,
WILLIAM T. COLEMAN, JR.,
GEORGE E. C. HAYES,
GEORGE M. JOHNSON,
WILLIAM R. MING, JR.,
CONSTANCE BAKER MOTLEY,
JAMES M. NABRIT, JR.,
DAVID E. PINSKY,
FRANK D. REEVES,
JACK B. WEINSTEIN,
of Counsel.

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Opinion Below

The opinion of the statutory three-judge District Court for the Eastern District of Virginia is reported at 103 F. Supp. 337-341 and appears in the record (R. 617-623).

Jurisdiction

The final decree of the District Court was entered on March 7, 1952 (R. 623). The petition for appeal was filed and the appeal was allowed on May 5, 1952 (R. 625, 630, 633).

This is an appeal from a decree denying an injunction in a civil action required by an act of Congress to be heard and determined by a district court of three judges. The

jurisdiction of this Court to review by direct appeal the decree entered in this case is conferred by Title 28, United States Code, Sections 1253 and 2101 (b).

Questions Presented

1. Whether Article IX, Section 140 of the Constitution of Virginia and Title 22, Chapter 12, Article 1, Section 22-221 of the Code of Virginia of 1950, which require segregated public secondary schools for Negro students are invalid and unenforceable as violative of rights secured by the due process and equal protection clauses of the Fourteenth Amendment.

2. Whether under the due process and equal protection clauses of the Fourteenth Amendment appellants are entitled to equality in all aspects of the public secondary educational process, including all educationally significant factors affecting the development of skills, mind and character, in addition to equality in physical facilities and curricula.

3. Whether, after finding that the buildings, facilities, curricula and means of transportation furnished appellants were inferior to those afforded white students, the District Court should have issued a decree forthwith restraining appellees from excluding infant appellants from the superior public secondary school facilities of Prince Edward County on the basis of race and color.

4. Whether the decree issued in this case can be effectively enforced without involving the District Court in supervision of the daily operation of the public secondary schools of the County.

Constitutional Provision and Statute Involved

Article IX, Section 140 of the Constitution of Virginia, provides as follows:

> "White and colored children shall not be taught in the same school."

Title 22, Chapter 12, Article 1, Section 22-221 of the Code of Virginia of 1950 provides as follows:

> "White and colored persons shall not be taught in the same school, but shall be taught in separate schools, under the same general regulations as to management, usefulness and efficiency."

Statement of the Case

On May 23, 1951, appellants, infant Negro high school students residing in the County of Prince Edward, Virginia, and their parents and guardians, began the instant action against appellees, County School Board of Prince Edward County, Virginia, and T. J. McIlwaine, Division Superintendent of Schools of Prince Edward County, Virginia, who maintain, operate and control the public secondary schools of Prince Edward County.

The complaint (R. 5-30) alleged that said appellees maintain separate public secondary schools for Negro and non-Negro children of public school age residing in the County pursuant to the provisions of the Article IX, Section 140 of the Constitution of Virginia, and Title 22, Chapter 12, Article 1, Section 22-221, of the Code of Virginia of 1950, which require that white and colored children be taught in separate schools.

The complaint further alleged that the public secondary school for Negro children was inferior and unequal to the public secondary schools for white children in plant, equipment, curricula, and other opportunities, advantages and

facilities; and that it was impossible for infant appellants to secure or obtain public secondary educational opportunities, advantages or facilities equal to those afforded white children similarly situated, or for the adult appellants to secure or obtain the right and privilege of sending their children to public secondary schools in said County with educational opportunities, advantages and facilities equal to those afforded white children, as long as said appellees enforce or execute the laws aforesaid or pursue any policy, custom or usage of segregating students on the basis of race or color in the public secondary schools in the County.

The complaint sought a judgment declaratory of the invalidity of said laws as a denial of appellants' rights secured by the due process and equal protection clauses of the Fourteenth Amendment and an injunction restraining appellees from enforcing said laws and from making any distinction based upon race or color among children attending public secondary schools in Prince Edward County.

Appellees, in their answer, admitted that the physical plant and equipment afforded Negro high school students at the Robert R. Moton High School were unequal to those afforded white high school students at the Farmville and Worsham High Schools and that they were enforcing the aforesaid constitutional provision and statute. They denied, however, that the practice of racial segregation in the public schools contravened any mandate of the federal constitution (R. 32-36). Appellee, the Commonwealth of Virginia, was permitted to intervene (R. 37). In its answer it made the same admissions and the same defense as did the original defendants (R. 37-39).

Pursuant to Title 28, United States Code, Section 2284, a three-judge District Court was convened and a trial on the merits took place in Richmond, Virginia on February 25-29, 1952 (R. 39-624).

At the trial both appellants and appellees introduced evidence, including expert testimony: (1) as to the extent of the existing inequalities at the Moton High School with respect to physical facilities and curricula as compared with that in the white high schools; and (2) as to whether equality of educational opportunities and benefits can be afforded Negro children in a racially segregated school system. In addition, over objection that such testimony was irrelevant and immaterial in that appellants were entitled to educational equality now (R. 329), appellees were permitted to show that a proposed new Negro high school designed to correct the admitted inequalities in physical facilities would be in operation by September, 1952 (R. 327-338).

The District Court found Moton High School inferior not only in plant and facilities but in curricula and means of transportation as well (R. 622-623), and ordered appellees to forthwith provide appellants with curricula and transportation facilities "substantially" equal to those available to white pupils, and to "proceed with all reasonable diligence and dispatch to remove" the existing inequality "by building, furnishing and providing a high school building and facilities for Negro students, in accordance with the program mentioned * * * in the testimony on behalf of the defendants herein, or otherwise * * * *" (R. 624).

The Court refused to either enjoin enforcement of the constitutional and statutory provisions here under attack or to restrain appellees from assigning secondary school space in the County on the basis of race or color (R. 619-624). The validity of the segregation provisions was sustained upon the following grounds:

1. That on the issue of the effects of segregation in education "the Court cannot say that the plaintiffs' evidence overbalances the defendants'." It accepted "as apt

and able precedent'' *Briggs* v. *Elliott,* 98 F. Supp. 529 (E. D. S. C. 1951) and *Carr* v. *Corning,* 182 F. 2d 14 (C. A. D. C. 1950), cases which ''refused to decree that segregation be abolished incontinently'' (R. 619).

2. That nullification of the segregation provisions is unwarranted in view of evidence that:

> (a) They declare ''one of the ways of life in Virginia. Separation of white and colored 'children' in the public schools of Virginia has for generations been a part of the mores of her people. To have separate schools has been their use and wont. The school laws chronicle separation as an unbroken usage in Virginia for more than eighty years * * * '' (R. 620).
>
> (b) Segregation has begotten greater opportunities for the Negro; that Virginia employs as many Negro public school teachers as are employed in all 31 nonsegregating states; and that ''in 29 of the even hundred counties in Virginia, the schools and facilities for the colored are equal to the white schools, in 17 more they are now superior, and upon completion of work authorized or in progress, another 5 will be superior. Of the twenty-seven cities, 5 have Negro schools and facilities equal to the white and 8 more have better Negro schools than white'' (R. 621).
>
> (c) The testimony that involuntary elimination of segregation ''would severely lessen the interest of the people of the State in the public schools, lessen the financial support, and so injure both races'' was ''a weighty practical factor to be considered in determining whether a reasonable basis has been shown to exist for the continuation of the school segregation'' (R. 621).

3. That the Court ''found no hurt or harm to either race,'' and ended its inquiry, saying: ''It is not for us to adjudge the policy as right or wrong—that, the Commonwealth of Virginia 'shall determine for itself' '' (R. 621-622).

Errors Relied Upon

The District Court erred:

1. In refusing to enjoin the enforcement of Article IX, Section 140 of the Constitution of Virginia, and Title 22, Chapter 12, Article 1, Section 22-221 of the Code of Virginia of 1950, upon the grounds that these laws violate rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

2. In refusing to forthwith restrain appellees from using race as a factor in determining the assignment of public secondary educational facilities in Prince Edward County, Virginia, after it had found that appellants are denied equality of buildings, facilities, curricula and means of transportation in violation of the due process and equal protection clauses of the Fourteenth Amendment.

3. In refusing to hold that appellants are entitled to equality in all aspects of the public secondary educational process, in addition to equality in physical facilities and curricula.

4. In issuing a decree ordering appellees to equalize secondary school facilities in the County where such decree cannot be effectively enforced without involving the court in the daily operation and supervision of schools.

Summary of Argument

The segregation laws of Virginia make a distinction in public education based solely on race. This Court has held race to be an impermissible basis for legislative classification and has frequently condemned state imposed racial distinctions as violative of the Fourteenth Amendment. Those decisions are decisive of the issue here. The State cannot here justify such distinctions at the secondary level

of public education, nor is the legislation validated by reason of its long continuance.

The Fourteenth Amendment prohibits the State from discriminating on the basis of race in affording the benefits of public education to its citizens. This prohibition is not limited to physical facilities but extends to all factors of educational significance. The record in this case demonstrates that Negro children are denied educational benefits and opportunities which the State itself asserts as the fundamental objectives of its public secondary educational program. It also demonstrates that segregation as here practiced is detrimental to the educational development of Negro children. The State did not substantially controvert this showing but urged that the present removal of State restrictions would not benefit Negro children because their non-acceptance by white children would result in the same damage. However true this may be, it cannot justify the State in refusing to adhere to its Constitutional obligations.

Since the District Court found as a fact that the Negro high school is inferior to the white high schools in physical facilities and curricula, it should have enjoined enforcement of the segregation laws. Instead, it issued an equalization decree which postpones educational equality until some future time. The rights asserted are personal and present, and the Fourteenth Amendment requires that equality be afforded now.

A fixed relationship between two public school systems cannot be established or maintained by judicial decree. A decree directing equalization cannot be enforced without involving the Court in a continuous supervision of the public schools. This is not an appropriate judicial function. Moreover, there is grave doubt as to whether the decree can be effective inasmuch as these school authorities have long discriminated against Negro children

notwithstanding a statutory directive to provide equal facilities. It is unlikely that more will be accomplished under the court's decree than has been done pursuant to the statute.

We submit that appellants can secure the rights to which they are clearly entitled under the Fourteenth Amendment only pursuant to a decree which enjoins the practice of racial segregation in the public schools and prohibits appellees from using race as a factor in affording educational benefits in Prince Edward County.

ARGUMENT

I

The school segregation laws of Virginia are invalid and unenforceable because violative of rights secured by the Fourteenth Amendment.

Article IX, Section 140 of the Constitution of Virginia and Title 22, Chapter 12, Article 1, Section 22-221 of the Code of Virginia of 1950, require all Negro pupils to attend schools segregated for their use and excludes them from schools in which pupils of other racial groups are educated. The clear vice is that the segregated class is defined wholly in terms of race or color—"simply that and nothing more." *Buchanan* v. *Warley,* 245 U. S. 60, 73. The laws here involved, like all others which curtail a civil right on a racial basis, are "immediately suspect" and will be subjected to "the most rigid scrutiny." *Korematsu* v. *United States,* 323 U. S. 214, 216.[1]

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[1] See also *Ex parte Endo,* 323 U. S. 283, 299; *United States* v. *Congress of Industrial Organizations,* 335 U. S. 106, 140, concurring opinion; *Skinner* v. *Oklahoma,* 316 U. S. 535, 544, concurring opinion; *Hirabayashi* v. *United States,* 320 U. S. 81, 100; Idem at 110, concurring opinion; *Steele* v. *Louisville & N. R. Co.,* 323 U. S. 192, 209.

A legislative classification violates the equal protection clause of the Fourteenth Amendment if it is based upon nonexistent differences or if the differences are not reasonably related to a proper legislative objective.[2] Classifications based upon race or color can never satisfy either requirement and consequently are the epitome of arbitrariness. In *Skinner* v. *Oklahoma,* 316 U. S. 535, 541, this Court held unconstitutional an Oklahoma "habitual criminal" statute providing for sterilization of persons convicted two or more times of felonies involving moral turpitude but exempting persons convicted of embezzlement, because the State of Oklahoma had "made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment." Similarly, in *Edwards* v. *California,* 314 U. S. 160, 184, where this Court invalidated a California statute making it criminal for any person to bring or assist in bringing an indigent nonresident into the state, Mr. Justice Jackson, concurring, pointed out that:

> "The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed or color."

Likewise, in *Nixon* v. *Herndon,* 273 U. S. 536, 541, where a Texas statute confining participation in primary elections to white persons was held to violate the equal protection clause, the Court stated:

> "States may do a great deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case."

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[2] *Skinner* v. *Oklahoma,* 316 U. S. 535; *Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison,* 301 U. S. 459; *Mayflower Farms* v. *Ten Eyck,* 297 U. S. 266; *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535; *Nixon* v. *Herndon,* 273 U. S. 536; *Air-Way Electric Appliance Corp.* v. *Day,* 266 U. S. 71; *Truax* v. *Raich,* 239 U. S. 33; *Southern Railway Co.* v. *Greene,* 216 U. S. 400.

This Court has declared that "distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi* v. *United States,* 320 U. S. 81, 100. See also *Korematsu* v. *United States, supra.* It was recognized that, insofar as the federal government is concerned, the constitutionally conferred right to wage war could temporarily override this civil right. Cf. *Ex parte Endo,* 323 U. S. 283. No state, however, can show such constitutional authorization or any overriding necessity which could sustain state action founded upon these constitutionally irrelevant and arbitrary considerations. See *Oyama* v. *California,* 332 U. S. 633; *Takahashi* v. *Fish and Game Commission,* 334 U. S. 410; *Shelley* v. *Kraemer,* 334 U. S. 1. Indeed, for the past quarter century this Court has consistently held that the Fourteenth Amendment invalidates state imposed racial distinctions and restrictions in widely separated areas of human endeavor: ownership and occupancy of real property, *Shelley* v. *Kraemer, supra; Oyama* v. *California, supra;* pursuit of gainful employment or occupation, *Takahashi* v. *Fish and Game Commission, supra;* selection of juries, *Shepherd* v. *Florida,* 341 U. S. 50; *Patton* v. *Mississippi,* 332 U. S. 463; *Pierre* v. *Louisiana,* 306 U. S. 354, *Hale* v. *Kentucky,* 303 U. S. 613; and graduate and professional education, *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637; *Sweatt* v. *Painter,* 339 U. S. 629; *Sipuel* v. *Board of Regents,* 332 U. S. 631; *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337; *Board of Supervisors* v. *Wilson,* 340 U. S. 909.[3]

[3] In the area of interstate travel the state's power is further limited by the commerce clause which similarly proscribes racial distinctions and restrictions. *Morgan* v. *Virginia,* 328 U. S. 373.

Segregation as here practiced is universally understood as imposing on Negroes a badge of inferiority.[4] It "brands the Negro with the mark of inferiority and asserts that he is not fit to associate with white people."[5] It is of a piece with the established rule of law in Virginia that it is slanderous *per se* to call a white person a Negro. *Mopsikov* v. *Cook,* 122 Va. 579, 95 S. E. 426 (1918); *Spencer* v. *Looney,* 116 Va. 767, 82 S. E. 745 (1914).

There has been no showing of any educational objective which school segregation subserves. In fact, it frustrates realization of the announced objectives of public education in Virginia. There are no differences between the races of educational significance (R. 180-183). As one authority has put it:[6]

> "* * * there is not one shred of scientific evidence for the belief that some races are biologically superior to others, even though large numbers of efforts have been made to find such evidence."

Upon this recognized scientists are agreed.[7]

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[4] Myrdal, *An American Dilemma* 615, 640 (1944); Johnson, *Patterns of Negro Segregation* 3 (1943); Dollard, *Caste and Class in A Southern Town* 349-351 (1937); Note, 56 Yale L. J. 1059, 1060 (1947); Note, 49 *Columbia L. Rev.* 629, 634 (1949); Note, 39 *Columbia L. Rev.* 986, 1003 (1939).

[5] *To Secure These Rights,* Report of the President's Committee on Civil Rights, 79.

[6] Rose, *America Divided: Minority Group Relations in the United States* 170 (1948).

[7] Montague, *Man's Most Dangerous Myth—The Fallacy of Race* 188 (1945); American Teachers Association, *The Black and White of Rejections for Military Service* 5, 29 (1944); Klineberg, *Negro Intelligence and Selective Migration* (1935); Peterson & Lanier, Studies in the Comparative Abilities of Whites and Negroes, *Mental Measurement Monograph* (1929); Clark, Negro Children, *Educational Research Bulletin* (1923); Klineberg, *Race Differences* 343 (1935).

The District Court in part predicated its decision on the ground that the school segregation laws had existed for more than eighty years and declared "one of the ways of life in Virginia." (R. 620). "This way of life" was characterized by one of appellees' witnesses as "a by-product, and a fearful by-product, of human slavery." (R. 462). The Fourteenth Amendment was adopted for the express purpose of bringing that "way of life" to an end. *Strauder* v. *West Virginia,* 100 U. S. 303. In any event, the issue here is whether these laws deny rights secured by that Amendment. If they do, the observation of the District Court is immaterial. Certainly laws acquire no immunity from invalidation by virtue of any "unbroken usage" either before or after the adoption of the Fourteenth Amendment.

The District Court followed *Briggs* v. *Elliott,* 98 F. Supp. 529 (E. D. S. C. 1951) and *Carr* v. *Corning,* 182 F. 2d 14 (C. A. D. C. 1950), each of which relied upon *Plessy* v. *Ferguson,* 163 U. S. 537, *Gong Lum* v. *Rice,* 275 U. S. 78, and *Cumming* v. *Board of Education,* 175 U. S. 528.

Cumming v. *Board of Education* is not in point. There this Court expressly refused to consider the validity of racial distinctions in public schools since this issue had not been properly raised.

Plessy v. *Ferguson* is not applicable since it did not involve the issues presented here. Whatever doubts may once have existed in this respect were removed by this Court in *Sweatt* v. *Painter, supra,* at pages 635, 636.

Gong Lum v. *Rice* is also irrelevant to the issues raised in this case. There, a child of Chinese parentage was denied admission to a school maintained exclusively for white children and was ordered to attend a school for Negro children. The power of the state to make racial distinctions in its school system was not in issue. Petitioner contended that she had a constitutional right to go to school with white

children, and that being compelled to attend school with Negroes, deprived her of the equal protection of the laws.

Further, there was no showing that her educational opportunities had been diminished as a result of the state's compulsion, and it was assumed by the Court that equality in fact existed. The petitioner was not unveighing against the system but its application which resulted in her classification as a Negro, and by so much conceded the propriety of the system itself. Were this not true, this Court would not have stated that the issue raised was one "which has been many times decided to be within the constitutional power of the state" and, therefore, did not "call for very full argument and consideration."

In short, *Gong Lum* raised no issue with respect to the state's power to enforce racial classifications. Rather, the objection went only to treatment under the classification. This case, therefore, cannot be pointed to as a controlling precedent covering the instant case where the constitutionality of the system itself is under attack and in which the existence of inequality has been proved.

In any event, the assumptions in *Gong Lum* have been rejected by this Court. In *Gong Lum,* without "full argument and consideration," the Court assumed the state had power to make racial distinctions in its public schools without violating the equal protection clause of the Fourteenth Amendment and also that state and lower federal court cases cited as controlling had been correctly decided. These assumptions upon full argument and consideration were rejected in the *McLaurin* and *Sweatt* cases in relation to racial distinctions in state graduate and professional education. Thus, the very basis of the decision in *Gong Lum* has now been destroyed.

This Court has considered the basic issue involved here only in those cases dealing with racial distinctions in education at the graduate and professional levels. *Missouri*

ex rel. Gaines v. Canada, 305 U. S. 337; *Sipuel* v. *Board of Regents, supra; Fisher* v. *Hurst*, 333 U. S. 147; *Sweatt* v. *Painter, supra; McLaurin* v. *Oklahoma State Regents, supra.* We submit, therefore, that Virginia's school segregation laws are invalid because they fail to conform to constitutional standards and no holding by this Court requires a different conclusion.

II

Under the Fourteenth Amendment appellants are entitled to equality in all aspects of the educational process as well as equality in physical facilities and curricula.

Virginia has declared public education to be a governmental function. Article IX, Section 129 of the Constitution of Virginia provides:

> "The General Assembly shall establish and maintain a system of public free schools throughout the State."

The statutes of the State comprehensively provide for the entire system of public schools from the elementary school through the university.[8] The general supervision of this system is vested in the State Board of Education.[9]

The State Board of Education has defined the State's public educational program as follows:

> "A good public school program should be designed to serve the needs of children, youth and

[8] VA. CODE, 1950, Title 22, Sections 22-1 to 22-330; Title 23, Sections 23-1 to 23-180.

[9] VA. CONST., Article IX, Section 130; VA. CODE, 1950, Title 22, Section 22-11.

adults. Such a program must be flexible so that it can be adjusted as the changes of society demand and so that it can be adapted to varying local needs and conditions. However, as a basis for State-wide consideration, it may be said that an adequate program of education should be:

"(1) Offer every child opportunities through training in the fundamental skills which includes not only the three 'R's, but also human relations and ways of thinking;

"(2) Provide experiences for physical, mental, emotional, moral, and social development which are also fundamentals of a balanced educational program;

"(3) Offer rich and stimulating experiences which are essential to the development of all phases of good citizenship in a democracy;

"(4) Provide, through guidance, assistance to pupils in making decisions and in selecting studies appropriate to their needs and aptitudes;

"(5) Prepare graduates and those who leave school before graduation to enter an occupation with basic training in fields of work which they will probably pursue and in which opportunities are developing;

"(6) Give adequate preparation for those planning to enter college; and

"(7) Serve the adults of the community by extending to them facilities and services desired and needed as they attempt to solve the problems of life" (R. 63-64).

It has similarly described the broad function of the high school in this program in the following terms:

"The development of the comprehensive high school with the broadening and extension of the program to meet the changing needs of an increasing pupil enrollment has resulted in a school of the cos-

> mopolitan type which is organized to provide for the educational needs of all groups whether their school objectives be college preparation or work that may lead into business or the industrial fields. It is a typically democratic institution, bringing within one organization all types of school work. Not only its program of studies but also its related curricular activities are organized on a broad democratic basis in order that it may serve as fully as possible the needs of 'all the children of all the people' " (R. 65).

The immediate and ultimate objectives of the State's high school program are set forth thusly:

> "What are some principles of desirable living? In some schools only incidental account has been taken of such factors as (1) the pupil's emotional growth, (2) his aptitudes, (3) his social adjustment, (4) his interests and purposes, (5) his need for planning, (6) his personality development.
>
> "Since we live in a democratic society, we accept 'the preservation, improvement, and extension of democracy' as an important function of American education. It follows, therefore, that the process of teaching and learning should be in harmony with the democratic ideal" (R. 65).

The State Board of Education has likewise recognized and pronounced that, "Growth processes in individuals in society are resultants of continuing interaction between individuals and society" (R.66); that, "Learning is a continuous process" (R. 66); that, "All learning comes through experience" (R. 66); that, "in order to achieve self-integrity, self-respect, each student must have a freedom from fear and a freedom from any sense of inferiority" (R. 161); that, "Students must be taught respect for personality, a belief in the equality of human beings, a desire to cooperate with others" (R. 161); and that, "We must develop good will toward individuals and groups whose race, religion, and nationality differ from our own" (R. 161).

These objectives are in accord with the recognized aims of public education in America (R. 155, 157). The State's objectives are pursued in Prince Edward County (R. 62, 64-66), but in a manner limited by the laws requiring segregated schools (R. 66-68).

The District Court concluded that these laws produced "no hurt or harm to either race" (R. 621-622) and refused to enjoin their enforcement. Examination of the record demonstrates that this conclusion is manifestly erroneous.

Appellants introduced the testimony of seven experts on this issue: Dr. John Julian Brooks, an educator, Director of the New Lincoln School of New York City; Dr. M. Brewster Smith, a social psychologist, Chairman of the Department of Psychology of Vassar College; Dr. Isidor Chein, a social psychologist, Director of Research of the Commission on Community Interrelations of the American Jewish Congress; Dr. Kenneth Clark, a child and social psychologist, Assistant Professor of Psychology at the College of the City of New York; Dr. Horace B. English, Professor of Psychology at Ohio State University; Dr. Mamie Phipps Clark, a clinical psychologist, Director of the Northside Center for Child Development in New York City; and Dr. Alfred McClung Lee, Chairman of the Department of Sociology and Anthropology of Brooklyn College.

Dr. Brooks described the purposes and objectives of public education in America and in Virginia (R. 155-158, 160-163), and asserted that educational segregation impoverishes the educational opportunities for Negroes and gives the Negro school "a morale, a status, a position that is not equal for educational opportunity" (R. 160). He testified further that basic educational objectives are difficult to achieve in a segregated school and are better realized in a non-segregated school (R. 159-161). It was his opinion that segregation renders the Negro school unequal to the

white school in curriculum (R. 163-164), quality of teaching (R. 166-167), development of democratic attitudes (R. 161-163) and economic competence (R. 164-165). He pointed out that the learning process itself is subject to emotional conditions and moral stimulation (R. 167), that a homogeneous grouping limits curricula and restricts the instructor's opportunity to teach functionally (R. 167-168). He concluded:

> "Overriding as this may sound, I would submit that in the last analysis there is not a good skill, not a good attitude—and this is important—not a basic understanding that can be taught equally well in the two systems. Bad skills, and some bad misunderstandings, and bad competencies can be taught" (R. 168).

Dr. Brooks felt that the student is harmed when an educational goal is not achieved because by "constant frustration in attempting to reach that goal, either he gives up or the learning process of attempting to reach it becomes a bad learning process rather than the good ones that had been planted" (R. 162).

Dr. Smith, after pointing out that modern social scientists have discovered that race is not a factor relevant to educability (R. 180-182, 183), testified that legal segregation impairs the personality, intellectual and educational development of the Negro (R. 183-185). Segregation, he said, perpetuates the prejudice inherent therein (R. 184-185). He emphasized the importance of the school in the child's experience (R. 186); expressed the opinion that segregation impairs the learning processes of the Negro child (R. 186) and prevents him from obtaining educational opportunities and advantages equal to those available to white children (R. 187, 195-196), saying in part that:

> "* * * segregation is, in itself, under the social circumstances in which it occurs, a social and official insult and that this has widely ramifying conse-

> quences on the individual's motivation to learn and benefit from his education and other developments of his personality and capacity to be effective in any realm of life. This, I think, is the overwhelming point which makes it impossible for me to see how one could have equal educational opportunity under any kind of segregating system" (R. 187).

Dr. Chein, who with Dr. Max Deutscher had made a comprehensive study[10] of the views of social scientists on the effects of enforced racial segregation outlined the results of the survey. A total of 849 social scientists were sent questionnaires and 517 responded. On the basis of this survey and his overall experience, Dr. Chein said of the impact of segregation on the individual that:

> "The conclusions are that there are feelings of inferiority and insecurity which develop in the members of the segregated groups, which are a function of the fact of segregation rather than of any facilities which they experience; that they are prone to develop strong feelings of self-doubt; that they are prone to develop mixed attitudes toward themselves, including feelings of self-hatred, as well as the opposite feelings. They are, in the technical lingo, referred to as ambivalents; but they are likely to develop feelings of being isolated and alone and not belonging anywhere, including, in many cases, not even in their own group; that they develop attitudes of cynicism; that there are reflections of these reactions in a loss of initiative and efficiency; that there is a diminished sense of personal responsibility, or, in some cases, they develop what is referred to in the technical lingo as ideas of persecution, that is, they become extraordinarily sensitive to even more than would be objectively justified to attribute to others the desire to persecute them; that in many instances they develop, or in relation to this, and partly a function of this, anti-social be-

[10] Deutscher & Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, 26 *J. Psychol.* 259 (1948).

> havior; and in what perhaps is another way of looking at what Professor Smith and Dr. Brooks have testified to this morning, what I would describe as disturbances in the sense of reality" (R. 208).

He also stated that segregation adversely affects the educational content of the segregated child (R. 209-210) and precludes equality of educational opportunity in the segregated school (R. 211-213, 240).

Dr. English testified that the child's conception of his own value and worth is of the highest importance, and that when constantly subjected to the notion that he is inferior his sense of personal worth suffers severe damage (R. 580).

Dr. Kenneth Clark described psychological tests and methods which are used to measure the effects of segregation upon personality growth and development (R. 247-250, 272-273) and detailed the damage resulting from segregation which these tests have demonstrated (R. 250-253). He stated that segregation robs the individual of a sense of self-esteem and produces a variety of adverse phychological reactions (R. 253-254). He testified that educational segregation impairs the learning process of the segregated child (R. 253) and stated:

> "I think, when you see these specific areas in which people react to fundamental damage to their self-esteem, you can then see how any situation which constantly reminds the person of his racial inferiority would be a situation in which he could not generally profit.
>
> "Segregated schools is such a situation. It is a situation which is constantly burning into that person's mind the fact that he is supposed to be inferior. He has to waste time and energy and, whether he wants to or not, he naturally must expend time fighting against being told that he is inferior. The very preoccupation with race takes away time

> that could be more constructively used in the pursuit of the educational process.
>
> "It is for that reason that I would answer your question that a segregated school, or a segregated situation, interferes with the full development of a person" (R. 254).

He discussed a test which he conducted on fourteen of the infant appellants (R. 254-261, 273-284, 291) and was of the opinion that segregation in the schools of Prince Edward County prevented Negro children from obtaining educational opportunities and advantages equal to those of white children (R. 262-264, 287-290).

Appellants' evidence thus demonstrated that Virginia's school segregation laws deny appellants educational benefits and opportunities available to the rest of the community. It also demonstrated the injurious impact of such laws upon the segregated child. These are not the private notions of a few individuals of good will but the consensus of social scientists who have studied the problem (see Appendix); nor can this evidence be dismissed as legislative argument. This evidence relates to those factors which this Court has held to be determinative of the validity of racial distinctions in public education in *Sweatt* v. *Painter,* 339 U. S. 629; and in *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637.

Appellees presented the testimony of four educators: Dr. Colgate W. Darden, Jr., President of the University of Virginia and former Governor of Virginia (R. 451-462); Dr. Dabney S. Lancaster, President of Longwood College (R. 463-485); Dr. Dowell J. Howard, State Superintendent of Public Instruction (R. 438-451); and Dr. Lindley Stiles, Dean of the Department of Education of the University of Virginia (R. 486-514). They also presented three experts in psychology and psychiatry: Dr. William H. Kelly, a child psychiatrist and Director of the Memorial Foundation

and Memorial Guidance Clinic, in Richmond, Virginia (R. 514-530); John Nelson Buck, a retired clinical psychologist (R. 530-544); and Dr. Henry E. Garrett, Professor of Psychology at Columbia University (R. 545-572).

Dr. Kelly (R. 529), Mr. Buck (R. 538, 541, 543) and Dr. Garrett (R. 569, 571-572) admitted that racial segregation has harmful effects on Negro children. Dr. Stiles testified that he did not accept segregation as a social practice (R. 497-507), and suggested that the problem would be solved by a gradual process of education (R. 498-504). Dr. Darden admitted the possibility of personality damage resulting from segregation (R. 458).

Thus, four of appellees' witnesses admitted that segregation produced harmful effects, and a fifth witness recognized that segregation could be injurious. While three of these witnesses questioned the value of the Deutscher and Chein study and Dr. Clark's interviews of Prince Edward County children (R. 519-522, 527-529, 538-539, 548, 553-555, 561, 563-564), they conceded that racial segregation inflicts injury upon Negro school children. Appellants' demonstration of the harmful consequences of segregation upon the segregated group was thus substantiated by appellees' own witnesses, and the District Court's conclusion that appellants evidence does not overbalance appellees' is manifestly erroneous and cannot stand. *United States* v. *United States Gypsum Co.*, 333 U. S. 364; *Baumgartner* v. *United States*, 322 U. S. 665; *United States* v. *Appalachian Electric Power Co.*, 311 U. S. 377.

The remainder of appellee's evidence did not deal with the basic issue before the court: whether Virginia's school segregation laws deny appellants their constitutional rights to equal educational benefits.

Some of their witnesses expressed the opinion that desegregation is more difficult at the lower educational levels (R. 448, 457, 468, 493, 518-519, 522-523, 535, 564-565). Public

secondary education is no less a governmental function than graduate and professional education in state institutions. Just as Sweatt and McLaurin were denied certain benefits characteristic of graduate and professional education, it is apparent from this record that appellants are denied educational benefits which are available to white children in secondary schools. Thus, as Sweatt and McLaurin, appellants are denied equal educational opportunities in violation of the Fourteenth Amendment.

Appellees' witnesses also predicted the effects of immediate desegregation by court injunction: The people of Virginia are not ready for the change (R. 444). They would ignore a desegregation injunction (R. 444, 500, 508-510, 522). Those who could afford to do so would send their children to private schools (R. 444, 455, 471, 536). Financial support for the public schools would diminish (R. 312, 322-323, 390, 444, 452-453, 455-460, 536-537), and racial relations would be impaired (R. 312, 390-391, 471, 542). Frictions and tensions would develop (R. 468, 479, 522-523, 526-527) although there would be no violence (R. 452, 455). Employment of Negro teachers would be adversely affected (R. 450-451, 457, 470-471, 481, 493-496, 511-512, 537), although such teachers are academically better qualified than white teachers (R. 450, 457), and notwithstanding a national shortage of white teachers (R. 451) and a shortage of elementary teachers in Virginia (R. 451). Subtle forms of segregation would displace statutory separation so that Negro children would not be benefitted by the change but would be better off in a segregated school (R. 489-491, 500-503, 523-524, 537-538).

These witnesses emphasized that their conviction that Virginians are unprepared for desegregation in the public schools formulated the basis for these conclusions (R. 444, 451-453, 455, 457, 470-471, 475-477, 479, 489-491, 496, 499-504, 523-524, 536-538, 542), and they were particularly concerned that school segregation not be stricken down by judicial decree (R. 443, 452, 455, 470, 471, 497, 500, 523, 536-538, 541). They agreed, not that segregation was non-injurious, but that desegregation must be a gradual process: Dr. Stiles (R. 498-504), Dr. Kelly (R. 525), Mr. Buck (R. 540-542), Dr. Garrett (R. 568-569).

This line of testimony is immaterial. The crux of this case is the impact of a state policy of segregation upon the individual in his pursuit of learning. Appellants say that the effect is discriminatory and injurious because it is the State that imposes it—and the evidence sustains their position. Appellees say the removal of the State's hand will not benefit the Negro student because discrimination imposed by individuals will continue.

Appellees, however, fail to distinguish between constitutionally permissible individual activity and constitutionally proscribed governmental action. As this Court said in the *McLaurin* case (pp. 641-642):

> "It may be argued that appellants will be in no better position when these restrictions are removed, for he may still be set apart by his fellow students. This we think irrelevant. There is a vast difference—a Constitutional difference, between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar. *Shelley* v. *Kraemer,* 334 U. S. 1, 13-14 (1948). The removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the state will not be depriving appellant of the opportunity to secure acceptance by his fellow students on his own merits."

Nor can the segregation laws be successfully defended on the ground that it is in appellants' best interest that they be deprived of their constitutional rights. In *McKissick* v. *Carmichael,* 187 F. 2d 949 (C. A. 4th 1951), *certiorari denied* 341 U. S. 951, this suggestion was made and the court said (pp. 953-954):

> "* * * the defense seeks in part to avoid the charge of inequality by the paternal suggestion that it would be beneficial to the colored race in North Carolina as a whole, and to the individual plaintiffs in particular, if they would cooperate in promoting the policy adopted by the State rather than seek the best legal education which the State provides. The duty of the federal courts, however, is clear. We must give first place to the rights of the individual citizen, and when and where he seeks only equality of treatment before the law, his suit must prevail. It is for him to decide in which direction his advantage lies."

Appellants, having demonstrated that these laws deprive them of educational equality, are entitled to relief as prayed for in their complaint.

III

The inferiority of the educational facilities and opportunities afforded Negro students requires an injunction restraining appellees from excluding appellants from sharing the superior facilities and opportunities on an equal basis without regard to race or color.

The District Court found that the Negro high school is unequal to the white high schools as to buildings, facilities, curricula and busses (R. 622, 624). This finding rested upon appellants' evidence establishing inequality in these areas: physical plant and teaching facilities (R. 82-102,

105-109, 122, 123-126, 129-131), curriculum (R. 102-105, 124-127) and transportation facilities and services (R. 114-118, 122-123), and upon the demonstration that such inequalities in themselves handicap Negro students in their educational endeavors (R. 80-118, 122-131).

Appellants' evidence further disclosed that Farmville High School is accredited by the Southern Association of Colleges and Secondary Schools while Moton High School is not (R. 118). As a consequence, the white graduate of Farmville will generally be admitted to institutions of higher learning outside the state on his record alone while Negro graduates of Moton will generally be required to take admission examinations and, if admitted without examination, will be accorded only a probationary status (R. 119). Farmville also offers its students the opportunity of membership in the National Honor Society (R. 118) which creates educational motivation and affords preferences in collegiate acceptance and employment (R. 120).

On the basis of its finding, the District Court forthwith restrained the continuance of inequality in curricula and conveyances (R. 624). It further ordered appellees to "proceed with all reasonable diligence and dispatch to remove the inequality existing as aforesaid in said buildings and facilities, by building, furnishing and providing a high school building and facilities for Negro students, in accordance with the program" undertaken by appellees respecting construction of a new Negro high school (R. 624) which will be not ready until September, 1953 (R. 311, 319, 338).

The District Court included physics, wood, metal and machine shop work and mechanical drawing in its enumeration of course deficiencies at Moton (R. 622). While its decree "forthwith" enjoins discrimination in curricular offerings (R. 624), it is apparent that the lack of proper facilities and equipment prevents advantageous instruc-

tion in these courses at Moton (R. 100-101, 124-126, 130). The court was cognizant of these deficiencies in facilities and equipment. It found that, "Moton's science facilities and equipment are lacking and inadequate. No industrial art shop is provided * * * " (R. 622). These inequalities cannot be removed, and under the decree need not be removed, until the new Negro high school is completed. Absent the essential teaching equipment, equality in these courses cannot be afforded now.

Just where these and other [11] curricular augmentations may be had is not clear. Moton is overcrowded (R. 124-126, 294-296, 317-318). The space problem cannot be solved save by curtailment of some of its present offerings. Attempted compliance with the decree may well create new curricular inequalities without solving the old.

We are dealing with an exercise of state power affecting rights secured by the Fourteenth Amendment. In this area the authority of the state is subordinate to the mandate of the Amendment. Whatever the fate of educational segregation under other circumstances, it is perfectly plain that it cannot obtain in the face of such inequalities. In *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337, 349, this Court pointed out that:

> "The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give the separated groups within the State."

The persons whose rights must be determined in this case are Negro high school students. Over many years a

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[11] The County's white high schools offer courses having a total unit value of thirteen and one-half units which are not afforded Negroes at Moton (R. 103-104). The District Court found that "physics, world history, Latin, advanced typing and stenography, wood, metal and machine shop work, and drawing, not afforded at Moton, but given in the white schools" (R. 622).

vast number of Negroes, including some who attended the Moton High School when suit was brought, have completed their education without having been afforded the educational equality which the Constitution demands. For many this case represents the last opportunity to obtain that equality. Their plight is in no way alleviated by a decree effective—if ever—only at some time subsequent to their graduation.

The Constitution countenances no such moritorium upon the satisfaction of the rights here involved. The rights secured by the equal protection clause of the Fourteenth Amendment are both personal and present. *Shelley* v. *Kraemer*, 334 U. S. 1; *Sipuel* v. *Board of Regents*, 332 U. S. 631; *Missouri ex rel. Gaines* v. *Canada, supra.* In *Sipuel* v. *Board of Regents, supra,* where a state, in conformity with its segregation laws, had excluded a Negro applicant from its law school, this Court said (pp. 632-633):

> "The petitioner is entitled to secure legal education afforded by a state institution. To this time, it has been denied her though during the same period many white applicants have been afforded legal education by the State. The State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other racial group."

There being no dispute or controversy as to a present unconstitutional denial of appellants' rights to equality of educational facilities and opportunities, no legal justification exists for its continuance.

In *Belton* v. *Gebhart,* —— Del. —— (decided August 28, 1952) a similar situation was presented. Inequalities were found at the secondary and elementary school levels. In was urged that the appropriate relief would be a decree directing the school authorities to equalize the facilities

while affording them a reasonable time to do so. It was shown that the State was engaged in a building program which by September, 1953, would have the Negro high school facilities equal to those for whites. The court there declined to follow *Briggs* v. *Elliott,* 98 F. Supp. 529 (E. D. S. C. 1951) or the decision of the District Court in this case, and held that the Negro plaintiffs must be admitted to the white school, saying:

> "If, as we have seen, the right to equal protection of the laws is a 'personal and present' one, how can these plaintiffs be denied such relief as is now available? The commendable effort of the State to remedy the situation serves to emphasize the importance of the present inequalities. To require the plaintiffs to wait another year under present conditions would be in effect partially to deny them that to which we have held they are entitled."

This conclusion accords with the decisions of this Court. Appellants must be permitted to share the superior facilities and opportunities in the County on an equal basis without regard to race or color. *Missouri ex rel. Gaines* v. *Canada, supra; Board of Supervisors* v. *Wilson,* 340 U. S. 909.

IV

An equalization decree cannot be effectively enforced without involving the court in supervision of the daily operation of the public schools.

Education is not an inert subject. Teachers differ in ability, personality and effectiveness, and their teachings correspondingly vary in value. Schools differ in size, location and environment. These are among the many variables in any educational system.[12]

Public education is an ever-growing and progressing field. Facilities and methods improve as experience demonstrates the need and the way. Buildings and facilities are constantly increased to accommodate the expanding school population.

It seems clear that no two schools can retain a constant and fixed relationship in the flux of educational progress. Certainly this relationship cannot be fixed or maintained by judicial decree. Indeed, several of appellees' witnesses testified that notwithstanding an effort to provide equal buildings, facilities and equally well-prepared teachers, identity of educational opportunity cannot be afforded under any circumstances, and at the very best the opportunities can only be made comparable or approximately equal (R. 467, 473, 502, 534).

In its final decree the District Court made a judgment declaratory of the existent inequality:

> "Adjudges and Declares that the buildings, facilities, curricula and means of transportation

[12] Judge Edgerton, dissenting in *Carr* v. *Corning*, 182 F. 2d 14, 31 (C. A. D. C. 1950), pointed out that: "* * * two schools are seldom if ever fully equal to each other in location, environment, space, age, equipment, size of classes and faculty."

> furnished for the education of the Negro high school students in Prince Edward County, Virginia are not substantially equal to those provided for the white high school students in said county; * * * " (R. 624).

Resoultion of the basic issue in this case—the right to equal educational benefits—by an equalization decree will engage the parties and the court in interminable litigation. The task of attempting to enforce equality in a segregated school system is clearly one for which the machinery of the court is unsuited. The decisions of this Court establish the impropriety of a decree which would require continuous judicial supervision of numerous details. *United States* v. *Paramount Pictures, Inc.,* 334 U. S. 131; *Armour & Co.* v. *Dallas,* 255 U. S. 280; *Javierre* v. *Central Altagracia,* 217 U. S. 502; *Beasley* v. *Texas & Pacific Ry Co.,* 191 U. S. 492; *Texas & Pacific Ry Co.* v. *City of Marshall,* 136 U. S. 393; *Rutland Marble Co.* v. *Ripley,* 10 Wall. 339. If even as to physical facilities, courses and teachers the decree is to be effective, children, parents and school authorities alike must be constant litigants.

Decided cases in Virginia demonstrate that an injunction restraining racial discrimination in public educational facilities and opportunities which does not eliminate segregation itself offers little promise of equality of even physical facilities and curricula. In *Smith* v. *School Board of King George County,* 82 F. Supp. 167 (E. D. Va. 1948), and *Ashley* v. *School Board of Gloucester County,* 82 F. Supp. 167 (E. D. Va. 1948), the court found Negro schools to be substantially inferior to white schools in physical facilities and curricula and issued injunctions against the continuance of these discriminations. Contempt proceedings were thereafter initiated in each case upon the claim that the inequalities had not been rectified. In the *Smith* case, after completion of a part of the hearing, the contempt proceedings were suspended upon representation that plans for improvement of Negro schools would be speedily

pursued. In the *Ashley* case, the court found the school authorities guilty of contempt because they had "not exerted reasonably satisfactory efforts to provide for petitioners substantially equal opportunities for education." (Unreported, Newport News Civil Action No. 175, decided January 13, 1949). In *Corbin* v. *County School Board of Pulaski County*, 84 F. Supp. 253 (W. D. Va. 1949), *reversed* 177 F. 2d 924 (C. A. 4th 1949), and *Carter* v. *School Board of Arlington County*, 87 F. Supp. 745 (E. D. Va. 1949), *reversed* 182 F. 2d 531 (C. A. 4th 1950), the Court of Appeals found substantial discrimination where the district courts had found none. Following reversal, injunctions were entered in each case against continued racial discrimination but requests that segregation be enjoined were denied. Further proceedings, seeking to restrain segregation, are now pending in each case.

The history of education in Prince Edward County does not suggest that the school authorities are particularly responsive to legal directives to equalize. Since 1869-70, they have been enjoined by statute to maintain white and Negro schools "under the same general rgulations as to management, usefulness and efficiency" (R. 620-621). The record discloses no historical moment at which the legislative command has been obeyed. It affirmatively shows inequality continuously existent for a period of at least thirty-four years (R. 394-400). Yet the District Court essayed to bring about by its equalization decree a result which more than eighty years of legislative injunction has not been able to accomplish.

At some point appellants are entitled to conclude their litigation and enjoy constitutional equality in the public schools. The District Court's decree can accomplish neither objective. It should be annulled, and a decree entered restraining the use of race as the factor determinative of the school which the child is to attend.

Conclusion

For the first time the question of constitutional validity of state imposed racial segregation at the secondary school level is presented to this Court in a case in which the State has attempted to justify its laws by a full and complete evidential showing. Notwithstanding Virginia's efforts in this case, it is clear that her racial policy in public education cannot be permitted to endure.

This Court, by its decisions in the *Sweatt* and *McLaurin* cases, have assured to all citizens constitutional equality at the graduate and professional school levels. Experience following these decisions has made manifest that complete and immediate elimination of racial distinctions in public education is feasible as well as proper.

For many years Negro children in Prince Edward County have suffered educational deprivations at the hands of the State. It is clear that they will continue to suffer as long as racial segregation in public schools is practiced.

Wherefore, it is respectfully submitted that the decree of the District Court should be reversed.

Robert L. Carter,
Oliver W. Hill,
Thurgood Marshall,
Spottswood W. Robinson, III,
Counsel for Appellants.

Elwood H. Chisholm,
William T. Coleman, Jr.,
George E. C. Hayes,
George M. Johnson,
William R. Ming, Jr.,
Constance Baker Motley,
James M. Nabrit, Jr.,
David E. Pinsky,
Frank D. Reeves,
Jack B. Weinstein,
of Counsel.

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