

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

CROSS-EXAMINATION.

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

CLARENCE G. COOPER,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. How often during the years she was there, 1924 to 1919— A. I do not recall any years she has been there.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. Now, do you give examinations from the first to the second grade, and from the third to the fourth, and from the fourth to the fifth, and from the fifth to the sixth? A. We begin at the second grade to give examinations.

Q. I mean for the purpose of promotion, uniform throughout the county? A. Yes, very frequently we do. We do not do it every year.

Q. Oh, you do not do it every year. A. But practically every year.

Q. Does that determine whether you go to the next grade? A. When the examination is set by the County, county-wide.

Q. It is for that purpose? A. Yes.

Q. And all through the schools, they go along like that. Now, tell me this, you allowed them to lower the mark, in order to be more liberal to the colored pupils, and for those who wanted to go to school, is that correct? A. Wanted to go to high school.

Q. Yes, those who wanted to go to high school. Now, tell me this, have you ever sent any more children than you had money to pay for? A. No.

Q. Have you ever sent in almost as many? A. No.

Q. How much money do you usually have left over from that tuition money? A. I could not tell you that.

Q. You have no idea? A. I have no idea. We have never had a budget for negro high schools until last year.

We never budget tuition separately but we budgetted transportation costs for negroes separately: to the Baltimore City High School. We have been giving negroes transportation to the Baltimore City High School since January 1, 1936 but this had nothing to do with Margaret Williams, who applied in 1935 and who took the examination also in 1934. We did not offer her transportation. She was not entitled to it. According to the examination she was not eligible for high school. We did not offer transportation for those who passed the examination in that year. To the white students we offered transportation provisionally, that is, the pupil is required to pay ten cents. The Board pays the excess up to twenty cents. In 1934 and 1935 if the colored parent had agreed to pay ten cents on the transportation, we would have paid the balance. When Margaret Williams finished the seventh grade, what we would offer her in the line of education would depend on whether or not she could pass the required test for seventh grade children throughout the county. If she had successfully passed, we offered her admission to the City High School and the Board of Education to pay the tuition. Baltimore City High School is removed from Baltimore County and our Board has absolutely no jurisdiction over the Baltimore City High School.

A child in the Baltimore City schools would be controlled by the Board of School Commissioners in Baltimore City and a white high school child attending school in Baltimore County would be under the control of the Board of Education of Baltimore County. We maintain high schools for the white child up to and including grade eleven. We supervise and control the edu-

cation and the colored child up to and including grade seven. After grade seven, we have no jurisdiction over what the colored child will receive in the line of education. The white child goes through to the eleventh grade. We give examinations in some subjects as to whether the child is to graduate and receive a diploma. The reason we do not give an examination at the end of the eleventh grade and do give one between the seventh and eighth grades is that we feel we should test for the eligibility for the high school. My high school principals test whether or not they are subjects for promotion, for graduation. I leave the question as to promotion in the high schools to the principals. It is not left entirely to the elementary school principals. Between the seventh and eighth grades the uniform examination is prescribed for white and colored high schools. The examination is printed by instruction of the Board of Education. The white children do not have to go to a central location for this examination. It is given right in their own school. Their teacher is present when it is given. The teacher gives the examination. The teacher marks the examination. The examination is prepared by the supervisors and the superintendent and the assistant superintendent. We all prepare it together. We do not give the colored examination to the colored children in their individual schools. Seventy per cent of them are in their individual schools with their teachers present. In 1934 and 1935 I do not recall but I believe we gave the examination in three or four colored schools. A child living at Sparks, Maryland, would have to come to Towson to take the examination. The child would have to find his own transportation. I did not instruct any principals to send only those who had a fair chance of passing the examination. I think the Assistant Superintendent did. It was done with my approval. The supervisor and assistants administer the colored examinations. These are white supervisors. Mr. John T. Hershner is the only one who supervises colored schools. The white supervisors do not supervise in the colored schools, but go there in testing programs. In 1934 the examinations were marked by supervisors. In 1935 they were marked by employed high school or college graduates who knew nothing of Baltimore County. The reason we do not allow the col-

ored teachers to give the examination as we allow the white teachers to do is because the number of children in the seventh grade colored schools is so small that it is possible for us to bring the children to announced centers and examine them in an impersonal and uniform manner. We would be very anxious to do the same for white children but the number of white children makes it practically impossible for us to do it. We did not transport the colored children to these announced centers prior to 1936. We never had any requests for transportation. By giving the examination in announced centers it is given in an impersonal and uniform manner by people especially trained and without the personal element of the teacher. We hired other people to mark the papers because the task was too great for the superintendent. In 1935 the test was along achievement or standard test, which required detailed and very laborious work and we hired these people who had taken courses in educational measurements and were familiar with the marking and grading of those tests. By impersonal, I mean that the person giving the examination could go around the room but would not help with the examination. We allow the white principal to give the examination because it is impossible to do otherwise. In the schools where the colored children are given examinations, the principals are there but they are not allowed to give the examination because it is possible for us to give the examination in the desired manner. In the particular place for example, Towson, the principal is there. He helps give the examination. He does not help to mark them. He has nothing to do with the marking of the papers. We do not inform the principal how many passed and how many failed unless he asks and we inform the children and they, in turn, inform the principals. The white principal had some jurisdiction as to who would be promoted and who would not. The colored principal sends in his recommendation at the end of the year on a special blank prepared by the superintendent asking for the grades attained by the pupils during the year, and whether or not in his estimation, the principal's examination, the pupil is eligible for high school. This is done before the examination. So far as it is humanly possible to do, these examinations are keyed to the course of study. The prin-

principal makes up a report card on which he says either "promoted" or "promoted to high school" at the end of the school year.

In the white schools the examinations are marked before the report card is made. The colored child receives his report card before the examinations are marked. He receives his report card from the principal. The white students receive their report cards from the principal. The colored principals have no knowledge of which colored children have passed prior to the closing of school. The colored principal has no authority to promote a student to high school. That authority rests in the hands of the assistant superintendent. For the white pupil, it rests in the hands of the principal. The negro principal cannot promote a child to high school without the approval of the assistant superintendent. A colored teacher should not mark on the report card "promoted to the eighth grade." They are instructed that colored children must take an examination for eligibility for high school. Regulations covering the promotion of colored children to the high school are sent out in letter form and they state that the principal cannot promote to high school without the approval of the assistant superintendent. The only regulations to the colored principals are that colored children must take the examination prescribed by the Board for admission to high school. The letter containing the regulations to the colored principals are in two letters. (Two papers handed to the witness.) This is a letter dated June 12, 1935. This is the letter sent in 1934. (Paper referred to marked "Petitioners' Exhibit #3.) According to this letter teachers are instructed to discourage pupils from taking an examination for free tuition to a high school if they do not have a fair chance of passing. The principal is familiar with the achievements of the pupil and it is left up to the principal to discourage pupils from taking the examination if they desire to do so. The white examinations are marked before school closes and is given before the colored examination. There is no special reason why we do not give the examinations to both groups on the same day. In 1935 it was around August when the colored children were informed of the results of the examination. We give the examination to the white

pupils with the idea of letting the principals use the result of that examination as a more or less measure as to whether the children will be promoted from the seventh grade with the instructions that they must refer all doubtful cases to the supervisor or superintendent. It is for the purpose of helping the principals to decide as to whether or not he shall promote the child.

Q. Yes, 1935. Now, do you give the examination to the white pupils with the idea of letting the principals use the results of that examination as a more or less measure as to whether the children will be promoted from the 7th grade? A. With the instructions that they must refer all doubtful cases to the supervisor or superintendent.

Q. And, is that not for the purpose of helping the principal decide also as to whether or not he shall promote the child? A. Yes.

Q. Then, why do you not give the colored principals the examination results in time for them to decide? A. In 1935 there was a different type of examination, and because of the nature of the examinations it was impossible for us to secure them so quickly.

Q. Well, did you secure the white ones in time? A. A different examination was given the whites in 1935.

Q. It was different from the examination given the colored? A. In June, yes. But the same examination was given—the examination that was given the colored in June, 1935, was given to the whites in January, 1935.

Q. Oh, well, the examination given to the whites in January, 1935, was that for admission to high school? A. It was not for admission to high school, but—

Q. Then, when that child, the white child in 1935, in June, had completed the seventh grade, what happened to that child? A. When he completed the seventh grade?

Q. That is right. A. If the principal recommended him to high school, he was admitted to high school.

Q. Did he have to take an examination? A. Yes.

Q. What kind of examination did he take then? A.

In June, 1935, the principals of the white schools set the examination.

Q. They set out their own examination? A. Yes.

Q. And it was a different examination, the June examination was different from the examination given to the negroes? A. In June, 1935?

Q. That is right. A. But the June examination given to the negroes was given to the whites in January, 1935, and was considered in promotion of the pupils of the white schools in 1935.

Q. Right, but that examination was not given for the purpose of promotion to high school in the white case? A. Not solely, but it was considered in the promotion.

Q. Well, was the examination given to the colored solely? A. Yes.

Q. Then there is a difference? A. To that extent.

Q. To that extent? A. Yes, in 1935.

Q. That is right. Then, would you call that a uniform examination, the one in 1935? A. Uniform except as to time and place of the examination.

Q. That is right, except as to the time and place and purpose. A. No, the purpose of the examination in 1935 was to measure the classification or the grade abilities of the pupils at the end of the mid-year.

Q. At the end of the mid-year, but you gave the colored theirs in June? A. Yes, in 1935. Will you allow me to explain that?

Q. Yes, please. A. On October 1, 1935, we received a letter from the State Superintendent of Schools, stating that the State Department of Education would provide, free of cost to the *ounties*, a state-wide examination for state-wide purposes, to be given in January, 1935—in October, 1934, I should say I received the instructions—to be given all schools, white and colored; and at the latter part of June, 1935—I beg your pardon—the latter part of January, 1935, the examination prescribed by the State Board of Education was given to all pupils in the white schools, from two to seven inclusive.

Q. Yes. Now—go ahead, I thought you were through.

A. The achievements on that test, the achievements of the white pupils of all grades, especially in the seventh grade of the white schools, were so high that the principals of the white schools stated to us, in conference, at a principal's meeting, that they were just a little bit alarmed about reporting back to the parents the high standing of those pupils. Just about that time the Assistant Superintendent, Mr. Hershner, suggested that instead of giving the seventh grade examination, the progressive achievement test in the mid-year, in lieu of mid-year examinations, that we withhold the seventh grade examination, in fact, withhold all the colored school examinations until the spring. And I think we have records which would show that the State Department, or perhaps the supervisor of colored high schools consented to the postponement of the examinations, of the giving of the progressive tests until later in the year. Mr. Hershner, the Assistant Superintendent, also stated that he had conferred with the negro principals, and that they preferred an objective test, which this progressive examination is, rather than old type of essay type of examination, or paragraph examination, as we sometimes call it. We then called up the statistician of the State Department of Education, and asked whether or not, in her judgment, the giving of this progressive achievement test in June to the colored pupils to the seventh grade colored pupils, would be a fair measure of their ability to enter high school, or would measure their achievements in the seventh grade. We therefore, decided to give this test. And it was given in June, 1935.

Q. Now, there are a couple of questions, Mr. Cooper. Do you know the purpose of this examination? I mean, from the letter the State Board sent. Was it for the purpose of finding out what the child was doing, for the purpose of placing the child, or was it for the purpose of promotion? A. To measure his grade placement.

Q. That is right. Now, this examination was used in the white schools for that purpose; is that correct? A. Partly; and also used by the principals at the end of the year in evaluating whether or not a child was eligible for high school.

Q. Right; but the examination was not the sole criterion as to whether he would graduate? A. No, it was not.

The results of the test given in January, 1935 were so high that we deemed it a very liberal move to give the same examination to the colored schools in June, 1935. The average placement on the white examination was eighth grade ability in reading and comprehension, 9.5; in arithmetic and reasoning, 9.2; arithmetic fundamentals, 8.4; language comprehension 7.9. Ninety-eight point five (98.5) per cent of the pupils were above the score. In marking the examinations on a standard test, you minutely follow instructions. The achievement test was the Tiegs-Clark sent out by the State Board of Education. This examination given the white schools in January was for the purpose of placing the children in lieu of mid-year examinations. When it came time for the white child to complete the seventh grade and to decide whether or not he was eligible to go into high school, the principal took into consideration this examination plus what the child had done, in his personal knowledge of the records of the child in the school for that year. The colored child took a mid-year examination. I suppose they did. This examination was prepared by the principal of the school and the Board had nothing to do with the examination and did not see it. When the colored child reached June, the principal of the colored school had authority to promote him out, but not to promote him to high school. At this point the child had not yet taken his examination. The colored principal had no jurisdiction over the progressive achievement test. I do not know whether the principals were informed of the result of the examination. Later in the year perhaps the principal was. These principals are appointed by the Board. The achievement test for colored pupils is this progressive achievement test. The same test which was given to the white pupils in January was used as the sole criterion as to whether the colored child should be admitted to the high school in Baltimore City with tuition paid by our Board. The principal had nothing to do with it. This was true of the 1935 examination. The other examinations were essay-type questions, the same as those the white children took.

Q. Now, right there, would you show me the records you keep of the examinations given to white pupils, and how many passed and how many failed? A. We can not differentiate between those promoted and those promoted to high school.

Q. But you can in the colored schools, can't you? A. No, we can not. We have no records as to—we would have to work that out.

Q. If I show you that in here you have a record which says so many children graduated from the seventh grade. A. Promoted.

Q. Promoted? A. Yes.

Q. And then in your minutes it shows how many passed the examination, and you would know then. I would have an idea. I would know, yes.

Q. How would you find out about the white children, or, would you ever know? A. Well, we would have checked up with our high school principals as to how many children came into the high schools.

Q. Why do you take such special pains about the colored children in their examination, and how many passed and how many failed? A. It is not a question of special pains. It is a question, as I said before, upon administering the examination in a way we feel is fair, impersonal and uniform.

Q. Even for the question of keeping your records. I mean, as to whether or not—what difference does it make as to how an examination is given, as to how you shall keep your record of it? A. The record in the minutes to which you refer is submitted to the Board of Education, in compliance with the order of September 7th, I think it is, 1926, that the assistant superintendent shall recommend as to the eligibility of pupils, colored pupils who wish to enter the Baltimore City high schools.

Q. Then, can you tell me why the statement is made—it says number recommended; and he goes into detail as to the number who took them. And he had to lower their mark to get them through. A. Because we are asked for a complete report.

Q. Oh, I see, but the Board does not require a recommendation from the superintendent as to whether a white child is admitted, does it? A. It does not.

Q. The_, as a matter of fact, the requirement that the negro child not only meet the requirement of the Board that the white child meets, but also be recommended by the Assistant Superintendent, is an additional burden not placed on the white children; is that not correct? A. No, I don't think that is correct.

Q. Well, if a white child passes the examination, does that child automatically go into the high school? A. Not automatically; if he passes the examination, and if the principal records on that test, on the report that he is promoted to high school, he is eligible for high school.

Q. Now, if a negro child passes the test, is he eligible for high school? A. Which test?

Q. The uniform test that you mention? A. If he passes the test prescribed by the County Board of Education.

Q. He is eligible. A. —given under the auspices of the Board of Education, he is eligible.

Q. Is he eligible, or does he not have to be recommended by the Superintendent always? A. The Assistant Superintendent bases his eligibility upon the basis as represented by the test.

Q. But he can not get in if the Assistant Superintendent does not recommend him; is that correct? A. The Assistant Superintendent recommends back to the Board of Education.

Q. My question is, the colored child can not get into the city school under your tuition paid unless the Assistant Superintendent recommends him. That is my question. A. Yes, plus the approval of the Board of Education.

Q. But that is not required of white students? A. No.

In compliance with the regulations of the County, September 1926, the superintendent approves all pupils eligible for high school after they have passed and met

the requirements prescribed by him for eligibility. We can tell how many white students were promoted but we cannot tell from our records how many were promoted to high school. In 1934 and 1935 78.01% were promoted but we do not know whether they were promoted to high school or out of school. The total number is 1657. The records of the number in the first year high school for this year did not show how many got in because there might be a number of repeaters. The only way to check would be to contact the individual principals. We can always tell the number of colored children who have passed the examination from our records. According to our records, 128 colored children were promoted from the seventh grade in 1931. 89 appeared for the examination and 30 passed. In 1932, 158 were promoted. 52 out of 133 applicants were authorized to attend the colored high school. In 1933, 153 were promoted and 62 were recommended for high school. In 1934, 137 were promoted and 31 were recommended for admission to high school. In 1935, 153 were promoted and 64 passed the examination. I think the percentage of the number who passed the examination as against the number who were promoted from the seventh grade as between white and colored is lower for the colored. I think the explanation is the availability of the pupil. It might be possible that the pupil is receiving inferior instruction. There is also a possibility that the person who gave it, the examination, did not give it properly. There is a possibility that the person marking the tests did not mark them accurately except that this was not possible in 1935 under the progressive achievement test.

Q. That is what we want, those who were promoted to high school. Now, Mr. Cooper, these state standards here that your schools follow, and which have been marked for identification as Petitioner's Exhibit 2 for Identification, I will ask you to read from page 135, as to admission and graduation. A. Do you want it all?

Q. I mean, if you please, if you will just read this right here, down to that paragraph there, please, sir? A. "Admission by Elementary School Certificates.

"The high school in order to fulfill its function, should

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

“The principal test for entrance should be the ability to do the work of the high school. This is usually based on the character of the pupil’s previous achievements, as shown in his daily work, tests, and formal examinations, these factors being taken as a whole.

“The possession of an elementary school certificate, signifying the successful completion of the pupil of the course of study prescribed for the elementary school, is sufficient to entitle the pupil to enter an approved high school without examinations.”

Q. That is right. Now, being an officer of the State of Maryland—and that is admitted—you are acquainted with the educational laws of the State, are you not? A. Somewhat.

Q. Are you acquainted with the fact that these standards have the force and effect of law? A. That is not a mandatory thing, in my opinion.

Q. That is, in your opinion? A. Yes.

Q. Do you think, first of all, that as to the colored children, you are following that provision? A. We are not following the provision either for white or colored.

Q. That is right. You are not following the provision in the code. I mean in the standards. A. They are optional standards, as I interpret them.

Q. As you interpret them, you interpret them as optional. Now, you deny that the satisfactory completion of the seventh grade automatically entitles the pupil to admission to a high school; do you deny that? A. In Baltimore County, yes, because there is a special examination prescribed for entrance to high schools.

Q. Now, under just what authority was that exami-

nation prescribed? A. By authority of the Board of Education.

Q. I mean, did that refer to any of the rules of the State Board? A. No, I do not recall any reference to them.

Q. They just decided to give the examination. A. I do not think it is in conflict with the regulations of the State Board.

Q. And why not?

(Mr. Rawls) Your Honor, I do not think that ought to be argued. That is purely a legal question.

(Mr. Marshall) The only question, if your Honor pleases, I want to know why he says he thinks they follow them, and they are not in conflict. A. My reading and interpretation of the regulations is that they are not mandatory. There is nothing there that says "shall". It is merely suggested rather than required.

Q. Did you read those standards? A. I do not believe those standards are in effect today, either.

Q. If I show you the one that has just been revised in September, 1935—I will ask you if you have ever seen it here. A. Yes.

Q. Do you think those are the ones that are in effect now? A. Yes.

Q. Then, I will turn you to—I show you page 12 of the revised standards published in September, 1935, and ask you to read them, and ask you if that is not merely an utterance of the same provisions you read before? A. The high school in order to fulfill its function, should articulate both with the elementary schools and with institutions of higher learning. The high school is not a separate institution, but an integral part of a common school course of eleven or twelve years. For a pupil to enter upon the first year of high school work he should have completed in a satisfactory manner the elementary school course in the school system from which he has come.

"It can not be too strongly emphasized that a high

school education is the rightful heritage of every American boy and girl of high school age and that "it is the function of the high school to welcome every such boy and girl, and to adapt subject matter, methods and organization to the needs of such boys and girls."

"It should be remembered, too, that in a democracy the high school far from being a luxury, is a necessity, not only for the individual, but for society. The day is past when a free elementary education for all is adequate for the safety, welfare, and progress of our country. The formative period of life is the high school age; it is at this age that careers and life ideals will be developed, that the instincts will be turned to social welfare or to social outlawry, and that capacities for achievement will be discovered and developed."

"A high school, therefore, is not adequately fulfilling its function and the social responsibilities, unless it numbers in its enrollment every normal boy and girl of high school age in the community, and so satisfies with its curriculum, methods of instruction, and machinery of organization, the individual needs of the pupils that under any but extraordinary circumstances they will want to continue in high school, and receive the training which is essential to active, useful and reliable citizenship in a twentieth Century democracy."

There is nothing mandatory in that.

Q. But, Mr. Cooper, you said before you did not think they were in effect? A. There is no doubt this one was in effect. That is not a regulation that the Board of Education has to follow. It is merely a suggestion.

(Mr. Marshall) If your Honor pleases, I move that that be stricken out, that voluntary statement as to what these are. I submit that that should be stricken out, if your Honor please. I have not asked that.

(The Court) I overrule the objection.

(Mr. Marshall) Exception.

Q. (By Mr. Marshall) Now, Mr. Cooper, the book you just read from is entitled "Standards for Maryland

County High Schools," issued September, 1935; is that correct? A. That is correct.

Q. Now, did you consult the standards before you decided to give an examination to colored pupils? A. No.

Q. Did you consult the standards when you found that Margaret Williams had been refused admission to the Catonsville High School? A. No.

Q. Why was Margaret Williams refused admission to the Catonsville High School? A. Because she did not pass the examination prescribed by the Board of Education for admission to the high school.

Q. Now, I ask you the same question I asked Mr. Zimmerman. If Margaret Williams had brought to you a report card written on the bottom, "promoted to high school", and the principal's name signed under it, and she had been a white child, would you have admitted her? A. Let me have that question again.

Q. If Margaret Williams had brought you a report card, like her own, except that on the bottom would be written "Promoted to High School", and the teacher's name signed under it, and Margaret Williams had been a white pupil would you have admitted her? A. A white pupil who has recorded on the face of the report card "Promoted to High School", with the signature of the principal thereon, is eligible for admission to high school.

Q. That is right. Suppose, under the same conditions, Margaret Williams had applied, and she had been a Chinese child, what would have happened? A. I would have referred the matter to the Board of Education.

Q. Right. And the same for a Japanese? A. Yes.

Q. Then, did you refuse Margaret Williams because she had failed in the examination, or did you refuse Margaret Williams because she was a white child and had no right to attend the Catonsville High School. A. Colored child.

Q. I mean she was a colored child? A. We refused Margaret Williams admission because—in fact, the question did not come up to us specifically whether she should be admitted or not.

Q. It did not come up? A. No.

Q. Why not? A. It was not presented to our Board, as I recollect it.

Q. Didn't I present a letter and petition to your Board? A. The Board did not receive your letter and petition; they rejected it.

The minutes will tell what was done with your petition. You came out there on one case on October 8, 1935. I remember a letter sent me requesting me to admit Margaret Williams, a registered letter. I referred the letter to the Board of Education. I do not recall what happened to the letter after that. Then a letter was sent to the Board, registered. I do not recall what action the Board took on this. The minutes of October 8 have nothing to say about the admission of Margaret Williams. These letters were referred to our attorney. So far as the Board acting on it, her application is still pending. If I am tendered in open court her application as a first year student in the Catonsville High School under my authority as superintendent, I would not admit her. I would refuse it, yes. Because she is not eligible for high school and secondly because she has not passed; she did not pass the required examination prescribed by the Board of Education. If she had passed the examination, I would not have admitted her to Catonsville High School because separate schools and separate educational facilities are provided for negro and white children. When Margaret Williams finished the eighth grade——

Q. Well, when Margaret Williams finished the seventh grade she, as a citizen and a resident of Baltimore County, was entitled to some form of education; and what did you as a superintendent offer her, along with the other colored children?

(Mr. Rawls) Your Honor, I am going to object to that.

(The Court) I sustain the objection——

(Mr. Marshall) I want to put this question right, so they can object, and your Honor rule.

Q. (By Mr. Marshall) When Margaret Williams com-

pleted the seventh grade elementary course in 1934, what did the State or the County Board of Education offer her in the line of further education at public expense?

(Mr. Rawls) I object to that.

(The Court) That has been decided. I sustain the objection.

(Mr. Marshall) And, if your Honor pleases, exception.

(The Court) Yes.

Q. (By Mr. Marshall) Now, then, in 1935, after Margaret Williams had gone back to the seventh grade and had completed the seventh grade, what did the Board of Education of Baltimore County offer her in the line of further education at public expense?

(Mr. Rawls) Same objection.

(The Court) And I sustain the objection.

(Mr. Marshall) The same exception.

The Board of Education offers all students educational opportunities above the seventh grade who meet the requirements prescribed by the Board. Margaret Williams stood in the same position as any white as well as colored child. The white child took the progressive achievement test in January 1935 and the Negro took it in June. The white child was graded by examination plus principal and the colored child was graded solely by examination; the progressive achievement test which had been given to the white child. The white child passes the examination and then the principal promotes her besides. The colored child has to take the examination, pass the examination and then be recommended by the superintendent before he can go to high school. The colored child took the progressive test in June, 1935 with a lowered standard than prescribed by the test. The lowered standard was 250 points instead of 260 points and they had to be recommended by the assistant superintendent. If Margaret Williams had passed the examination, we would have paid the full five years' tuition for her in high school. If she had gone into the high school and had failed the first year, the question as to whether

we would pay her tuition would be based upon the recommendation of the assistant superintendent after a close examination of her report cards for the Baltimore City work. If she had a very low standing, we might refuse to pay her tuition further. The Board has been very liberal. I do not recall anyone having been, or any action by the superintendent in refusing to pay tuition. The ruling of the Board is set out in the minutes of 1926, reserving the right to refuse to pay tuition if the child fails. If a white child fails in some instances we put the child out, but this is not a settled rule. It would not matter except as to the number of children whether a white child stayed in or not so far as expense to the County is concerned. If there is one colored child and that colored child fails, the Board saves \$150.00. The Board has never been interested in the matter of saving money on the tuition of colored children; in regard to paying tuition in Baltimore City. We have been as liberal as we can possibly be in regard to that. I do not know the percentage of negro to white population in the county. The course of studies taught in the County is uniform as far as I know to white and colored. I do not visit colored schools. The assistant superintendent endeavors to enforce the same uniform course of study. I sit in with the assistant superintendent while the examinations are being prepared. We accept his recommendation. In 1935, we gave the achievement test and in the past June, 1936, we gave the essay-type test. In the places in the minutes where we mentioned the fact that there were so many students passed out of so many "contestants," this was a very poor word. It should have been applicants. This statement appeared in the minutes from the minutes of July 10, 1931. We find the Board approved the successful number of colored applicants for high school tuition in Baltimore City. This also is poorly worded. These minutes are read to the Board and approved by the Board. If the Board had recommended any changes, they would have been there.

CROSS-EXAMINATION.

I have seen the report card offered in evidence this morning during the petitioners' testimony, the first time I had seen it. I had not seen Petitioners' Exhibit #1 be-

fore this time. In the case of a seventh grade white pupil, it is necessary for the principal to make the notation on the report card in his own handwriting "promoted to high school," with his signature below the statement and the date. The principal is required by the superintendent through instructions and letters sent out repeatedly to do that. In the case of white pupils this must be done. In the case of colored pupils, the report card would not show anything as to the right of the child to be admitted to high school. That is the uniform, universal practice of the school department. The eligibility of a colored pupil to enter high school is determined by the passing of the prescribed examination set by the Board of Education or the superintendent. That is a pre-requisite to the right to attend high school. The pupil would receive evidence of this eligibility by a letter from the assistant superintendent or the superintendent stating that he is eligible and directing, listing the names of the high schools in Baltimore City to which he might apply. That form was used in this case in the letter we have read, August 8, 1935. That letter was sent that the pupil was not eligible. It gave the result of this examination and stated she would not be eligible to high school. That eligibility depends upon the passing of the examination given under the direction and supervision of my office. If the pupil successfully passes that examination, she is notified by letter that she is eligible for admission to one of the Baltimore City High Schools and that the Board of Education will pay her tuition. At various times we have considered the record of the pupil as submitted by the principal of the school and there have been occasions when we have promoted, or had decided to promote, even though the pupil failed the examination. But in case the pupil passes the examination, then the passing automatically entitles her to attend high school. The only variation is in some cases where the pupil has failed and we have given consideration to other facts. By lowering the standard, we have admitted other children. We always recommend for high school pupils who pass the examination. This is the invariable rule. There is no signature on this report card. The name of the teacher is written above, Violet M. Taylor. I do not know whether this is her handwriting or not. But the state-

ment "promoted to the eighth grade" is not signed by the teacher. I have never seen any notation as "promoted to the eighth grade" before. I have seen hundreds, perhaps thousands, of these cards but I do not recall ever having seen a notation of this kind. It would mean nothing to me. It would have no meaning to any school official in Baltimore County. There is no eighth grade in the public schools of Baltimore County now. If the pupil had successfully completed the seventh grade and if she were a white pupil, she would enter one of the first year white high schools. The first year of high school; and if she were a colored student, she would be eligible for the first year, or, in Baltimore City it would be the eighth year of the Baltimore City Schools. We do not have an eighth grade in Baltimore County. The grade that would correspond to the eighth grade would be the first year in high school. When Margaret presented her card to the principal of the Catonsville High School, if she had been a white pupil she would not have been admitted to the school. Her card would not be evidence of her right to attend that school. She was treated precisely as a white child would have been treated if she had applied to the Catonsville school with this card or a similar card. There has been no instance where a colored pupil successfully passed in the examination has been refused admission to a high school. I recognize the name, Violet M. Taylor, as one of the teachers. These report cards are given to the pupil. They would not come to my department at all. The cards are made out by the principal and handed to the individual pupil. At the end of the year all pupils are supposed to get some sort of card like that. The examination given in June, 1934, was the old fashioned essay or paragraph form of examination prepared by the supervisors, the assistant superintendent and myself. It was a uniform examination given to white and colored alike. In the white schools in the year 1934, the pupil who failed in the examination could not be promoted by the principal without the approval of the superintendent or the supervisor. That was the uniform rule applied as far as I know, throughout the system. In 1934, the white pupil and the colored pupil both had to pass the same examination before either could be promoted. The difference in the examination between the white and colored

pupils was that the colored pupils took the examination at designated centers and the white pupils took the examination in the respective schools. They took the same examination though. The grading was uniform. The grading was as uniform as it could possibly be. We sent out and gave a weight to the examination questions so there would be as little variation as possible. The passing mark for white was 70% in each subject and the passing mark for the colored was 60% in each subject. The colored pupils had a 10% allowance in the marking. Unless each passed, no principal had authority to recommend to high school. The examination in 1934 was perhaps different as to time. One was given in the centers and the other was given in the schools. The colored pupils were marked by supervisors in 1934 and the white pupils were marked by their principals or teachers, in some instances, the principal was the teacher. With these exceptions, the examination was uniform. In 1935, we gave the so-called standard test to the white seventh grade pupils in January. This was given in pursuance of some recommendation of the State Board of Education. The result of the examination indicated that it was an easy examination for those students. They passed it with marks so high that it indicated it was not a difficult examination for those pupils. In some places 95½% passed. This would be an unusual result in an ordinary school examination—unusually high. The same examination was given to the colored pupils in June, 1935. The colored pupils made a much poorer showing. I do not know the difference in percentages, but I am certain that a larger number of colored pupils failed than white. This was the same examination given in other counties in Maryland about the time. I think it was given a month or two earlier, than June in the other counties. It was given to both white and colored pupils. I do not have the results clearly as to the comparison between the white and colored pupils, but I am confident it showed the white schools are very much higher in achievement. I do not have the figures. Mr. Hirshner has them. The test given in 1935, this so-called standard uniform test, is known as the objective test. The gradings are not dependent upon the judgment of the marker. The answer is true or false; or right or wrong. In theory you could

practically conduct that examination like the marking of a ballot at election. The grading or marking could as well be done by any person familiar with the key. There is not any chance of error in my opinion, when the tests are checked. This is assuming that the paper is honestly marked. I have before me the answers of Margaret Williams in June, 1934, and June, 1935—the first being the old form of examination and the 1935 examination being the standard type. (Examinations introduced and marked Defendant's for Identification #1 and #2.) I obtained these from Mr. Hirshner. They have been in our custody. They were in the City office of the Board of Education in Baltimore City. The City office is located in Baltimore City because it is the population center of Baltimore County. These examinations were collected in the four or five colored schools and brought to the Baltimore City office. They were examined by the supervisors in 1934 and examined under the direction of the supervisor and specially trained people as assistants, college graduates, I might say in most cases, 1934. It took about seven people and in 1935 it took considerably longer. We had 128 papers in 1934. We collected the colored pupils in these four or five school centers and had them take the examination. It is desirable to do the same for white pupils but we could not do it because we could not handle the situation. The white school population, in round numbers, is 24,000. We have, in round numbers, 2,000 colored pupils in our schools. About one-twelfth of the white population. In the colored seventh grade in round numbers we had 200 and in the white seventh grade in round numbers 2,000. I could not say the average since 1926, but I would say approximately 50 pupils entered the high schools per year. Last year a total of 158 in the high school in all the five years. The size of our ordinary white schools in the county for secondary schools are from 500 to 1,250. There is a difference in efficiency between a small and a large high school. It is impossible for a small school to offer the various types of subject matter that a large school can offer. It is also difficult to obtain efficient instruction in a small school. I think this is an accepted principle in education. These 158 pupils would not be enough to provide the facilities that you properly should have in a high

school. I think they get better educational opportunities in Baltimore City than our white children get in Baltimore County. If I had the choice I would not erect a high school in Baltimore County as against sending them to the larger schools in the City. I am inclined to believe that the colored schools in Baltimore City rank better perhaps than any other schools south of the Mason and Dixon Line. I feel that in Baltimore County we are acting for the best interest of our colored pupils when we send them to those schools. That has been our only and sole purpose in sending the colored pupils to schools in Baltimore City in order to give them better educational facilities. I am not aware of any discrimination in the giving of those examinations against the colored pupils which I would call an unfair discrimination. I think they are treated as fair as the white pupils. If there is any discrimination, it would be in favor of the colored children. I think it applies to the liberal treatment in the marking of the papers, the essay type, but it generally applies in the progressive achievement test as well as in liberality in regard to the time and the giving of the test. The passing mark has been repeatedly reduced in order to give high school opportunities to more colored children. In the 1934 examination, Margaret Williams received the following grades: 34% out of a possible 100% in Geography, 21% out of a possible 100% in History, 61% out of a possible 100% in English, 37% out of a possible 100% in Arithmetic. This would indicate that she was unprepared at that time for admission to high school, a very low grade. I would rate her as unsatisfactory with the exception of English. Others were very unsatisfactory. In the 1935 examination, she obtained a score of 244 points out of a possible 390. That would indicate that she was not eligible for eighth grade work, or first year high school work. It would indicate it very clearly according to the standards of this test. This would be true according to both examinations. I know of the two letters sent here in August, 1934 and 1935. I know now that she failed in both examinations and that she was so notified. Upon examination, the highest colored school population in Baltimore County is at Towson, Sparrows Point and Turners, which is in the same vicinity as Catonsville. The center of the population would be in Baltimore City.

It would be very much more convenient for the colored children to attend school in Baltimore City. I would say this would be in regard to 90% of the population. Attendance at Baltimore City schools is more convenient than attendance at some county school. I should say the longest distance in Baltimore County that white students attend high school is 11 or 12 miles. We have a few pupils who attend that distance. I should say the average distance would be 5 to 6 miles and that is frequent, very frequent. These are children between the ages of 12 and 17. I think the colored children are perhaps a year or two higher in grade generally.

REDIRECT EXAMINATION.

We base our examinations on the course of study and we base our instructions on the course of study. We make modifications in the course of study in the colored schools and the white schools to meet the individual needs wherever we can, but we do not change the basic fundamentals of our courses of study in either school. We endeavor to give the same quantity and quality of examination to white and colored children. A large high school is better than a small one and this is also true of the elementary school. With equally good teachers in the grade school, we do more teaching in quality in a grade organization school than we do in a one-teacher school. The teachers in the colored schools have the same certificates as the white teachers and the same qualifications as far as I know and they are supposed to do the same kind of teaching as the white teachers. I cannot account for the poor marks of Margaret Williams' examination and the good marks on her report card. I do not know whether the teacher is making a deliberate falsehood. She is my agent, appointed by me, and supervised by my other agent, Mr. Hirshner. So far as I know, she is acting as a qualified teacher should act. I never sent for Margaret Williams' record from Miss Taylor. It never occurred to me to go in and check a teacher where the child had twice taken the seventh grade and was unable to pass the examination. Mr. Hirshner no doubt checked up on the teacher and does check up on teachers. If Mr. Hirshner allows her to remain there, I assume she is putting over her job properly. (The witness shown two letters, one

sent to him and one sent to the Board.) I received these letters. (Papers referred to marked Petitioners' Exhibit 4 and 5.) The white principals make notations on the report cards as to whether or not the child is promoted to high school. There is no possible way that Margaret Williams could have on this card "promoted to high school" with the principal's name signed under it. It is absolutely impossible. If she had passed the examination, she would not have had that put on her report card. We refused her admission because we do not admit colored children to white schools, and in the first place, she was not eligible. In the case of colored children, before we pass them we consider the records of the principal. We do it before we pass them and afterwards. We do not go over the records until after the examinations are given. If the child fails, we might help him out. All these records show from the principal is whether he recommends the child for promotion. (Papers referred to marked Petitioners' Exhibit #6.) We never receive an actual record of the child showing the actual subject marking, prior to passing an examination for seventh grade pupils. We cannot produce one of these records for 1934 and 1935, but we can produce it by tomorrow. After the child has passed the examination, we mail the letters saying that "you have passed the examination, and you are entitled to admission into the high schools in Baltimore City" and that entitles her to admission to the Baltimore schools. She could not take that letter and get in the Catonsville High School because it does not pertain to the Catonsville High School. It pertains to the Baltimore City Schools and it pertains to Negroes. When a colored child leaves the Baltimore County and goes to the Baltimore City schools, the next grade he goes to is the eighth grade. There is such a thing as an eighth grade in Baltimore City, but not in Baltimore County. The colored children go to school in Baltimore City but not in Baltimore County. "Promoted to the eighth grade" would not necessarily mean something to somebody in Baltimore City. If a white child had presented a report card in the same form as this one (Petitioners' Exhibit #1) I would have refused to accept the child because the card is not properly endorsed. I would make her get it signed by the principal. I did

not send word to Margaret to that effect. There was no occasion to send it to her because she had been notified by her teacher that she would not be admitted to the high school without passing the required examination. When I saw the photostatic copies of this report, it meant nothing to me in regard to her examination. I refused to admit her. I knew she had failed when I refused. I did not refuse except to inform Mr. Zimmerman. The matter was referred to the attorneys without any action of the Board. We did not answer the letter. The examinations given the white pupils in 1934 and 1935 are in the offices of the high school. We cannot get the white examinations because they are not kept more than six months in schools. We have the colored examinations, but we do not keep the white ones. We do not keep the colored ones for an indefinite period. We keep the colored ones and not the whites because they are small in number from the standpoint of storage and the whites are not transferred from the respective schools to the central offices. The supervisors and superintends see the white examinations at the schools. They are never forwarded to our office. The reason there are only 158 colored pupils in the Baltimore City schools is because they fail to pass the required examination. The local colored principals have the option to encourage or discourage children from taking the examination but they may still go, even though they are discouraged. The white children travel an average of five, six and seven miles and some go as far as eleven. Some travel by our transportation and some furnish their own. The center of the colored population is in Baltimore City and I think the center of the white population would be perhaps in Baltimore City too. We have small high schools in Baltimore County that offer one year's work. One of them offers two. Most of them have been failures. The largest white high schools are in close proximity to Baltimore City. The auditorium in the Catonsville High School seats 500 people and would seat the seventh grade pupils in that district surrounding Catonsville High School, but you cannot satisfactorily conduct an examination in an auditorium. We do not have enough disinterested persons to administer an examination in the classrooms. The examiners do not examine white children. The principals do. It is to the

best interest to have disinterested persons give the examination. In the white schools the principals give them but we would like to have the conditions different.

Q. (By Mr. Marshall) Going to the extreme, if a principal gave an examination and told the answers to the pupils and that examination was sent in to your office to be marked, is there any way that the markers could know whether that was done or not?

Now, they do want you to answer that.

(Mr. Roe) We object to the question.

(The Court) I sustain the objection.

(Mr. Marshall) And we take an exception.

Q. (By Mr. Marshall) One more question, to keep the record straight. I show you this letter, and ask you if you remember it (handing letter to witness)? A. Yes, I do.

Q. And that included a letter from Mr. Hirshner, is that correct? A. Yes, that is right.

Q. (By Mr. Marshall) Now, Mr. Cooper, again we want the record to show that in the subpoena to you you were requested to bring with you all records of the white examination; is that correct? A. That is correct.

Q. And that you are unable to produce those records? A. We have the records. We can, perhaps, produce the records and what the pupils' scores were; but as to the papers we can not, no, absolutely impossible.

Q. You are unable to produce the papers? A. We do not hold those in the schools. We have no space for them. We hold them for a period of six months, and they are subject to the inspection of any one interested, a parent or any interested person, but not longer than that.

Q. And you mentioned a little while ago that you held the colored papers for a little while, but do not hold them forever. Approximately, how long do you hold them? A. I don't know. I don't know whether we have them back farther than 1933 or '34.

Several times we lowered the marks for colored pupils. The Board instructed us to raise the examination because the examinations were not a true measure of the students' ability. We lowered it to deal more liberally with the colored pupils. In the achievement test, we lowered the passing mark. We reduced the points from 260 to 250. In 1933 we had a resolution by the Board that the colored children had to attain the same percentage as the white children, namely 70%. When we lowered the mark in 1935, we did not put that in the minutes.

HENRY M. WARFIELD,

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

"I am president of the Board of Education of Baltimore County and one of the respondents in this case. I have been president about three years, occupying such office in September, 1935. I do not recall receiving a letter personally from Thurgood Marshall requesting admission of Margaret Williams to the Catonsville High School, but I did see such a letter addressed to the Board at a Board Meeting. The minutes of the Board on page 325 which show that Attorney Thurgood Marshall appeared before the Board with a petition to establish high schools for Negroes and that the petition was rejected are correct. At that Board Meeting we stated that we would not accept the petition. I do not recall what action the Board took on the letter referring to the application for admission to the Catonsville High School on behalf of Margaret Williams. We would reject an application for admission to the Catonsville High School on behalf of Margaret Williams if such application should be tendered now because that is a white high school, and further because she did not pass her examination.

Under our rules it is impossible for any Negro child to be admitted to the Baltimore City High School, with our Board paying the tuition, without the recommendation of Mr. Herschner. I am not sure about the requirements for the admission of white students into the high