

up and see what they are, and give them to you, if there are any.

(The Court) All right.

(Mr. Marshall) Your Honor, at this point I want to call to your attention that the examination papers of Margaret Williams have been mismarked by the stenographer as Petitioners' Exhibit. They were Respondents' Exhibits.

(Mr. Roe) They were put in by consent.

(Mr. Marshall) We can take care of that later on. We will introduce these, if there is no objection.

(Mr. Marbury) What dates are those?

(Mr. Marshall) June 15, 1935, and May 23, 1934.

(Mr. Marbury) That is right.

(Papers referred to marked "Petitioners' Exhibits Nos. 22 and 23.")

(Mr. Marshall) If your Honor pleases, that is the petitioners' case.

(The Court) Petitioner closes.

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### DR. ALBERT S. COOK,

a witness of lawful age, produced in behalf of respondents, being duly sworn was examined and testified as follows:

I am Superintendent of Schools for the State of Maryland, under the State Board of Education. I have been Superintendent for 16 years and prior to that was Superintendent of schools of Baltimore County for 20 years. I am not as familiar with Baltimore County schools now as I was then. They are under my general supervision. I am familiar with the general set-up of the Baltimore County schools. I am familiar with the public school systems generally in the United States and I have studied administration for 36 years off and on. I have attended Columbia University to study administration. White and

colored teachers attend Columbia University. That is the great clearing house of educational information in this Country. I am familiar with the system in Baltimore County of sending children from the seventh grade into high school. I have learned more about it during the trial than I knew before. They give a special test for the purpose to both white and colored schools. I assume that this is made the criterior for promotion. I assume this is the general rule. It is followed in other places. I do not know just where. I remember that Kent County, for example, used one of the standardized tests, as far as I know, as a basis of promotion from elementary to high school. The County superintendent did not need to get my permission in order to do it. My assistant, Mr. Huffington, is familiar with the details for the colored schools. There are others but I do not recall which ones because I did not give it any study. I remember at one time that it came up at an administration meeting of superintendents and some mentioned that they were giving tests of some sort at most of the high schools.

Q. Are you familiar with the practice in other states in that respect? A. Well, not very, except that I happened to be in Pennsylvania a few years ago, attending, speaking at one of the sessions of the State Teachers' Association there, which I am going to do again this year; and a professor from the University of Pittsburgh made a report on high school promotions; and that report—I remember just the substance of it—I reported to our people here when I came back. He said that in the counties, particularly in the rural districts—they have the township system there, not the county system—and if a township does not have a high school in it, then the children must take the examination, in order to be certified to the adjoining township, or town, or borough where there is a high school. He said that of the rural high school children in Pennsylvania—I think he stated most of the counties—there are sixty-seven in all—you know, I am a native of Pennsylvania.

Q. I know you are. A. Green Castle. But only 70 per cent of the children that could take it, that were eligible to take the examination took it, and he found in general of the 70 per cent that took it only 70 percent passed the

examination, meaning that 70 per cent of 70 is 49 per cent, so that only 49 per cent of the children in the rural districts of most of the sixty-seven counties of the State at that time were getting into the public high school; and this year we find that half of them failed to graduate.

(Mr. Marshall) If your Honor pleases, I did not want to stop the testimony until I found out just where Dr. Cook was going, but at this point I move to strike out the answer to the entire question, because it is obviously hearsay, as to what somebody said up in Pennsylvania.

(The Court) I overrule the objection.

(Mr. Marshall) Exception, please.

By Mr. Bawls:

Q. Dr. Cook, you are familiar with the standard test that was given in 1935 in Baltimore County, are you not?

A. Well, it just depends on what you mean by familiar. I know about it, but I am not an expert in that field.

Q. I understand. A. I do not attempt to do everything in the department.

Q. Do you know whether that test was used in other places than Baltimore County? A. Well, of course, they were using it. We bought enough to supply the whole State. We used it in all the counties of the State.

Q. And did your department have any discussion with Mr. Cooper with reference to its use in Baltimore County?

A. Nothing except what Miss Stern testified about.

(Mr. Marshall) If your Honor pleases, I object to anything Miss Stern know~~n~~ about it. Miss Stern was on the stand, and there is most certainly no excuse for him to testify what Miss Stern said.

(The Court) He testified all he knew about it is what Miss Stern testified.

(Mr. Marshall) I must object to any testimony, as to that line of testimony.

By Mr. Bawls:

Q. Dr. Cook, in your opinion as an educator, do you

think that the examination that was given in Baltimore County in June, 1935, to the colored pupils, and the one that was given in January to the white pupils, that they were a fair test of the achievement of those pupils?

(Mr. Marshall) If your Honor pleases, by the testimony of the witness he disclaims any knowledge of being an expert in the field of testing, and claims his knowledge in the field of an administrator, and as an administrator, and admitting he is not qualified as an expert on testing, and I object to any opinion testimony from him concerning the fairness of that or any other examination.

(The Court) There are a great many young men in Baltimore County that have taken the test from him. He was a member of one of the high schools.

(Mr. Marshall) But they were not giving progress achievement tests during that time.

(The Court) I think he is competent to testify.

(Mr. Marshall) Objection and exception.

(The Court) Very well.

A. Are you speaking of the achievement test that was given in 1935?

By Mr. Rawls:

Q. Yes, sir. A. Of course, I do not know what that other test was. I did not see the other test.

Q. I am only speaking now—you never saw the examination in 1934? A. No.

Q. But you did see the standardized test that was given in June, June 20, 1935, to the colored children, and which had been given in January of the same year to the white children? A. May I make a statement in reference to these tests that we give?

Q. All right. A. Miss Stern, who is the expert in the Department in that field, is getting tests, all the new tests that come out, that we can possibly find out about all over the United States, wherever they are made. They are usually made at the universities. We buy printed copies,

and have them in the office. In the elementary field, Miss Stern, as Miss Simpson, of the elementary schools, and Miss Wiedefeld, who is supervisor of Elementary Schools, and those three go carefully over and annotate these tests, and they keep a record of that from time to time, and before they really choose they select some office, one according to their judgment, to do anything we want to do with that particular test; and then we very frequently call in some of the nearby supervisors, some of our outstanding supervisors, to check up; and sometimes we even give those tests to a small group of children outside of the State somewhere, to find out a little bit more about them. In other words, it is all handled very, very carefully. And that group made the decision. I have nothing to do with the decision. I accept their judgment, as I always do with my experts in their field.

Q. And what was their recommendation? A. Their recommendation was that they thought it was a splendid test, and the testimony of teachers over the State that I spoke with last summer was the same.

(Mr. Marshall) If your Honor pleases—

(The Court) Don't go too far.

(Mr. Marshall) Thank you, your Honor.

By Mr. Rawls:

Q. And looking at the test yourself, what is your judgment about it? A. I accepted their judgment.

Q. You accepted their judgment? A. Yes.

(Mr. Marshall) If your Honor pleases, we again put in the same objection as to his opinion as to that examination.

(The Court) Overruled.

(Mr. Marshall) Exception.

With reference to the administration of County schools, I believe the law says that the State Superintendent of schools and his assistants have supervisory control over

a great many things and of course, admission and promotion from the elementary school to the high school is one of them, but that control is only supervisory. We feel that the Counties have the initiative in all of these things. If we exercise any supervision it would be in the nature of suggestions, if we thought that something was going on that perhaps was not just what it should be or there would be a discussion between a member of my department and he reported it to me and I thought it was safe and worthwhile, I would discuss it with the superintendent myself or put it on the program for discussion at one of our provisional conferences but that is a matter within the authority and control of the local Board. It is the policy of the State not to butt in. The statement in the 1927 standards for Maryland high schools on page 135 which reads: "The possession of an elementary school certificate signifying the successful completion by the pupil of a course of study prescribed by the elementary school is sufficient to entitle the pupil to enter an approved high school without an examination" does not appear in the last statement of standards. We have a great many bulletins. These are provisional bulletins issued from year to year. When a bulletin is issued that is a definite rule of the Board and is passed as a by-law. It has the full force and effect of law. These other bulletins are provisional bulletins gotten out by the department and not brought to the attention of the State Department. Since the Secretary of the Board and the State Superintendent is executive officer for the administration of the schools, they are not by-laws. The statement just mentioned was omitted from the new bulletin because I found that a number of County Superintendents did not think it should be in there. It was not a good way to do it and they were not following it. There was nothing compulsory about it. The quotations from law in these bulletins are binding and some quotations from the by-laws are binding. This however, is a statement that is neither a by-law nor law. Some of it is philosophy of education and some of it is, of course, idealistic. Of course, we feel we have the right to put some ideals in these bulletins. That statement is not binding upon a local Board. I would not consider it as standard even if it was a by-law. It would be a regu-

lation. If 16 units are required for examination, I would consider that a standard. A minimum of 180 days would be a standard.

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### CROSS-EXAMINATION.

I did not prepare these standards. The high school supervisors did, but I read them over before they were published. They must have my approval. I omitted that statement I mentioned. I do not remember whether it was in there when it came to me. I do not know whether we omitted any other items. I called the attention of the high school supervisors to it. The reason I am so confident about omitting this one is because we had a discussion on it. We might have discussed some of the other provisions. We probably did. I do not know. It was not as a result of these discussions necessarily that I took it out. In the discussion the County superintendents believed there ought to be an examination given pupils. The 1927 bulletin is 216 pages and the 1935 bulletin is 49 pages. If you will let me have the bulletins, I will explain what sections were left out. The bulletins were shorter because we were short of funds. There are three bulletins, as a matter of fact. I ordered the provision of the 1927 bulletin left out of the 1935 bulletin. I am not an expert on standard achievement examinations. The purpose of the standard achievement examination was to check on the school system of the State. We keep a record of how each county stands and give each county its own record, but we do not give them the records of other counties. They are also used as diagnostic tests, of course, they also assist in setting standards. When children take these examinations, they become familiar with standard tests and that is a part of education. Some people believe that no examination is worth anything and I have come to the conclusion they are also unfair. But, at the same time, we believe that the children must go up against examinations all the time and therefore I believe in examinations written as well as oral. The State Board has repealed the by-law at the request of the county superintendents. We have left it to the county superintendents to determine

how it is to be done. The examination was sent out for the purpose of helping the counties, helping the schools and for diagnostic purposes. We had nothing to do with using the examination for promotion purposes. I had no idea about using it for promotion purposes. You do not have an idea about a thing you are not going to do and have nothing to do with it. The examination was put out by the State Board for the purposes stated. The purpose of promotion was not included in the purposes for which the examination was sent out. I had nothing to do with promotion. It was sent out to the county superintendents for the purposes mentioned. I do not know of my own knowledge of the time the examination was to be given. If the examination is given to less than 50% of the seventh grade in a particular county I could not conceive of that happening throughout the test. We would ask them to examine the whole grade and that was our purpose.

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## PETITIONER'S EXHIBIT NO. 2.

February 1923:

### ADMISSION AND GRADUATION.

#### A. Admission by Elementary School Certificate:

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

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