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Richmond, Va.
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Records Nos. 5096, 5097

In the
Supreme Court of Appeals of Virginia
at Richmond

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ETC.

v.

A. S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, ET AL.

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

v.

A. S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5096

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 14th day of October, 1959.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ETC., Appellant,

against

A. S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, ET AL., Appellees.

From the Circuit Court of the City of Richmond

Upon the petition of National Association for the Advancement of Colored People, a corporation, an appeal and *supersedeas* is awarded it from a final order entered by the Circuit Court of the City of Richmond on the 25th day of February, 1959, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Albertis S. Harrison, Jr., Attorney General of Virginia, and others were defendants, Chancery Case No. B-2869; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

• • • • •

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5097

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 14th day of October, 1959.

N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC., Appellant,

against

A. S. HARRISON, JR., ATTORNEY GENERAL OF VIRGINIA, ET AL., Appellees.

From the Circuit Court of the City of Richmond

Upon the petition of N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, an appeal is awarded it from a final order entered by the Circuit Court of the City of Richmond on the 25th day of February, 1959, in a certain chancery cause then therein depending wherein the said petitioner was plaintiff and Albertis S. Harrison, Jr., Attorney General of Virginia, and others were defendants, Chancery Case No. B-2870; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD NO. 5096

Note: The Record in Case No. 5097 commences on page 42.

RECORD

• • • • •

Filed in the Clerk's Office the 20th day of May, 1958.

Teste:

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

IN CHANCERY
NO. B-2869.

National Association for the Advancement of Colored People, a corporation, Complainant,

v.

Albertis S. Harrison, Jr., Attorney General of Virginia, Supreme Court Building, Richmond, Virginia, T. Gray Haddon, Commonwealth's Attorney for the City of Richmond, Virginia, 3818 Hermitage Road, Richmond, Virginian, William L. Carleton, Commonwealth's Attorney for the City of Newport News, Virginia, 959 Shore Drive, Newport News, Virginia, Linwood B. Tabb, Commonwealth's Attorney for the City of Norfolk, Virginia, 1118 North Shore Road, Norfolk, Virginia, William J. Hassan, Commonwealth's Attorney for the County of Arlington, Virginia, 5906 Ninth Road, North Arlington, Virginia, Frank N. Watkins, Commonwealth's Attorney for the County of Prince Edward, Virginia, Farmville, Virginia, Defendants.

BILL OF COMPLAINT.

To the Honorable E. W. Hening, Jr., Judge of said Court:

Complainants respectfully shows the following case:

page 2 } 1. This is a suit for a judgment declaratory of the construction and interpretation of Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra Session 1956, being Sections 54-74, 54-78 and 54-79, as amended, and Sections 18-349.31 and 18-349.37, inclusive, of the Code of Virginia of 1950, as they may affect the complainant, its affiliates, officers, members, contributors, volun-

tary workers, attorneys engaged by it or to whom it may contribute monies, or litigants receiving its assistance in cases involving racial discrimination, because of the activities of complainant in the past or the continuance of like activities in the future, in the light of complainant's contentions that enforcement thereof would deny complainant, its Virginia State Conference of Branches, its branches, officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies, or litigants receiving its assistance, their liberty and property without due process of law and the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States.

2. Complainant's basic aims and purposes are to secure the elimination of all racial barriers which deprive Negro citizens of the privileges and burdens of equal citizenship rights in the United States. In its Articles of Incorporation (attached hereto as complainant's Exhibit No. 1 and made a part of this Complaint), its principal objectives are described as follows:

* * * voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability and complete equality before the law.

page 3 } "To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any kind and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects."

Complainant has registered with the State Corporation Commission and has complied fully with state laws relating to foreign corporations which were in force prior to the enactments here being contested. By virtue of its activities through the 49 years of its existence in its efforts to secure equal rights and equal opportunities for colored citizens of the United States, complainant has become regarded as a chief instrument through which colored citizens of the United States and of the State of Virginia may act in their effort to remove the burdens and penalties imposed by restrictions based upon race and color.

Prior to the enactment of the laws herein complained of,

the activities of complainant have been recognized and regarded by the public, public officials and the courts in Virginia as a normal American procedure for the redress of grievances.

3. In accord with its charter and national constitution (attached hereto as Complainant's Exhibit No. 2 and made a part of this Complaint), complainant has chartered various branches in Virginia for the purpose of carrying on the work of the organization in Virginia. These branches are independent unincorporated associations subject only to such control by complainant-corporation as is set out in the national constitution and constitution and by-laws for branches (attached hereto as Complainant's Exhibit No. 3 and made a part of this Complaint).

In addition to the various branches, there is a state-wide organization of branches known as the Virginia
page 4 } State Conference of Branches maintained by the branches through which they seek to act in concert and pool their strength on issues of state-wide interest. Its chief activity is to acquaint the people of the State with the facts regarding segregation and discrimination and to inform Negroes as to their legal rights and to encourage the assertion of those rights when they are denied. This program is carried out through public meetings, speeches, press releases, news letters and other media.

4. Complainant, its Virginia State Conference of Branches, its branches and members, have worked jointly and severally in concert to secure the eradication of enforced racial segregation pursuant to governmental authority and the elimination of all other forms of racial discrimination imposed by law. This effort has been pursued in various ways: (1) by apprising the public of the adverse effects of discrimination; (2) by seeking to secure the passage of federal and local legislation barring racial discrimination in various facets of American life and by seeking these results through executive action wherever possible; (3) by encouraging Negro citizens to assert their constitutional rights and seek redress in the courts wherever necessary; (4) by advocating the removal of all racial barriers to the full participation in community life of Negro citizens; (5) by contributing to the payment of fees or expenses incident to the prosecution of litigation involving the constitutionality of racially discriminatory governmental action; (6) by aiding in defraying expenses of such litigation from funds raised by public solicitation.

This has been the manner in which complainant has sought to give aid in the overall struggle in the United States for

a society in which considerations of race and color
page 5 } will have no part and proposes to continue such activities in the future. No questions were ever raised concerning the legality of complainant's activities in Virginia or elsewhere until the Supreme Court decision on May 17, 1954, outlawing segregation in public schools. Since that decision, state officials have been seeking to find ways and means to avoid its implementation, and have concluded that complainant must be destroyed if segregation is to be preserved in this state.

Thus, the General Assembly, at its said special session in 1956 which was devoted almost solely to finding ways and means of preserving segregation in the public schools, enacted Chapters 33 and 36, specifically intended to bar complainant, its Virginia State Conference, its branches or members from assisting others in court tests of the legality of governmental action preserving segregation in the state's public school. By this legislation, Negro citizens are in effect denied access to the courts in Virginia to seek redress against state officials for deprivation of their constitutional rights.

5. Defendant Albertis S. Harrison, Jr., is Attorney General of Virginia and as such is the chief executive officer of the Department of Law of the Commonwealth of Virginia and is charged with enforcement of all laws of the Commonwealth including the statutes aforesaid.

6. Defendants T. Gray Haddon, William J. Carlton, Linwood B. Tabb, Jr., William J. Hassan and Frank N. Watkins are the Commonwealth's attorneys for the cities of Richmond, Newport News, and Norfolk, and the counties of Arlington and Prince Edward, Virginia, respectively, and are each charged with the enforcement of the laws aforesaid.

page 6 } 7. Chapter 36 of the Acts of the General Assembly of Virginia, Extra Session 1956, being now Sections 18-349.31 to 18-349.37, of the Code of Virginia of 1950, makes it unlawful for any person not having a personal or pecuniary right or liability in the proceedings to promise, give, offer, receive or solicit any money, personal services, "or any other thing of value, or any further assistance, or an inducement to any person to commence or to prosecute further any original proceeding in any court of this State, or before any board or administrative agency which the said State, or in any United States Court located within the said State against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing; * * *" (Sec. 1-a), or for any person "not related

by blood or marriage or who does not occupy a position of trust or a position in *loco parentis* to one who becomes the plaintiff in a suit or action, who has no direct interest in the subject matter of the proceeding and whose advice has not been sought in accordance with the Virginia canons of legal ethics, to advise, counsel or otherwise instigate the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing." (Sec. 1-b). "Person" is defined to include "person, firm, partnership, corporation, organization or association," and "direct interest" as "a personal right or a pecuniary right or liability." (Sec. 1-c). Doubts have arisen as to the application of the provisions of this statute to the activities of complainant, its officers, members, contributors and voluntary workers, and attorneys engaged by or to whom they may contribute monies, and litigants as hereinbefore set forth.

page 7

8. Chapter 33 of the Acts of the General Assembly of Virginia, Extra Session 1956, amended Sections 54-74, 54-78 and 54-79, of the Code of Virginia of 1950 and defines the elements and penalties of unprofessional conduct on the part of an attorney and the offenses of "running" and "capping." In its original form, Section 54-74 (6) defined "unprofessional conduct" as including the "improper solicitation of any legal or professional business or employment, either directly or indirectly." Chapter 33 amended this subsection to extend this definition to include "the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 of this Chapter * * *" which includes Sections 54-78 and 54-79. The former, as amended by Chapter 33, now provides:

"(1) A 'runner' or 'capper' is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or procurement of business for such attorney at law or for such person, partnership,

corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated * * *

page 8 } "(2) An 'Agent' is one who represents another in dealing with a third person or persons."

Section 54-79, as amended by Chapter 33, now reads in part:

"It shall be unlawful for any person, corporation, partnership or association to act as a runner or capper as defined by Sec. 54-78 to solicit any business for an attorney at law or such person, partnership, corporation, organization or association * * * in any public place * * * or upon private property of any character whatsoever."

9. In places wherein defendants have a legal duty to enforce said statutes, and elsewhere in the Commonwealth, the complainant has (a) contributed, and proposes to continue to contribute, upon request, the services of attorneys, expert and scientific data which illuminate the ravages of racism, monies toward counsel fees and the expenses of litigation in cases initiated or pending which raise question for decision concerning the legality of racially discriminatory conduct with respect to the use and availability of public facilities; (b) afforded, and proposes to continue to afford, advice and counsel to persons requesting the same with respect to matters involving their civil rights; and (c) informed, and proposes to continue to inform, citizens through public meetings, speeches and other media, as to their civil rights, and to encourage the assertion of those rights when denied.

10. On November 29, 1956, complainant instituted in the United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No. 2435, against the defendants herein, seeking a declaratory judgment as to, and an injunction restraining the enforcement of, certain laws enacted at the 1956 Extra Session of the General Assembly of Virginia, including Chapters 33 and 36, on the ground that the enforcement of said statutes against complainant, its Virginia State Conference, its branch-

page 9 } es, officers, members, contributors or voluntary workers, attorneys engaged by it or to whom it might contribute monies, or litigants to whom it might lend assistance, because of its activities in the past or the continuance of like activities in the future, would deny complainant, its Virginia State Conference, its branches, mem-

bers, contributors and voluntary workers, attorneys engaged by it or litigants to whom it might lend assistance their liberty and property without due process of law and the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States, as is more fully shown by its complaint therein, a copy of which is attached hereto as Exhibit 4. The Court, in an opinion filed January 21, 1958, a copy of which is attached hereto as Exhibit 5, concluded that Chapters 33 and 36 were too vague and ambiguous to enable it to pass upon their constitutionality and by a judgment entered April 30, 1958, a copy of which is attached hereto as Exhibit 6, ordered that the complaint therein be retained for a reasonable time pending the determination of such proceedings in the courts of the Commonwealth of Virginia as complainant might see fit to bring to secure an interpretation of Chapters 33 and 36 as they may affect complainant because of its activities in the past or the continuance of like activities in the future.

11. The activities of complainant, its Virginia State Conference, its branches, members, contributors and attorneys engaged by it, have been investigated by two committees created by the General Assembly and in the judgment of these committees the activities of the complainant and its subordinates in urging citizens to challenge in courts the constitutionality of Virginia's segregation laws, and raising and expending monies to defray the costs and expenses of litigation designed to eradicate racial segregation, particularly segregation in the public schools of this Commonwealth, violate the provisions of Chapters 33 and 36 of the Code of 1950 as well as activities of attorneys engaged by it to prosecute or defend cases in which questions concerning constitutionality of racially discriminatory state action were raised. The aforesaid legislative committees have recommended that proper officials take appropriate action under these statutes to enforce the penalties provided therein against complainant, its Virginia State Conference, its branches, members and attorneys engaged by it.

page 10

In the case in the district court as mentioned in paragraph 10, the defendants attempted to establish that complainant's aforesaid activities violated the statutes under a fair interpretation of the scope and meaning of the statutes, that the statutes constitute a valid exercise of the state's police power and that the district court should sustain the statutes as constitutional and hold for defendants on the merits. Moreover, complainant believes and so alleges that said statutes would have been enforced against complainant but for the

fact that an injunction issued on them in the federal court. Therefore, complainant is faced with imminent and immediate threat of irreparable injury to itself, its liberty and property, and to its Virginia State Conference, its branches, members, voluntary workers, contributors and attorneys engaged by it and their liberty and property by virtue of the fact that defendants and other state officials charged with the enforcement of these statutes have manifested an intention to apply the statutes and their penalties to complain-
page 11 } ant.

12. As demonstrated by the above allegations this creates an actual controversy and an actual antagonistic assertion and denial of rights between complainant and the defendants, they being the ones charged by law with the assertion of the governmental position, with regard to whether or not the activities of the complainant as heretofore set forth violate the provisions of Chapters 33 and 36 aforesaid, or either of them, and with regard to the proper interpretation of said statutes.

WHEREFORE, complainant prays that this court render a declaratory decree and make a binding adjudication of right that the activities of the complainant, its Virginia State Conference, its branches, members, voluntary workers, contributors and cooperating attorneys—through political activity before governmental bodies, by expending monies to defray the costs and expenses, in whole or in part, of litigation designed to eradicate racial segregation from governmental or public functions, by the solicitation of funds for such purposes, and by assisting litigants in their efforts seeking to secure equal rights and justice for colored citizens by persuading them to exercise and assert their constitutional rights through redress in the courts—and the actions of litigants in seeking, receiving or accepting the assistance of complainant are legitimate functions in which complainant, its Virginia State Conference, members, voluntary workers, contributors and cooperating attorneys and litigants receiving or accepting the assistance of complainant may participate under rights guaranteed it and them by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and do not violate the provisions of said statutes or either of them;
page 12 } or, if these do violate the statutes, that said statutes violate the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, and their enforcement against the complainant, its Virginia State Conference, its members, voluntary work-

ers, contributors and cooperating attorneys and litigants seeking, receiving or accepting its assistance be permanently enjoined as being in derogation of its and their constitutionally secured rights; and that this court award complainant its costs in this behalf expended.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A CORPORATION, Complainant,
By OLIVER W. HILL
Of Counsel for Complainant.

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Received and filed Jun 9, 1958.

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

National Association for the Advancement of Colored People, a Corporation, Plaintiff,

v.

Albertis S. Harrison, Jr., Attorney General of Virginia, et al., Defendants.

ANSWER.

To the Honorable E. W. Hening, Jr., Judge of said Court:

The answer of Albertis S. Harrison, Jr., T. Gray Haddon, William L. Carleton, Linwood B. Tabb, Jr., William J. Hassan, and Frank N. Watkins to a bill of complaint filed against them in the Circuit Court of the City of Richmond, Virginia, by National Association for the Advancement of Colored People, a corporation.

These defendants for answer thereto, or to so much thereof as they be advised that it is material they should answer, answer and say:

1. They are not advised as to whether the activities of the plaintiff violate the provisions of Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra Session,

1956 (Sections 54-74, 54-78 and 54-79, as amended, and Sections 18-349.31 and 18-349.37, inclusive, of the Code of Virginia). It is the contention of the defendants that page 19 } the said Chapters 33 and 36 do not violate the equal protection clause or the due process clause of the Fourteenth Amendment to the Constitution of the United States.

2. They are not advised as to the allegations contained in paragraphs 2 and 3 of the bill of complaint, and call for strict proof of said allegations.

3. They deny the allegations contained in paragraph 4 of the bill of complaint, and call for strict proof of said allegations.

4. They admit the allegations contained in paragraphs 5 and 6 of the bill of complaint.

5. They are not advised as to the allegations contained in paragraphs 9 and 11 of the bill of complaint, and call for strict proof of said allegations.

6. They admit the allegations contained in paragraph 10 of the bill of complaint.

7. They deny the allegations contained in paragraph 12 of the bill of complaint concerning any denial of rights of the plaintiff, and call for strict proof of said allegations.

And now, having fully answered the plaintiff's bill, these defendants pray to be hence dismissed with their reasonable costs by them in this behalf expended.

ALBERTIS S. HARRISON, JR.,
T. GRAY HADDON,
WILLIAM L. CARLETON,
LINWOOD B. TABB, JR.,
WILLIAM J. HASSAN,
FRANK N. WATKINS,
Defendants.

C. F. HICKS
Assistant Attorney General of Virginia,
Supreme Court Building,
Richmond, Virginia.

DAVID J. MAYS
HENRY T. WICKHAM
1407 State-Planters Bank Bulding,
Richmond, Virginia.

Attorneys for the Defendants.

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Received and filed Nov. 6, 1958.

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

National Association for the Advancement of Colored People, Complainant,

v.

Albertis S. Harrison, Jr., etc., et al., Defendants.

N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, Complainant,

v.

Albertis S. Harrison, Jr., etc., et al., Defendants.

STIPULATION.

It is hereby stipulated by and between the complainants and the defendants in each of these suits, by their respective counsel, that

1. Any party may offer, for admission into evidence in these suits, or either of them, any portion of the record in either of the actions respectively originally styled "National Association for the Advancement of Colored People *v.* J. Lindsay Almond, Jr., etc., et al." and "N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, *v.* J. Lindsay Almond, Jr., etc., et al.," and being, respectively, Civil Actions Nos. 2435 and 2436 formerly pending in the United States District Court for the Eastern District of Virginia, Richmond Division, including any of the evidence, testimonial or documentary, introduced in either of said actions.

2. Matter offered pursuant to this stipulation shall, if otherwise admissible, be admitted into evidence in these suits, by introduction of a copy thereof without the necessity of further authentication than the certificate of counsel for the party introducing the same that it is an accurate copy of

a portion of the record in either of said actions, to the same extent that it would be admitted were the entire record in said actions, properly authenticated, introduced into evidence in these actions.

page 22 } 3. Matter offered pursuant to this stipulation shall be admitted subject to any proper objection on grounds of incompetency, irrelevancy or immateriality arising from any circumstance other than lack of authentication in a manner other than that specified in paragraph 2 hereof.

4. No party should be precluded by this stipulation from offering in these suits any evidence, testimonial or documentary, as may be desired, whether or not introduced in said actions.

5. Neither complainant, by entering into this stipulation, waives its legal position that the determinations made in said actions are conclusive in these suits.

OLIVER W. HILL
Of Counsel for National Association for the Advancement of Colored People, Complainant.

SPOTTSWOOD W. ROBINSON, III
Of Counsel for N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, Complainant.

HENRY T. WICKHAM
Of Counsel for Defendants.

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* * * * *

Received and filed Feb. 25, 1959.

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

CIRCUIT COURT
of the
CITY OF RICHMOND
(Zone 19)
RICHMOND, VIRGINIA

November 3, 1958.

Mr. Oliver W. Hill
Attorney at Law
118 East Leigh Street

Mr. Spottswood W. Robinson, III
Attorney at Law
623 North Third Street

Mr. C. F. Hicks
Assistant Attorney General
Supreme Court Building

Mr. David J. Mays
Attorney at Law
State Planters Bank Building

Mr. Henry T. Wickham
Attorney at Law
State Planters Bank Building

Re: (1) National Association for the Advancement of Colored People *v.* Albertis S. Harrison, Jr., etc., et al., Chancery Case No. B-2869
(2) N. A. A. C. P. Legal Defense and Educational Fund, Inc., *v.* Albertis S. Harrison, Jr., etc., et al., Chancery Case No. B-2870

Gentlemen:

The above styled cases are before the Court on the Bills of Complaint and exhibits filed therewith, the Answers of the Defendants, and upon the written memorandum and oral argument of counsel for the parties.

page 24 } The preliminary question presents the issue of what effect, if any, do the facts as found by United States District Court for the Eastern District of Virginia, Richmond Division, in the case of *National Ass'n. for Advancement of Colored People* v. *Patty,* 159 F. Supp. 503 (1958) have on this litigation.

Upon the consideration whereof the Court is of the opinion that under the pleadings and circumstances in the instant cases the District Court's determinations are not conclusive in the present litigation by reason of 28 U. S. C. Sec. 1738. The Court is of the further opinion that the Doctrine of *Res Judicata* is not applicable to the present litigated cases.

It seems to the Court that the principle of law to be considered by the Court is the Doctrine of Collateral Estoppel.

This doctrine does not extend to matters unessential to the determination of the prior case. Otherwise stated, a judgment is not binding or conclusive as to facts or findings of law, although put in issue and actually tried and expressly determined by a court in the prior action, where such matters were immaterial or unessential to the determination of the real and essential issues. *Yates* v. *United States,* (1957) 354 U. S. 298, 1 L. Ed. (2d) 1356; *Russell* v. *Place,* 94 U. S. 606, 24 L. Ed. 214; *Petrus* v. *Robins,* 196 Va. 322 (1954), and cases there cited.

In view of the above, the burden is upon the complainants to point out those facts found by the three-judge Federal Court which were essential to its judgment and thus binding upon the parties in this litigation. However, this burden would not be applicable to the facts conceded by the defendants to have been essential to the judgment of the three-judge Court and enumerated on page 16 of defendant's brief.

Very truly yours,

EDMUND W. HENING, JR., Judge.

cc: Clerk's Office

page 25 }

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Received and filed, Feb. 25, 1959.

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

CIRCUIT COURT
of the
CITY OF RICHMOND
(Zone 19)
RICHMOND, VIRGINIA

January 21, 1959.

Mr. Oliver W. Hill
Attorney at Law
118 East Leigh Street

Mr. Spottswood W. Robinson, III
Attorney at Law
623 North Third Street

Mr. C. F. Hicks
Assistant Attorney General
Supreme Court Building

Mr. David J. Mays
Attorney at Law
State Planters Bank Building

Mr. Henry T. Wickham
Attorney at Law
State Planters Bank Building

Re: (1) National Association for the Advancement of Colored People *v.* Albertis S. Harrison, Jr., etc., et al., Chancery Case No. B-2869
(2) N. A. A. C. P. Legal Defense and Educational Fund, Inc., *v.* Albertis S. Harrison, Jr., etc., et al., Chancery Case No. B-2870

Gentlemen:

These two suits, jointly heard and jointly considered, are before the Court on the Bill of Complaint of the respective complainants with accompanying exhibits, upon the answers of the defendants, upon the evidence, exhibits and stipulations introduced at the hearings on November 10, 11 and 12, 1959, upon the deposition of Edwin Bancroft
page 26 } Henderson duly taken on November 24, 1958, and filed on December 17, 1958, upon the written briefs of counsel for the parties and upon oral argument of counsel for the parties.

The Bill of Complaint of the N. A. A. C. P. Legal Defense and Educational Fund, Inc. (hereinafter called Fund), is substantially similar to the Bill of Complaint by the National Association for the Advancement of Colored People (hereinafter called NAACP), in that each seek a declaratory judgment of the construction and interpretation of Chapter 33 and Chapter 36 of the Acts of the General Assembly of Virginia, Extra Session 1956, being Sections 54-74, 54-78 and 54-79, as amended, and Sections 18-349.31 to 18-349.37, inclusive, of the Code of Virginia of 1950, as amended, as they may affect each complainant, its officers, members, affiliates, contributors, voluntary workers or attorneys retained or employed by it or to whom it may contribute monies, or litigants receiving its assistance in cases involving racial discrimination because of the activities of each complainant in the past or the continuation of like activities in the future.

NAACP contends, in addition to the above, that if the above referenced statutes are applicable to its activities, the statute is invalid as depriving NAACP of liberty and property without due process of law as secured by the Fourteenth Amendment of the U. S. Constitution.

The following basic questions are raised:

(1) Do the activities of the NAACP or the Fund amount to the solicitation of business as provided by Chapter 33?

(2) Do the activities of NAACP or the Fund amount to an inducement to others to commence or further prosecute a law suit as provided by Chapter 36?

(3) Do the provisions of Chapters 33 and 36, as applicable to the activities of NAACP, violate the Fourteenth Amendment to the U. S. Constitution?

In oral argument made by Attorney Robinson on behalf of both organizations, he stated that NAACP is an activity organization and Fund helps to supply assistance in making a combined effort of the two for supplying assistance.

Without endeavoring to review the evidence in any detail, the Court will make brief references thereto.

NAACP is organized as a non-profit corporation under the laws of New York and has been described as a political association opposing racial discrimination (Complainants' Brief, page 20).

page 27 } The Virginia State Conference is an unincorporated association and a unit of the NAACP and is subject to NAACP's control to the extent NAACP presides over the functions of the local branches throughout the country and the State Conference branches. (Federal Court Tr., p. 65 and exhibits 2 and 3 filed with NAACP Bill of Complaint). Attorneys Hill and Robinson are members of the Legal Committee of NAACP as well as being members of the Legal Committee of the Virginia State Conference.

Fund was organized as a corporation in New York and one of its purposes is:

"To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustice by reason of race or color and *unable to employ and engage legal aid and assistance on account of poverty.*" (Italics supplied)

The Director and Counselor for the Fund carries out the policies of its Board with the assistance of a legal staff of six (6) full time lawyers in New York City, in addition

to which there are lawyers in other sections of the country. Robinson is retained at $6,000 as counsel for the Southeast region which includes Virginia. (Federal Tr., pp. 252, 254)

Fund is operated in accord with the policy that it will furnish legal assistance in the form of either helping in the payment of lawyers' fees to those people who can not afford to pay for the litigation. However, the Fund Director testified that he knew of no instance in which an investigation was made on this point. (Marshall's testimony Federal Court Tr., pp. 254 through 256, 271, 312, 314) This same witness admitted that if a plaintiff owned real estate at a fair market value of $15,000, free and clear, he would be in pretty good shape to finance his own law suit.

The evidence at the hearings on November 11, 1958, indicates that the income of nineteen of the litigants of Virginia school cases ranged from a low of $3,500 to an estimated high of between $13,000 and $17,000 and that ten of the litigants in the Virginia school cases owned real property valued from a low of $12,000 to a high of $87,000, or an average of $35,000 for each litigant.

With regard to the operations of NAACP, the evidence indicates that it does not ask a person if he wishes to challenge a law but it does state publically that it believes that a certain law is invalid and should be challenged and Negroes are urged to challenge such laws and if one comes forth, NAACP agrees to assist. Pre-prepared author-
page 28 } ization forms are available and prospective plaintiffs are referred to Attorney Hill as Chairman of the legal staff and the plaintiff makes his appearance when Hill recommends "a legitimate situation that the NAACP should be interested in." (Federal Court Tr., pp. 39, 84, 86). When Attorney Hill decides that the case is a proper one within NAACP policies and with the automatic concurrence of the President, Hill selects a lawyer and refers the case to a member of the legal staff in the area from which the party came. (Federal Court Tr., pp. 47, 131-135) For other references to testimony of a similar nature see Transcript of the evidence at the hearings on November 10, 11 and 12, 1958, pages 75, 117, 122, 130, 142 through 148, 365 and pages 4, 5, 9, 11 of the Henderson deposition taken November 24, 1958.

Generally, plaintiffs in the school segregation cases do not contribute toward payment of legal fees and expenses (Tr., p. 35) with the exception of fees of Attorney Robinson, which are paid by Fund in the form of an annual retainer. The State Conference pays the expenses and fees of its lawyers in each case and since July 1956, has paid out for serv-

ices and expenses approximately $12,378 and expects to receive additional outstanding bills. (Tr., pp. 99, 103, 285, and Defendants' Exhibit D-3). Attorney Hill as Chairman of the legal staff approves every item of expense and legal fees paid by the Conference and the President automatically approves same. (Tr., pp. 75-77) The Legal Committee controls the list of lawyers on this Committee almost to the extent of perpetuating itself. (Tr., pp. 89, 92)

There is ample evidence that the State Conference did sponsor cases as long as the litigants adhered to the principles and policies of the Conference that a school case must be tried as a direct attack on segregation, and hence, NAACP maintains almost absolute direction and control. (Tr., p. 108, Exhibits D-7 and D-9) This was true to such an extent that the Executive Secretary of the Conference and Attorney Hill proclaimed that NAACP was not a Legal Aid Society, (Exhibits D-4, D-10, Tr., pp. 10, 163, 165), and to the extent that Attorney Hill recommended against NAACP's participation in a labor suit (Exhibits D-10), and to the further extent, that NAACP was not interested in assisting an Amelia County effort for consolidation of Negro elementary schools (Exhibit D-9) or assist in securing separate but equal facilities. (Exhibit D-7)

Defendants' Exhibits D-1, D-2 and D-8 point directly to the manner in which litigation in the school cases was solicited and induced. For instance, a portion of the Action Letter of May 26, 1954, from the Executive Secretary of the Virginia Conference stated in part that:

page 29 } "It is of utmost importance that your branch retain the leadership in all actions engaged in in your community."

And the following excerpt from the June 16, 1954, letter of the Executive Secretary stated in connection with the distribution of suitable petition forms:

"The Conference is proceeding with the development of *its plan* and will advise you thereof as soon as this work is completed." (Italics supplied)

Also, parts of the confidential directive of June 30, 1955, from the President and Executive Secretary with regard to the handling of petitions stated:

"Petitions will be placed only in the hands of highly trusted and responsible persons to secure signatures of parents or guardians only." and

"The signing of the petition by a parent or guardian may well be only the first step to an extended Court fight. Therefore, discretion and care should be exercised to secure petitioners who will—if need be—go all the way." * * *

"The Education Committee's Chairman will forward completed petitions to the Executive Secretary of the State Conference." * * *

"Following the above procedure, it becomes apparent that the faster your branch acts the sooner will your school board be petitioned to desegregate your schools. Every act of our branch and State Conference officials from this point on should be considered as emergency action, and must take precedence over routine affairs—personal or otherwise."

Defendants' Exhibit D-8, being a directive to the Branches contained, in part, these instructions:

"Organize the parents in the community so that as many as possible will be familiar with the procedure when and if law suits are begun in behalf of plaintiffs and parents." * * *

"If no plans are announced or no steps towards desegregation taken by the time school begins this fall, 1955, the time for a law suit has arrived. At this stage court action is essential because only in this way does the mandate of the Supreme Court that a prompt and reasonable
page 30 } start towards full compliance become fully operative on the school boards in question." * * *

"At this stage the matter will be turned over to the Legal Department and it will proceed with the matter in Court."

Defendants' Exhibti D-2 shows a continuation of the method of operation of NAACP and the Virginia State Conference where reference is made to:

"UP TO DATE PICTURE OF ACTION BY NAACP BRANCHES SINCE MAY 31.

"A. Petitions filed and replies

"A total of 55 branches have circulated petitions.

"B. Where suits are contemplated

"Petitions have been filed in seven (7) counties/cities.
"Graduated negative response received in all cases.

"C. Readiness of lawyers for legal action in certain areas

Selection of suit sites reserved for legal staff. State legal staff ready for action in selected areas.

"D. Do branches want legal action

"The majority of our branches are willing to support legal action or any other program leading to early desegregation of schools that may be suggested by the National and State Conference offices. Our branches are alert to overtures by public officials that Negroes accept voluntary racial segregation in public education."

The following references to testimony by various litigants in the school cases here is made to indicate the nature of the so-called attorney-client relationship:

Witness James E. Manson at page 191 of the Transcript.

"Q. But you don't know the names of your attorneys?
"No.
"Q. You never had any personal contact with them?
"A. I do not know."

• • • • •

page 31 } "Q. Well, how did you first learn about the lawsuit?
"A. From the papers I imagine.
"Q. You have had no contact with any attorneys?
"A. No."

Witness Josie F. Pravad at page 231 and 232 of the Transcript:

"Q. Who represented you in that case, or who is representing you?
"A. Who is representing me? I haven't a lawyer representing me, if that is what you mean."

• • • • •

"Q. And you are being represented by the N. A. A. C. P.?
"A. Yes."

Witness Harry Strother at page 241 and page 242 of the Transcript:

"Q. Who is your attorney in that case?

"A. My lawyers—I don't know—we had the N. A. A. C. P. lawyers, I don't know which one it is."

• • • • •

"When did you first—when did they first get in contact with you?

"A. I don't think—they have never been in contact with me."

Witness Moses C. Maupin at page 271 of the Transcript:

"Q. Did you ever have any personal contact with Mr. Hill?

"A. No I haven't."

• • • • •

"Q. Well, have you seen before today—have you seen Mr. Hill since that time, since he came to this meeting?

"A. No, sir.

"Q. You have had no contact with him?

"A. No, sir.

page 32 } "Q. No communication with him of any kind?

"A. No, sir."

Under the facts before the Court there are two (2) broad legal principles to be applied. First, the State has the right to require high standards of qualification for those who desire to practice law within its borders and may revoke or suspend the license to practice law of attorneys who are guilty of unethical conduct. *Schware* v. *Board of Bar Examiners,* 353 U. S. 232; *Richmond Association of Credit Men* v. *Bar Association,* 167 Va. *Campbell* v. *Third District Committee,* 179 Va. 244.

The practice of law or any other profession is not a right but is a privilege conferred by the State with great discretion and is normally not one of the privileges and immunities guaranteed by the Fourteenth Amendment. *McClosky* v. *Tobin,* 252 U. S. 107; In *Re*: Isserman, 345 U. S. 286; In *Re*: Lockwood, 154 U. S. 116; *Bradwell* v. *Illinois,* 16 Wall 130; *Sharp* v. *Lucky,* 148 F. Supp. 8. For other cases regulating other professions see also *Semler* v. *Oregon State Board,* 294 U. S. 608 (Dentist); *Barskey* v. *Board of Regents of New York,* 347 U. S. (physician); *Williamson* v. *Lee Optical Co.,* 346 U. S. 483 (optician).

The second principle is that although penal statutes must

be construed strictly, nevertheless in constructing such statutes the Legislative intent should be found by giving words ordinary and usual meaning. *Tiller* v. *Commonwealth,* 193 Va. 418; *Board of Supervisors* v. *Boaz,* 176 Va. 126; *Gates and Sons* v. *Richmond,* 103 Va. 702.

Defendants admitted in their brief that Chapters 33 and 36 do not prohibit the complainants freedom to speak or to join as such nor prevent the raising of funds as such.

The Court is of the opinion from the evidence in these cases that certain hereinafter enumerated activities of the complainants and those connected with them amount to improper solicitation of legal or professional business or employment within the provisions of Chapter 33, by reason of the following authorities:

Richmond Association of Credit Men v. *Bar Association, supra,* Canons 47 and 35 of the Canons of Professional Ethics adopted and promulgated by the Supreme Court of Appeals of Virginia; Opinions 10, 41, 43 and 45 of the Virginia State Bar; *McClosky* v. *Tobin, supra; Re*: Maclub of America Inc. (Mass.) 3 N. E. (2d) 272; *People ex rel Courtney* v. *Association of Real Estate Taxpayers,* 4 Ill. 102, 187 N.E. 823; *People ex rel Chicago Bar Association* v. *Chicago Motor Club,* 362 Ill. 50 199 N. E. 1 (1935); *Dorghty* v. *Grills,* 37 Tenn. App. 63, 260 S. W. (2d) 379; *Hilebrand* v. *State Bar of California,* 225 Pa. (2d) 508; *Atchison, Topeka & Sante Fe Railway Co.* v. *Jackson,* 235 F. (2d) 390; In *Re*: Brotherhood of Railroad Trainmen, 13 Ill. (2d) 391, 150 N. E. (2d) 163.

page 33 } The Court is of the further opinion from the evidence in these cases that certain hereinafter enumerated activities of complainants and those connected with them amount to an inducement to commence or prosecute law suits without a direct interest in the subject matter of the proceeding and as to which professional advice has not been sought in accordance with the Virginia Canons of Legal Ethics, and hence such activities are within the provisions of Chapter 36. In addition to the authorities cited in the preceding paragraph, see:

International Brotherhood v. *N. L. R. B.,* 341 U. S. 694; *LaPage* v. *United States,* 146 F. (2d) 536; *People* v. *Drake,* (Cal.) 310 P. (2d) 977; *Commonwealth* v. *Mason,* (Pa.) 106 A. (2d) 877; Restatement of Torts, Section 766; Blackstone's Commentaries, Book 44, p. 135; *Wickham* v. *Conklin,* 8 Johns N. Y. 220; *Nichols* v. *Bunting,* 3 Hawks (N. C.) 86; *McIntyre* v. *Thompson,* 10 F. 531 (W. D. N. C.); *Thurston* v. *Percivel,* 18 Mass. (1 Pick.) 415.

Counsel for NAACP has cited cases to support its contention that the application of Chapters 33 and 36 to any of its activities violate the due process clause of the Fourteenth Amendment but none of these cases are directly in point on the facts or on legal principle. They further overlook the *priniple* that a statute does not violate the equal protection clause for failure to be applicable to the whole field of abuses, as a State may direct a law against what it deems evil as it actually exists without covering the whole field of possible abuses. *Williamson* v. *Lee Optical Co., supra; U. S.* v. *Carolene Products Co.,* 304 U. S. 144; *Hughes* v. *Superior Court of California,* 339 U. S. 460; *U. S.* v. *Petrills,* 332 U. S. 1; *Railroad Express Agency* v. *New York,* 336 U. S. 106.

In the light of the above discussion, the Court is of the opinion that the following activities, where conducted by either of the complainants, are not within the purview of the provisions of Chapters 33 or 36:

1. Political activities before governmental bodies.
2. Mere solicitation of funds.
3. Mere receipt of contributions of funds made to the complainants.
4. Mere publication or general dissemination of facts, data, statistics and information and the results of factual, scientific and legal research* and investigation respecting various aspects of racial segregation or discrimination. (*legal research is to be distinguished from legal advice.)

page 34 } 5. Mere publication and general dissemination by means of speeches, meetings or other media, of information respecting legal rights* and matters, cases and procedures involving the issue of racial segregation or discrimination (*information respecting legal rights is to be distinguished from legal advice.)

6. Mere advocacy* that persons subjected to any form of racial segregation or discrimination assert their legal rights in an appropriate case or proceeding. (*Mere advocacy is to be distinguished from advice or inducement to do so.)
7. Unconditional contribution to persons and groups, upon request of such persons and groups of mere service of experts and of mere facts, data, statistics and information and the mere results of factual, scientific and legal research* and investigation. (*Legal research is to be distinguished from legal advice, memo or opinion.)
8. Acceptance by an attorney of employment by either complainant for purposes of rendering legal services to the complainant of a character not prohibited by A, B, C, D & E below.

provided that any of the above activities are not connected directly or indirectly with or made a part of those activities, hereinafter enumerated, which are prohibited by said Chapters.

The following activities, whether conducted separately or in conjunction with the permitted activities listed above, of either of the complainants, are prohibited by the provisions of Chapters 33 or 36.

A. Contribution by either complainant to any person or group, of advice respecting his or its legal rights in a matter, case or proceeding involving an issue of racial segregation or discrimination or any other issue.

B. Expending by either complainant of monies to defray the costs and expenses, in whole or in part, of litigation involving an issue of racial segregation or discrimination, or any other issue.

page 35 } C. Assisting litigants in such litigation, cases or proceedings by persuading them to express and assert legal rights by receiving or accepting assistance in the nature of advice and monies, within the contemplation of A & B above.

D. Contributions by either complainant, to any person or group, of monies toward counsel fees and other expenses of litigation or the services of attorneys in a matter, case or proceeding involving an issue of racial segregation or discrimination, or any other issue.

D. (1) Acceptance by an attorney of assistance from the complainants in the form of legal advice, monies toward counsel fees and other expenses of litigation in a matter, case or proceeding involving an issue of racial segregation or discrimination, or any other issue;

(2) Acceptance by an attorney of employment by a person or group for the purposes of rendering legal service to such person or group in a matter, case or proceeding in which either complainant has furnished or will furnish assistance in the nature of advice, monies toward counsel fees and other expenses within the contemplation of A, B, D. and E (1) above.

(3) Acceptance by an attorney of employment by either complainant for purposes of rendering legal services to a person or group desiring his service in a matter, case, or proceeding involving an issue of racial segregation or discrimination, or any other issue.

It follows, that those activities prohibited to either of the complainants are likewise prohibited to complainants' officers,

members, voluntary workers, or others within the control of complainants, on the recognized legal maxim of that which cannot be done directly by the principals cannot be done indirectly by the agents of, or those under control of, the principals.

Counsel are requested to prepare and present an order in accordance with the above opinion of the Court.

Very truly yours,

EDMUND W. HENING, JR.

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National Association for the Advancement of Colored People, a Corporation, Plaintiff,

v.

Albertis S. Harrison, Jr., Attorney General of Virginia, et al., Defendants.

N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, a corporation, Plaintiff,

v.

Albertis S. Harrison, Jr., Attorney General of Virginia, et al., Defendants.

ORDER.

These cases came on to be jointly heard and considered upon the bills of complaint, with accompanying exhibits, seeking declaratory judgments of the construction and interpretation of Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra Session, 1956, as they may affect each complainant, its officers, members, affiliates, contributors, voluntary workers, attorneys retained or employed by each, or to whom each may contribute moneys, page 37 } or litigants receiving assistance, in light of complainants' contentions that the enforcement thereof because of any of their activities would deny them their liberty and property without due process of law and the equal protection of the laws secured by the Fourteenth Amendment

of the Constitution of the United States and in light of the further contention of complainant, NAACP, that Chapters 33 and 36, if applied to its activities, deprive it of due process and equal protection guaranteed by the Fourteenth Amendment; upon the answers of the defendants; upon the preliminary question of what effect, if any, do the facts as found by United States District Court for the Eastern District of Virginia, Richmond Division, in the case of *National Ass'n. for Advancement of Colored People* v. *Patty,* 159 F. Supp. 503 (1958) have on these cases; upon the evidence, exhibits, stipulations and deposition introduced by the parties; and upon the briefs and arguments of counsel.

Upon consideration thereof the Court, having found the facts and reached the conclusions of law stated in its written opinions, dated November 3, 1958 and January 21, 1959, and previously filed and made a part of the record in these cases, does Adjudge, Order and Decree:

1. That the complainants have failed to point out those facts found by the three-judge federal court in *NAACP* v. *Patty* which were essential to its judgment and thus binding upon the parties in these cases;

2. That the provisions of Chapters 33 and 36 do not prohibit the complainants' freedom to speak or to join as such and do not prevent complainants from the raising of funds as such;

page 38 } 3. That the following activities, when conducted by either of the complainants, their affiliates, officers, members, voluntary workers or attorneys, are not within the purview of the provisions of Chapters 33 and 36:

(1) Political activities before governmental bodies.

(2) Mere solicitation of funds.

(3) Mere receipt of contributions of funds made to the complainants.

(4) Mere publication or general dissemination of facts, data, statistics and information and the results of factual, scientific and legal research (as distinguished from legal advice) and investigation respecting various aspects of racial segregation or discrimination.

(5) Mere publication and general dissemination by means of speeches, meetings or other media, of information respecting legal rights (as distinguished from legal advice) and matters, cases and procedures involving the issue of racial segregation or discrimination.

(6) Mere advocacy that persons subjected to any form of racial segregation or discrimination assert their legal

rights in an appropriate case or proceeding. (Mere advocacy is to be distinguished from advice or inducement to do so.)

(7) Unconditional contributions to persons and groups, upon request of such persons and groups of mere service of experts and of mere facts, data, statistics and information and the mere results of factual, scientific and legal research and investigation. (Legal research is to be distinguished from legal advice, memo or opinion.)

(8) Acceptance by an attorney of employment by either complainant for purposes of rendering legal services to the complainant of a character not prohibited by subparagraphs A, B, C and D of paragraph 4 and paragraph 5.

4. That the following enumerated activities of complainants, and those persons or attorneys connected page 39 } with them, when conducted in the manner shown by the evidence in these cases, amount to either an improper solicitation of legal or professional business or employment within the provisions of Chapter 33 or an inducement to commence or prosecute law suits within the prohibitions contained in Chapter 36, or both, whether conducted separately or in conjunction with the permitted activities hereinbefore mentioned:

A. Contribution to any person or group, of advice respecting his or its legal rights in a matter, case or proceeding involving an issue of racial segregation or discrimination or any other issue.

B. Expending of monies to defray the costs and expenses, in whole or in part, of litigation involving an issue of racial segregation or discrimination, or any other issue.

C. Assisting litigants in such litigation, cases or proceedings by persuading them to express and assert legal rights by receiving or accepting assistance in the nature of advice and monies, within the contemplation of A & B above.

D. Contributions to any person or group, of monies toward counsel fees and other expenses of litigation or the services of attorneys in a matter, case or proceeding involving an issue of racial segregation or discrimination, or any other issue.

5. That the following enumerated activities of attorneys, when conducted in the manner shown by the evidence in these cases, amount to a violation of the provisions of Chapter 33:

E. (1) Acceptance by an attorney of assistance from the

complainants in the form of legal advice, monies toward counsel fees and other expenses of litigation in a matter, case or proceeding involving an issue of racial segregation or discrimination, or any other issue.

(2) Acceptance by an attorney of employment by a person or group for the purposes of rendering legal serv-
page 40 } ice to such person or group in a matter, case or proceeding in which either complainant has furnished or will furnish assistance in the nature of advice, monies toward counsel fees and other expenses within the contemplation of subparagraphs A, B and D of paragraph 4 and E (1) above.

(3) Acceptance by an attorney of employment by either complainant for purposes of rendering legal services to a person or group desiring his service in a matter, case, or proceeding involving an issue of racial segregation or discrimination, or any other issue.

6. That those activities prohibited to either of the complainants are likewise prohibited to the complainants' affiliates, officers, members, attorneys, voluntary workers, or others within the control of complainants;

7. That the application of Chapters 33 and 36 to the activities of the complainant, National Association for the Advancement of Colored People, their affiliates, officers, members, attorneys or voluntary workers listed in paragraphs 4 and 5 hereof, does not deny them due process of law or equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States; and

8. That in view of the position and contention of the complainant, N. A. A. C. P. Legal Defense and Educational Fund, Inc., that the pleadings in this proceeding do not raise or present for determination by this Court the question of whether or not the provisions of Chapter 33 and 36, as applicable to the activities of said complainant, violate the provisions of the 14th amendment of the United States Constitution, this Court makes no ruling or adjudication on said question.

9. That the defendants recover their costs in these cases from the complainants.

To which action of the Court, with the exception of paragraphs 2, 3 and 8 above, the complainants object and except. The defendants object and except to paragraph 8.

Enter: 2/25/59.

EDMUND W. HENING, JR., Judge.

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Received and filed Apr. 24, 1959.

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

National Association for the Advancement of Colored People, a Corporation, Complainant,

v.

Albertis S. Harrison, Jr., Attorney General of Virginia, et al., Defendants.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Complainant, National Association for the Advancement of Colored People, hereby gives notice of its appeal from the final order of the Circuit Court of the City of Richmond, Virginia, entered on the 25th day of February, 1959, in the above-captioned case, declaring that Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra Session of 1956 (Sections 54-74, 54-78 and 54-79, as amended, and Sections 18-349.31 to 18-349.37, inclusive, of the Code of Virginia of 1950), construed and interpreted in the light of the constitutional contentions theretofore made by complainant in the United States District Court for the Eastern District of Virginia, Richmond, Division, in the action styed "*National Association for the Advancement of Colored People* v. *Kenneth C. Patty, Attorney General for the Commonwealth of Virginia, et al.,*" being civil Action No. 2435, and restated in its complaint in this case, viz., that enforcement of such statutes would violate rights secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States, apply to page 42 } and prohibit certain of the customary activities of complainant, its affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance; and further declaring that the application of the provisions of said Chapters 33 and 36 and the prohibitions contained therein do not deny complainant, its

affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance due process of law or the equal protection of the laws secured to it and them by the Fourteenth Amendment of the Constitution of the United States; and failing and refusing to grant an injunction as prayed; and complainant designates the following

ASSIGNMENTS OF ERROR.

First: The Court erred in ruling that the findings, conclusions and determinations of the United States District Court for the Eastern District of Virginia, Richmond Division, in the cases styled "*National Association for the Advancement of Colored People* v. *Patty, et al.,*" being Civil Action No. 2435, and "*N. A. A. C. P. Legal Defense and Educational Fund, Incorporated* v. *Patty, et al.,*" being Civil Action No. 2436, with respect to the constitutional validity of Chapters 31, 32 and 35 of the Acts of the General Assembly of Virginia, Extra Session 1956, were not, by reason of Section 1739 of Title 28 of the United States Code, made conclusive and binding upon the Court in this case.

Second: The Court erred in its application of the doctrine of collateral estoppel by refusing to rule that the
page 43 } findings, conclusions and determinations of the United States District Court for the Eastern District of Virginia, Richmond Division, in the above-mentioned cases with respect to the constitutional validity of Chapters 31, 32 and 35 of the Acts of the General Assembly of Virginia, Extra Session 1956, were conclusive and binding in this case.

Third: The Court erred in declaring that contribution by an attorney engaged by, or associated with, complainant or its affiliates of advice to a person or group, respecting his or its legal rights in a matter, case or proceeding involving an issue of racial segregation or discrimination amounts to either an improper solicitation of legal or professional business or employment within the provisions of Chapter 33, or an inducement to commence or prosecute law suits within the prohibitions contained in Chapter 36, or both, for the reason that (1) neither of said statutes, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, applies to or prohibits said activities, or (2) if said activities are included within the prohibitions of said statutes, or either of them, then said statutes or statute, as the case may be, deny complainant, its

affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance their liberty and property secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

page 44 } Fourth: The Court erred in declaring that the expenditures of monies by complainant or its affiliates to defray the costs and expenses, in whole or in part, of litigation involving an issue of racial segregation or discrimination amounts to either an improper solicitation of legal or professional business or employment within the provisions of Chapters 33, or an inducement to commence or prosecute lawsuits within the prohibitions contained in Chapter 36, or both, for the reason that (1) neither of said statutes, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, applies to or prohibits said activities, or (2) if said activities are included within the prohibitions of said statutes, or either of them, then said statutes or statute, as the case may be, deny complainant, its affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance, their liberty and property secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Fifth: The Court erred in declaring that assistance by complainant, its affiliates, its officers, members or voluntary workers, or attorneys engaged by, or connected with, it or its affiliates, to litigants in litigation, cases or proceedings involving an issue of racial segregation or discrimination by persuading them to express and assert legal rights by receiving or accepting assistance in the nature of advice respecting their legal rights therein and monies to defray the costs and expenses thereof amounts to either an improper solicitation of legal or professional business or employment

page 45 } within the provisions of *of* Chapter 33, or an inducement to commence or prosecute law suits within the prohibitions contained in Chapter 36, or both, for the reason that (1) neither of said statutes, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, applies to or prohibits said activities, or (2) if said activities are included within the prohibitions of said statutes, or either of them, then said statutes or statute, as the case may be, deny complainant, its affiliates, its officers, members, contributors,

pose of rendering legal service to such person or group in a matter, case or proceeding involving an issue of racial segregation or discrimination wherein complainant or its affiliates have furnished or will furnish assistance in the page 47 } nature of advice respecting his or its legal rights therein, or monies toward counsel fees, or costs and other expenses thereof amounts to a violation of the provisions of Chapter 33, for the reason that (1) said statute, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, does not apply to or prohibit said activities, or (2) if said activities are included within the prohibitions of said statute, then said statute denies complainant, its affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance, their liberty and property secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States.

Ninth: The Court erred in declaring that acceptance by an attorney of employment by complainant or its affiliates for the purpose of rendering legal services to a person or group desiring his services in a matter, case or proceeding involving an issue of racial segregation or discrimination amounts to a violation of the provisions of Chapter 33, for the reason that (1) said statute, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, does not apply to or prohibit said activities, or (2) if said activities are included within the prohibitions of said statute, then said statute denies complainant, its affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance, their liberty and property page 48 } secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Tenth: The Court erred in adjudicating that the application of Chapters 33 and 36, or both, to the activities of the complainant, its affiliates, officers, members, attorneys or voluntary workers in making a contribution to any person or group, of advice respecting his or its legal rights in a matter, case or proceeding involving an issue of racial segregation or discrimination does not deny them due process of law or the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for the reasons that the application of Chapters 33

voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance, their liberty and property secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States.

Sixth: The Court erred in declaring that contributions by complainant or its affiliates to a person or group of monies toward counsel fees and other expenses of litigation or of the services of attorneys in a matter, case or proceeding involving an issue of racial segregation or discrimination amounts to either an improper solicitation of legal or professional business or employment within the provisions of Chapter 33, or an inducement to commence or prosecute law suits within the prohibitions contained in Chapter 36, or both, for the reason that (1) neither of said statutes, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, applies to or prohibits said activities, or (2) if said activities are included within the prohibitions of said statutes, or either of them, then said statutes or statute, as the case may be,
page 46 } deny complainant, its affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance, their liberty and property secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the *Constition* of the United States.

Seventh: The Court erred in declaring that acceptance by an attorney of assistance from complainant or its affiliates in the form of legal advice, monies toward counsel fees and other expenses of litigation in a matter, case or proceeding involving an issue of racial segregation or discrimination amounts to a violation of the provisions of Chapter 33, for the reason that (1) said statute, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, does not apply to or prohibit said activities, or (2) if said activities are included within the prohibitions of said statute, then said statute denies complainant, its affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it may contribute monies or services, and litigants receiving its assistance, their liberty and property secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States.

Eighth: The Court erred in declaring that acceptance by an attorney of employment by a person or group for the pur-

the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

page 50 } Twelfth: The Court erred in adjudicating that the application of Chapters 33 and 36, or both, to the activities of complainant, its affiliates, officers, members, attorneys or voluntary workers in assisting litigants in such litigation, cases or proceedings by persuading them to express and assert legal rights by receiving or accepting assistance in the nature of advice and monies to defray the costs and expenses thereof, in any matter involving racial segregation or discrimination, does not deny them due process of law or the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for the reasons that the application of Chapters 33 and 36, or either of them, to prohibit such activities (1) deprives them of their right to freedom of expression, free access to the courts, freedom of association with others, freedom to pursue a profession free of arbitrary governmental restraint, and of their liberty and property, secured by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and (2) denies to them the right to assist in the litigation of others in matters of racial discrimination where the State permits, by exemptions or otherwise, others similarly situated to foster, counsel and participate financially and otherwise in litigation non-racial matters, and denies to them the right to counsel others and to advocate the institution of litigation to eliminate racial segregation where the State permits, by exemptions or otherwise, others similarly situated to counsel persons or groups and to advocate the elimination of restrictions and prohibitions imposed by governmental action or custom and usage in non-racial matters, secured by the

page 51 } Thirteenth: The Court erred in adjudicating that the application of Chapters 33 and 36, or both, to the activities of complainant, its affiliates, officers, members, attorneys or voluntary workers in making contributions to any person or group, of monies toward counsel fees and other expenses of litigation or the services of attorneys in a matter, case or proceeding involving an issue of racial segregation or discrimination, does not deny them due process of law or the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for the reasons that the application of Chapters 33 and 36, or either of them, to prohibit such activities (1) deprives them of their right to freedom of expression, free access to the courts, freedom of association with others, freedom to pursue a profession free of arbitrary governmental

and 36, or either of them, to prohibit such activities (1) deprives them of their right to freedom of expression, free access to the courts, freedom of association with others, free to pursue a profession free of arbitrary governmental restraint, and of their liberty and property, secured by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and (2) denies to them the right to assist in the litigation of others in matters of racial discrimination where the State permits, by exemptions or otherwise, others similarly situated to foster, counsel and participate financially and otherwise in litigation in non-racial matters, and the right to counsel others and to advocate the institution of litigation to eliminate racial segregation where the State permits, by exemptions or otherwise, others similarly situated to counsel persons or groups and to advocate the elimination of restrictions and prohibitions imposed by governmental action or custom and usage in non-racial matters, secured by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

page 49 } Eleventh: The Court erred in adjudicating that the application of Chapters 33 and 36, or both, to the activities of complainant, its affiliates, officers, members, attorneys or voluntary workers in expending of monies to defray the costs and expenses, in whole or in part, of litigation involving an issue of racial segregation or discrimination does not deny them due process of law or the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for the reasons that the application of Chapters 33 and 36, or either of them, to prohibit such activities (1) deprives them of their right to freedom of expression, free access to the courts, freedom of association with others, freedom to pursue a profession free of arbitrary governmental restraint, and of their liberty and property, secured by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and (2) denies to them the right to assist in the litigation of others in matters of racial discrimination where the State permits, by exemptions or otherwise, others similarly situated to foster, counsel and participate financially and otherwise in litigation in non-racial matters, and the right to counsel others and to advocate the institution of litigation to eliminate racial segregation where the State permits, by exemptions or otherwise, others similarly situated to counsel persons or groups and to advocate the elimination of restrictions and prohibitions imposed by governmental action or custom and usage in non-racial matters, secured by

that the application of Chapter 33 to the activities of complainant, its affiliates, officers, members, attorneys or voluntary workers, wherein there is an acceptance by an attorney of employment by a person or group for the purposes of rendering legal service to such person or group in a matter, case or proceeding in which either complainant has furnished or will furnish assistance in the nature of advice, monies toward counsel fees and other expenses in any matter involving racial segregation, does not deny them due process of law or the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for the reasons that the application of Chapter 33 to prohibit such activities (1) deprives them of their right to freedom of expression, free access to the courts, freedom of association with others, freedom to pursue a profession free of arbitrary governmental restraint, and of their liberty and property, secured by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and (2) denies to them the right to assist in the litigation of others in matters of racial discrimination where the State permits, by exemptions or otherwise, others similarly situated to foster, counsel and participate financially and otherwise in litigation in non-racial matters, and the right to counsel others and to advocate the institution of litigation to eliminate racial segregation where the State permits, by exemptions or otherwise, others similarly situated to counsel persons or groups and to advocate the elimination of restrictions and prohibitions imposed by governmental action or custom and usage in non-racial matters, secured by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

page 54 } Sixteenth: The Court erred in adjudicating that the application of Chapter 33 to the activities of complainant, its affiliates, officers, members, attorneys or voluntary workers, wherein there is an acceptance by an attorney or employment by complainant for purposes of rendering legal services to a person or group desiring his service in a matter, case, or proceeding involving an issue of racial segregation or discrimination, does not deny them due process of law or the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for the reasons that the application of Chapter 33 to prohibit such activities (1) deprives them of their right to freedom of expression, free access to the courts, freedom of association with others, freedom to pursue a

restraint, and of their liberty and property, secured by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and (2) denies to them the right to assist in the litigation of others in matters of racial discrimination where the State permits, by exemptions or otherwise, others similarly situated to foster, counsel and participate financially and otherwise in litigation in non-racial matters, and the right to counsel others and to advocate the institution of litigation to eliminate racial segregation where the State permits, by exemptions or otherwise, others similarly situated to counsel persons or groups and to advocate the elimination of restrictions and prohibitions imposed by governmental action or custom and usage in non-racial matters, secured by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

page 52 } Fourteenth: The Court erred in adjudicating that the application of Chapter 33 to the activities of complainant, its affiliates, officers, members, attorneys or voluntary workers, wherein there is an acceptance by an attorney of assistance from the complainants in the form of legal advice, monies toward counsel fees and other expenses of litigation in a matter, case or proceeding involving an issue of racial segregation or discrimination, does not deny them due process of law or the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, for the reasons that the application of Chapter 33 to prohibit such activities (1) deprives them of their right to freedom of expression, free access to the courts, freedom of association with others, freedom to pursue a profession free of arbitrary governmental restraint, and of their liberty and property, secured by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and (2) denies to them the right to assist in the litigation of others in matters of racial discrimination where the State permits, by exemptions or otherwise, others similarly situated to foster, counsel and participate financially and otherwise in litigation in non-racial matters, and the right to counsel others and to advocate the institution of litigation to eliminate racial segregation where the State permits, by exemptions or otherwise, others similarly situated to counsel persons or groups and to advocate the elimination of restrictions and prohibitions imposed by governmental action or custom and usage in non-racial matters, secured by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the

page 53 } United States.

Fifteenth: The Court erred in adjudicating

RECORD NO. 5097

Filed in the Clerk's Office the 20th day of May, 1958.

Teste: # B-2870

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, Complainant,

v.

Albertis S. Harrison, Jr., Attorney General of Virginia, Supreme Court Building, Richmond, Virginia, T. Gray Haddon, Commonwealth's Attorney for the City of Richmond, Virginia, 3818 Hermitage Road, Richmond, Virginia, William L. Carleton, Commonwealth's Attorney for the City of Newport News, Virginia, 959 Shore Drive, Newport News, Virginia, Linwood B. Tabb, Commonwealth's Attorney for the City of Norfolk, Virginia, 1118 North Shore Road, Norfolk, Virginia, William J. Hassan, Commonwealth's Attorney for the County of Arlington, Virginia, 5806 Ninth Road, North, Arlington, Virginia, Frank N. Watkins, Commonwealth's Attorney for the County of Prince Edward, Virginia, Farmville, Virginia, Defendants.

BILL OF COMPLAINT.

To the Honorable E. W. Hening, Jr., Judge of said Court:

Complainant respectfully shows the following case:

1. This is a suit, pursuant to Sections 8-578 to 8-585, inclusive, of the Code of Virginia of 1950, for a judgment declaratory of the construction and interpretation of Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra Session 1956, being Sections 54-74, 54-78 and 54-79, as amended, and Sections 18-349.31 to 18-349.37, inclusive, of the Code of Virginia of 1950, as they may effect complainant, its officers, members, contributors or voluntary workers, or attorneys retained or employed by it or to
page 2 } whom it may contribute monies, because of the activities of complainant in the past or the continuance of like activities in the future, in the light of com-

profession free of arbitrary governmental restraint, and of their liberty and property, secured by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States; and (2) denies to them the right to assist in the litigation of others in matters of racial discrimination where the State permits, by exemptions or otherwise, others similarly situated to foster, counsel and participate financially and otherwise in litigation in non-racial matters, and the right to counsel others and to advocate the institution of litigation to eliminate racial segregation where the State permits, by exemptions or otherwise, others similarly situated to counsel persons or groups and to advocate the elimination of restrictions and prohibitions imposed by governmental action or custom and usage in non-racial matters, secured by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

page 55 } Seventeenth: The Court erred in its failure and refusal to award complainant an injunction as prayed, for the reason that the evidence clearly demonstrated that the application of Chapters 33 and 36 to the activities of the complainant or its affiliates, its officers, members, contributors, voluntary workers, attorneys engaged by it or to whom it or its affiliates may contribute monies, or litigants receiving its assistance, would deny them their liberty and property without due process of law and the equal protection of the laws secured to them by the Fourteenth Amendment to the Constitution of the United States.

NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF
COLORED PEOPLE, Complainant
By OLIVER W. HILL
Of Counsel for Complainant.

OLIVER W. HILL
118 East Leigh Street
Richmond, Virginia.

ROBERT L. CARTER
20 West 40th Street
New York 18, New York.

Counsel for Complainant.

• • • • •

plainant's contentions that enforcement thereof would deny complainant, its officers, members, contributors or voluntary workers, or attorneys retained or employed by it or to whom it may contribute monies, their liberty and property without due process of law and the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States.

2. Complainant is now, and since March 20, 1940 has been, a non-profit membership corporation incorporated under the laws of the State of New York, and is now, and since October 30, 1956 has been duly authorized by the State Corporation Commission to function as a foreign corporation in Virginia. As set forth in its articles of incorporation, a copy of which is filed herewith as Exhibit "A," its principal purposes are as follows:

(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of proverty.

(b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

(c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and educational opportunities provided for Negroes out of public funds; and the status of the Negro in American life.

3. Defendant Albertis S. Harrison, Jr., is Attorney General of Virginia and as such is the chief executive officer of the Department of Law of the Commonwealth of Virginia. Defendants T. Gray Haddon, William L. Carleton, Linwood B. Tabb, Jr., William J. Hassan and Frank N. Watkins are the Commonwealth's Attorneys for the Cities of Richmond, Newport News and Norfolk, and the Counties of Arlington and Prince Edward, Virginia, respectively. Each is authorized to enforce the laws aforesaid.

4. Complainant has pursued its authorized corporate objectives, in Virginia (1) by conducting research and collecting, collating and compiling facts, information and statistics concerning the extent of racial segregation and discrimination, the lack of scientific basis therefor, and the benefits of desegregation to humanity, our society and governments, State and Federal; (2) by compiling scientific data bearing upon racial and other minority discrimination within the United States; (3) by obtaining legal

page 3

research by lawyers, law school professors and others in the field of constitutional law, with particular reference to civil rights of individuals; (4) by rendering, upon request, legal aid and assistance to litigants seeking redress for the denial of civil rights by reason of race or color, when the litigant is financially unable to bear the cost of the litigation; and (5) by informing citizens, through public meetings, speeches, lectures and other media, as to their legal rights. Its program is financed solely by voluntary contributions solicited from individuals and organizations in Virginia and elsewhere.

5. In the prosecution of this program, complainant employs a full-time staff of attorneys in its office in New York City, retains on an annual retainer basis five additional attorneys outside of New York, including one in Richmond, Virginia, engages local attorneys for investigation, research and other legal services in particular cases, and utilizes the voluntary services of approximately one hundred attorneys and a large number of social scientists throughout the United States, some of whom are in the Commonwealth of Virginia. It has contributed monies, legal services, data, and the results of expert studies in a large number of civil rights cases litigated both within and without Virginia, including nearly every major litigation since 1940 involving a question of the validity of governmental action predicated upon race. By virtue of its efforts to secure equal rights and opportunities for Negroes in the United States, complainant has become regarded as an instrument through which individuals may act in their efforts to combat unconstitutional color restrictions.

6. Chapter 36 of the Acts of the General Assembly of Virginia, Extra Session 1956, being now Sections 18-349.31 to 18-349.37, of the Code of Virginia of 1950, makes it unlawful for any person not having a direct interest in the proceedings to promise, give, offer, receive, or solicit any money, personal services, or any other thing of value, or any other assistance, as an inducement to any person to commence or to prosecute further any original proceeding in any court of the Commonwealth of Virginia, or before any board or administrative agency within the said Commonwealth, or in any United States court located within the said Commonwealth

page 4 } against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing, or for any person not related by blood or marriage or who does not occupy a position of trust or a position in *loco parentis* to one who becomes the plaintiff in a suit or action, who has no direct

order to save the necessity of having to put the same witness on to testify to the same thing. In other words, while all of the testimony in the District Court is here, at the same time only the portions that we are offering for evidentiary purposes, as distinguished from the purpose of having the entire record here, are the portions of the evidence that I have just enumerated.

To answer the second part of Mr. May's inquiry, it was not our purpose to have the reporter copy into the transcript here the portions of the testimony to which I have just referred. It seems to me that having introduced that testimony for our purposes in this case, and the
page 11 } Court having the entire transcript before it, that the evidence is before the Court to the same extent that it would be either if the witnesses themselves testified in these cases, or to the same extent that it would be if we had the reporter copy out of the transcript over in the District Court into the transcript in this Court.

Mr. Mays: Can it be understood, sir, that that is true of the whole record and not of those portions just designated? Otherwise, we will have to come up and designate the rest.

Mr. Robinson: Certainly, is it all right with us. The point I am trying to make is this, that the only portions of the testimony that we are introducing as our own evidence in these two cases before the Court here today are the portions that I enumerated. So far as the balance of the record is concerned, if the defendants want to introduce it in evidence, they would certainly have that privilege.

Mr. Mays: The point is, Your Honor, it is already there. That is the point I want to get clear.

The Court: The point I raised as to R-9, I understand that you are going to offer the transcript in the prior proceedings consisting of 600 pages, and I understand it has been received without objection.

Mr. Robinson: In the record without objection in this proceeding. But the point I am making is this: We don't consider ourselves bound by the testimony they
page 12 } put in over at the District Court. So consequently, while all of the transcript is in the record here and may be referred to by another side, we are offering, in lieu of having those people come back and testify here, their testimony over in the District Court, we are offering that as our testimony. We do not offer as testimony emanating from us, and which will be binding upon us, other portions of the transcript. That is the point I am trying to make.

The Court: If that were true, then, why didn't you, as

of the certificate. While these five exhibits are not here supplied, the character of each of those exhibits, we submit, sufficiently appears either from the transcript of the trial proceedings or from the majority opinion of the District Court.

Mr. Mays: I might say, if Your Honor please, as to the evidence that has just been offered, while we have grave doubt as to the materiality of some of the items,
page 9 } we have, of course, no jury, so we have no concern about that, and so have no objection to race.

Mr. Robinson: We would like to introduce that in evidence from the transcript of the trial proceedings in the District Court. In other words, we would like to introduce, pursuant to the stipulation and the certificate, those portions of the testimony as given in the District Court in evidence in the two cases now being heard by this Court.

This is the testimony of the following persons:—and I will also give for purposes of the record the pages of the transcript at which the testimony in each instance appears —W. Lester Banks, pages 8 through 16; Roy Wilkins, pages 61 through 130; Oliver W. Hill, pages 130 through 169; Jack C. Orndoff, O-r-n-d-o-f-f, so it is spelled in the transcript, pages 170 to 175; Robert D. Robinson, pages 176 through 183; Sarah B. Brooks, 184 through 192; Mildred D. Brown, pages 193 through 203; Edith Burton, pages 204 through 206; Margaret I. Finner, F-i-n-n-e-r, pages 207 through 215; Barbara S. Marx, M-a-r-x, pages 218 through 226; Thurgood Marshall, pages 248 through 321; Martin A. Martin, pages 321 through 329; Roland D. Ely, pages 329 through 335; S. W. Tucker, pages 336 through 341; Otis Scott, pages 575 to 579; Viola A. Neal, N-e-a-l, pages 580 to 588; George P. Morton, pages 589 through 600; and Guy R. Friddell, F-r-i-d-d-e-l-l, pages 600 through 603;
page 10 } C. Harrison Mann, M-a-n-n, Jr., pages 500 through 541.

Mr. Mays: May I make an inquiry of counsel? As I understand it, this entire record to which he referred is now a part of this proceeding. I did not know whether he had in mind having the matter he just adverted to copied in the record separately or not. But isn't it all before the Court without any specific designation?

Mr. Robinson: Yes, Your Honor, I think it is all before the Court. What we tried to do here is produce the current record in the District Court. However, while all of the transcript and all the testimony in the District Court is here, I simply wanted to offer this for the purposes of these cases as evidence coming from the complainants in these cases in

RECORDS NOS. 5096 AND 5097

Transcript of Testimony

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page 5 }

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Mr. Robinson: If your Honor please, there has been a stipulation made between counsel for the complainants and the defendants in both cases. A copy of that stipulation appears in the file in one or the other of the two cases.

Under the stipulation either-party may offer for admission in evidence in these cases any portion of the record in either of the two actions previously involving the same parties that were recently pending in the U.S. District Court for the Eastern District of Virginia. The stipulation extends to any portion of the record in either of the two actions respectively known as Civil Action Nos. 2435 and 2436, formerly pending in the Richmond Division of the United States District Court for the Eastern District of Virginia. This extends to any of the evidence, whether it was testimonial or documentary, introduced by either party to the actions.

page 6 } The stipulation further provides that in lieu of any other kind or manner of authentication, any portion of the record in either of these cases might be introduced upon the certificate of counsel for the party introducing that portion that it is an accurate copy of the portion of the record that it purports to be.

The stipulation further provides that any such evidence or any such portions of the record offered for this purpose will be admitted subject to any proper objection on the grounds of incompetency, irrelevancy or immateriality, except lack of authentication in a manner other than as provided in the stipulation.

It further provides that neither party shall be precluded from offering additional evidence by reason of this stipulation.

And lastly, it provides that neither of the complainants by entering into the stipulation waives his legal position that the determinations as made by the District Court are conclusive here.

I don't suppose there is anything more that need be done with reference to that stipulation. It is signed by coun-

sel for both sides. It was filed with the Clerk a few days ago.

The Court: The Court has the stipulation you refer to in hand. It has been marked "Received and filed"
page 7 } November 6 in the Clerk's office in each case, and the Court has read the stipulation, and considers it part of the record.

Mr. Robinson: Now, if Your Honor please, pursuant to that stipulation, we do have portions of the record in these two actions that we would now like to introduce here.

I think it would consist—we have a certificate conforming with the stipulation, and I suppose it might save a little time if I presented the Court with a copy of the certificate, and counsel for the defendants.

The Court: Has counsel for the defendants received a copy of this certificate?

Mr. Robinson: No, they have not. I will give them copies right now.

The Court: Mr. Robinson, in the papers handed to me with the certificate, which lists R-1 through R-22, I find no R-9.

Mr. Robinson: If Your Honor please, that is a four-volume transcript that we have here at the counsel table. I would like to explain that we are getting ready to make use of it in just a moment. But as the certificate states, it is a transcript of the trial proceedings in the District Court consisting of four volumes.

Perhaps I should add a further word concerning this certificate. As the Court has undoubtedly already seen, there were some exhibits when the actions were tried
page 8 } in the District Court that were attached to the complaints in those actions, and also were introduced in evidence at the hearing. And whether that was true, as the middle paragraph, the first full paragraph on the second page indicates, we did not undertake to supply duplicate copies of those exhibits, but simply in the certificate pointed out for the information of the Court that they were the same exhibits, with the result that the Court would have the only data that I have just passed up to the Court, with no duplication.

I would also like to point out that the documents that appear as R-1 to R-22, inclusive, comprise all of the record on appeal in the Supreme Court of the United States in those actions.

The Court: R-1 through what?

Mr. Robinson: R-1 through R-22—comprise the entire record as it is in the Supreme Court of the United States, with the exception of the five items that appear at the end

litigants in litigation, cases or proceedings involving an issue of racial segregation or discrimination by persuading them to express and assert legal rights by receiving or accepting assistance in the nature of advice respecting their legal rights therein and monies to defray the costs and expenses thereof amounts to either an improper solicitation of legal or professional business or employment within the provisions of Chapter 33, or an inducement to commence or prosecute law suits within the prohibitions contained in Chapter 36, or both, for the reason that neither of said statutes, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, applies to or prohibits said activities.

Sixth: The Court erred in declaring that contributions by complainant to a person or group of monies toward counsel fees and other expenses of litigation or of the services of attorneys in a matter, case or proceeding involving an issue of racial segregation or discrimination amounts to either an improper solicitation of legal or professional business or employment within the provisions of Chapter 33, or an inducement to commence or prosecute law suits within the prohibitions contained in Chapter 36, or both, for the reason that neither of said statutes, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, applies to or prohibits said activities.

Seventh: The Court erred in declaring that acceptance by an attorney of assistance from complainant in the form of legal advice, monies toward counsel fees and other expenses of litigation in a matter, case or proceeding involving an issue of racial segregation or discrimination page 40 } amounts to a violation of the provisions of Chapter 33, for the reason that said statute, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, does not apply to or prohibit said activities.

Eighth: The Court erred in declaring that acceptance by an attorney of employment by a person or group for the purpose of rendering legal service to such person or group in a matter, case or proceeding involving an issue of racial segregation or discrimination wherein complainant has furnished or will furnish assistance in the nature of advice respecting his or its legal rights therein, or monies toward counsel fees or costs and other expenses thereof amounts to a violation of the provisions of Chapter 33, for the reason that said statute, properly construed in the light of complainant's constitutional contentions under settled rules of

statutory construction, does not apply to or prohibit said activities.

Ninth: The Court erred in declaring that acceptance by an attorney of employment by complainant for the purpose of rendering legal services to a person or group desiring his services in a matter, case or proceeding involving an issue of racial segregation or discrimination amounts to a violation of the provisions of Chapter 33, for the reason that said statute, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, does not apply to or prohibit said activities.

N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INCORPORATED, Complainant
By SPOTTSWOOD W. ROBINSON, III
Of Counsel for Complainant.

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Received and filed Apr. 21, 1959.

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

IN CHANCERY
No. B-2870

N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, Complainant,

v.

Albertis S. Harrison, Jr., Attorney General of Virginia, et al., Defendants.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Complainant, N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, hereby gives notice of its appeal from the final order of the Circuit Court of the City of Richmond, Virginia, entered on the 25th day of February, 1959, in the above-captioned case, declaring that Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra Session of 1956 (Sections 54-74, 54-78, 54-79, as amended, and Sections 18-349.31 to 18-349.37, inclusive, of the Code of Virginia of 1950), construed and interpreted in the light of the constitutional contentions theretofore made by complainant in the United States District Court for the Eastern District of Virginia, Richmond Division, in the action styled "*N. A. A. C. P. Legal Defense and Educational Fund, Incorporated,* v. *Kenneth C. Patty, Attorney General for the Commonwealth of Virginia, et al.,*" being Civil Action No. 2436, viz., that enforcement of such statutes would infringe rights secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States, apply to and prohibit certain of the customary activities of complainant, its officers, members, contributors, voluntary workers, and attorneys employed or retained by it or to whom it may contribute monies or services; and complainant designates the following.

page 38 } ASSIGNMENTS OF ERROR.

First: The Court erred in ruling that the findings, conclusions and determinations of the United States District Court for the Eastern District of Virginia, Richmond Divi-

sion, in the cases styled "*National Association for the Advancement of Colored People* v. *Kenneth C. Patty, Attorney General for the Commonwealth of Virginia, et al.,*" being Civil Action No. 2435, and "*N. A. A. C. P. Legal Defense and Educational Fund, Incorporated,* v. *Kenneth C. Patty, Attorney General for the Commonwealth of Virginia, et al.,*" being Civil Action No. 2436, with respect to the constitutional validity of Chapters 31, 32 and 35 of the Acts of the General Assembly of Virginia, Extra Session 1956, were not, by reason of Section 1738 of Title 28 of the United States Code, made conclusive and binding upon the Court in this case.

Second: The Court erred in its application of the doctrine of collateral estoppel by refusing to rule that the findings, conclusions and determinations of the United States District Court for the Eastern District of Virginia, Richmond Division, in the above-mentioned cases with respect to the constitutional validity of Chapters 31, 32 and 35 of the Acts of the General Assembly of Virginia, Extra Session 1956, were conclusive and binding in this case.

Third: The Court erred in declaring that contribution by an attorney employed or retained by, or associated with, complainant of advice to a person or group, respecting his or its legal rights in a matter, case or proceeding involving an issue of racial segregation or discrimination amounts to either an improper solicitation of legal or professional business or employment within the provisions of Chapter 33, or an inducement to commence or prosecute law suits within the prohibitions contained in Chapter 36, or both, for the reason that neither of said statutes, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, applies to or prohibits said activities.

Fourth: The Court erred in declaring that the expenditure of monies by complainant to defray the costs and expenses, in whole or in part, of litigation involving an issue of racial segregation or discrimination amounts to either an improper solicitation of legal or professional business or employment within the provisions of Chapters 33, or an inducement to commence or prosecute law suits within the prohibitions contained in Chapter 36, or both, for the reason that neither of said statutes, properly construed in the light of complainant's constitutional contentions under settled rules of statutory construction, applies to or prohibits said activities.

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Fifth: The Court erred in declaring that assistance by complainant, its officers, members or voluntary workers, or attorneys employed or retained by, or connected with, it, to

ings involving an issue of racial segregation or discrimination, or (d) employment by complainant for purposes of rendering legal services to the complainant of a character other than that specified in paragraph 5 of this prayer.

and that this Court award complainant its costs in this behalf expended.

N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INCORPORATED, Complainant,
By SPOTTSWOOD W. ROBINSON, III
Of Counsel for Complainant.

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Received and filed Jun. 9, 1958.

LUTHER LIBBY, JR., Clerk
By E. M. EDWARDS, D. C.

N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, a Corporation, Plaintiff,

v.

Albertis S. Harrison, Jr., Attorney General of Virginia, et al., Defendants.

ANSWER.

To the Honorable E. W. Hening, Jr., Judge of said Court:

The answer of Albertis S. Harrison, Jr., T. Gray Haddon, William L. Carleton, Linwood B. Tabb, Jr., William J. Hassan, and Frank N. Watkins to a bill of complaint filed against them in the Circuit Court of the City of Richmond, Virginia, by N. A. A. C. P. Legal Defense and Educational Fund, Incorporated, a corporation.

These defendants for answer thereto, or to so much thereof as they be advised that it is material they should answer, answer and say:

1. They are not advised as to whether the activities of the plaintiff violate the provisions of Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra Session, 1956 (Sections 54-74, 54-78 and 54-79, as amended, and Sections 18-349.31 and 18-349.37, inclusive, of the Code of Virginia). It is the contention of the defendants that page 16 } the said Chapters 33 and 36 do not violate the equal protection clause or the due process clause of the Fourteenth Amendment to the Constitution of the United States.

2. They admit the allegations contained in paragraphs 2 and 3 of the bill of complaint.

3. They are not advised as to the allegations contained in paragraphs 4, 5 and 8 of the bill of complaint, and call for strict proof of said allegations.

4. They admit the allegations contained in paragraph 9 of the bill of complaint.

5. They deny the allegations contained in paragraph 10 of the bill of complaint, and call for strict proof of said allegations.

And now, having fully answered the plaintiff's bill, these defendants pray to be hence dismissed with their reasonable costs by them in this behalf expended.

ALBERTIS S. HARRISON, JR.,
T. GRAY HADDON,
WILLIAM L. CARLETON,
LINWOOD B. TABB, JR.,
WILLIAM J. HASSAN,
FRANK N. WATKINS,
Defendants.

C. F. HICKS
Assistant Attorney General of Virginia,
Supreme Court Building,

DAVID J. MAYS
HENRY T. WICKHAM
1407 State-Planters Bank Building,
Richmond, Virginia.

Attorneys for the Defendants.

* * * * *

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* * * * *

plainant alleged, and in their answer, a copy of which is filed herewith as Exhibit "C," defendants denied, that Chapters 33 and 36 applied to the activities of complainant and that said statutes were on that account unconstitutional and void. The Court, in an opinion rendered January 21, 1958, a copy of which is filed herewith as Exhibit "D," concluded that Chapters 33 and 36 were too vague and ambiguous to enable it to pass upon their constitutionality and by a judgment entered April 30, 1958, a copy of which is filed herewith as Exhibit "E," ordered that the complaint therein be retained for a reasonable time pending the determination of such proceedings in the courts of the Commonwealth of Virginia as complainant might see fit to bring to secure an interpretation of Chapters 33 and 36 as they may affect complainant because of its activities in the past or the continuance of like activities in the future.

10. The provisions of Chapters 33 and 36 are susceptible to the construction that they render illegal complainant's principal activities and functions in Virginia, and subject to severe penalties the complainant, its officers, members, contributors, voluntary workers and attorneys associated with its functions, if such activities are continued. The operation of said statutes to produce these consequences would destroy the rights of complainant, its officers, members, contributors, voluntary workers and attorneys associated with its functions, to freedom of expression, access to the courts, and equality of treatment, and would deny them their liberty and property without due process of law and the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States, and would be unconstitutional and void.

Wherefore, complainant prays that this Court enter a decree declaratory of the construction and interpretation of Chapters 33 and 36 of the Acts of the General Assembly of Virginia, Extra Session 1956, as they may affect complainant, its officers, members, contributors or voluntary workers, or attorneys retained or employed by it or to whom it may contribute monies, in the light of complainant's contentions that enforcement thereof because of either of said activities would deny complainant its liberty and property without due process of law and the equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States, because of any of the following activities:

page 7 } 1. Publication or dissemination, by complainant to any person or group, of facts, data, statistics or information, or the results of factual, scientific or legal re-

search or investigation, respecting any aspect of racial segregation or discrimination.

2. Publication or dissemination, by complainant to any person or group, by means of a speech, meeting or other medium, of information respecting legal rights in any matter, case or proceeding involving an issue of racial segregation or discrimination.

3. Advocacy, by complainant to any person or group, that persons subjected to any form of racial segregation or discrimination assert their legal rights in a case or proceeding appropriate thereto.

4. Contribution by complainant to any person or group, upon request of such person or group, of advice respecting his or its legal rights in a matter, case or proceeding involving an issue of racial segregation or discrimination to which such person or group is, but complainant is not, a party or in which such person or group may have, but complainant does not have, some personal or pecuniary right or liability.

5. Contribution by complainant to any person or group, upon request of such person or group, of (a) monies toward counsel fees and other expenses of litigation, (b) the services of attorneys, (c) the services of experts, or (d) facts, data, statistics or information, or the results of factual, scientific or legal research or investigation, in matters, cases or proceedings involving an issue of racial segregation or discrimination to which such person or group is, but complainant is not, a party or in which such person or group has, but complainant does not have, a pecuniary right or liability.

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6. Solicitation by complainant, its officers, members or voluntary workers, of money or services to be employed for either of the purposes specified in paragraphs 1 to 5, inclusive, of this prayer.

7. Contribution to complainant, by an officer, member, contributor or voluntary worker, of money or services to be employed for either of the purposes specified in paragraphs 1 to 5, inclusive, of this prayer.

8. Acceptance by an attorney of (a) assistance by complainant of the character specified in paragraph 5 of this prayer, (b) employment by a person or group for purposes of rendering legal services to such person or group in a matter, case, or proceeding in which complainant has furnished or will furnish assistance of the character specified in paragraph 5 of this prayer, (c) employment by complainant for purposes of rendering legal services to a person or group desiring his services in matters, cases or proceed-

interest in the subject matter of the proceeding and whose advice has not been sought in accordance with the Virginia canons of legal ethics, to advise, counsel or otherwise instigate the bringing of a suit or action against the Commonwealth of Virginia, any department, agency or political subdivision thereof, or any person acting as an officer or employee for either or both or any of the foregoing. "Person" is defined to include "person, firm, partnership, corporation, organization or association," and "direct interest" as "a personal right or a pecuniary right or liability." A controversy has arisen between complainant and defendants as to whether the provisions of this statute apply to the activities of complainant, its officers, members, contributors or voluntary workers, or attorneys engaged by it or to whom it may contribute monies, as hereinafter more fully appears.

7. Chapter 33 of the Acts of the General Assembly of Virginia, Extra Session 1956, amended Sections 54-74, 54-78 and 54-79, of the Code of Virginia of 1950 which define the elements and penalties of unprofessional conduct on the part of an attorney and the offenses of "running" and "capping." In its original form, Sections 54-74(6) defined "unprofessional conduct" as including "the improper solicitation of any legal or professional business or employment, either directly or indirectly." Chapter 33 amended this subsection to extend the definition to include "the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 of this Chapter," which includes Sections 54-78 and 54-79. The former, as amended by Chapter 33, now provides:

(1) A "runner" or "capper" is any person, corporation, partnership or association acting in any manner or in any capacity as an agent for an attorney at law within this State or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or
page 5 } procurement of business for such attorney at law or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated * * *

(2) An "Agent" is one who represents another in dealing with a third person or persons.

Section 54-79, as amended by Chapter 33, now reads in part:

It shall be unlawful for any person, corporation, partner*ship* or association to act as a runner or capper as defined in §54-78 to solicit any business for an attorney at law or such person, partnership, corporation, organization or association * * * in any public place * * * or upon private property of any character whatsoever.

A controversy has arisen between complainant and defendants as to whether the provisions of this statute apply to the activities of complainant, its officers, members, contributors or voluntary workers, or attorneys engaged by it or to whom it may contribute monies, as hereinafter more fully appears.

8. In cities and counties wherein defendants are authorized to enforce said statutes, and elsewhere in the Commonwealth, complainant (a) contributes, upon request, the servives of attorneys, the results of expert studies and scientific data, and monies for defraying counsel fees and expenses of litigation, in cases pending therein, or affecting public officials, agencies or facilities therein; (b) affords advice and counsel to persons requesting the same with respect to matters involving their civil rights; and (c) informs citizens, through public meetings, speeches and other media, as to their civil rights.

9. On November 29, 1956, complainant instituted in the United States District Court for the Eastern District of Virginia, Richmond Division, Civil Action No. 2436 against the defendants herein, seeking a declaratory judgment as to, and an injunction restraining the enforcement of, certain laws enacted at the 1956 Extra Session of the General Assembly of Virginia, including Chapters 33 and 36, on the ground that the enforcement of said statutes against complainants, its officers, members, contributors or voluntary workers, or attorneys, retained or employed by it or to whom it might contribute monies, because of complainant's activities in the past or the continuance of like activities in the future, would deny them their liberty and property without due process of law and the equal protection of the
page 6 } laws secured by the Fourteenth Amendment of the Constitution of the United States. In its complaint, a copy of which is filed herewith as Exhibit "B," com-

casions in Charlottesville and made speeches before anybody importuned you to take any action, isn't that right?

A. No one has importuned me to take any action, sir.

Q. All right. You say "we". Who else included in that pronoun "we" appeared there?

A. When I use the pronoun "we" I speak of the N.A.A.C.P.

Q. Can you name any other individuals other than yourself?

A. Well, I don't know. We had a convention in Charlottesville that included 45 or 50 individuals. I wouldn't attempt to name any other individuals, but I am certain that other persons who are members of the State Conference have spoken from time to time in Charlottesville.

Q. Well, you couldn't name any other individuals.

A. Well, I could name, just run down—I imagine Mr. Hill has spoken in Charlottesville. I imagine Dr. Henderson, who was then president of the Conference, spoke one or more times in Charlottesville.

Q. When you say you imagine, please leave page 34 } that out. Do you know?

A. I would say yes, that they have spoken.

Q. Was that before 1956, when these cases were started?

A. Yes, I am certain that they spoke before 1956.

Q. Now, when was it, as far as you know, that the next event took place leading up to litigation after these several speeches were made? Did you or somebody from your organization contact some of the parents or children, or did they contact you?

A. I am pretty certain—let me be more specific—the parents of the children did not make any contact with me. As I said a moment ago, my first official knowledge of the actual suit came through the chairman of the legal staff and president as a recommendation. But I suspect that the parents contacted a member of the staff, perhaps the chairman of the staff.

Q. You don't know?

A. I don't know.

Q. So any contacts that were made by the parents or the children in Charlottesville were not made with you? That would come through some official?

A. They were not made through my office, no.

Q. And, therefore, it came through some other officials to you, in the first instance you had no previous contacts except through the speeches with the parents of the children?

W. Lester Banks.

A. As far as the case itself is concerned, yes,
page 35 } that officially came to me in that manner.

Q. Now, when it came to you, was it with the request that the Conference approve this as litigation which it would endorse and aid?

A. Yes. There is a general policy, Mr. Mays, that if matters such as the matter under consideration have been given thought by the chairman of the legal staff and his conclusions have been concurred in by the president of the Conference, then a recommendation is made to the State Conference that necessary assistance be given.

Q. And that was done in that instance?

A. Yes.

Q. Did you or anyone representing the Conference as far as you know have any understanding with any of the parents of the children in Charlottesville as to how the fees and expenses of litigation would be paid?

A. No, there was no understanding as far as I know with the members of the branch, other than the fact that the State Conference would be responsible for the fees and expenses.

Q. Did any of those parents indicate to you that they were prepared to make contributions toward the expenses and costs of litigation?

A. As plaintiffs, I would say no. As members of
page 36 } the Charlottesville community, yes, I am certain
that the plaintiffs were among the many, many persons in Charlottesville who made contributions to the Freedom Fund, which is generally used to defray the legal expenses involved.

Q. Was that aimed at the legal expenses merely in that suit, or is it a general fund for the purpose of handling this type of litigation?

A. Their contributions came as contributions to what was then known as the Freedom Fund, which is designed to help defray the legal expenses, help programming, and the overall activities of the Conference generally.

Q. It was not aimed at that particular litigation?

A. That is correct.

Q. Has it come to you attention in any way that any of the plaintiffs in Charlottesville have made any arrangements, tentative or otherwise, to reimburse the Association or Conference or counsel for expenses and legal fees?

A. As far as I know, that hasn't come to my attention.

Q. There is some litigation now pending, rather recent liti-

situation at all. I think—I intended to testify, I thought I testified that if the matter was brought directly to the chairman of the legal staff, then the chairman of the legal staff after studying the matter would make recommendation to the president, and they jointly would make recommendation to the Conference.

Q. I understand the general theory. What I am trying to find out is what happened? How did the Charlottesville case first come to your attention? Did it come from the chairman of the legal staff? Did it come from the

page 30 } president of the Conference, or somewhere else?

A. Well, the president of the Conference and the chairman of the legal staff would jointly concur in seeing that the Charlottesville situation was a situation that merited the consideration of the N.A.A.C.P., and that is when it would be officially before the Conference.

Q. But aside from when it was officially before the Conference, when did it come to your individual attention first, the Charlottesville school situation?

A. I am trying to say, sir, officially I couldn't say the date or the hour, but it officially came to my attention when the situation in Charlottesville had been discussed by the chairman of the legal staff and the president, and they jointly made recommendation to the Conference.

Q. That it take over the case and pay the bills?

A. That it would support the Charlottesville action.

Q. Right.

Now, that is when it came officially to your attention. But I am talking now about a man named Lester Banks, when did he first hear about the Charlottesville case?

A. Well, Lester Banks officially heard about it when that was brought to my attention, sir.

Q. Well, can we just forget about you being an official for a minute, and think about you as being a man,

page 31 } and with that thought, tell me when you first heard about the school situation in Charlottesville, and how you heard about it?

A. Mr. Mays, I would have to ask you again—and I am not trying to be evasive, I am trying to keep our thinking together—when you say about the school situation, I interpret that as being something different from a Charlottesville case.

Q. All right. Of course, certain things had to be done by the officials of N.A.A.C.P. or the fund or the Conference or the legal staff before there was a case. But at some stage,

W. Lester Banks.

I assume, this didn't come from heaven. I assume that at some stage somebody in Charlottesville got in touch with somebody in one of the organizations I mentioned, or that somebody in one of those organizations I mentioned got in touch with somebody in Charlottesville. Now, does that make clear what I am trying to bring out? When did that begin? Who got in touch with you first? Who started it?

A. Well, let me try to answer your question this way. Every situation where there is a public school in the State of Virginia, and certainly where there are discriminations existing in those public school, those things come to the attention of the community, and certainly I was aware as an individual and as Executive Secretary that page 32 } there were conditions in Charlottesville that needed to be rectified. And I suspect on more than one occasion I have spoken at public mass meetings and urged the citizens of Charlottesville to look about them and see whether or not there were discriminatory conditions. If you are distinguishing between that situation and the actual filing of the case, then, oh, a number of years ago the situation in Charlottesville came to my attention.

Q. You suspect you appeared there and spoke to them. Don't you know?

A. Oh, yes, I suspect that I have spoken more than once to the citizens of Charlottesville.

Q. So far as your contact with Charlottesville is concerned, the first thing that happened is, you appeared and spoke to groups of aggrieved parents, is that right?

A. Not necessarily spoke to groups of aggrieved parents, I have spoken on any number of occasions to citizens of Charlottesville, which in all probability included some of the aggrieved parents.

Q. What was the next thing that happened so far as Charlottesville is concerned after you made one more of your speeches leading up to this litigation?

A. Leading up to the litigation?

Q. Yes.

A. Now, what I have said thus far, we have page 33 } spoken to groups in Charlottesville on any number of occasions, and certainly not only those conditions in Charlottesville have been pointed out, but conditions throughout Virginia have been pointed out. I mean that is a part of the program of the Association.

Q. Yes, I understand that. You appeared on several oc-

don't know whether you want to use letters or numbers for that.

Mr. Hill: Are you submitting them as one exhibit?

Mr. Mays: As one exhibit.

The Court: Will you mark them defendants' exhibit D-1?

(The document was marked Defendants' Exhibit D-1 for identification, and received in evidence.)

By Mr. Mays:

Q. Mr. Banks, what was your first contact with the plaintiffs in the Charlottesville case?

A. As plaintiffs in the Charlottesville case, Mr. Mays, it is hard to say what the first contact was. I have, as Executive Secretary, perhaps known one or more of them for a number of years as individuals.

Q. What was your first contact, then, with the Charlottesville school situation?

A. Well, my first knowledge of the Charlottesville school situation was when a recommendation through the president came to the attention of the Conference that the Charlottesville situation was a situation that needed Conference assistance.

Q. Do you know how that came to the attention of the president?

A. I imagine through the usual procedure, sir.

page 27 } Q. What do you mean by you imagine it was the usual procedure?

A. I think you alluded to it a moment ago—the usual procedure on matters coming to the official attention of the Conference comes about either where an individual who thinks that he or she have been aggrieved will come directly to a branch officer, or will come directly to the Conference official, come directly to me as the Executive Secretary, or that same individual might take his complaint directly to a member of the legal staff or the staff.

Now, if the individual complaint comes to me in the first instance, if there is indication that a legal question is involved, then without a determination of that particular complaint it is immediately referred to the chairman of our legal staff, Mr. Oliver W. Hill. If Mr. Hill is unavailable, then the individual would go to another member of the staff. If Mr. Hill, after consideration of the matter, determines that it is a matter in which the N.A.A.C.P. should interest itself in, then he makes a recommendation to the

president of the State Conference, and the president and Mr. Hill concurring, that action is referred to the State Conference Assembly. So that would be the point where I would officially have knowledge of the situation as far as the Charlottesville situation is concerned.

Q. And you say you imagine that is what hap-
page 28 } pened in the Charlottesville case?

A. I would imagine that is what happened in the Charlottesville situation.

Q. Actually, that was the general gist of your testimony which I read into the record a while ago, but which seems not to have been followed in practice in any case that I mentioned. Do you have any clearer recollection than that of the Charlottesville case, as to how it came to your attention?

A. Well, I am pretty certain that that is the way the Charlottesville case came to my attention, through action that had been concurred in by the president of the Conference and by the chairman of the legal staff. I might add, Mr. Mays, that you only asked me about five or six specific cases, and there are just any number of complaints that come to the N.A.A.C.P.

Q. Did I miss any of the school cases?

A. I don't know whether you did or not, sir.

Q. Do you know of any school case that you handled through the usual channels you have just described?

A. I don't recall any of the school cases coming directly to me.

Q. Now, in the Charlottesville case, you knew nothing about it, I understand, until you ascertained it from the president and the chairman of the legal staff?

page 29 } A. In the Charlottesville case, I think that is correct.

Q. You had no participation in it at all before you heard from them?

A. Before the chairman of the legal staff and the president recommended that Conference report, that is right, I am pretty positive of that.

Q. Do you know whether it came first through the president or first through the chairman of the legal staff?

A. I don't understand your question, sir.

Q. Who was the first one as far as you yourself know, who handled the Charlottesville situation? Was it the president of the Conference or the chairman of the legal staff?

A. The president of the Conference wouldn't handle a

special reserve set aside to take care of the accumulated fees. It is all a part of the Freedom Fund activities.

page 23 } By Mr. Mays:

Q. Do you recall sending out a letter over your signature as Executive Secretary for the Fund, a letter under date of May 26, 1954, addressed to N.A.A.C.P. branch offices, lay members, and members of the legal staff and Executive Board of Virginia State Conference, N.A.A.C.P.?

A. I don't know. I would have to see the letters, sir.

Q. I will broaden the questions to ask about three, and show them to you at one time. You may recognize these as copies. If not, I will ask you to produce a copy.

The other was a communication addressed by you to "Dear Branch Officer", dated June 16, 1954, and the third a confidential directive dated June 30, 1955, which is addressed to "Member Branches of the Virginia State Conference, N.A.A.C.P.". For your further information, I may say that the letters to which I refer were developed in testimony before one of the legislative committees, and were published in their report, that is, the Committee on Offenses Against Administration and Justice, the first of those letters appearing on page 45. I might say that if you could identify those we might put them in evidence from the report, otherwise, I would ask you to produce the letters themselves for the introduction.

A. I would like to see them.

Q. Surely.

page 24 } A. Incidentally, Mr. Mays, those letters were not developed in testimony. Those letters came as a part of some material that we submitted to the committee.

Mr. Mays: Will you read the question, please.

(Question read.)

The Witness: Yes, we recognize those letters.

By Mr. Mays:

Q. As far as you know, they are correct copies of the letters?

A. From a casual observation, they seem to be copies. I couldn't swear to them.

Q. Then we will ask you, if you are not certain these are

copies, we will ask you to produce the letters from your files. Will you do that?

Mr. Hill: I think the witness was as fair as he could be, Judge. He said they appeared to be.

Mr. Mays: If he will admit these are copies, that is all I want to know. If he is not certain, that is another matter. If he feels these are correct copies, I would like to introduce them in evidence.

By Mr. Mays:

Q. Do you feel they are?

A. As far as I can ascertain, they are correct copies, Mr. Mays.

Q. Certainly they are correct in substance?

page 25 } A. They are correct in substance, as far as I can ascertain.

The Court: How much time do you need to ascertain that they are correct copies?

The Witness: I would certainly need to read them over.

The Court: We will take a five-minute recess to enable you to read them through.

(Recess.)

The Court: Mr. Banks, during the recess have you had an opportunity to examine these letters you were being questioned about?

The Witness: I have, sir.

The Court: Counsel may proceed with his examination.

By Mr. Mays:

Q. And you find that they are correct copies of the letters you sent out?

A. Yes, Mr. Mays, I do find that they are correct copies.

Mr. Mays: Thank you.

I ask, if Your Honor please, that they be marked in evidence, and I may further identify them as pages 47, 48, 49 and 50 of the appendix of the pamphlet to which I referred, in which they are designated respectively, as appendices 10, 11 and 12.

The Court: How do you suggest that be

page 26 } marked, as defendants' exhibits?

Mr. Mays: It would be our first exhibit. I

A. Did I have anything to do with that?

Q. Yes. Did the matter come through you, or did it go directly to counsel?

A. Well, in the Arlington County case, as I understand, the contacts were made directly with counsel.

Q. They did not come through you at all?

A. Not the original contacts.

Q. What about the Prince Edward case?

A. The same thing is true of the Prince Edward case.

Q. The Charlottesville case?

A. The same thing is true of Charlottesville.

Q. Arlington?

A. You just asked me about Arlington.

Q. I beg your pardon. I take it your view has not changed?

A. No.

page 20 } Q. The Newport News case?

A. The same thing would be true in Newport News.

Q. How about the new case in Warren County?

A. That would be true in Warren County, also.

Q. The Norfolk case?

A. That would be true there, too.

Q. You recall at the hearing to which Mr. Hill adverted, you testified concerning the manner in which those cases are handled, and on page 35 of the testimony that was taken as to September 16, 1957, when you were asked about getting lawyers for these cases, you replied: "In that particular situation, when a complaint comes in, if the complaint comes into a local branch, the local branch in many instances will bring that complaint to me as Executive Secretary. In other instances the complaints come directly from the individual. The first thing that I attempt to do is to ascertain whether or not the complaint falls within the general classification of the things that the Association is interested in, that is, cases involving discrimination."

Now, I take it that that is something set up for the record, but not something that operates in practice?

A. I can't see how you could take it in that manner, sir.

Q. In none of these instances you referred to in the specific cases I mentioned, did it come through

page 21 } you to counsel, isn't that true?

A. I so testified.

Q. Has there been, as far as you know, any compensation paid to counsel in any of those cases as of this time, or

W. Lester Banks.

would you know?

A. Yes, there has been.

Q. And to whom and in what amounts and for what case, as far as you can recall.

A. I wouldn't, Mr. Mays, be able to recall the amounts paid by the State Conference to any particular attorney without referring to the records.

Q. Would you mind getting that information and supplying that to us at a later time during the course of the hearing?

A. I would be glad to.

Q. Have you set up any kind of special fund within the Conference of branches to meet these legal expenses?

A. Yes and no. I suspect what you have reference to—you have reference to, at one time we had a special legal fund within the Virginia State Conference which was in actuality a general fund, and then it was set aside and designated as a general fund. Freedom funds are set up for the general operations of the Conference.

Q. When was that first set up?

A. When you say that, what do you refer to?

Q. That special fund.

page 22 ⁑ A. I just testified that I suspect you have reference to a designation of a legal fund which was in reality part of our overall fund. But as far as the Conference is concerned, what we designated as a Defense Fund was set up in 1947.

Q. And you still have that?

A. No, that has now become known as a Freedom Fund.

Q. You still have that?

A. Yes, we do have a Freedom Fund.

Q. Is there set up in that Freedom Fund a reserve to take care of the accumulating counsel fees in the several cases I have referred to?

A. At one time there was special fund, as I just referred to, known as the Legal Fund. That fund has changed over to the General Fund.

Q. Have you in any manner set up a reserve to take care of accumulating legal fees in these cases I have referred to?

A. At the present time we have no reserve to take care of the accumulated legal fees; it is all a part of our Freedom Fund activities.

The Court: You do or do not?

The Witness: I say, at the present time we have no

1956, of the General Assembly, which is the message of the Governor to the General Assembly of Virginia at page 16 } the 1956 extra session.

I would also like to say for the information of the Court that all of the documents to which I have made reference appear as exhibits 4 through 12, inclusive, attached to the complaint in Civil Action No. 2435 in the U.S. District Court, and copies of all of those documents appear in the record from those two actions as earlier submitted this morning.

Just one other preliminary matter, if Your Honor please—

The Court: Just a moment.

Is there any objection to that?

Mr. Mays: What is already in the record—and I don't mean here to debate anything—of course, our position is and will be, that is, to the matter of motive. And we are not concerned with motive but merely what the statute itself provides. I merely point out that difference of view.

Mr. Robinson: If Your Honor please, I would like the record to be clear as to why we introduce them. We introduce them as an aid to the Court in interpreting chapters 36 and 32 as introduced here, and we do submit that they have an important bearing on the meaning of the two statutes involved here, being contemporaneous legislature and contemporaneous public action of an executive character.

The final preliminary matter that I would like page 17 } to take up with the Court is this: The complainants in each of the two cases involved here except to the action of the Court, to the ruling of the Court as contained in the Court's letter of November 3, 1958, to counsel, insofar as that ruling is predicated upon the conclusion that the determinations of the U.S. District Court for the Eastern District of Virginia in civil actions No. 2435 and 2436 are not conclusive in this action by reason of Title XXVIII, U.S. Code, Section 1738. In other words, to the extent the Court ruled that 28 U.S.C., Section 1738, does not afford a basis for a conclusive effect of those determinations here, each of the complainants respectfully excepts.

Mr. Mays: Your Honor, in Mr. Robinson's closing remarks he referred to the fact that the objection he just made related to both cases. He, as counsel, is really for only one of the two. May we understand that everything that has gone before relates to both cases as well?

Mr. Robinson: Yes, sir, that is entirely agreeable.

The Court: That is agreeable with you, Mr. Hill?

Mr. Hill: Yes, sir. We don't see any need for duplication.

W. LESTER BANKS,

was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION.

page 18 } By Mr. Hill:

Q. Will you state your name, address and occupation for the record, please?

A. My name is W. Lester Banks. I live at 1613 Ontario Avenue, Richmond, Virginia. I am employed as Executive Secretary for the Virginia State Conference of the National Association for the Advancement of Colored People.

Q. You have testified previously in cases in the Federal District Court which you just referred to, have you not?

A. I have.

Q. You were Executive Secretary of the Virginia State Conference of N.A.A.C.P. branches long prior to 1956, were you not?

A. Yes, I was.

Q. Is there any difference in the operation of the Virginia State Conference of N.A.A.C.P. branches and the N.A.A.C.P. in Virginia now than there was September 1, 1956?

A. No, there is no difference. The Virginia State Conference and its member branches operate today just as they did on September 1, 1956.

Q. And is that also true of the N.A.A.C.P., the National Association for the Advancement of Colored People, insofar as the overall organization operations in the State

page 19 } of Virginia are concerned?

A. Yes, it is true of the National Association, for the subsidiary branches, and for the State Conference.

Mr. Hill: That is all.

CROSS EXAMINATION.

By Mr Mays:

Q. Mr. Banks, did you have anything to do with the making of contacts between the Arlington County plaintiffs and their counsel?

part of R-9 offer just the pages you rely on out of the transcript in the District Court?

Mr. Robinson: We thought, if Your Honor please, that it would be desirable to have before this Court, in view of the position that we have taken with reference to the effect of the District Court's determinations in these actions, to have the full record from the District Court here, and that was the purpose in offering the entirety of the transcript, just as we undertook to offer as far as we were able to get copies of them the balance of the record in those actions as it appears in the Supreme Court. In other words, in introducing the transcript along with the other exhibits, along with the other papers marked R-1 through R-22, what we were trying to do is to get here the complete record as it was in the District Court in order that this Court would be in position to make a determination as to how far those findings and conclusions over in the District

page 13 } Court might have a bearing or might have a conclusive effect here. That was the purpose of trying to put the whole thing in.

The Court: But I believe Mr. Mays' point is, put the whole record of the District Court in here.

Mr. Robinson: Put the whole record in here. But I wouldn't consider that because we undertook to supply in these cases the full record in the District Court that our actions in doing so would have the same effect as it would have if we offered the testimony. For example, as I adverted to a few minutes ago, I don't think that simply by getting the entire record here, bringing it over for the purposes that I have just mentioned, that we would be bound by evidence of the defendants themselves introduced in the District Court. We are perfectly willing to be bound by the testimony of the witness whom I enumerated a few minutes ago. But I don't think that we would be bound as though they were our own witness by other witnesses who testified for the defendant in the District Court. That is the only point I am trying to make.

The Court: Do you gentlemen care to be heard from?

Mr. Mays: No, sir. We will let the record speak for itself.

The Court: Well, the entire record has been placed in on your offer under this certificate under R-9, and without objection by the defendants, the Court considers

page 14 } the entire record in. And yet so far as the letter "R" is concerned, if you believe the evidence of these witnesses might possibly carry your point, that is another thing. But when you offer the record here to the

Court and it is accepted without objection, the Court considers the entire record received, subject to any irrelevancy.

(The certificate and items R-1 through R-22 listed were received in evidence.)

Mr. Robinson: The only point I want to make is, I don't want to be bound by the testimony of witnesses who testified for the defendants other than those who were enumerated in my earlier statement.

If we are over that, if the Court please, I would like to request the Court to take judicial notice of certain things that I think would be within the realm of the Court's capacity to judicially notice that we believe would have a bearing upon the essential problem before the Court in these cases, and that is the construction of the two statutes involved.

In this regard I would like to ask the Court to take judicial notice of chapters 34 and 37 of the extra session of the General Assembly of Virginia, of 1956, these being two statues that were enacted by the same session of the General Assembly enacting chapters 33 and 36 which are the subject of construction here.

page 15 } I would also ask the Court to take judicial notice of chapters 56 through 71, inclusive, of the acts of the General Assembly at the extra session of 1956.

Next the report of the Virginia Commission on Public Education, which is Senate Document No. 1 of the General Assembly of Virginia at the regular session, 1956; next, the Act of the General Assembly approved on December 3, 1955, submitting to the qualified electors of Virginia the question whether there should be a convention to revise Section 141 of the Constitution of Virginia.

Next, the Act of the General Assembly approved January 19, 1956, providing for the election of delegates to the Constitutional Convention, and related matters.

Next, Senate Joint Resolution No. 3 of the regular session, 1956, of the General Assembly, which was adopted February 1, 1956.

Next, the Ordinance of March 7, 1956, of the Constitutional Convention ordaining a revision or amendment of Section 141 of the Constitution of Virginia.

Next, House Joint Resolution No. 97 of the General Assembly of Virginia at the regular session, 1956, adopted March 10, 1956.

And lastly, Senate Document No. 1 at the extra session,

W. Lester Banks.

A. Oh, I don't think I pinpointed my remarks to the litigation.

Q. At that time you did not—it was not at that time that you urged them to go on with the litigation?

A. I don't think that I have ever urged them to go on with the litigation.

Q. You urged them to exercise their constitutional rights?

A. I believe that that came about when, as I page 61 } said a while ago, that some of the parents—

Q. At the treasurer's house, which we have now identified as the third meeting?

A. That is right.

Q. Did Mr. Hill address this third meeting?

A. The third meeting?

Q. The Front Royal meeting.

A. Mr. Hill spoke at that meeting, yes.

Q. What were his comments on the school case?

A. I don't recall, sir.

Q. You don't remember whether he urged them to buck up and see it through or not?

A. I don't recall.

Q. Did anyone else address a meeting on this subject?

A. I don't think they did. I just don't remember.

Q. Now, you stayed at the meeting until it adjourned?

A. Yes.

Q. And it was in the afternoon or the evening?

A. It was in the evening.

Q. After that did anything further happen in connection with the school case or with the plaintiffs until the following morning, as far as you know?

A. As far as I know, no.

Q. Now, when did you understand that there page 62 } would be a meeting of plaintiffs the following day?

When did you first learn about it?

A. I think I learned that at the meeting that evening.

Q. And were the people at the meeting who were plaintiffs urged to be present at the meeting the next day?

A. I don't recall definitely, but I think they were urged by their counsel to be present.

Q. And do you know who urged them to be there?

A. I imagine counsel.

Q. But you don't know?

A. I imagine Mr. Hill urged them.

Q. Well, don't you know that?

Q. Do you know how numerous the gathering was?
A. Well, as I recall, the little church was pretty well filled.
Q. Can you estimate the number of people there?
A. Oh, I would think maybe 50, 60 or 70, something like that.

page 59 } Q. Well, you said most of the citizens of Front Royal. You meant colored citizens, I take it?
A. Yes.
Q. Were the plaintiffs among them?
A. Yes, sir, I am sure that they were.
Q. Do you know who called that meeting?
A. No, I don't know who called the meeting.
Q. At what time was it held?
A. It was held in the evening.
Q. Was it very long after your arrival?
A. If I remember correctly, Mr. Mays, the meeting was in progress when we arrived. I think it was.
Q. So you and Mr. Hill went straight to the meeting?
A. I think that we did.
Q. What was going on there when you arrived?
A. I believe when we arrived there was a workshop in progress.
Q. What character of workshop?
A. Well, I think it was a community coordination educational workshop. .
Q. Put on by the Conference?
A. No, not put on by the Conference.
Q. Put on by whom?
A. By the local branch.

page 60 } Q. And what was the subject of discussion in the workshop?
A. Well, I think that—we missed, I think, the greater portion of it—but I think the general tenor of the discussion was community coordination, and that sort of thing.
Q. In connection with the educational situation?
A. In connection with the educational situation, and community living generally.
Q. Now, when you and Mr. Hill arrived on the scene with a court reporter, you immediately participated in the meeting?
A. No, I think the proceedings continued, and then at the proper time there were introductions and we did participate.
Q. Now, did you address that meeting?
A. I think I made remarks at that meeting, sir.
Q. What kind of remarks did you make insofar as the litigation is concerned?

sonburg, if I recollect correctly, and then went over to Front Royal.

Q. And you went to the Judge's office or came straight over there to meet the plaintiffs?

A. I don't know whether it was from the Judge's office or not.

Q. You were in Harrisonburg, weren't you there on the occasion of the hearing before the Court?

A. Yes, sir.

Q. And when that was concluded then you went with Mr. Hill on over to Front Royal in order to have a discussion with the plaintiffs, isn't that correct?

A. Mr. Hill had business in Front Royal, and since I was driving, of course we went together.

Q. I understand by now that you went together, but I am trying to understand why it was that you went at all to Front Royal. Why did Mr. Banks go to Front Royal at all?

A. Well, I went to Front Royal, one, because I was interested in Front Royal. Front Royal was one of the areas where we were sponsoring litigation, or assisting in the sponsorship of litigation. I was interested in Front Royal be-
page 56 } cause of the branch there.

Q. Weren't you specifically interested in Front Royal because there was to be a meeting of plaintiffs there that day?

A. Not necessarily, sir. It wasn't that day, sir. As I recall, the Court convened on Friday, and we went over that evening, and the plaintiffs went to the courthouse Saturday morning.

Q. Then you and Mr. Hill drove over on Friday evening after the Judge's decision, and met with the plaintiffs at the courthouse the following morning in Front Royal?

A. I think that is the way it was.

Q. Why did you happen to go to Front Royal? Was it a general visit, or did you go with the expectation of such a meeting?

A. Again, sir, I went with Mr. Hill.

Q. Yes, I know that. Did he ask you to go with him? Did he ask you to drive him?

A. No, Mr. Mays, he didn't ask me to drive him. He was riding in my car.

Q. He was a passenger in your car?

A. Yes, he was in my car.

Q. But for some reason you went to Front Royal at that time?

W. Lester Banks.

A. Yes.

page 57 } Q. And what activated your going? Was it simply just general curiosity about the state of the chapter, or did you expect to meet with the plaintiffs in that litigation?

A. I didn' expect to meet with the plaintiffs. Perhaps Mr. Hill was going to meet with the plaintiffs.

Q. Did you understand there was going to be a meeting of the plaintiffs?

A. I don't remember whether I understood that or not.

Q. What did you understand was going to happen at Front Royal, that day or the next day?

A. I think that it was tacitly understood perhaps that there would be a meeting with the plaintiffs, but as to being told that, I don't recall that. I am trying to be truthful about it, because I don't remember.

Q. I certainly want you to be, but we are having a slow time. There was a tacit understanding. I suppose you mean by that that in some way or another you understood that Mr. Hill was going over to Front Royal in order to confer with the plaintiffs? In some way or another you had that impression, however you got it?

A. That is right.

Q. And isn't it true that you got that impression from Mr. Hill?

A. In all probability, I did, sir.

Q. Was there anybody else in the car with you?

page 58 } A. I don't recall. I am trying to remember whether or not—I believe that—it seems to me that a Mr. Ray was with us.

Q. Who is that?

A. Mr. Ray is a newspaper reporter—it seems to me that he was with us at that time. I wouldn't swear to it.

Q. When you and Mr. Hill arrived at Front Royal, what happened that evening that had any relation at all to the case?

A. I think that there was a meeting that evening.

Q. Where, and who attended?

A. Oh, I imagine most of the citizens of Front Royal attended.

Q. Most of the citizens?

A. I imagine they did—it might have been a meeting purely of the plaintiffs.

Q. Were you there?

A. Yes, I was there.

about what you said generally, but what you said up there. You don't deny having said that up there?

A. I don't deny it, but I don't recall.

Q. When did that meeting break up, the one at the treasurer's house?

A. I don't know.

Q. Did it last well into the night?

A. I don't recall just how long.

Q. You were home that night, I take, from Warren?

A. No, I stayed in Warren that evening.

Q. Did you have occasion to go up there again?

A. Yes, I was in Warren County again.

Q. When was that?

A. I think that I was in Warren County on the day—I believe I was in Warren County on the Saturday be-
page 52 } fore the schools were officially to be opened.

Q. That was the next trip after your meeting with the plaintiffs at the home of the treasurer?

A. No, let me correct myself. I was in Warren County on a Saturday, on the Saturday after the case, I believe. That was before this trip.

Q. Well, I hope you are no worse confused than I am. I understood the first trip you took was the time you met with these plaintiffs at the treasurer's home.

A. No, I didn't mean to imply that, sir. The first trip in 1958 that I made to Warren County was during June and July to the Freedom Fund dinner.

Q. There was no other trip between that and the time you met with the plaintiffs at the treasurer's home, is that right?

A. That is what I am trying to correct. I was in Warren County prior to that, and if I recall correctly, it was on a Saturday

Q. You don't know what month that was?

A. No, I don't recall. But it was immediately, I believe, after the Court decision.

Q. After the Court's injunction?

A. I think so.

Q. That was a temporary injunction, and wasn't that September when that took place, or do you remember?
page 53 } A. I don't remember, but I think it was.

Q. And that was the only time you were there between the Freedom Fund dinner trip and the trip when you went to see the plaintiffs at the treasurer's home?

A. Yes, sir. I wouldn't want you to refer to it as seeing the plaintiffs at the treasurer's home—I have memorandums

of the communications, including memorandums of the branch, which also included some of the plaintiffs'.

Q. I am not trying to pin you down as to who was there, but identifying the occasion. You have described an occasion when you went up and saw various officers of the local branch?

A. That is right, sir.

Q. And you spent an afternoon or evening or both with some plaintiffs at the home of the treasurer. And the next time, as I understand it, you went up was just after the temporary injunction, which was on a Saturday. What happened on that occasion?

A. What I am trying to correct, sir, after the temporary injunction, if it was a temporary injunction, I was trying to include that I was in Warren County, not twice, but three times, and I think that was the Saturday preceding the meeting that we have been discussing at length.

Q. All right. What happened on that Saturday?

A. Well, I think that the parents went to the school board's office in the presence of their attorney, and there

page 54 } was some conversation in the school board office. I was more or less a spectator in that situation.

Q. How did you happen to go up? How did it come to your attention that the meeting was to take place?

A. Well, I knew from—I think that Mr. Hill told me that.

Q. Did he suggest you go up?

A. No, if I remember correctly, we were traveling in the same car.

Q. He told you there was going to be such a meeting, but he did not suggest you go to it?

A. It wasn't a meeting as such. I think Mr. Hill met the plaintiffs at the courthouse.

Q. Well, it was understood, wasn't it, that he was coming to see the plaintiffs at the courthouse?

A. I imagine that the plaintiffs knew that he was coming.

Q. Mr. Hill informed you that he was going up for the purpose, is that correct?

A. Mr. Hill informed me that he was going to Front Royal, and, of course, as I was driving, it was necessary—

Q. Necessary what?

A. I said, I was driving, so I had to go along with him.

Q. Did Mr. Hill ask you to go?

page 55 } A. No, I don't think it was asking at all, Mr. Mays, I just think it was a matter of being—I think we were in Harrisonburg. I am trying to recall this. I think we were in Harrisonburg at the trial, and we came from Harri-

Q. Was there any discussion of that situation with the plaintiffs when you met with them at the treasurer's?

A. Yes, I think that there was some discussion. I don't recall the exact line of it.

Q. Do you know whether you or anyone else, while you were present there, urged them to stand by their guns

page 48 } and not drop the litigation?

A. I don't recall, sir, but I am positive if I said anything to them I urged them to stand on their constitutional rights.

Q. Which, of course, meant stick with the litigation in the Federal Court. It could have meant nothing else, could it?

A. Actually, the litigation was accomplished, an accomplished fact so far as I was concerned, the Court had decreed that they had been deprived of their rights, and the Court had ordered them admitted to the Warren County high schools.

Q. You do understand, however, don't you, that plaintiffs can retire from litigation when they choose, you knew that?

A. Certainly.

Q. And didn't you know that an effort was being made by somebody to get these plaintiffs to quit, just give up?

A. It had been called to my attention—in fact, it was brought to my attention while I was there—

Q. By whom?

A. By some of the members of the branch.

Q. You didn't know that was true before you went there?

A. Officially, no.

Q. Well, did you know in advance? Did you know it as an individual, as a man?

page 49 } A. As an individual, no, I didn't officially know it.

Q. Well, if we will leave out the official, Executive Secretary Banks, and talk about that man Banks again, when did you first find out that some effort was being made to get these people out of the case in the Federal Court?

A. I believe that it first came to my attention when it was published in the Times Dispatch that some of the plaintiffs had been contacted. I am just guessing there, but I remember reading it in the paper. And I think that perhaps was the first instance that I had heard it.

Q. Now, seeing it in the Times Dispatch, your first information on the subject came very shortly before your trip up to Warren County, didn't it?

A. Yes, it did.

Q. And didn't that inspire your trip to Warren County?

W. Lester Banks.

A. I am positive that it did, sir.

Q. That it did?

A. Yes.

Q. And did you not go there for the express purpose of putting some steel in them so they would stick in the litigation?

A. No, not in those terms, sir. I think as Executive Secretary, we went to Warren County to find out whether or not the newspaper accounts had any—whether there was any truth to them, and to find out how the people generally

page 50 } felt.

Q. Well, you did somewhat more than that, didn't you, after you got there? Didn't you urge them as you say to exercise their constitutional rights, and wasn't the only way to do it in the Federal Court as they had been doing?

A. No, that wasn't the only way, sir. I did urge not only the parents and plaintiffs but the citizens generally, as we always do, to exercise their constitutional rights. We urged, as we would do elsewhere, that the problems were not insurmountable, that there should be communication between the elements of the community, and that sort of thing.

Q. Well, quite aside from all the general speeches and conversation, didn't you specifically ask at least one or more people up there not to get out of that case?

A. No, I can very truthfully say, Mr. Mays, that I didn't ask anyone not to get out. I think that a question was raised generally, how do you feel about the situation. But as far as asking somebody not to get out, that was the individual's personal prerogatives.

Q. That I well know. But I am merely asking you what you did?

A. No, I can truthfully say that I didn't ask any plaintiff not to withdraw. I might have asked whether or not they were going to, or something of that sort.

Q. Did you tell them that it was their duty to

page 51 } their race to stick in that litigation and carry it through to a conclusion?

A. I don't recall telling them that, but I think that had it come to my mind I would have told them that it was their duty to their race to do so.

Q. You don't deny having said it in any event?

A. I don't deny having said it on more than one occasion, that if an individual is being denied something, he should certainly do it for himself and for America.

Q. We are going back to general occasions. I am not talking

W. Lester Banks.

A. Some discussion of the case—not necessarily a discussion of the case. We had certainly a discussion of the decision that had been rendered by Judge Paul.

Q. When you went up there in August, wasn't that before a decision by Judge Paul? Didn't that come in September?

A. As I said before, sir, I went to one either in the latter part of June or July, to attend a Freedom dinner. My next visit to Warren was the date that I have mentioned, and that came after the decision of Judge Paul.

Q. Did you arrange for the plaintiffs to meet you on that occasion? Did they know you were coming up in advance?

A. Did the plaintiffs know that I was coming in advance? No, they didn't know that I was coming in advance. The secretary of the branch knew that I was coming.

Q. And he called them together when you came?

A. She called some of the parents together, yes.

Q. And what was your discussion with them on that occasion?

A. Oh, I can't recall my discussion. But I would imagine that the discussion certainly centered around—

page 45 } first of all, I suspect as an individual I commended them.

Q. For having brought suit?

A. No, not for having brought the suit.

Q. For what?

A. Having strengthened democracy, having given evidence of one more thing toward making democracy stronger in Virginia and the United States. I imagine that is what perhaps came out in the discussion.

Q. What evidence are you speaking of? In giving evidence, how was it given?

A. Well, in my opinion, sir, these individuals were citizens of Warren County, State of Virginia, and the United States. And when I say individuals, I am not only talking of the plaintiffs, but these individuals know that they had certain rights, and they asserted those rights, and they had for the first time been given promise of having their children educated within the political confines of the county. And in so doing, that certainly was in accord with the interpretation of the courts. And that is why I suspect that we congratulated them.

Q. Why can't we all save a lot of time here? Isn't it true that the evidence they had given was a willingness to go into the litigation to accomplish their purpose, and you were congratulating them on having shown that evidence? That was

the only evidence they had shown, wasn't it?

page 46 } A. No, not necessarily to be litigants. I was there congratulating them because they had exercised their constitutional prerogatives.

Q. Where was that particular meeting held?

A. I don't think that it was a particular meeting. We went with several groups, but it wasn't—we met in several of the homes.

Q. Now, I understand you went up there on one occasion after Judge Paul's decision, which you placed in August. You went there on one occasion. Did you go to several homes on that occasion, or was there one meeting?

A. We visited several homes on that occasion.

Q. How numerous were they?

A. Oh, I don't know. I visited the secretary's home, I visited the president's home. I think I visited the treasurer's home, and maybe one or two others.

Q. The plaintiffs'?

A. No, I am talking about branch officials now.

Q. All right.

Where was your meeting with the plaintiffs?

A. Well, I think that at the treasurer's home there were quite a number of the plaintiffs, parents who were present who were incidentally plaintiffs and who were also members of the branch.

Q. Was that true of the homes of the other officials?

A. Well, at the secretary's home, as I recall it,

page 47 } there was at least one plaintiff present who happens to live at this home.

Q. But most of them turned up at the treasurer's home?

A. Yes.

Q. And he had them assembled as far as you know in order to meet with you?

A. Yes, I think so.

Q. And where does the treasurer live in Warren County?

A. He lives in Front Royal.

Q. At what time of day or night was that meeting?

A. Late afternoon or early evening, I think.

Q. Not later than early evening?

A. No, late afternoon or early evening.

Q. Now, at that time, was there any effort being made to get the plaintiffs to give up their litigation? Had you heard of any effort being made to induce them to voluntarily relinquish pressing their suit?

A. Yes, I had heard of such.

principal speaker. That, I believe, preceded the litigation, and I have been in Warren County since the institution of the suit.

Q. Were there any speakers other than Mr. Hill on that occasion?

A. Well, yes, I had my Assistant Executive Secretary with me who made remarks and greetings, I believe. As I recall, there were one or two other persons who made remarks, such as the—oh, I think there was a Reverend present who made some remarks, but it was simply a banquet procedure.

Q. As a part of the banquet procedure, did any of the speakers urge or suggest to any of those present that litigation be instituted in connection with the segregation situation in Warren County?

page 41 } A. I don't recall that any suggestions as to the institution of litigation were made. I think that the individuals were told as to what their constitutional rights were.

Q. And were they urged to give effect to those constitutional rights by whatever means were necessary?

A. I can't recall the exact words of the speech, but I am pretty certain that that was recommended, urged, as anybody would urge the citizens to assert their constitutional rights.

Q. And was it urged upon them that the only effective way to do it was in the federal courts?

A. I don't recall that. I have a copy of the speech. I could get it.

Q. Copy of whose speech?

A. The major speech that was delivered.

Q. Was that delivered by Mr. Hill?

A. He did deliver the major speech.

Q. Will you produce that for us so we may have it tomorrow?

A. I will check and see what I can find.

Q. I understood you to say you could produce it.

A. Let me clarify myself. I have had, let me say, a copy of the speech as it was recorded in the Sentinel. Whether that has been thrown away I don't know.

page 42 } Q. You say as it was reported. Did you have a speech from which Mr. Hill read, or did you have a stenographic transcript of the speech as it was made?

A. As it was reported. I don't have a copy of his speech.

Q. Reported where?

A. In the Sentinel, which is one of the local papers.

Q. That, I suppose, is available in libraries, is it not, or do you know?

W. Lester Banks.

A. I don't know whether it is or not.

Q. And you will make a search and let us know?

A. I will try to find it.

Q. And will you make a search and tell us whether you can find it?

A. As I say, I can't tell whether it was the latter part of June or the first of July.

Q. You don't keep a memorandum of your activities?

A. I can tell you when I went there.

Q. It was when you went there that you heard it?

A. That is right.

Q. If you can give us some information as to this report and when you went there and heard it, we will appreciate it.

A. I will try, sir..

Q. If that was the Freedom dinner, when did you

page 43 } go back to Warren County?

A. I think that my next visit to Warren County must have been in August.

Q. Can you fix the date reasonably well as to what part of August?

A. No, I would have to refer to my calendar.

Q. What was the occasion of that trip?

A. Well, the occasion was to—it was just a routine trip as Executive Secretary to oblige.

Q. No one asked you to go?

A. Nobody but the branch, and I acted in the capacity of Executive Secretary, yes.

Q. Who went with you on the trip?

A. Mr. Brooks, I believe, accompanied me on the trip.

Q. Who is that?

A. Mr. Brooks is the National Registration Voter Director of the N.A.A.C.P.

Q. None of the legal staff went with you?

A. No, none of the legal staff.

Q. And who was present when you had whatever conference you did have in Warren County.

A. Oh, a number of citizens were present, sir.

Q. Did you at that time give them any advice or suggestions as to litigation?

A. As I recall, this particular trip occurred after

page 44 } the case had been tried in Warren County—I mean the Warren County case had been tried in District Court.

Q. But you had some discussion of the case with these plaintiffs, did you not?

gation in Warren County. When did that situation first come to your attention?

A. I think it came to my attention, oh, it must have been mid-summer.

Q. When?

page 37 } A. In mid-summer.

Q. Of this year?

A. You mean the litigation itself?

Q. I am trying to get the antecedents of the litigation. I am perfectly willing to start with the end and work back chronologically, but I would rather start at the beginning and get a continuous story. You knew there was some problem existing in Warren County. I wonder when that first came to your attention.

A. We will separate that from the actual litigation. Yes, Mr. Mays, there has existed a problem in Warren County as far as Negro education is concerned always, because there has never been a high school there. And we were very positive and aware of the situation in Warren County.

Q. What do you mean by "we" and what do you mean by "positive"?

A. Again, I am speaking of the N.A.A.C.P., and I should use the pronoun "I". I was aware of the situation in Warren County. I was aware of the problems that the Negro high school children were facing. I was aware of the problems that the Negro elementary children had faced over the years, not only in 1958, that has been a problem of long standing.

Q. In any event it culminated in litigation this past summer?

A. Yes.

page 38 } Q. As the immediate antecedent of that litigation,who got in touch with who, in order to get it initiated? Did it come from your organization? Did it come from the parents, or where did it come from? Do you know?

A. I think it came from the parents, sir.

Q. You don't know?

A. In that particular instance, it is the same as the Charlottesville situation. It came officially to the Conference on recommendation, but in talking to some of the parents, I think that they did contact the chairman of the legal staff in that instance.

Q. Was that done at your suggestion, or did they go to him directly themselves without any suggestion from you?

A. Well, I was certain they went, because they as citizens felt that they had certain constitutional rights, and those rights were being violated, sir.

W. Lester Banks.

Q. Did you go up there and make any speeches in Warren County, too, as you did in Charlottesville?

A. Over the years I have appeared in Warren County.

Q. In the last few years, would you say?

A. In the last few years—I was in Warren County—I was in Warren County, not to make a speech, but I was in Warren County maybe the latter part of June. I don't recall the date, but I was in Warren County this year.

page 39 } Q. We will come back to that. But what I am trying to get out now, and it must be obvious, is just how the parents who became plaintiffs got in touch with counsel in that case, do you know?

A. I would say, to be exact, I don't know how they got in touch with counsel. I would think that the chairman of the legal staff would have to answer that question.

Q. He will be given his chance, but I was wondering if you knew.

A. No, I couldn't swear just what the procedure was.

Q. In any event, it came to you from Mr. Hill, chairman of the legal staff, with a recommendation that the Conference back up that litigation and take care of the expenses and legal fees, is that right?

A. It came jointly from Mr. Hill and the president of the Conference.

Q. And who was the president at that time?

A. Mr. Phillip W. Wyatt, of Fredericksburg, W-y-a-t-t.

Q. He is president of the whole Conference, of the entire Conference?

A. He is president of the Virginia State Conference, yes.

Q. And you have no further knowledge as to how the representation came about, it simply came to you in your official capacity, and you said yes?

A. It wasn't a matter of my saying yes, it was a matter of the Conference concurring in that.

page 40 } Q. And the Conference did concur?

A. Yes, sir.

Q. And you passed that concurrence on to Mr. Hill?

A. Yes.

Q. Now, you mentioned being up there in June. Have you been present in any of the meetings of the parents in the Warren County situation?

A. The meeting that I referred to in June, Mr. Mays, was a Freedom Fund dinner, if I recall correctly—I couldn't know whether it was June or July. Actually—I was present as an official of the Conference, and at that time Mr. Hill was the

Oliver W. Hill.

DIRECT EXAMINATION.

By Mr. Mays:

Q. Mr. Hill, please state your full name, residence and occupation.

A. Oliver W. Hill, 107 Overbrook Road, Richmond, Virginia. I am an attorney at law.

Q. And will you state what, if anything, is your connection with the Virginia Conference of the N. A. A. C. P.?

A. I am chairman of what is known as the legal committee, legal staff, of the Virginia State Conference of the N. A. A. C. P. branches.

Q. Do you have any connection with the Conference other than that, officially, I mean?

A. Well, no.

Q. Do you have any connection with the N. A. A. C. P. itself, the corporation?

A. Well, I am a registered agent for the corporation.

Q. For the State of Virginia?

A. For the State of Virginia, yes.

Q. Are you on the legal staff of the N. A. A. C. P.?

A. No—except that I have been retained as counsel for the N. A. A. C. P.

page 86 } Q. In individual cases, but are you a member of the legal staff of N. A. A. C. P.?

A. Well, of the National Legal Committee with the N. A. A. C. P. Legal Defense and Educational Fund, and I have been a member of that committee for several years.

Mr. Robinson: Here is Mr. Banks again.

Mr. Hill: He can go ahead and get the exhibits ready, if he wants.

Mr. Mays: Mr. Banks is back in the courtroom, and I heard some colloquy as to whether he should stay. We may need him to testify again, and I think he should be excluded, as much as I regret to have him excluded, and he might utilize this time to get this information together this afternoon.

The Court: So I will know, is he leaving, asking to be excused for the day, or is he being excluded under the exclusion rule?

Mr. Mays: It would greatly help the case if he would find that material and get it back in the case.

Mr. Hill: My understanding was that Mr. Mays wasn't going to call him back any time soon, and we weren't going to call him. He was going to be excused to get the material.

Q. Had there been any discussion of the school situation in any of those communities where suits are now pending prior to the institution of suits?

A. Oh, yes, I would say yes.

Q. So far as you know, when did the Conference first start an active program with reference to educational facilities for Negro children in Virginia?

A. To my knowledge, Mr. Hill, the concerted program was started in 1947.

page 84 } Mr. Hill: That is all.

Mr. Mays: Nothing further.

The Court: All right, you may step down.

(Witness temporarily excused.)

Mr. Hill: Your Honor, may we have a five minute recess to determine whether or not we have anything more?

The Court: All right. Five minute recess.

(Recess taken.)

Mr. Hill: We rest, Your Honor.

The Court: I take it that both complainants are resting?

Mr. Robinson: That is correct, sir.

The Court: Mr. Mays?

Mr. Mays: Your Honor, before calling our first witness, I would like to make this observation.

When this matter was heard in September of last year before the three-Judge Federal Court, several of counsel for the other side testified in those cases. At that time we were perfectly willing for them to do so without severing their participation, and that is still our view. I want to call Mr. Hill as a witness now, and I don't want him to feel that he would be precluded from acting as counsel if it be your pleasure to let him continue to do so.

The Court: All right, that will be satisfactory to the Court.

Mr. Mays: Mr. Oliver Hill.

page 85 } OLIVER W. HILL,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

W. Lester Banks.

Mr. Mays: To facilitate things, I don't want to put counsel or the witness to any more trouble than it is necessary. We will eliminate the Prince Edward case entirely from the picture, that is, before 1956, and disregard any entries in the Prince Edward ledger sheet prior to that time.

By Mr. Mays:

Q. Wouldn't that simplify things considerably for you, the other cases came up later?

A. Yes, that would simplify it.

Q. Will you do that?

A. It would be simpler, I mean it would further simplify it if we were able to produce the statements, as far as we have them, the vouchers and counsel checks covering that particular period, if that would satisfy your inquiry.

page 81 } Q. You have the books in which the entries were made? I ask for that, too. You have the books of accounts?

A. Yes, sir.

Q. When you produce them, will you be able to testify concerning them, or will we need the treasurer, too?

A. I think I would be able to testify as to any payments paid to counsel.

Q. As to any unpaid bills as well?

A. As far as they are in my possession, yes.

Q. When you say, "in your possession", they are in the possession of the Conference, aren't they?

A. What I am trying to say, Mr. Mays, is that it might be that there might be a bill for $2,000 that hasn't been submitted, so it wouldn't be in my possession.

Q. I am not speaking of that. But when you say in your possession, you have in your possession whatever has been submitted to the Conference?

A. That is correct.

Q. To distinguish you from the treasurer or some other official?

A. That is right.

Q. Whatever has come in you would have and be able to produce?

A. Yes, sir.

Mr. Mays: That is what I am asking.

page 82 } Thank you.

The Court: Does that complete your cross-examination?

W. Lester Banks.

Mr. Mays: Yes, sir.
The Court: Any re-direct?

RE-DIRECT EXAMINATION.

By Mr. Hill:
Q. Mr. Banks, is it not a fact that at conferences and branch meetings—

Mr. Mays: This is his witness Your Honor, and we think the leading ought to stop somewhere.
Mr. Hill: I asked a particular question, whether or not the N. A. A. C. P. were still doing the same thing as they were before all this other evidence was adduced in response to the questions asked by Mr. Mays.
The Court: We will still follow the usual ways of asking the questions.
Suppose you rephrase the question in full. I am not sure I understood the question.
Mr. Hill: Mr. Mays was anticipating it.

By Mr. Hill:
Q. What types of problems are discussed at branch meetings and conferences of the State Conference?
A. Problems that generally affect the legal status of Negro citizens, their enjoyment of full constitutional rights, and whether or not there are denials of these rights, page 83 } and so forth.
Q. Can you particularize as to the types of discrimination that are discussed?
A. Yes—educational discrimination, transportation, housing, employment, right straight on down the line, all types of discrimination are the general topics of discussion at branch meetings in the Conference.
Q. And has there been discussion of these types of problems in branches or by members of particular branches at State Conferences in communities where suits have not been instituted?
A. Yes, Mr. Hill. In fact, the only existence, the only reason for existence of the branch, I would say, is to make the general public aware of the fact that these discriminations exist, and whether there is action in that particular area is perhaps only incidental.

W. Lester Banks.

A. Affecting the attorneys?

page 77 } Q. Affecting the attorneys in the school litigation case. Will you do that?

Mr. Hill: May it please the Court, I have gone along with a lot of questions I still don't see any relevancy to, and I would like to ask, what is the relevancy of submitting financial statements of what the Conference has paid the attorneys or what they have not paid? There is no question about the fact that the Conference has paid the money. I am asking what is the relevancy in this case to determine the exact amounts.

Mr. Mays: Your Honor, we have three statutes here involved, having to do with running and capping and maintenance and related subjects, and I can't imagine anything being more relevant than the information I am now seeking. We are trying to find out who hires the lawyers, who approves the lawyers' bills, who pays them, in what cases they are paid, and if this is not relevant, sir, I don't know what can be relevant in this type of litigation.

Mr. Hill: May it please the Court, the question as to whether or not the lawyers are paid and who pays them certainly is relevant. Who employs the lawyers is relevant. But all we are asking now—he has asked this witness to produce certain statements between the lawyers and the Conference, and all I am asking is, what is the relevancy of these individual statements? Not the question, the overall

page 78 } question as to whether or not the Conference is bearing those expenses, that is admitted. We don't need to have any evidence on that. We admit that. My own question is whether or not this witness is bound to produce the statements from any of these individual lawyers.

Mr. Mays: May we respond to that, Your Honor?

The Court: Yes, you may.

Mr. Mays: One of the things developed in the hearing in the Federal Court, the record of which has been put in by Mr. Robinson, had to do with the cost of litigation. What does it cost to take a case through the higher court, now that the principle has been established in 1954, what does it cost to take it up on appeal, the number of plaintiffs involved, their capacity to pay—all of those things are quite relevant things here. Now, as Your Honor will find in going through the record in the Federal Court, the Conference has undertaken to pay legal fees and expenses in a number of cases, and we need to go through that whole background in order to find out

how it actually operates, not what the By-laws say, but how it operates, how the lawyers function, how the plaintiffs function, and how the officers of these various units, the N.A.A.C.P., the Fund and the Conference and the staff fund.

Now, with that information before us we can get a picture, and without it we haven't even a frame. It seems to page 79 } me highly relevant, and I can't understand how that objection can be raised.

The Court: I am going to overrule the objection raised by the counsel for the complainants.

Now, do you have an answer to this to the extent, that he was going to produce it, or did the objection come before that?

Mr. Mays: I think the objection came before.

By Mr. Mays:

Q. I have indicated to you what I would like with respect to the Conference books and accounts, the records of paid bills receipted by the lawyers and the unpaid bills rendered by you in the school litigation cases, and I have asked you to produce them here tomorrow morning.

Will you be able to do that?

A. For what period?

Q. From the time school litigation began. I would say it was about 1951, that starts with the Prince Edward case. You know the names of the others, don't you? Or shall we enumerate?

A. I think I have a general knowledge.

Q. I am pretty sure you do.

Mr. Hill: Before we get too far, we would like to take exceptions to the ruling of the Court with respect to this particular evidence.

page 80 } Mr. Mays: We have no further questions.

The Court: Mr. Banks, on this last series of questions, I understand that you now know what records of receipted bills and bills on hand unpaid that Mr. Mays has requested in the school litigation cases, and I want to make sure that the record is clear. Did you say you were going to produce those or not?

The Witness: He is asking, Your Honor, for records of fees paid to attorneys dating back to 1951. To pull those statements out of the records is not going to be an easy job.

made on the general statement. I was trying to segregate them into fees and expenses.

Q. Now, there are 13 members of the legal staff, as you understand it?

A. No, we have more than that, sir.

Q. More than 13 on the legal staff as such?

A. Yes.

Q. Since you testified last year before the three Judge Federal Court, you have added lawyers to the legal staff?

A. That is correct.

Q. You may remember at that time you said it was 13, but you named only 12. There is a lawyer from Petersburg who is now a member of the legal staff, but was not then, isn't that true?

A. I don't recall, but there is a lawyer in Petersburg.

Q. Will you give us his name, and that will round it out.

A. Mr. Robert H. Cooley, Jr.

Q. And he was a member of the legal staff in September of last year?

page 74 } A. That is correct.

Q. You have added to the legal staff since, I understand. What gentlemen have been added to the staff, their names and addresses?

A. Mr. James Overton has been added to the staff, he resides in Portsmouth, Virginia. Mr. Otto Tucker has been added to the staff since he testified last September.

Q. And is he related to the Tucker in Emporia?

A. Yes, he is a brother. He lives in Alexandria. Those two have been added to the staff since we testified last year.

Q. Have any others been added?

A. No, I think those are the only two.

Q. Has anybody been subtracted from the legal staff since the September hearing of last year?

A. No, sir, there haven't.

Q. They still have them all?

A. They still have them all.

Q. Are they all now in active practice?

A. As far as I know, they are.

Q. Is Mr. Brown still on the staff?

A. Mr. Brown, as far as I know, is still a member of the staff.

Q. Is he active at the present time?

A. I don't know whether he is active at the

page 75 } present time or not.

Q. Do you know where he is at the present time?

W. Lester Banks.

A. I imagine he is at home in Washington. I haven't heard from him.

Q. You know nothing to the contrary?

A. I know nothing to the contrary.

Q. Now, you mentioned these various members of the staff, who now seem to be 16 in number, sending in their statements. Is that true of all of them? Do they all send them in from time to time?

A. Maybe I could answer that, sir, by giving you the procedure that is followed. A member of the staff submits a statement of fees and expenses to the chairman of the staff, and the chairman of the staff, after consulting with other members, either approves or disapproves the expense item. It is transmitted by voucher to the office, and in turn with the approval of the president and the chairman of the staff, that particular expense item is ordered paid.

Q. Well, if it receives the approval of the chairman of the legal staff, it is paid on that recommendation in every instance, isn't it?

A. No, it must also receive the approval of the president.

Q. But hasn't the president approved it in every instance?

A. I don't know of an instance that the presi-
page 76 } dent has not approved it.

Q. Now, who approves the bill of the chairman of the legal staff himself when he bills for services and expenses?

A. Well, that is approved by the president, and the chairman of the staff. I imagine the vice chairman comes into play in that particular instance.

Q. Do you have on hand now any substantial number of bills unpaid as to amounts?

A. Yes, I do have a substantial number pending.

Q. Well, will your record indicate just what bills have been paid and what bills have not been paid growing out of the school segregation cases as of this time?

A. Yes, my records will indicate that, sir.

Q. Will you produce those for me so that we can see precisely what those items are?

A. I would be glad to.

This question that you are asking now, Mr. Mays, is akin to the question that you asked for information earlier, is it not?

Q. What I would like you to bring are your books of account and the receipted vouchers, receipted statements that you have paid, and those which have been billed to you but which have not been paid.

W. Lester Banks.

A. When you say "them", you are talking about the plaintiffs? No, I am positive that Mr. Hill didn't.

Q. Did he address the convention?

A. Mr. Hill had remarks before the convention.

Q. Did he or anyone urge upon these people to continue to exercise their constitutional rights?

A. Oh, I imagine every speaker at the convention urged upon not only those, but everybody in Virginia to exercise their constitutional rights.

Q. Don't you think your imagination is pretty good? Don't you think it is a fact that they did urge them to continue to exercise their constitutional rights?

page 70 } A. I don't think they pointed out those 18, that is what I am trying to say. I am positive that every convention speaker urged that everyone exercise his full constitutional rights.

Q. Have you had any other meeting with the plaintiffs there except the four instances you have referred to, the plaintiffs in warren County?

A. I don't think that we have, sir. And may I say again, it wasn't necessarily a meeting with the plaintiffs themselves; probably in two of those instances the plaintiffs were present.

Q. Do you know of any other meetings in which you yourself were not a participant that took place among the Warren County plaintiffs?

A. Oh, no, I don't know officially of any particular ones.

Q. Unofficially, do you know of any meetings that were held by the Warren County plaintiffs other than those you have described?

A. I know of some meetings that were held earlier in the year, not of the Warren County plaintiffs, no.

Q. I am talking about the Warren County plaintiffs.

A. No, I don't recall.

Q. When they were held early in the year, that was long before the litigation?

page 71 } A. Yes.

Q. Now, I suppose you are aware that in these various school cases there is a considerable accumulation of court expense and per diem time which the lawyers ultimately will have to be paid for because of the undertakings of the Conference, do you not?

A. I am very aware of the expenses involved, sir.

Q. Are you advised from time to time, at least approximately how these expenses have accumulated?

W. Lester Banks.

A. Yes, I receive statements periodically from the chairman of the legal staff.

Q. How often do those statements come?

A. Oh, they come—I couldn't say how often they come.

Q. Well, you have a practice, don't you?

A. I imagine that the statements—it is no set time for a statement to come in.

Q. Do they come with any frequency?

A. Let me put it like this: I think that it has been the experience of the members of the staff to submit their statements as quickly as they can, and as frequently as they can, time permitting.

Q. Those statements, do they cover legal fees, or just legal expenses?

A. The statements coming from the attorneys
page 72 } cover legal fees and expenses.

Q. How near up to date are they?

A. Oh, I don't think that many of them are at all up to date.

Q. What do you mean by that? Are we talking about two years, two months, two weeks, or what?

A. Well, I think that they were within a 12-month period, I assume that.

Q. In other words, the lawyers who participated in these various school segregation cases have got to have their statements current up to within sometime in the last year?

A. Yes, I should think so.

Q. And some of them were pretty well up to date, and some not?

A. As far as I know, yes.

Q. Have you paid he expense items as they came in?

A. As far as the Conference has been able to pay them.

Q. As long as they had money?

A. As long as we have been able to meet the statements we have tried to pay them.

Q. Which means as long as you had money in the treasury for the purpose?

A. That is correct.

Q. Now, have you paid any of the legal fees as
page 73 } such quite as distinguished from the legal expenses? I understand you have paid some. Have you paid the greater portion of the legal fees?

A. No, I think that when a statement comes in, a statement is made including legal fees and expenses, and a payment is

W. Lester Banks.

A. That is what I don't know. I couldn't recall
page 66 } what he said in substance. I don't know what he said in substance.

Q. Did anybody else speak to them?

A. No, I don't think so.

Q. You realized when you went there with Mr. Hill there was some real purpose in having such a meeting?

A. Yes.

Q. And did you understand what that purpose was?

A. I understood that Mr. Hill was to advise—I assumed, I didn't understand, I assumed that Mr. Hill had conversed with the superintendent of schools, and I assumed that Mr. Hill, since all of the plaintiffs were not in the superintendent's office, I assumed that Mr. Hill did not want to clutter up the courthouse corridor, so he simply used the Methodist Church as a convenient place of gathering to impart whatever information had been discussed between the superintendent and himself.

Q. You don't know whether there was any plan of future action there at all, whether anything was said about the next step to be taken?

A. No, I don't.

Q. You don't know of any requests he made of the plaintiffs one way or the other?

A. I don't recall.

page 67 } Q. Did you have any discussion with the plaintiffs, any of them, about footing the bills, that is, the legal expenses and the court costs in the litigation there?

A. As individual plaintiffs, no.

Q. Well, as a group?

A. No more than as members of the branch, not at this particular meeting, but certainly as members of the N.A.A.C.P. branch, the member of a legal community.

Q. Making general considerations?

A. That is correct.

Q. But you had not had any discussion or any knowledge as to what arrangements might have been made concerning the plaintiffs in this case as to costs and expenses in this particular case?

A. No, as far as I was concerned, there was no discussion, as far as I know there had been no discussion.

Q. Did you have information from Mr. Hill or any of the other lawyers as to whether there were any arrangements, tentative or otherwise, with the plaintiffs?

A. No, we didn't have any information to that extent.

W. Lester Banks.

Q. Now, we have had reference made to three different visits you had up there, and the last of those visits have been described, and the third one was at the home of the treasurer when you met with some of the plaintiffs. Did you have occasion to make further visits to Warren County?

page 68 } A. No, I think that was my last visit down there.

Q. Did any of the Warren County plaintiffs meet with you elsewhere?

A. Yes. I have had occasion since that time to see 18 of the plaintiffs.

Q. Where was that?

A. That was at our state convention in Hampton.

Q. When

A. October 10, 11 and 12.

Q. And at that time was the case in Warren County discussed?

A. No, it wasn't discussed. In other words, they were a part of the overall convention program.

Q. You mentioned 18, and I wonder whether or not at that time you had a separate meeting with the plaintiffs of the Warren County case at the convention?

A. No, we didn't. I mentioned 18 only because the number, Mr. Mays—it was necessary for me to know how many plaintiffs were present, because it was my responsibility to arrange housing and food accommodations for them.

Q. I can appreciate that. But there was no meeting of that group of plaintiffs as such?

A. No, they were a part of the general convention proceedings, the 23rd Annual State Convention proceedings.

Q. Did anyone admonish them then to keep the

page 69 } litigation going?

A. No, not as such. I wasn't able to attend all the sessions, but I imagine they were certainly given plenty of accolade for being pioneers.

Q. Were they pioneers? Hadn't there been right many school cases in Virginia before then? They were the lastcomers, weren't they?

A. I don't know whether they were or not, sir. I don't think they were.

Q. I don't think we need to go into that. I think the record must be replete with Norfolk and Newport News and many other places.

Did Mr. Hill address them on that occasion?

W. Lester Banks.

A. Well, I can't say for sure that he did, but I imagine that he did.

Q. Well, you are pretty sure that he urged all of the parents to be present, all of the plaintiffs to be present at the meeting the next day, there was something vital for them to hear. You remember that, don't you?

A. I don't remember whether he did or whether he didn't.

Q. Well, now, the meeting was held the next morning, wasn't it?

A. It wasn't a meeting as I understand it, sir.

Q. Some people got together, didn't they?

page 63 } A. If I remember the situation correctly, Mr. Hill met the parents and the children at the courthouse, and they went in to see the superintendent. I wasn't in that particular meeting, and I don't know what transpired.

Q. And that was the only thing, the only contact you had on the following day, that is, a Saturday, with the parents, you saw them go with Mr. Hill?

A. Yes, they went into the superintendent's office, as I recall, and the superintendent conversed with them, and then after a meeting with the superintendent, I think the group went over to, I believe it was, the Methodist Church, and Mr. Hill talked to the plaintiffs there.

Q. Now, did you accompany Mr. Hill and the plaintiffs to the meeting with the superintendent?

A. I went to the courthouse, yes.

Q. Was it indicated by Mr. Hill or the plaintiffs, any of them to you, the purpose of the meeting with the superintendent?

A. Oh, I had a general knowledge of why they were meeting with the superintendent, yes.

Q. And why was that?

A. I think that it was to ascertain whether or not enrollment would be affected.

Q. Now, you did not participate in the discussion, as I understand it, you were outside?

A. That is correct, sir.

page 64 } Q. And was there any further discussion with Mr. Hill or the plaintiffs in your presence after they came outside, and if so, on what subject?

A. Well, as I said, after they left the courthouse, after they left the superintendent's office, if I recall correctly, the group retired to the Methodist Church.

Q. Was that at your request or Mr. Hill's or whose?

W. Lester Banks.

A. Oh, I had nothing to do with it. It wasn't my meeting. It was Mr. Hill's action with these plaintiffs.

Q. When you came away from that meeting with the superintendent, as I understand, the folks who were there adjourned to the Methodist Church, and you went along?

A. Yes, sir.

Q. And Mr. Hill went along?

A. That is right, sir.

Q. Were you present at the Methodist Church during the entire meeting, or however you want to describe it, gathering of people?

A. Yes, I was, either inside or outside.

Q. Were you inside during the most of the meeting?

A. Oh, I think I was.

Q. You were not outside a great deal?

A. Well, I said I was in and out of there.

Q. You were in enough to know pretty much what was going on?

A. Yes, I knew Mr. Hill was talking to the plaintiffs.

Q. What did he say?

page 65 } A. I don't recall just exactly what it was. I couldn't for the life of me—I don't know what he said.

Q. Did he discuss the case?

A. I am positive that the case was being discussed, but I don't know what he said.

Q. Do you know whether at that time there were any plaintiffs who had been asked to get out of the litigation?

A. Had been asked to?

Q. Yes, that it had been suggested that any of them get out as of that time?

A. I don't know. I think that there had been some that had withdrawn from the case, as I understand it, but I don't know whether they were asked or not.

Q. Did Mr. Hill make any comment on that in his talk to those people?

A. I don't recall whether he made any specific comment.

Q. Do you remember anything at all that Mr. Hill said at that meeting?

A. To quote Mr. Hill verbatim—

Q. No, what was the burden of it.

A. As I said before, Mr. Mays, I am positive that Mr. Hill was talking to the parents and the children in reference to the school situation.

Q. I am sure of it, but what did he say, in substance?

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Mr. Mays: I thought he could, and if it could be produced without a hardship on the witness he could bring it back and get it in the record of this hearing today. I had
page 87 } requested it for tomorrow. If it can be secured earlier, it will be better.

The Court: The Court will excuse Mr. Banks with the understanding that he will try to secure the records that have been called for sometime during the day if he can. I wish he would let the Court know at periodic intervals from, say, starting at 2:30, by phoning the Sheriff or my secretary as to whether he can produce them this afternoon, and if so, approximately what time, so we will know whether we can cover the rest of your testimony today, or whether we will have to wait until tomorrow.

You are excused, Mr. Banks.

By Mr. Mays:

Q. Mr. Hill, from former testimony I have understood that there is a legal committee which is also called legal staff of the Virginia Conference of branches, that is correct, is it not?

A. That is right, yes.

Q. And Mr. Banks testified that there were 13 members, and has named those members, and you have heard his testimony about three others being added since that time?

A. Two.

Q. Two others. Is that correct to the best of your knowledge?

A. Yes.

page 88 } Q. Do you remember when the legal staff was first set up as an official legal staff?

A. Well, as I stated before, it was set up sometime during the war years while I was in the Army, and I was made chairman—I don't know whether it was actually the first meeting of it, or whether I was made chairman in absentia—but it was very close anyway.

Q. Now, when did it begin to function? Let's get at it in that fashion. I understand it was set up during the war, and you were not here?

A. That is right.

Q. And who set it up, do you know?

A. Well, prior to going in the Army we had discussed the situation—put it this way—prior to going in the service I had been very active in this same type of matter involving teachers' salaries, bus transportation for Negro children in

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rural areas, and things of that nature. In some of these cases Mr. Martin, who was at that time practicing in Danville, worked with me.

Q. That is Martin W. Martin?

A. Martin A. Martin.

Q. Martin A. Martin?

A. That is right. During this time younger lawyers started coming into the state. As I was going in the army Mr. Robinson was taking the examination, and we page 89 } had agreed to set up a partnership . Mr. Cooley had worked with us on some of the cases, and Mr. Valentine. So there had been discussion about working together on the cases. It grew out of that. As I say, I don't know who called them together or anything, but I know there was a background to it, and that is the way the committee got together.

Q. It started out as an informal meeting of lawyers who had a common purpose, I take it, and a common interest?

A. That is correct.

Q. When did the legal staff become the official legal staff of the Virginia Conference?

A. To the best of my knowledge, somewhere around 1945 or 1946.

Q. And that was just about the time you came out of the service?

A. Yes.

Q. So it began to function then as an actual legal staff right after the war, and you were the chairman of it from the inception, were you not?

A. That is right—I might say that there was a general reorganization of the State Conference and all that sort of thing. We employed an Executive Secretary, and sort of built up an organization around that time.

Q. When you say "we employed a secretary," you mean the State Conference?

page 90 } A. The State Conference, yes.

Q. And that was Mr. Banks, was it?

A. Mr. Banks was the first person employed.

Q. So he has been the executive secretary of the Virginia Conference of branches since 1945, and you have been—

A. No, since 1947.

Q. 1947— and you have been chairman of the legal staff since it began right after the war.

A. That is right.

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Q. Do you remember the personnel of that legal staff as of the time it was first created?

A. Well, as best I can recall, Martin A. Martin, Spotswood W. Robinson, III, Robert Cooley, and I think Edward Brown was one of the earlier ones, I can't just—those were in the earlier group, anyway.

Q. Yes. And then you added to that from time to time until it got to its present size?

A. Another fellow, Walker, Wendell Walker, from Newport News.

Q. When did he come into it?

A. Oh, I am sure he was in the earlier group.

Q. Now, as I understand it, this legal staff is elected at the annual convention of the Virginia Conference

page 91 } of branches?

A. That is right.

Q. And who nominates them?

A. The nominating committee of the State Conference.

Q. And the nominating committee gets its recommendation from whom?

A. It gets its recommendation from the legal staff.

Q. So that I take it at the inception, this informal group of lawyers was formally nominated as the legal staff or legal committee of the Conference and was elected at an annual meeting somewhere around 1946 or 1947?

A. Somewhere back there, but initially the members were just nominated the same as any other officers were nominated. It was subsequently that the nominating committee sort of took the recommendation of the legal staff.

Q. Well, back over a period of, shall we say, seven or eight years anyway, it has been the practice, hasn't it, for the nominating committee to put up the names of those that the legal staff itself recommends?

A. That is right.

Q. And so you as chairman, I take it, informed the nominating committee that you wanted to re-elect the same staff, or make whatever changes you would like to make, and then they put these people's names in nomination, and they are duly elected?

A. That is right.

page 92 } Q. As a matter of fact, they never have any additional nominations from the floor in any of these cases either, do they?

A. You mean with respect to the—

Q. For the legal staff.

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A. To the legal staff?

Q. Yes.

A. Not in a long number of years, to my recollection.

Q. So that the legal staff can in a sense perpetuate itself by telling the nominating committee who it is they want to continue to have on it?

A. That is correct.

Q. Now, do people come to you from time to time, or as far as you know, to other members of the staff, and suggest that other lawyers be added to it?

A. Suggestions may have been made from time to time, and other lawyers have been added from time to time.

Q. Do those suggestions come from laymen, or do they come from some of the lawyers who would like to be members of the legal staff?

A. Well, they principally come from the branches, the lawyers spoke to the branch president, I don't know.

Q. How the lawyer gets into it you don't know, but the branch president will talk to the nominating committee or talk to you, rather, to find out whether you would

page 93 } like him added to the staff.

A. That is one way. And there have been suggestions emanating from the existing members on the committee as to lawyers who have demonstrated an interest and willingness to devote the time and understanding vagary phases incident to this type of activity.

Q. Well, now, could you on any occasion reject those who seek places on the legal staff?

A. I can recall on one occasion where a suggestion was made for the inclusion of a person that never was included. Now, I said it that way because there have been others whom it has been suggested be put on the legal staff, and maybe this year or next year they wouldn't, but subsequently they have been, but this particular individual, he never was.

Q. I don't want in the slightest way to embarrass you with names. I don't want to do that. I feel that if I were sitting where you are I might not like to go into the names of those who were rejected, but when you do turn a lawyer down, either suggested by somebody else or yourself, is that due to incompetence, or you have enough lawyers already, or what would be the controlling reason?

A. Well, in this particular case I have in mind, the lawyer that never was accepted, there was a strong feeling on the

page 94 } part of several of the members, maybe, that he was incompetent, that had a whole lot to do with it. Well, it has been a cooperative, good-working relationship, and we didn't feel that he would add anything to it.

Q. It wasn't due to the fact that he was so geographically located that he would cut in on somebody else?

A. I don't think that has even been any consideration. You don't have that many lawyers who are active and interested. As a matter of fact, I know that has never happened—you say cut in on somebody else. I assume you mean—

Q. Getting his share of legal business.

A. All right—for this reason, that is no factor, because usually in communities where there are more than one, if they are interested in participating, they will all participate anyway.

Q. You mean that anybody who is in a community affected can get in that wants to get into a pending case?

A. No, what I mean to say is that usually in a pending case, if there are two or three lawyers in a particular community, they usually do get into it, that is what I mean to say.

Q. In other words, if any lawyer in a community wants to get into a case pending in that area, he gets in, and there is no question asked about that, is that true?

A. I don't know, because I don't know whether I am following your question correctly.

page 95 } Q. Let me be more specific. I thought we understood each other. A case involving education is brought, say, in a community in which there is more than one lawyer on the staff. That might be Richmond, it might be Norfolk, and one of those lawyers is given a job to do. Is the other lawyer always free to get into that case if he so desires?

A. Well, let's try to describe it a little differently. As a practical matter, in the cases that we have had up to the present time, anyway, either working in conjunction with some of the other lawyers, one of the other lawyers brings him in, or people consult the two lawyers or three lawyers, as the situation may be in that situation, all together. In a community that is the usual situation. Say either the first lawyer brings the other one in, or they happen to coincide.

Q. It is pretty well understood, isn't it, or is it, that any

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lawyer in a locality where litigation is pending, if he is on the legal staff, can get into the case if he wishes?

A. What I am hedging about is—

Q. I notice that, but I don't want you to do it any more.

A. What I am hedging about is the approach you seem to be taking. The one who has it draws the other one in rather than saying, you have got a case, let me in it.

Q. Anyway, he winds up in it?

A. Yes.

page 96 } Q. It is usually understood in a community that when one lawyer gets in a case he brings in the other staff lawyers in that community? Can you think of any exceptions?

A. I can't say—well, there haven't been that many cases in the respective communities to be of—yes, I can think of one—no, I can't, I can't think of any.

Q. As far as you now remember—and if you think of an instance later, bring it up and tell us—as far as you now remember, whenever one of these school cases gets started in a community that has more than one lawyer, all will be in it?

A. I can think of one instance right now. You take the present Norfolk case. Mr. Overton is in that area. He is not counsel in the case, although he and Mr. Ashe all have been in it prior.

Q. When did Mr. Overton go on the staff?

A. Last year.

Q. That was when the case was brought, wasn't it?

A. Yes, but he wasn't brought in on the case.

Q. So far as existing members of the staff are concerned, if you have a case in the community where there is more than one staff lawyer, then they all get in?

A. Well, the only thing I can say is that they are all in.

page 97 } Q. O. K. Have any of the members of the staff who were originally members or who subsequently came on the staff been dropped?

A. No, sir—yes.

Q. Who?

A. One lawyer.

Q. Who is that?

A. Well, it is a lawyer in the Tidewater area.

Q. Is he a lawyer you have not enumerated?

A. You mean—

Q. Whose name has not come up?

A. Oh, yes, I have mentioned his name.

Q. If he has been enumerated in the picture, who is he?

A. Mr. Wendell Walker from down at Newport News. He was dropped.

Q. And when was that?

A. He withdrew, oh, seven years ago.

Q. Was that at whose instance?

A. Well, I think it was at the legal committee's instance. He became inactive. He was not doing anything.

Q. Well, now, you have had some litigation in Newport News. Who are the counsel of record in that case, the school case?

A. W. Hale Thompson, and Philip Walker.

Q. Aren't you in it?

page 98 } A. I say, I haven't completed.

Q. I am sorry.

A. The residents in Newport News, Spotswood Robinson and myself.

Q. How did you come into it?

A. At the request of Mr. Thompson.

Q. How did Mr. Robinson come into it?

A. At the request of Mr. Thompson.

Q. Through you or directly to Mr. Robinson?

A. Directly to Mr. Robinson.

Q. I take it that in that case there were written authorizations for counsel to appear?

A. I was so advised.

Q. Have you seen them?

A. I don't think I have.

Q. Do you know to whom the authorization ran?

A. To Mr. Thompson and Mr. Walker.

Q. As individuals?

A. As individuals, and I am almost certain that the authorizations authorize them to associate with other counsel.

Q. But you don't know, do you?

A. I wouldn't want to take an oath that I read it, because I haven't.

Q. What understanding did you have with reference to the compensation in that case as to yourself?

page 99 } A. In the Newport News case?

Q. Yes.

A. Oh, it was sponsored by the Conference, and I expect the Conference to compensate me.

Q. Have the expenses that you have advanced been reimbursed?

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A. I think that in Newport News all of them have.

Q. And what about fees for the handling of the case, has any part of them been paid?

A. Yes.

Q. The greater part?

A. Offhand, I don't remember an individual case in that situation, but I know that I have been compensated.

Q. Now, did you have any understanding, or as far as you know did any other counsel in the case have any understanding, with the plaintiffs as to who would pay the expenses and legal fees?

A. Will you repeat that, Mr. Mays?

Mr. Mays: Will you repeat the question, Mr. Reporter?

(The question was read.)

The Witness: All counsel except Mr. Robinson had an understanding, and at least expected the Conference to compensate.

By Mr. Mays:

Q. Mr. Robinson. Didn't they propose to call you on retainer from the N. A. A. C. P.?

page 100 } A. That is right. In a lot of these cases these statutes were inactive, and before anyone had an opportunity to study them, there was quite a problem as to what effect these statutes would have on an attorney attempting to assert the constitutional rights of Negroes upon the questions. I am positive that he did, because I advised him so to do, and in the other case that I had at that time I did contact the plaintiffs and advised them of the action of the Legislature of Virginia in its efforts to keep the N. A. A. C. P. from functioning, and pointed out to them that it might, if these statutes were to be held constitutional, it would, of course, prohibit the N. A. A. C. P. from functioning in the fashion in which it was functioning, and that counsel would have to look to these individuals for the reimbursement of the expenses and some compensation.

I know that insofar as my personal statements to the people were concerned, I assured them that any requests for compensation would be very meager, if any at all.

Q. Now, in the Charlottesville case, will you tell us just how you came into that, who the counsel were?

A. I came into it when Mr. Ferguson—put it this way—

the immediate step leading up to it, Mr. Ferguson came by my office one day and said that he wanted me to come up and talk with the parents.

Q. Will you identify him?

page 101 } A. He is Dr. George Ferguson.

Q. What was he?

A. He was the president of the Charlottesville branch at that time.

Q. Is he a physician?

A. No—when I said "doctor," I am sorry. He is not a doctor, Mr. Ferguson, he is the funeral director.

Q. Right.

A. But let me say this. It is hard to say in a large number of these communities just what was the initial contact. You take a situation like Charlottesville. It was one of the areas which was involved in discussions with respect to teachers' salaries. There have been a lot of meetings and things. You talk with people. You know what the problem is in a particular community. Now, at some stage somebody or something occurs, and they write you about the case, but just to say what was the initial contact makes it a little difficult.

But I do happen to recall that the thing that got me to Charlottesville to meet with the group of parents, at which time I was authorized to represent, was the call from Mr. Ferguson.

Q. Now, you appeared there and had a meeting with the prospective plaintiffs in response to his call?

A. With respect to his visit.

page 102 } Q. Yes. And then you obtained from those people written authorizations running to yourself to handle the litigation?

A. That is right.

Q. I believe I heard someone suggest at some time that some of those were in blank, is that correct?

A. The authorizations were written up in blank, they were prepared not only for my use, but for the use of any attorney that had need for such written authorization. In some of the authorizations people filled my name in. Some of them they left blank and my name was subsequently typed in at my office. I think I so testified.

Q. I assume that you put your name in in the firm belief that the people intended you to be the lawyer growing out of that meeting. You expected that everybody intended you to be their counsel?

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A. Oh, yes. I had discussed the situation with people. I told them I could only act upon some written authorization—there were a number of reasons for having written authorizations; as you well appreciate.

Q. I can fully appreciate that.

Now, did they give written authorizations to any other attorneys?

A. There was no other attorney present, and so far as I know, for a long period of time no other attorney met with the parents as a group except myself.

page 103 } Q. Now, did they at any time in Charlottesville give written authorization to any attorney other than you?

A. Only in that the authorizations they signed authorized me and such other attorneys as I may associate with them.

Q. Is this a proviso, that you were free to authorize others?

A. That is right.

Q. Now, who else did you bring into the case?

A. Well, at first Mr. Robinson, Mr. Tucker, Mr. Martin and Mr. Ely, because it was one of the first ones that we instituted after the Supreme Court decision. But actively participating in the case it would only be Mr. Robinson and Mr. Tucker, and Mr. Carter was down at the trial of the case in Charlottesville in 1956.

Q. Now, these various lawyers you mentioned became counsel of record within a reasonably short time after the suit was brought, did they not?

A. Yes—well, if they were counsel of record at the time, of course.

Q. Now, Mr. Robinson, and did you mention Mr. Martin?

A. Yes.

Q. And both of those are partners in your law firm. Now, was Mr. Robinson still in your law firm at the time that suit was brought?

page 104 } A. Let's see. That suit was instituted—no, at the time that suit was instituted we had several in the partnership.

Q. Now, you brought Mr. Ely in, and where does he reside?

A. In Richmond.

Q. And Mr. Tucker, he came from Emporia?

A. Yes, sir.

Q. And who was the other lawyer?

A. Mr. Martin.

Q. There were five altogether?

A. Yes.

Q. Now, did Mr. Tucker make any contribution to the case, any unusual contribution to the case, or was he simply there as reinforcement?

A. At what stage are you talking about?

Q. At any stage.

A. Oh, yes, sir, he is actively participating in the case.

Q. I notice you brought him from quite a distance, and ordinarily you confine this to the people in the general locality, don't you?

A. Well, there were no lawyers in the county in which Charlottesville is located.

Q. Yes, but there were some in Richmond and page 105 } Emporia, some distance away.

A. Another 60 miles.

Q. And I wonder if there was any particular reason for bringing him up there when you had some other lawyer?

A. Well, I can't say that we couldn't have done without him.

Q. Then why did you have him?

A. I am trying to recall now—to the best of my recollection, the situation had begun to develop to where it had begun to appear that you were not going to be able to arrive at desegregation in any cooperative fashion such as we had anticipated in the beginning, but that it would have to be brought about by litigation, and in discussion of the matter I think it was felt that it would be advisable and helpful if as many as possible of the lawyers who were in a particular community had some participation in the cases.

Q. So he hadn't been in one of those cases before, had he?

A. Not to my recollection.

Q. So that he was brought in so that he could sort of get the feel of things for future cases?

A. I think that was sort of the idea.

Q. In other words, it was sort of a school for lawyers?

A. If you want to call it that.

Q. Yes, I do. Well, he was to be compensated, page 106 } wasn't he, for being there?

A. He would have been compensated had he been active at that time.

Q. He has participated in some degree?

A. He has participated, yes.

Q. And learned something?

A. I hope so.

Mr. Mays: I am willing to go on as long as you want to, Your Honor.

The Court: I normally adjourn at one o'clock.

Suppose we take a recess until 2:15.

(Recess for lunch was taken from 1:07 p. m. until 2:15 p. m., the same day.)

page 107 } AFTERNOON RECESS.

(The trial was resumed pursuant to noon recess at 2:15 p. m.)

The Court: Mr. Mays, you may proceed.

OLIVER W. HILL,
resumed his testimony as follows:

DIRECT EXAMINATION. (Continued)

By Mr. Mays:

Q. Mr. Hill, in connection with the Charlottesville case, did you have any understanding with any of the plaintiffs as to the payment of counsel fees and expenses?

A. I think I told you this morning, Mr. Mays, that after the enactment of the statute I met with the plaintiffs in the Charlottesville case, and advised them of the passage of these statutes, and the possible interpretations that could be put upon them, in my opinion, and that in the event that they were held to be constitutional, in such an event the State Conference would no longer be able to sponsor litigation in the manner in which it has sponsored it heretofore, and in the case of such a contingency, then we would have to look to them individually for the reimbursement of the expenses that had been incurred.

Q. And that was agreeable to them?

A. Yes, sir.

Q. You had no understanding prior to that time with those people?

page 108 } A. Other than that it was generally expected that the State Conference would sponsor the case.

Q. Indeed, is it not a fact that the State Conference held itself out to sponsor any school cases as long as the plaintiffs in those cases adhere to the principles and policies of the

Conference, that is, that the case would be tried as to a direct attack on segregation rather than equal facilities?

A. Now, at what time are you talking about?

Q. I am talking about from the time of the Supreme Court decision in 1954.

A. After the Supreme Court's decision in 1954 I don't think there was ever the contemplation of anyone that any of the so-called separate or equal facilities cases would be brought.

Q. But to answer my specific question, at least I thought I had made it specific, the answer is that the Conference would not stand in back or aid any cases unless they went all the way under the Supreme Court decision?

A. That is true.

Q. And in those communities where the parents wanted to bring those suits, in each instance the Conference would pay the expenses of the litigation?

A. That is true.

Q. And that was generally known as far as you
page 109 } know?

A. I think so.

Q. And it was brought home by you and others to prospective litigants from time to time?

A. Not only brought by me and others in the public press, but in our conventions and in branch meetings—it was widely known.

Q. In other words, the word was out, and as far as you know it was well understood that the staff was there to render service for them when they needed it in that type of case, and that the expense would be borne by the Conference?

A. Upon request, yes.

Q. And was it not further understood, or did not you members of the staff and the officers of the Conference further inform them that it would have to be done by counsel with members of the staff themselves, rather than by independent counsel?

A. I don't know that that was generally understood.

Q. Well, as far as you know, whether it was generally understood or not, as far as you know, you gave that impression, didn't you, in talking with these people?

A. No.

Q. Very well. Turning now to the Norfolk case, were you in that?

A. Yes, sir.

page 110 } Q. What other lawyers were?

A. Victor J. Ashe, and J. Hugo Madison,

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Spotswood W. Robinson, I was in it, and there was also Mr. Joseph Jordan.

Q. Mr. Ashe and Mr. Madison, they are Norfolk lawyers?

A. That is right.

Q. Were they first in the case?

A. Yes.

Q. And did they obtain, or one or more of them obtain written authorizations from the plaintiffs?

A. Yes, sir.

Q. Did both get the authorizations, or one?

A. I am not in a position to say.

Q. You don't know?

A. I don't know.

Q. Do you know whether those authorizations ran to other lawyers than those two?

A. I would have to say it like I said as to the Newport News situation, I am positive that they did, although I couldn't say it of my own knowledge.

Q. Maybe you are saying more than you intend to say. Let's be quite certain. What you mean by that is that those two lawyers in Norfolk had authorization, and in turn had authority to bring you in, rather than you with respect to them?

page 111 } A. I doubt it.

Q. Were you first brought into that case after the two Norfolk lawyers were employed?

A. I didn't understand you.

Q. Were you the first lawyer brought in from the outside to participate in that case after the Norfolk lawyers were employed?

A. I couldn't say whether I was first or Mr. Robinson was first.

Q. You were both called on about the same time?

A. I would imagine about the same time.

Q. You wouldn't know for certain?

A. I couldn't say.

Q. Do you know who brought you into the case?

A. Mr. Ashe.

Q. Now, when did the other lawyers come in?

A. You mean Mr. Jordan?

Q. Yes.

A. He came in as an intervenor—as an attorney for some intervenors in the summer.

Q. He was employed by them and came in to intervene for them?

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got the preliminary—we had the hearing for the preliminary injunction, that was on a Friday. In the meantime, we were involved in the Charlottesville school case, and we had a hearing set for September 8, which was on a Tuesday, or maybe a Monday, I don't recall right this minute myself.

Q. It was the following week?

A. It was the following week, anyway. So Judge Paul said for us to prepare the order and present it on, it must have been Monday, present it on Monday. On Monday he entered the order. Now, that would be the 8th. Either General Harrison or Mr. McElwain called up Chief Judge Soboloff and made an engagement with him for Thursday, and they advised him then that they were going to have this hearing in Baltimore for an application for a stay, and Judge Paul refused to grant a stay.

On that particular Thursday, which was the same day that the Supreme Court was hearing the Little Rock case the first time it came back after the recess, we met in Baltimore, and Judge Soboloff refused to grant a stay. At the conclusion of the hearing the attorney for the Warren County School Board, I can't recall his name—Phillips—Mr. Phillips contacted me and said, "Well, now, couldn't we handle this thing without a whole lot of anything that would be likely to create a disturbance?"

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And I asked him what did he have in mind.

And he said, "Well, rather than have the children go to the white school, since it has been threatened that Governor Almond would close the schools, couldn't we agree to bring the children to the superintendent's office?"

I told him we would be happy to cooperate in any way, the only thing we were interested in was getting the children in school, we weren't interested in creating any disturbance. That was on Thursday.

Mr. Banks was in my company in Washington, and when I came back here on Friday, for reasons of mine, I didn't want to drive, and I asked him to drive me up there. He carried me up to Front Royal, and I met the plaintiffs and advised them of what had occurred in Baltimore, and why I had contacted them and asked them to meet then and explained to them what we proposed to do, and arranged for them to meet with me the next morning, to meet at the courthouse rather than any parade of students and parents walking down the streets, and that sort of thing—that was

vided it went to the defeat of segregation in the schools? Was that made clear to that group?

A. No, sir.

Q. You didn't discuss that?

A. I don't think we went into anything of that nature, no.

Q. When after that Freedom dinner did you next meet with the plaintiffs in the Warren County case?

A. I met such of the plaintiffs as journeyed to Harrisonburg on September 5.

Q. They were there, spectators, I imagine, at the hearing at Harrisonburg, is that right?

A. No, that was the date of the application for a preliminary injunction.

Q. Did you have any conference with them then?

A. Yes.

Q. How many plaintiffs did you have?

page 134 } A. I didn't count them, but they had a large number of their children with them, and we pretty well filled up the juryroom there.

Q. Had you asked them to come?

A. Yes, I had advised them that we had that date for the application.

Q. Well, I assume that they were there to let the Court know their intent?

A. They were there to testify or to do anything that a plaintiff would normally do.

Q. You didn't have any discussions with them on that occasion, did you, the time you appeared before Judge Paul in Harrisonburg?

A. You say I didn't—

Q. You didn't have any discussion with them as a group about the case, did you?

A. Well, I talked with them prior to going into the courtroom, the normal type of conversation that you would carry on with plaintiffs, and I advised them that they might be called on to testify, and suggested that maybe we would just use two or three of them, and that type of thing.

Q. The normal type of conversation that a lawyer has with his clients?

A. That is right.

Q. Now, after the court hearing, I understand

page 135 } from Mr. Banks that you went on later that day to Front Royal?

A. Well, Mr. Banks had his dates a little confused. We

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Q. And no one came except the parents?

A. That is right. As a matter of fact, Mr. Mays, the president of the legal branch complained on May 17 because she had no knowledge of this thing until she came to that meeting, or somebody advised her.

Q. She hadn't consulted with them before she came to see you in April?

A. Apparently not.

Q. And no other official of the local branch had as far as you know?

page 132 } Q. Now, after you got those authorizations, when they first came to you in April, did you tell them that you ought to have more plaintiffs in that?

A. No, I didn't tell them that. They wanted to talk, to report back to the group that sent them, and the suggestion was made that they arrange a meeting up there, and as a matter of fact they went back, and I don't know whether they called me or not, but we finally arrived at May 17.

Q. How many authorizations approximately did you get at that May 17 meeting?

A. I don't know. I think it must have been somewhere in the neighborhood of 16 or 17. I figure we had around 20 all together, or 23.

Q. Then you had three or four that come down to Richmond?

A. There were only four.

Q. Now, did you have any arrangement with those people about compensation other than that the Conference itself cleared?

A. No.

Q. When was the next meeting you had with them after the 17th of May with the plaintiffs or any of them?

A. It was this dinner meeting that Mr. Banks spoke of.

Q. That Freedom dinner?

A. They had—as an outgrowth of the meeting

page 133 } on the 17th, they said they would like for me to come back, and they arranged a Freedom dinner meeting. And as a matter of fact, I know it was in the latter part of July.

Q. And you addressed that dinner?

A. I was the principal speaker, yes.

Q. Did you indicate to the people there substantially what you have mentioned a while ago, that litigation was being carried on the basis of the Conference paying for it pro-

them non-discriminatory public school education for their children.

Q. There was no question in the minds of you and those plaintiffs as far as you were concerned, was there, that what you were going to do was to file a prompt suit in the Federal Court?

page 130 } A. Well, it depends upon your definition of prompt, but I advised them that before anything could be done we would have to petition the school board to give them an opportunity to do something.

Q. And if the petition were rejected, as you suspected, you would then go to the Federal Court?

A. That is right.

Q. And did you not tell them also that you would not be interested in getting in the case, nor would the Conference be interested in getting into the case, unless they went all out to abolish the segregated schools?

A. Well, I am certain that—I don't know that it was put in just the way you expressed it, but I am certain they were advised that the Conference would not support any other type of litigation.

Q. And you were not interested in getting into it?

A. As a matter of fact, I wouldn't have gotten into it.

Q. In other words, to put it plain, in all of these situations didn't you tell parents who wanted to get some redress that you and the Conference would not get into it unless it went all the way?

A. I don't like the use of your words "all the way".

Q. Stop at any point you want.

page 131 } A. Let me explain. I pointed out to them that the only—I would consider it a waste of my time and of their effort to seek so-called separate but equal facilities, and consequently, if they wanted to put forth the effort to abolish racial segregation, which ultimately would be of some benefit to them and their children, why I would be willing to work, and I was certain that we would get the Conference to support that type of litigation, if that answers your question.

Q. I think we are getting along now. Fine. When they came in to see you in April, did they have any of the officials of the Conference with them?

A. No, sir.

Q. Did they have any officials of the legal branch with them?

A. No, sir.

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Q. Did you address that meeting?

page 128 } A. Yes.

Q. What did you tell them?

A. I explained to them the constitutional—what the import of the Supreme Court decision was, and what their constitutional rights were. We were talking about a particular situation that had reference to sending the children out the county. I pointed out to them that nearly ten years ago, in Pulaski County, the Court of Appeals, even under the old separate but equal doctrine, had declared that such action was an unconstitutional infringement of the rights of the children involved, and statements along that line. I also pointed out to them the vices of segregated education, that in my opinion children, Negroes, would always be disfranchised as long as they were segregated, and the necessity of making a contribution to the development of democracy by breaking down segregation in the respective communities.

Q. Did you specially urge any course of action on them?

A. No, I didn't urge any course of action. I made a talk about the situation. I had already been contacted with reference to doing so, and I explained to them the steps that would be taken.

Q. When you were contacted about doing something, did the people at that time indicate what they wanted you to do?

page 129 } A. The committee?

Q. The first meeting. The committee meeting.

A. Yes.

Q. What did they say they wanted you to do?

A. Well, they asked me what could be done, and I explained to them what could be done, and they showed their assent, that they were willing to do that. That is all. In other words, nobody said, "I want you to bring the suit right now", or anything of that nature, but they did state that they wanted to be petitioners in this matter. They gave me authorizations while they were here at Richmond, and then I gathered other authorizations at this May 17 meeting.

Q. The committee was here in Richmond in April, you advised them what their legal rights were, and you then obtained from those present authorizations to act from them?

A. Yes.

Q. To do what?

A. To take such steps as may be necessary to secure for

Conference, because a lot of these people travel around, and they talk.

Q. I am talking about officers of the State Council, as far as you know, had they talked about these prospective plaintiffs before they saw you, as far as you know?

A. I don't know.

Q. You had never heard it?

A. I have no recollection.

Q. Your first impression was this meeting of the P.T.A. people who came to see you, is that right?

A. Yes.

Q. Can you fix that time a little closer?

A. Well, I know it was in April, and the reason I know it was in April was because we set up a subsequent meeting for May 17, and I know it was several weeks.

Q. Now, was that meeting held on May 17?

A. Yes.

Q. Were there any meetings or conferences between you and these prospective plaintiffs in the meantime?

A. No.

page 127 } Q. Or as far as you know, were there any conferences involving them and officers of the Conference?

A. Not so far as I know.

Q. Or the staff?

A. Not so far as I know.

Q. And the next thing that happened was on May 17?

A. That is right.

Q. Where was that and what happened?

A. Well, for the first time I went to Front Royal and met with—you see, a committee came to see me, and I met with the group of parents at the church there, and there were also about two or three people present that apparently weren't parents and didn't have any children involved.

Q. It was an open meeting, I take it?

A. No, apparently it had not been—it was a meeting of people from out in what they call the Happy Creek Section; the reason I mentioned the fact that there were one or two other people there, they mentioned the fact that had they known about it they were certain that other people would have been there.

Q. What I meant by open meeting, nobody was excluded from it?

A. So far as I know, no.

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to your attention? Maybe I am too indefinite when I say the situation—

A. Yes, because I have been aware of the situation for a long time.

Q. You have been aware of this for a long time, but the time did come when you and certain people that became plaintiffs came together in the Warren County case?

A. I think I can answer it this way.

Q. Very well.

A. This year, as best I can recall, sometime in April, a committee from the P.T.A. up there, I think it was—

page 125 } anyway, they came down, they made an appointment on a Saturday and came down and discussed their situation, and stated they wanted to do something about it, that they had talked to the superintendent. He told them that they weren't going to let them go to the schools there. They had their choice, and they were going to give some of them a choice to go to Berryville or over to Warrenton, and they wanted to know whether something could be done about it.

Q. For the Court's information, is the situation this: There were no colored schools in the county. They were being transported by bus to schools in other counties.

A. That is right. There were no high schools for Negroes in Warren County. The children were being sent to the regional school in Manassas, or some of them were sent to Berryville up in Winchester County.

Q. And they came to Richmond to consult you about that situation?

A. That is right.

Q. And you had no contacts with them before that?

A. I had no contacts.

Q. As far as you know, had any member of the legal staff had any prior contact with them in connection with that immediate problem?

A. I am not sure, but so far as I can recall right now, no—I wouldn't want to say that nobody talked to them.

page 126 } Mr. Brown may have talked to them, or they may have talked to somebody else, I don't know.

Q. Would you answer me the same as to the officers of the Conference, so far as you know they had not been in touch with them either?

A. I wouldn't want to say that, Mr. Mays. I wouldn't be a bit surprised if they hadn't talked to somebody in State

interested in getting the vindication of their rights, and they are not as much concerned about the particular lawyers in the majority of instances—as to the number of lawyers, put it that way—as a client would be who was involved in a particular single piece of private litigation.

page 123 } Q. I am keenly aware of that, and I am glad to have you state it so clearly. As a matter of fact, the members of N.A.A.C.P. understand, do they not, that if they have this sort of problem they are entitled to have, without any financial liability on their part, representation by counsel from the staff?

A. No, sir, I wouldn't say that, not as being members of the N.A.A.C.P., as being members of a disfranchised and disadvantaged minority. It is pretty well understood that the N.A.A.C.P. will do this.

In other words, put it this way. You don't have to say, "I am a member of the N.A.A.C.P." to get the N.A.A.C.P. to defend you in any particular area in which it renders legal assistance. I mean, they do it on the basis of racial discrimination.

Q. When you say "area," you are not talking about geographical area, but area of discrimination?

A. That is right.

Q. Now, of course, you understand, do you not, that we have a person coming in to have a constitutional right vindicated, that person is asserting the right as it applies to him as an individual?

A. That is true.

Q. So that, of course, it doesn't matter how many people are involved in the litigation, everyone is as-

page 124 } serting his own individual right and not someone else's?

A. He is asserting his own individual right, but in the assertion of his individual right, and in getting, say, a statute declared unconstitutional, we recognize it not only affects him as an individual, but it affects all other Negroes in similar situations.

Q. Yes, but it is his individual constitutional rights in any instance?

A. True.

Q. Now, you were counsel also, were you not, in this relatively new case in Warren County?

A. That is true.

Q. When did that situation in Warren County first come

that reason so that they could get familiar with the thing, that type of litigation, for future use?

page 121 } A. No, I can't say that.

Q. Only the Tucker in Emporia?

A. Well, he is the only one at any distance that has been involved in any cases.

Q. You mentioned a moment ago that the authorization for the Prince Edward case was different from that in the other cases, in that I think it designated the particular lawyer who was to function, but did not authorize him to bring in associates; that is right, isn't it?

A. It has been a long time since I have seen one of those forms, but to the best of my recollection it did not authorize us to include anyone else, although I wouldn't want to say that it did for positive. I just don't have any recollection of doing so. In other words, if I had to make a guess about it, I would guess that it just said, "Hill, Martin and Robinson."

Q. I am sorry about that, because you were testifying positively a few minutes ago as to the difference, as I remember your testimony.

A. Well, I haven't varied from it, to my recollection.

Q. Very well.

Now, who was named in the authorization for Prince Edward's County?

A. Hill, Martin and Robinson.

Q. Were any other lawyers associated thereafter?

A. No local lawyers.

page 122 } Q. Well, have any other lawyers been associated, local or otherwise?

A. Well, in the trial of the case Mr. Carter was present—I was trying to remember whether Mr. Marshall was down or not. I don't think he was. I think it was Mr. Carter.

Q. And who brought him in the case?

A. I did.

Q. There was no specific authorization for that, I take it?

A. Not that I recall at the present time.

Let me say this, Mr. Mays, so that you may understand our position about this thing. We don't regard the prosecution of a person's constitutional rights in the same strictness that you would regard, say, handling a contract litigation for a particular individual client. This is something that the N.A.A.C.P. was sponsoring. These people are actively connected with the N.A.A.C.P. and known to be, and these people whose rights we are trying to protect and assert are

say all of them are different, some of them are the same people.

Q. Now, wasn't it the policy in these cases as far as you know, when people came to seek intervention in a case, to require them to employ their own counsel, or didn't you on occasion become the attorney for them and intervene for those parties yourself?

A. Will you read that back? I didn't get the purport of that.

(The question was read.)

A. Well, on several occasions we have intervened for people ourselves.

Q. When you were already in the case?

A. Already in the case, yes.

Q. Did you have some particular reason for having these two lawyers intervene in Washington rather than appear as counsel for the parties yourself?

A. The only reason for it was approximate to the people, that was the primary reason.

Q. Where does Mr. Reeves live?

page 120 } A. In Washington.

Q. And what is his full name?

A. Frank D. Reeves.

Q. And where does this particular Mr. Tucker live?

A. In Alexandria.

Q. And you wanted them in because they lived nearby?

A. Well, remember, now, Mr. Tucker was right there in Alexandria.

Q. I say, they lived nearby the Court?

A. That is right.

Q. Had this Mr. Tucker been in any of these cases before?

A. No.

Q. Had Mr. Reeves been in any of them before?

A. He had been in school desegregation cases before, yes,

Q. Wasn't it at least in part true that you brought in this particular Mr. Tucker for the same reason you did his brother who lives in Emporia, so he could get his feet wet and get familiar with this type of litigation?

A. No. As I say, the primary reason was that he was right in that *locaty*.

Q. Did you bring in any other lawyers in other cases for

over the telephone one day, and he talked to me the same day or later, but my recollection is—

Q. I happen to know what you mean by "Spot", but tell the Court.

A. Mr. Robinson.

Q. In other words, it is pretty well understood that if they got one the other was going to be in right away anyway, isn't that true?

A. Well—

Q. That is the way it worked?

A. That is the way it worked, beyond a doubt.

Q. Well, you two came in, and who came into the case next?

page 118 } A. Well, that case went to the Supreme Court. And this year—I don't know which one came in first, whether it was Mr. Reeves or Mr. Tucker. I don't recall right now. The reason I said I don't recall, some of the intervenors contacted Mr. Tucker, and some of them contacted Mr. Reeves. Just which was first I don't recall right now.

Q. Then Mr. Tucker and Mr. Reeves were brought in by intervenors and not brought in by counsel already in the case?

A. Well, so far as Mr. Tucker was concerned, some people spoke to me, and I suggested to them that they talk to Mr. Tucker, so I was responsible for Mr. Tucker becoming involved in that. Some of these people talked to Mr. Reeves, and he contacted me relative to the fact that these people had discussed the situation with him, as to my position, and he invited me in.

Q. In either case, did you go to him to suggest bringing in intervenors?

A. They came to me with the intervenors.

Q. And that was the first you knew about the proposed intervenors?

A. No, sir.

Q. What was your first knowledge?

A. Well, we intervened, the plaintiffs, a year ago, and they were ordered admitted. And as you know,

page 119 } the case was appealed, the admission was stayed. Several people in Arlington from time to time have contacted me. And as I say, we have met with a number of the original plaintiffs, and other people who were interested, in the spring. Now, some of those people, some of the people that Mr. Reeves and Mr. Tucker—I can't

A. That I am not certain about.

Q. Who first came to the Arlington case? I mean the school segregation case, what counsel first came into that case?

A. Mr. Brown.

Q. By himself.

A. Yes.

Q. And did he get the customary authorizations as far as you know?

A. Yes, sir.

page 116 } Q. You haven't yourself seen them?

A. I have a vague recollection that I did see some of them, but I am not certain of it, I don't remember.

Q. As a matter of fact, I have the impression somehow that you have, and I wonder if that refreshes your memory?

A. Well, I will put it this way. I prepared an authorization form that only required the information with respect to the parents, children, schools involved, and the attorneys.

Q. But you didn't handle it beyond that point?

A. That is right.

Q. Now, can those particular authorizations in the Arlington case have the usual clause that you referred to authorizing the lawyer specifically named to bring in an associate counsel?

A. I am reasonably certain they did.

Q. Is that the kind of form you used in all these cases?

A. Yes.

Q. Did you use that same form in the Prince Edward case?

A. I am inclined to think that we did not. As I recall, the authorizations really went to Hill, Martin and Robinson.

Q. And after that you amended the form so that you could authorize other lawyers?

A. Yes.

page 117 } Q. And, as far as you know, except in the Prince Edward case you used this amended form?

A. I wouldn't say except the Prince Edward case, since the Prince Edward case, we will say.

Q. Very well.

Who did Mr. Brown bring into the case first after he became counsel?

A. Mr. Robinson and me.

Q. Did he get directly in touch with you or Mr. Robinson?

A. My recollection is that he got in touch with Mr. Robinson first. But put it this way: He probably talked to Spot

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Q. And is it fair to say that any payments that have been made since have been made since April of this year?

A. Well, I wouldn't recall exactly about fixing April as the beginning, but certainly they have been made this year.

Q. Well, they have been made either in the spring or summer of this year?

page 114 } A. That is right.

Q. In other words, isn't it true that the payments that were made to counsel in those cases were made after the decision of the three-Judge Court, which I believe was in April?

A. I would think that—I wouldn't want to say that no payments were made prior to that time, but I would think that the majority of them were made after that time.

Q. I take it that counsel felt sufficiently encouraged by the Federal Court decision that there might not be any trouble if they accepted the payments thereafter?

A. I certainly think that strengthened their belief.

Q. Yes.

Now, if we might turn for a little while to the Arlington cases. Who are the counsel in that case—in those cases?

A. Well, now, in Arlington there have been what could be described as two cases, one, the original case, was an equal facilities case. And that one was Mr. Robinson and Mr. Leon A. Ransom. Since the Supreme Court decision there has been another case in which there have been the original plaintiffs and then subsequent intervenors. In that case—

Q. As a separate case?

A. Yes, as a separate case. I said there were two cases.

Q. Yes.

page 115 } A. Now, in the case since the Supreme Court decision, there was Mr. Edwin Brown, Mr. Robinson, Mr. Otto Tucker, Mr. Frank Reeves.

Q. Otto Tucker, he is the brother of the Tucker in Emporia, isn't he?

A. That is right.

Q. Are all of those five counsel still in the case?

A. Well, Mr. Robinson, Mr. Reeves, Mr. Tucker, and I am still in the case. I don't know just what the status with reference to Mr. Brown is. I met with some of the plaintiffs early in the spring, and they had no wish about it one way or the other. They didn't commit themselves. They didn't make any request about it. So he hasn't been dropped. On the other hand, he hasn't been active.

Q. Well, he is not in active practice now, I think.

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A. He came in representing them.

Q. And is he to be paid by the Conference, as far as you know, or by the intervenors?

page 112 } A. There wasn't any understanding about the Conference.

Q. As far as you know, he was employed by the intervenors?

A. As far as I know.

Q. And the intervenors will pay him?

A. He has never requested any compensation, but to be technical about it, I don't know, it will have to be considered.

Q. How many intervenors did he represent approximately?

A. In Norfolk?

Q. Yes.

A. You are talking about Mr. Jordan?

Q. That is right.

A. I don't recall the exact number.

Q. I meant approximately.

A. Frankly, Mr. Mays, that came in at such varied times and in such fashion that I just couldn't remember.

Q. I fully appreciate that difficulty. Could you approximate the number of plaintiffs in the Norfolk suit?

A. Well, there were, I would say, about 50.

Q. Now, these intervenors represented by Mr. Jordan, did they come in of their own volition, or was it suggested by the Conference that further intervenors come in?

page 113 } A. I am sure they came in of their own volition. In other words, Mr. Ashe and Mr. Madison had intervened other people. When they got together about it I don't know. There was no problem about the case becoming moot or anything of that nature unless somebody else came in.

Q. Do you know whether the counsel in that case other than Mr. Jordan, who represented any intervenors, had been paid wholly or in part for their services?

A. In the Norfolk case?

Q. Yes.

A. They have been paid in part.

Q. And when was that payment made, do you recall?

A. I don't recall the time. They submitted a bill, and I know they have received payments on account, I know that.

Q. At the time you testified in September of last year in the three-Judge Federal Court, I think very few payments had been made?

A. That is true.

questioning is very pertinent to the inquiry before the Court.

The Court: Objection overruled.

Mr. Hill: May I say one other thing, Your Honor.

We have not contended that we have complied with legal aid society requirements of this statute. We haven't asked for any approval of the Bar Association and all such things as required by the statute. And so that still affords no basis for the type of examination these witnesses are being subjected to.

page 164 } The Court: The Court understands the history of these cases. The first one is whether or not the activities of the N.A.A.C.P. or the Virginia Conference of it or the Defense Fund or any of its member branches and sections have violated any of these sections of the Code.

Mr. Hill: That is right.

The Court: And consequently until I know what the activities are and in what manner the employment was made it seems to me the Court would not have sufficient information to rule on.

Mr. Hill: There is no denying the fact that we do the thing that the statutes say you can't do. We don't contend that we have been conforming with this statute. We admit that the State Conference has been sponsoring all this litigation and paying the attorney's fees. There is no denial of that. They are trying to prove something that isn't denied, and to prove it they are prying into a lot of people's personal affairs. If we were denying that we were doing a lot of these things, I would submit that these questions would be pertinent. But we admit that we paid the expenses for these cases. We paid the expenses of the attorneys. We paid the expenses. There is no denial of it. The only question is whether or not we can do these things, whether this statute in prohibiting us from doing it, attempting to prohibit us from doing it, violates the constitutional rights of the

page 165 } national office and the State Conference and local branches.

Mr. Wickham: If Your Honor please, it is not a question of whether or not the plaintiffs are doing it or not. It is a question of whether or not the particular plaintiffs can afford to pay or not afford to pay.

Mr. Carter: That is not the issue in this litigation, Your Honor. The only question in this litigation is as to the construction of these statutes. There is no allegation made here that either of these organizations has sought the approval of

Ernest C. Downing.

Q. Were you actually a plaintiff, or was your wife a plaintiff?

A. My wife.

Q. And your children?

A. Yes.

page 162 } Q. Who were your attorneys?

A. Lawyer Thompson and his associates.

Q. Who are his associates?

A. Lawyer Walker.

Q. And that is all, sir?

A. That is all, Lawyer Thompson and his staff.

Q. You don't know the members of his staff?

A. I know Lawyer Walker.

Q. What arrangements did you and your attorney make as to the payment of expenses and attorneys' fees?

A. Well, there weren't any definite arrangements made. They were to take the case, and so far as any financial arrangements, they were to be made after it was brought to court and decided on.

Q. Has a bill been rendered to this date?

A. No bill has been rendered.

Q. Doctor, I find from the land books of Newport News that you own three parcels of land with the appraised value of thirty thousand eight hundred and sixty-odd dollars, is that right?

A. That is about correct.

Q. Are there any liens on those parcels?

A. No.

Q. Is it free and clear?

A. Free and clear.

page 163 } Q. What was your income in 1956?

A. I don't recall just what it was.

Mr. Hill: Your Honor, I don't see the pertinency of asking about his personal business. This is not supposed to be any prosecution under these statutes, as to whether or not the N.A.A.C.P. is violating these statutes. It certainly doesn't necessitate the inquiry into all these people's personal affairs. It is just for the persecution of these people.

The Court: Mr. Wickham, do you wish to be heard?

Mr. Wickham: If Your Honor please, Chapter 36, which is involved in this litigation, provides for the exemption of legal aid societies, and under any deviation of a legal aid society, you must find that the particular client is unable to pay for the litigation, and, therefore, we feel that this line of

James W. Harris.

Q. One other question. Did you attend the hearing in Newport News?
A. No, I didn't.
Q. Did you have any objection to your attorney securing other lawyers?
A. No.

Mr. Hill: That is all.

RE-DIRECT EXAMINATION.

By Mr. Wickham:
Q. Mr. Harris, what was your understanding with your attorneys concerning the payment of expenses and attorney's fees?
page 159 } A. Repeat your question again, now.
Q. What was your arrangement with your attorneys concerning the payment of expenses and attorney's fees in the lawsuit?
A. Well, I decided that—there was more than one of us signed it for them to represent us, and I said, whatever the cost was I would pay my share.
Q. Did you know that the N.A.A.C.P. was going to sponsor that particular suit?
A. No, I didn't.
Q. And you didn't look to the N.A.A.C.P. or anyone else to pay any part of the expenses or the attorney's fees in that suit?
A. No.
Q. Have you paid any attorney's fees to date?
A. No, I haven't.
Q. Has a bill been submitted to you?
A. No, not yet.
Q. And this suit was started when?
A. 1956.
Q. 1956?
A. Yes.

Mr. Wickham: No further questions.
The Court: Do you want this witness excused?
Mr. Robinson: Your Honor, we would like to
page 160 } have this witness held for possible further cross-examination at a later time today.
The Court: Who summoned this witness here?
Mr. Wickham: We did, Your Honor.
The Court: Why are we holding the witness?

Why is it that you can't cross-examine him now?

Mr. Robinson: There was testimony given by this witness both on direct and cross-examination concerning an authorization. We have asked that that authorization be gotten from Newport News and Richmond. We expect to have it before the end of the day, and we would like this witness before leaving the case to identify the authorization with a view to possibly putting that authorization in.

Mr. Wickham: Is that the only reason for holding this witness?

Mr. Robinson: Yes.

Mr. Wickham: If Your Honor please, we would like to suggest, if this witness is going to be recalled by the complainants, that his examination be limited only to the question concerning the written authorization.

The Court: Well, I will keep that motion under advisement to see if nothing else develops in the case. I won't rule on it at this time.

Mr. Harris, you can step down from the witness stand. You will have to remain outside. Do not discuss with
page 161 } any of the other witnesses the questions you were asked or the answers you gave.

(Witness temporarily excused.)

The Court: Next witness.

Mr. Wickham: Ernest C. Downing.

ERNEST C. DOWNING,

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you please state your name and address?

A. Dr. E. C. Downing, 1229 - 27th Street, Newport News,

Q. What is your occupation?

A. Physican and surgeon.

Q. Doctor, were your children plaintiffs in the Newport News segregation suit that was brought in 1956?

A. Yes.

Q. You were not, is that right?

A. I?

JAMES W. HARRIS,

was called as a witness and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address?

A. James W. Harris, 618 - 33rd Street, Newport News, Virginia.

Q. What is your occupation?

A. Brakeman, railroad brakeman.

Q. Were you a plaintiff in the Newport News segregation suit that was brought in 1956?

A. That is right.

Q. Who were the attorneys that represented you in that suit?

A. Thompson.

Q. Is he the only one?

A. Philip Walker.

Q. They are the only two?

A. Yes.

page 156 } Q. Did you sign a written authorization for them to represent you?

A. Did I sign one? No.

Q. You just told them verbally that you wanted to be represented by them?

A. Yes.

Q. Did you authorize them to employ additional counsel?

A. No.

Q. You did not authorize your attorneys to employ additional counsel?

A. No.

Q. Do you own any real estate in the City of Newport News?

A. I am buying.

Q. Buying a home?

A. A home.

Q. What was your income for the year 1956?

A. About $5,000.

Q. Approximately $5,000?

A. Yes.

Q. Is your wife employed?

A. Yes.

Q. Where does she work?

A. She works in the Newport News Shipbuilding Dry Dock

James W. Harris.

Company, she works for the government.

page 157 } Q. Approximately what was her income?

A. About $3500.

Mr. Wickham. We have no further questions.

CROSS EXAMINATION.

By Mr. Hill:

Q. Mr. Harris, you met with Mr. Thompson and Mr. Walker at various times, did you not?

A. That is right.

Q. Did you ever sign a sheet of paper?

A. Yes, I did.

Q. Now, when you were asked, did you sign an authorization, what did you understand by authorization?

A. Repeat your question, again.

Q. Counsel asked you, did you sign an authorization. What did you understand him to mean when he said an authorization?

A. He asked me, did I sign an authorization for them to represent me.

Q. Yes.

A. I thought maybe, did I sign a paper saying, did I want them to represent me.

Q. Did you sign such a paper?

A. Yes, I did.

Q. Do you remember the terms of the paper?

A. No, I can't recall exactly.

page 158 } Q. You had a place for the attorney's name inserted, or it was already written in, isn't that true?

A. Yes.

Q. And do you recall whether or not this paper also said that such attorney might associate other attorneys with him?

A. I don't know.

Mr. Wickham: I object to that question, Your Honor.

The Court: The witness has already answered before the objection was made. He said he doesn't recall.

By Mr. Hill:

Q. But you do recall signing a paper?

A. Yes.

still pay the same rate of compensation now as they paid as of that time, which was in 1951.

Q. And is the policy still the same, that they get paid as long as they adhere strictly to the N.A.A.C.P. policy?

A. Well, there was quite a bit of discussion at that particular board meeting as to whether or not fees should be handled on an equalization basis, inasmuch as an attack had been made on segregation per se, whether or not the Conference should undertake to compensate. And as a result of that discussion, that action was taken, yes, sir.

Q. Well, as you understand it then, as I think it bears out, the Conference would not pay the lawyers unless they followed N.A.A.C.P. policy?

A. That is true.

Q. And, of course, the policy, the main policy

page 148 } was to go for desegregation in the schools?

A. Well, that is one of the policies.

Q. But insofar as that particular segment of law is concerned, that is definitely the policy, isn't it?

A. There isn't any question about it.

Q. So that in those cases, if the plaintiffs decided on some other courses of action, of course counsel could not follow the plaintiff's direction and expect compensation from the Conference?

A. Not and expect compensation from the Conference no.

Q. And as matter of fact, in every instance they have gone along with the direction of the Conference, haven't they, so as to get the $60 per diem, or at any rate have always gone along with the policy of the Conference?

A. Well, I would say that the plaintiffs—well, the Conference had never undertaken to sponsor any case in which the plaintiffs at the outset were not seeking to establish their rights by the elimination of segregation.

Q. I think you have answered me. I do notice in the second paragraph of that document which you sent to Mr. Johnson, the clerk, and I quote from the minutes of the meeting:

"Mr. Hill pointed out how each case has helped our cause, and then he made the following recommendations".

page 149 } What was meant by that observation, Mr. Hill?

This might refresh your recollection.

Oliver W. Hill.

(Handing a document to the witness.)

A. Well, as best I can recall right now, the Chance case—
Q. What case?
A. Chance—it was a case against the Atlantic Coastline Railroad for forcing passengers—as a matter of fact, the passenger refused to move and they took him off down in Emporia and arrested him—that established the principle the same as the Morgan case that where a person is in interstate commerce they could not require him to change his seat in compliance with any regulations of the railroads for the segregation of passengers.

These other cases—I don't particularly recall right now what, if any, principle of law was established—I mean, I know that no principle was established in the Martinsville case— it was just a general revulsion at the mass execution of some people in a particular case that got us involved in that—but as I say, the other two cases I don't recall at this time. But since you have submitted this memorandum to me, I would like to call attention to one item in it which is labeled "Subsection A," that was one of recommendations on that particular date, that greater emphasis be placed on activities of a non-legal nature by our mem-
page 150 } ber branches.

In other words, I know that at that time, but not only at that time, but subsequent times, I have urged people to do things that would achieve their constitutional rights without resort to court, to court action.

Q. Well, that is not in response to my question, but I don't mind the observation.

You refer to the Martinsville case as a revulsion of people and the execution of seven people. I take it to mean they should have drawn straws as to which one should be executed?

A. No, I didn't mean that.

Mr. Mays: That is all.

• • • • •

page 155 }

• • • • •

Q. Two years ago?

page 144 } A. Yes.

Q. Well, you think this is an accurate copy of the document you supplied at that time?

A. I would think so, yes, sir.

Q. And do you know to whom these were sent?

A. Let me read it and see.

Q. Take your time. I don't want to hurry you through it.

The Court: Suppose we take about a five-minute recess.

(Recess.)

By Mr. Mays:

Q. Mr. Hill, have you been able during the recess to identify the document which I showed you?

A. As I say, Mr. Mays, I see Mrs. Pole's initials up there. I know that I presented certain evidence to the Boatwright Committee in response to a subpoena, and I know that it was labeled such as this is labeled "Exhibit Hill", and so on. And based on that, and the fact that it deals with N.A.A.C.P. activities, I assume it is all right. Now, there is some writing in, whether that was on the exhibit as submitted or not I don't know. I can't read it in the first place.

Q. I can't either. You identify the typewritten part as accurate, but so far as what is put in by pen is concerned, you do not?

page 145 } A. I say, I assume it is accurate.

Q. You have no reason to think it is not?

A. I say, I assume it is accurate.

Q. Do you remember the occasion for which this is prepared?

A. No, sir. I am certain there must have been some kind—I really don't know—it appears to be a report of some kind.

Q. And a report that you made?

A. That I made?

Q. Yes. Or who made it?

A. I don't know, I imagine Mr. Banks made it, or somebody out of his office. No, sir, I have no personal knowledge about it at all, other than what I have stated. I mean, in other words, this didn't come—this wasn't labeled "Hill Exhibit" because it has something that I furnished, this was labeled "Hill Exhibit" merely because I was the messenger, so to speak, that carried the material from the State Conference to the Boatwright Committee.

Oliver W. Hill.

Mr. Mays: Your Honor, the witness has not been able to identify the document further than that, and I, of course, cannot offer it in evidence.

Since I have examined the witness on it I should like to mark it for identification so that we may proceed further with another witness. The witness has testified
page 146 } to it, and I will probably have it in through another witness.

The Court: Defendants' Exhibit D-2.

(The document was marked Defendants' Exhibit D-2 for identification.)

The Court: Gentlemen, I have just received a message from my secretary, and the reports that Mr. Banks called in about. He called a few moments ago and stated that he didn't think he would be able to get together the information requested by counsel this afternoon, but that he would call in again shortly before five and advise us positively.

By Mr. Mays:

Q. Mr. Hill, there was introduced, you may recall, in the Federal Court in September of last year a copy of a letter from you to Mr. Walkley Johnson, Clerk, dated October 7, 1957, in which you enclose a document which counsel had asked you to produce. And that document was a memorandum which I will describe by this notation at the top:

"In response to the question of Mr. Gravatt, transcript page 54, we submit herewith excerpt from the minutes of the Executive Board of the Virginia State Conference of N.A.A.C.P. branches, February 4, 1951, fixing fees for the employment and compensation of attorneys".

Of course, that was handed in after you had testified in the case. I notice that in the last paragraph—
page 147 } would you like to refresh your memory—

A. Yes, sir.

Q. I notice in the last paragraph it is stated:

"The Conference agreed to pay $60 per diem to attorneys so long as such attorneys adhere strictly to N.A.A.C.P policy."

That was adopted at this particular meeting of the Conference, as I understand it. Has there been any change of policy since that time as to per diem pay?

A. That was adopted at the board meeting. No, sir, they

school board acted or—I don't recall right at this minute whether it was before the school board applied or after—but at some period between the time we filed a petition for the school board and the time the suit was instituted, two of the parents requested that their names be withdrawn, and when the suit was filed, their names were withdrawn—I mean, no effort was made in their behalf.

Q. No effort was made in their behalf in the court?

A. That is right. It was too late to do anything, the petition was already filed.

Q. Did you urge them to remain as petitioners?

A. No, sir.

Q. Did anyone else, as far as you know, urge that they stay on as petitioners?

A. Not as far as I know. As a matter of fact,

page 141 } one of the husbands, father, rather, of the children, asked that his child's name be withdrawn. On the occasion when I was in Front Royal after the granting of the temporary injunction when we were making the application to the school board, the mother of the boy and the boy himself, the boy himself and his mother, came up and asked me to represent them. I told them that if they got together, the family unit, about it, I would be interested in including them, but I thought they ought to get together about it, but I left it up to them. What they have done I don't know.

But I can say this, that we have never put forth any effort to keep somebody in the case that wanted to get out of it.

Q. And that goes for all cases?

A. Yes, that goes for all cases.

Q. When you say "we"—

A. I was talking about the attorneys, so far as I know.

Q. You don't know of any case of anybody on the legal staff that tried to keep somebody in the case when they wanted to get out?

A. No, sir.

Q. And I suppose that observation would apply with equal force to the officers of the Conference of branches?

A. I assume so. I can't imagine any—

Q. Well, you know nothing to the contrary?

page 142 } A. I know nothing to the contrary.

Q. Mr. Hill, Mr. Banks has testified as to the method of handling fees and expenses, and I believe you did up to, prior to September of last year. I take it that all

Oliver W. Hill.

of those bills from other lawyers associated with the staff come to you, and then you pass on those bills and send them for payment. That is a correct procedure, is it not?

A. Yes, sir.

Q. And that is true of bills for services for yourself and your partners as well?

A. Well, put it this way. I actually have no partner in a sense that I don't voluntarily submit a fee, but my bills are passed on by members of the staff, too—the members of the staff pass on the bills.

Q. Now, I had understood that you as chairman pass on the bills?

A. I do, yes, sir.

Q. So that you pass on all bills, yours, your partner's or anybody else's?

A. That is right.

Q. And when you O.K. them they go on then to whom?

A. To the president.

Q. And if the president O.K.'s them, they go to the treasurer for payment?

page 143 } A. That is right.

Q. And are paid?

A. That is right.

Q. Have you known of any case at all in which the president refused to approve a bill that you had approved?

A. No, sir.

Q. Mr. Hill, I have a photostat, three pages, of a document which is headed "Exhibit Hill, B-17, September 13, 1957", and I pass this on to you, and ask you whether or not you are familiar with it, and whether that is a photostat of the original document?

A. Put it this way, Mr. Mays. The only thing I can say about it is that it appears to be a photostat of some material that was submitted to the Committee on Offenses Against Administration of Justice or the Thompson Committee, I don't know which, in pursuance to a subpoena, and it was delivered by me. Now, the reason I am saying that is because I know the exhibits to the Boatwright Committee were labeled such as this is labeled.

Q. Now, to clarify the thing for this present record, when you refer to the Boatwright Committee and the Thompson Committee, were they named after the chairman of two committees appointed by our General Assembly two years ago?

A. That is true.

Oliver W. Hill.

Q. Before the hearing?

A. And after the hearing.

Q. What was the nature of the discussion after the hearing?

A. I advised them with respect to what had transpired, and what the implications of it were, and as far as I could at that time what we proposed to take as future steps, and that sort of thing.

Q. And when did you next meet with the plaintiffs?

A. I haven't met with them since.

Q. You haven't had occasion to go up there and see them at all except on the occasions mentioned?

page 139 } A. No, I haven't been to Front Royal since we carried the children.

Q. Well, have you met with the plaintiffs in any way?

A. I say, except on the occasion at Harrisonburg.

Q. And other than the occasions you have enumerated you haven't met with them at all?

A. Well, it seems to me that on some other occasion of some hearing several of them came down. A committee, say, came down to Harrisonburg. I don't remember the exact date, but anyway I haven't met with the plaintiffs as a group since presenting them to the school board.

Q. Now, what other lawyers were associated with you in that case?

A. Mr. Robinson and Mr. Tucker.

Q. Which Tucker?

A. Otto Tucker.

Q. He is the one from the northern part of the state?

A. I am sorry, S. T. Tucker.

Q. And why was he brought into it from Emporia?

A. Well, we were working on matters at that time. There were some ideas that I had, and I got him to do some work on them, and that was the reason for it.

Q. That was the second occasion now?

A. That is right.

page 140 } Q. Did you have any difficulty, or did at any time any of the plaintiffs in the Warren case indicate a desire to withdraw as plaintiffs?

A. No, sir.

Q. You never heard of any such instance as that?

A. Not of any plaintiffs, no, sir. Now, may we get straightened out with this? The first step taken, of course, was to file a petition with the school board. After that petition was filed—and I couldn't know whether it was before the

all the Conference—and we went to the superintendent's office.

Q. Now, you had a meeting on a Friday night?

A. That is true.

Q. And, of course, the parents knew you were coming I suppose?

page 137 } A. I had contacted them.

Q. You went by appointment?

A. Yes.

Q. And a large number of parents were there on that particular occasion?

A. I think all of the plaintiffs were there. All of the plaintiffs were there, I am reasonably certain, and there were other parents who wanted to get in the case.

Q. Then you had another meeting the next morning?

A. At the superintendent's office.

Q. Did you have any other?

A. Yes. Well, in the meantime the school board in Warren County had changed its mind about enrolling them, and the Governor had issued his proclamation, or what-not, and they were refused at that time. And then I carried them back over to the church and explained to them what had occurred, and I left to rush to Harrisonburg for the entry of the order in the Charlottesville case.

Q. Now, at that meeting in the church on Saturday morning, you didn't admonish them to do any particular thing one way or another, did you? Or did you?

A. Oh, I advised them to keep the children off the streets, advised them not to let people get them involved in any brawls, or anything, not to get disturbed by remarks made by people, or anything of that sort, yes.

page 138 } Q. When did you meet with the plaintiffs again?

A. At Harrisonburg on a motion for further relief, I have forgotten the date.

Q. Did you have any conference with them other than the usual one you have with clients?

A. No.

Q. Did you have most of the plaintiffs there at Harrisonburg?

A. I had a goodly number. No, they all weren't there.

Q. Did you have any meeting with them other than at the court itself?

A. Well, we met in the juryroom. I mean I had a private discussion with them before the hearing.

Jerry C. Fauntleroy.

Q. Were you a plaintiff in the Newport News segregation suit that was brought in 1956?
A. Yes, I was.
Q. Are you married?
A. Yes, I am.
Q. Does your wife work?
A. Yes, she does.
Q. Who are your attorneys in that litigation?
A. Attorney W. Hale Thompson.
Q. Only Mr. Thompson?
A. And Phillip Walker.
Q. They are the only two representing you?
A. That is right.
Q. Do you know of any other attorneys representing you in that case?
A. No, I can't say definitely. I know I hired those two to represent me, I secured their services for my benefit.
Q. Did you authorize them to secure other attorneys to be associated with them?
A. What?
Q. Did you authorize them to obtain other lawyers to work with them in the case?
page 188 } A. Oh, yes, to get justice.
Q. I say, did you authorize them?
A. Yes, I did.
Q. What attorneys did you authorize?
A. Any that they saw fit that could help them.
Q. And what arrangements did you make with your attorneys with regard to the payment of legal fees and expenses?
A. Well, I agreed to pay them after the case was brought to a completion, finished, there wasn't no particular—
Q. You have agreed to pay expenses and attorneys' fees, is that correct?
A. That is right.
Q. Do you know whether or not the N. A. A. C. P. has also agreed to pay those expenses and attorneys' fees?
A. No, I can't say definitely on that.
Q. You don't know?
A. Not definitely.
Q. What was the income—your income and the income of your wife for 1956?

Mr. Hill: Same objection, Your Honor.
The Court: Same ruling.

will have to try to think of one, I guess—suppose we say—I would have to look on the income tax statement. I don't think it would be fair for your records if I give you a wrong figure. You are trying to have exact records, aren't you?

Q. No, just an estimate of what your husband and you make. You work with your husband in this business, do you not?

A. I go down occasionally and help with the supervisory part of the work, but I don't do any office work.

Q. And you filed a joint return with your husband?

A. Yes.

Q. And you signed the return?

A. Oh, yes.

page 186 } Q. And you have no idea what the return said, or what your husband made?

A. It is in the thousands.

Q. In the thousands?

A. Just say $15,000.

Q. Would that be within $2,000 of his income, either way?

A. That would be within $2,000 either way.

Mr. Wickham: No further questions.

The Court: Any cross?

Mr. Hill: No.

The Court: Mrs. Patterson, you are excused. You may leave. Please don't discuss the case with any witness.

The Witness: Thank you.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Jerry C. Fauntleroy.

JERRY C. FAUNTLEROY,

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. Jerry Cornelius Fauntleroy, 3303 Roanoke Avenue, Newport News.

page 187 } Q. What is your occupation?

A. I am a rigger in the Newport News dry dock.

Marie E. Patterson.

Q. Did he get anyone else?

A. I am not too familiar with the others.

page 182 } Q. Did he inform you who he was going to get?

A. I asked him—this was all my idea. He didn't tell me anything at all. You see, Mr. Thompson is my husband's legal adviser, and naturally when something came up about the schools, having had contact with him, I thought about him first of all, and knowing that he was a very capable person, I left the rest of it to him.

Q. What arrangements did you make with him concerning the payment of expenses and legal fees?

A. Arrangements? As far as I know, no arrangements have been made for any legal fees.

Q. Who was supposed to pay the expenses and legal fees?

A. I didn't discuss that with him, it was just understood that he would handle the case for us, because he had done this sort of work before, and to really be frank with you, I don't see how Mr. Thompson is making it, because as far as I know, he hasn't received anything.

Q. You don't expect to pay him anything?

A. Well, we can't ever tell what may happen in the future. If the case goes on long enough and his situation gets bad enough, I am hoping that we will have to give him something. But as far as I know now, I don't expect to pay him any special fee.

page 183 } Q. Well, suppose the suit stopped right this minute, would you expect to pay anything up to date?

A. If the suit stopped right this minute, I would first like to know why it stopped, because as long as there is segregation, there will be a necessity for a suit, and if the suit stops, then my first problem would be to find out why it stopped, and then I would look to God for the money or whatever would be necessary to take care of the other steps in the case.

Q. Well, now, will you answer my question, please? I asked you if the lawsuit in Newport News was completed today, would you expect to pay your lawyers' attorneys' fees and expenses incurred in that suit?

A. No.

Q. Do you know whether or not the N.A.A.C.P. has stated that they would pay the expenses and attorneys' fees?

A. No.

Q. You have no recollection on that at all?

A. No. We haven't talked about money too much.

Q. Did you and your husband file a joint tax return in 1956?

Marie E. Patterson.

A. Yes.

Q. Can you estimate the income, your husband's income and your income for that year?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

page 184 } Mr. Hill: Exception.

The Court: Read the question, Mr. Reporter.

(Question read.)

The Witness: For the year 1956?

By Mr. Wickham:

Q. Yes.

A. That would be very difficult for me to do, and we have a bookkeeper, and he works very close with my husband.

Q. How about 1957?

A. I am not too familiar with any of the financial statements that have been made.

Q. Don't you file a joint return, you stated?

A. My husband and I have been married 21 years, and he seems to be a pretty reliable fellow, and I just thought I would go along with that he does.

Q. I say, did you file a joint return?

A. We always file joint returns.

Q. And you signed it?

A. Yes.

Q. And you don't know what you signed?

A. No.

Q. And you don't know—

A. I know it must be accurate, because my children are still having clothes, and I am still eating, and we page 185 } are still living in the same home, so he must be making something, so I don't pay too much attention to that.

Q. Can you estimate approximately what he is making?

A. Let me see now. He allots himself so much a week. He allots himself between $50 and $60 a week for the family, and then I guess that is about as close as I can come to it. You can sort of figure out from that, maybe.

Q. You don't have any idea what your husband makes?

A. Well, I would like to be perfectly frank with you, and as I said before, I am not so familiar with that side of the business, but if you would rather that I make up a figure—I

Thomas W. Selden.

A. Thomas W. Selden, 3100 Madison Avenue, Newport News.

Q. Will you state your occupation?

A. Physician.

Q. Were you a plaintiff—are you a plaintiff in the Newport News segregation case that was started in 1956?

page 179 } A. Yes.

Q. Who were your attorneys?

A. Lawyer Hale Thompson and Lawyer Phillip Walker.

Q. Have you made any arrangements with them as far as the payment of expenses and attorneys fees?

A. No, I haven't.

Q. Do you expect to make any arrangements with them?

A. No.

Q. Who do you expect to pay the expenses and attorneys' fees in this case?

A. The N.A.A.C.P.

Q. Doctor, the land books of Newport News show that you own two parcels of land at an appraised value of somewhat over $21,000, is that correct?

A. At one time it was correct.

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. In 1956, wasn't that correct, at the time you brought this lawsuit?

A. 1955 or 1956, I am not certain which.

Q. Since then you have sold your real estate?

A. No, I had one of the dwellings to burn down in December of last year.

page 180 } Q. What was your income in 1956?

Mr. Hill: As I stated, Your Honor, the objections go to all this line of testimony.

The Witness: I don't remember the exact figure.

By Mr. Wickham:

Q. Estimate what your income was in 1956?

A. I would say around $19,000.

Q. Around $19,000.

No further questions.

Marie E. Patterson.

The Court: Any cross-examination?
Mr. Hill: No, sir..
The Court: All right.
Dr. Selden, you are now excused by the Court. You are free to return to Newport News if you care to. Please do not discuss with any witnesses on the way out any questions you were asked or any answers you gave.

(Witness excused.)

The Court: Next witness.
Mr. Wickham: Marie E. Patterson.

MARIE E. PATTERSON,
was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:
Q. Will you please state your name and address?
A. Marie E. Patterson, 751 - 26th Street, New-
page 181 } port News, Virginia.
Q. Were you a plaintiff in the Newport News segregation suit brought in 1956?
A. Yes.
Q. What is your occupation?
A. Housewife, and then I assist my husband. He is self-employed.
Q. What is his business?
A. Laundry business. We have a small laundry.
Q. You mean your husband owns this laundry and operates it also?
A. Yes, he does.
Q. Who were your attorneys in the lawsuit that was brought in Newport News in 1956?
A. Lawyer Thompson.
Q. Did you have any other lawyers?
A. Do you mean likely, just likely?
Q. Well, likely or otherwise.
A. Well, we gave him the right to get anyone to help him whom he thought would be suitable for the case.
Q. Do you know who he got?
A. Phillip Walker.

wife and children were actually named in the lawsuit, is that correct?

A. Well, I am with my wife in anything she attempts to do. I will go along with her, whatever she does.

Q. Can you estimate what your income was in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: No, I couldn't.

By Mr. Wickham:

Q. Can you estimate what your income was in 1957?

Mr. Hill: Your Honor, I would also like to make a further objection in this particular instance, because it has not been established that this man was a party to the suit.

page 176 } Mr. Wickham: Your Honor, the children were parties to the suit, and I am sure the children have a right to look to the parents for the payment of the attorney's fees.

The Court: Objection overruled.

Mr. Hill: I note an exception.

Mr. Robinson: To save the frequent interruption of the examination, I wonder if it could be understood that each plaintiff objects to testimony in response to questions of the type that Mr. Wickham has just asked, and we note an exception to the ruling by the Court on those objections. Or would the Court prefer us to make the objection each time?

The Court: Suppose, to keep the record straight, you just say "same objection" to each question, and the Court will say "same ruling".

Mr. Robinson: All right. May I have this understanding, that the objection made by each complainant and the exception take from any ruling on that objection would apply equally to both complainants, so it would save the necessity for each complainant making the same objection and obtaining the same exception?

The Court: Understood.

By Mr. Wickham:

Q. Do you have any liens on the real estate that you own?

A. I certainly do.

page 177 } Q. From what amounts?

A. Well, I can't say definitely. I imagine about in the neighborhood of $20,000, approximately.

Thomas W. Selden.

Q. Now, did you make any arrangements with your attorneys concerning the payment of expenses and legal fees in the segregation case?

A. No, I have not.

Q. Do you expect to pay your share of expenses and legal fees?

A. Well, if there is any fee attached I would be expected to, but I haven't been billed for such.

Q. You don't expect to be billed?

A. I don't know, I couldn't answer that.

Q. You never discussed that with your attorneys?

A. No.

Q. Can you tell us whether or not the N.A.A.C.P. is paying the expenses, your share of the expenses and legal fees in this case?

A. How was that, now

Q. Could you tell us whether or not the N.A.A.C.P. is paying your share of the expenses and legal fees in the Newport News case

A. Not that I know of; I couldn't answer that question.

Mr. Wickham: No further questions.

page 178 } The Court: Cross-examination?

Mr. Hill: No.

The Court: You are now free to leave, Mr. Morris. You are excused for the day. If you want to return to Newport News, you may do so.

The Witness: Thank you.

The Court: Do not discuss the case with any witnesses on the way out as to questions you were asked or the answers you gave.

The Witness: Thank you.

(Witness excused.)

The Court: Next witness?

Mr. Wickham: Thomas W. Selden.

THOMAS W. SELDEN,

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please?

David W. Morris.

Q. Do you expect to receive a bill?
A. Well, I hope so. I usually receive bills for all attorneys' fees.
Q. You didn't know that the N.A.A.C.P. was going to pay the expenses and attorneys' fees in this litigation?

Mr. Robinson: If Your Honor please, I have been rather patient on this matter of leading. This is Mr Wickham's witness, and I think he has gone right far in leading this witness so far.
The Court: Will you read the last question?

(Question read.)

The Court: I will sustain the objection to the form of the question.

By Mr. Wickham:
Q. Did you know whether or not the N.A.A.C.P. was going to pay the expenses and legal fees in the case to which we are referring?
A. Did I know?
Q. Yes.
A. No, I don't know that.
Q. You have no information concerning that?
A. No, I really don't.

page 173 } Mr. Wickham: No more questions.
The Court: Any cross-examination?
Mr. Hill: No questions.
Mr. Wickham: He may be excused as far as the defendants are concerned.
The Court: All right, Mr. Thompson, you are excused. You are free to leave and go home. If you remain outside, don't discuss with any other witnesses what questions you were asked and what answers you gave.
The Witness: Thank you.

(Witness excused.)

Mr. Wickham: I will call David W. Morris.

DAVID W. MORRIS,
was called as a witness and, after being first duly sworn, was examined and testified as follows:

David W. Morris.

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. My name is David W. Morris. I live at 1818 Marshall Ave., Newport News, Virginia.

Q. Did you have a child or children that were plaintiffs in the Newport News segregation case that was brought in 1956?

A. I did.

Q. What is your occupation?

page 174 } A. I am a restaurant and hotel keeper.

Q. Does your wife help you in this business?

A. That is right.

Q. The land books of the City of Newport News reveal that you own two parcels of land with the appraised value of something over $53,000, is that correct?

A. I imagine it is about correct. I couldn't say the exact figure.

Q. You say that it would be approximately correct?

A. Well, I couldn't tell you that.

Q. Well, what is the value of the property, in your opinion?

A. Well, I am unable to tell you that.

Q. Well, would you sell it for $50,000?

A. No, I wouldn't.

Q. You would sell it for something more than $50,000?

A. Well, I would get as much as I could.

Q. And you think you would get something more than $50,000 for it?

A. Well, I don't know.

Q. Who are your attorneys in the Newport News segregation case, or the attorneys of your children?

A. Well, Mr. Thompson has been my attorney ever since I have been in business since 1938.

Q. Well, you actually weren't a plaintiff in the

page 175 } Newport News suit, were you? Wasn't it your wife or both of you?

A. My wife.

Q. And children?

A. I am subpoenaed here.

Q. But actually your wife and children were the plaintiffs in the Newport News case, you weren't actually a party to that suit? Or were you? I don't know.

A. I just don't quite understand what you mean there.

Q. I mean, were you a plaintiff in the Newport News segregation suit that was brought in 1956? As I recall, only your

Louis Thompson.

A. Yes, I did personally sign my name for them to represent me.

Q. Did you have any personal contact with the attorneys?

A. Yes.

Q. When was the first time you had that personal contact?

A. I don't remember what day it was.

Q. Where was the contact first made?

A. In the City of Newport News.

Q. Where in the City of Newport News?

page 169 } A. I don't really remember that, it might have been in the office or the street or meeting. I don't remember.

Q. What type of meeting would it have been if it was at a meeting?

A. I wouldn't know particularly. I do remember in their office. I remember that distinctly.

Q. You met with them in their office?

A. That is right.

Q. Did you also meet them at a N.A.A.C.P. meeting held in Newport News?

A. Oh, I have met with them several times and others.

Q. At the N.A.A.C.P. meeting?

A. Many times.

Q. Is that when you personally authorized them to represent you?

A. No.

Q. What was your income in 1956?

Mr. Hill: We raise the same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. What was your income in 1956?

A. Right offhand, let's see. I don't know. I am a mechanic, and, of course, I maybe—what do you mean, total amount of income?

Q. That is correct.

page 170 } A. I can't just say right offhand.

Q. Was it over $5,000?

A. I imagine it was around $5,000.

Q. You think it was around $5,000?

A. I think it was. That sounds pretty good.

Q. Do you own any real estate in the City of Newport News?

Louis Thompson.

A. Yes, sir.

Q. The land books indicate you own three parcels of land in the City of Newport News, is that correct?

A. I guess so, if it shows that, must do.

Q. Don't you know?

A. Well, I do—it could be more or less, but I know that I own some real estate.

Q. Do you know what the value of your real estate is?

A. Right offhand, I don't.

Q. Do you have any liens on your real estate, any mortgages? Do you owe any money on your real estate?

A. Yes, there are some liens against it.

Q. How much?

A. That is another question I can't answer you accurately. I know there are some liens, just how much I can't answer.

Q. Roughly how much?

A. Roughly, a couple of thousand dollars or maybe more.

Q. But you don't have any idea of what the ap-
page 171 } praised value of your real estate is?

A. No, I really don't know just what the appraised value is.

Q. Would you say $15,000?

A. To me I would say that, yes.

Q. I mean, would you sell your real estate for $15,000?

A. I most certainly wouldn't.

Q. You would not?

A. I would not.

Q. How much would you sell it for?

A. I wouldn't sell it.

Q. How much do you think it would be worth to somebody else?

A. Worth to them? I don't know.

Q. If you had to sell it, what would you sell it for?

A. Well, now, if I had to sell it, I don't know what I would sell it for.

Q. $15,000?

A. I am sure not.

Q. More than $15,000?

A. Well, I wouldn't want to sell it, but if I had to sell it I would be asking more than that for it.

Q. Did you have an arrangement with your attorneys concerning the payment of legal fees and expenses in
page 172 } the Newport News segregation case?

A. Well, they haven't sent me a bill or anything like that.

the Virginia Bar Association, which is the only issue of weighing the statute, that a legal aid society is exempted from the provisions of this statute.

The question is whether or not the association and the fund can do the things it has done, whether or not it comes within the statute, whether or not the statute is constitutional or can be enforced, or reaches our activities.

The Court: All right. The Court will adhere to the same ruling.

Go ahead with the examination.

Mr. Hill: We note an exception, Your Honor.

Mr. Robinson: If Your Honor please, the complainant that I represent will also note an exception.

By Mr. Wickham:

Q. Will you estimate your income for 1956?

page 166 } A. Well, I don't know the exact amount it was because my income fluctuates, and I can't give an exact amount. It is exact in the U. S. Internal Revenue return.

Q. Can you estimate your income for last year?

A. I would say it was perhaps $12 or $16 thousand, or something like that.

Q. Would there be any substantial change from the previous year?

A. Well, it wouldn't be any substantial change.

Q. Do you expect to receive a bill for services rendered from your attorneys in this Newport News case?

A. What was that question?

Q. I say, do you expect to receive a bill for services rendered by your attorneys in the Newport News case?

A. That was the understanding.

Mr. Wickham: That was your understanding.

No further questions.

The Court: Do you want him excused?

Mr. Hill: Just one moment, Doctor.

CROSS EXAMINATION.

By Mr. Hill:

Q. Doctor, you were not a plaintiff in that case?

A. Just what do you mean by that?

Louis Thompson.

Q. Was your name listed as one of the plaintiffs, or was it just your wife?

page 167 } A. My wife.

Q. Who played the leading role in this thing so far as your family is concerned?

A. My wife.

Mr. Hill: That is all.

The Court: Is there any objection to his being excused now?

Mr. Wickham: No, sir.

The Court: All right, you are excused. You may go back to your community.

(Witness excused.)

Mr. Wickham: Louis Thompson.

LOUIS THOMPSON,

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you please state your name and address?

A. Louis Thompson, 829 - 21st Street, Newport News, Virginia.

Q. What is your occupation?

A. A mechanic in the shipyard.

Q. Were you a plaintiff in the suit that was brought in Newport News in 1956 concerning the integration of the schools?

A. Yes.

page 168 } Q. And who are your attorneys?

A. Phillip Walker, W. Hale Thompson.

Q. Did you authorize them personally to represent you in this suit?

A. Not personally, but I did.

Q. What do you mean by not personally? Who authorized them?

A. I did.

Q. How did you do it? You said you didn't do it personally. How did you do it?

A. Well, suppose I say I did it personally.

Q. Now, is that going to be your story now, that you did it personally?

Harold M. Johnson.

The Witness: But the appraised value is not
page 210 } on the book.

Mr. Wickham: Well, you show whatever is on the blanks that you have or on the books.

The Witness: What is on the blank, that is what you want?

Mr. Wickham: That is correct.

The Witness: That is in my name?

Mr. Wickham: That is correct.

The Witness: All right.

The Court: Mr. Hill, in view of your position on this, perhaps I might ask you whether you would be willing to stipulate that this could come in from the Office of the Treasurer, or possibly the Finance Officer?

Mr. Hill: Certainly. That would certainly seem to me to be a better way of doing it, Your Honor. I still don't agree that the evidence is pertinent or relevant, but so far as what the figures show, as I said, we are perfectly willing to stipulate with respect to those, if they say they are correct figures.

The Court: I mean obviously we are all familiar with the land book and what it shows, and, of course, if you think it is such a hardship, rather than have the witness doing it, I mean you could simply file it by stipulating to admitting whatever the Treasurer of Arlington County's land books would show.

Mr. Hill: If they will submit the figures, we
page 211 } would be perfectly willing to stipulate that those
are the figures—if Mr. Wickham says they are accurate, I will stipulate that they are accurate. Of course, we don't waive any objection to the evidence.

The Court: To the materiality, I understand.

In view of the stipulation, Dr. Johnson, you don't have to furnish anything.

Any further questions of this witness?

Mr. Wickham: No.

The Court: Any cross examination of this witness?

Mr. Hill: No.

The Court: Doctor, you are excused. You may return to Arlington.

(Witness excused.)

Mr. Wickham: Barbara S. Marks.

The Court: How many witnesses do you have for today?

Mr. Wickham: Eleven, I think.

Harold M. Johnson.

The Court: Well, the Court has already ruled on the materiality of the evidence in this type case. And having done so, and since this witness was unable to give any opinion at all as to the real property he owned, but said he could prepare a list, the Court expects him to furnish such a list.

Dr. Johnson, would you state to the Court within what time you can prepare a list as requested by counsel?

The Witness: Let me state this now. I am a very busy person. We have a lot of people who are sick, I just got back Friday from being away where I went out to bury my mother, and coming here I found this little subpoena tacked on my door the night before last, a thing of that size, and I just resent the intimidation involved here.

Now, I will make out the list as soon as I can. I think it is most unfair, but I shall certainly comply with the Court's request on this thing. I will get it to you sometime this week, as soon as I possibly can.

The Court: What date would counsel like to have it? It can be submitted as part of the evidence at any time coming in as an exhibit in connection with his testimony.

page 209 } Mr. Wickham: Any time this week, I think.

The Court: Dr. Johnson, will you be able to prepare it by Friday or Monday of next week?

The Witness: I think I can possibly get it by that time, after I get caught up with my work and can go to the courthouse. I may be short a tax blank, I don't know.

The Court: Suppose we give you until Monday of next week.

The Witness: Will someone tell me where I can send it?

The Court: You can forward it to the Clerk of this court. The Clerk will give you a self-addressed envelope.

The Witness: What am I supposed to do?

The Court: You have been requested to prepare an assessed valuation on your parcels of land that you own in Arlington.

The Witness: On the parcels of land that I own—

Mr. Wickham: Not the assessed value, either the appraised value or the fair market value—the assessed value—I don't care, either one or the other.

The Witness: They have on the tax blank the amount of money they are taxing me on, is that what you want me to put down?

Mr. Wickham: I want the appraised value.

Harold M. Johnson.

A. Well, the firm of Robinson, Hill and Martin.

Q. The land books of Arlington County show that you own 14 parcels of land, is that correct?

A. I don't know. I would have to count them.

page 205 } Mr. Robinson: I make the same objection, if Your Honor please, to that question.

The Court: Same ruling.

Mr. Robinson: Exception.

By Mr. Wickham:

Q. Well, would that be approximately correct?

A. I have no idea. I would really have to count them.

Q. Well, the land books also show that the appraised value of your real estate is something over $87,000, is that correct?

A. I don't know what the land records show, sir.

Q. Well, would you say that was a fair value of the land you own in Arlington County?

A. I would have to stop and make a list and put my own personal values on it.

Q. Well, would you say that the value of the land you own in Arlington County is worth more than $80,000?

A. I really wouldn't know without making a list, sir.

Q. Would you say it was worth more than $70,000?

A. I still wouldn't know until I made a list of the things that I have in Arlington County.

Q. Would you say it was worth more than $60,000?

Mr. Robinson: I object, Your Honor. This question has been asked three or four times. The witness
page 206 } says he doesn't know, and he can't say until he makes a list and puts his own appraisal of the value on it.

The Court: All right, I sustain the objection.

By Mr. Wickham:

Q. How long would it take you to make up a list and estimate the value of your real estate in Arlington County?

A. Well, I would have to go home and get my tax blanks and figure out what I had. I can mail it to you.

Q. How long would it take you to do that?

A. Well, I will do it tonight and put it in the mail, and you will have it tomorrow or the day after tomorrow.

Harold M. Johnson.

Mr. Hill: Your Honor, that seems to be a ridiculous requirement, to make this witness send a list of his real estate. What difference does it make whether he owns $50,000 worth of real estate or $200,000 worth of real estate?

That has no pertinency to any issue in this case.

The Court: Objection overruled.

Mr. Hill: I note an exception.

By Mr. Wickham:

Q. Will you then as soon as possible, Doctor, send us the number of parcels of real estate you own in Arlington County and the appraised value of those parcels?

A. The appraised value?

Q. Well, you can either get it off the land books or you can estimate it yourself.

page 207 } Mr. Hill: Your Honor, I want to make a further objection to it. This witness is no party to any litigation here. He is under subpoena by these defendants, and they can't force him to take the stand and do a whole lot of things outside the Court. They have got the land book records. They have public records. They can go up there and get them and bring them down. They have got copies of them, I assume. If they want to introduce the land book records or introduce copies of them or something of that sort, they can. But I submit it is an imposition to require this witness to go back and get some land records and send them back here when all he is is a witness in this case.

The Court: Let me ask you this: Do you think a witness cannot be compelled to furnish information to the Court when requested?

Mr. Hill: Of course, under certain circumstances a witness can be compelled to submit information, that is perfectly obvious. But I am pointing out to the Court that where the defendants have subpoenaed a man to come here and testify—now, he came here under their subpoena, he is not a party to this litigation or anything else, and for them to require him to go back and make up some record of his appraisal of his property which has no pertinency whatsoever to any issue in this case, I submit that that is an imposition on this witness.

page 208 } The Court: Do you care to be heard?

Mr. Wickham: No, Your Honor, I think Your Honor has already ruled as to the materiality of this evidence, and we have nothing further to say.

Harold M. Johnson.

A. No, they haven't billed anything. I am under the impression that it all comes—under the impression that it all comes under the N. A. A. C. P. of which I am a legal member. I think it comes under that heading.

Q. Well, do you expect the N. A. A. C. P. to pay the expenses?

A. I would think it would.

Q. Because you are a member of the N. A. A. C. P.?

A. I think that is reasonable enough.

page 202 } Q. What was your income in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. Approximately.

A. Approximately?

Q. Yes.

A. Approximately $6,000.

Q. The land books of the City of Newport News show that you own some real estate with an appraised value of something over $12,000, is that correct?

A. I guess so.

Mr. Wickham: No further questions.

Mr. Hill: No questions.

The Court: All right, Mr. Price, you are excused. You are free to go back to Newport News if you wish, but don't discuss the case with any other witnesses.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Harold M. Johnson.

HAROLD M. JOHNSON,

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

page 203 } By Mr. Wickham:

Q. Will you state your name and address, please?

Harold M. Johnson.

A. Harold M. Johnson, 2901 Lexington Street, Arlington, Virginia.

Q. What is your occupation?

A. A physician.

Q. Were you a plaintiff in the Arlington County school segregation suit that was brought in 1956?

A. No, 1957.

Q. You intervened in 1957?

A. 1957; I was not in in 1956.

Q. Who were your attorneys?

A. Mr. Edmund C. Brown was the man whom I engaged to represent me.

Q. Did you have any understanding with him concerning the payment of expenses and legal fees?

A. I did.

Q. What was that understanding?

A. Well, I sent him a check for $100 at the time that I wrote him a letter asking him to represent me on behalf of my two daughters, who had applied to Washington and Lee High School.

Q. Have you received any further bills, or any bills from him since that time?

A. No, I have not.

page 204 } Q. Is he still representing you in that case?

A. No.

Q. Who is representing you now?

A. Now, did you say? Well, I don't have a legal counsel now, so far as that goes. I am not in the case any longer. I withdrew in 1958.

Q. You withdrew?

A. When one of my daughters went on to college, and I chose to carry the other daughter on to school where she had been going prior to the time we elected to seek admission to the high school.

Q. When you employed Mr. Brown to represent you, did you have any understanding, or did you know that he would engage other counsel to assist him?

A. At the time, I did not.

Q. And you had not authorized him to do so?

A. At the time I sent him the check I had not done so.

Q. Well, when did you do so?

A. Shortly thereafter.

Q. And who did you authorize him to associate himself with?

James E. Manson.

Have you personally paid any money for attorneys' fees or expenses or anything in this suit?
A. No.

Mr. Wickham: One further question.

RE-DIRECT EXAMINATION.

By Mr. Wickham:
Q. Who was your attorney in the case?
A. I just signed the proclamation. I didn't know who all of them was, I didn't know all the names.
Q. Didn't you know anybody's name?
page 199 } A. I knew one of them names.
Q. What was his name?
A. Lawyer Thompson.
Q. Did Lawyer Thompson give you the paper to sign?
A. No, he didn't.
Q. And you had no personal contact with Lawyer Thompson?
A. No, a neighbor gave me the paper.

Mr. Wickham: No more questions.

RE-CROSS EXAMINATION.

By Mr. Hill:
Q. Mr. Manson, did I understand you to say you had no personal contact with Mr. Thompson?
A. Yes, I have had personal, sure, I have had personal with him.
Q. And was Mr. Thompson present at this meeting?
A. Yes, he was present at one meeting, but we didn't sign the authorization then.
Q. You didn't sign the authorization then?
A. No.
Q. You didn't discuss this matter at the time?
A. Yes.

Mr. Hill: That is all.
The Court: Any objection to this man being excused?
Mr. Wickham: None, Your Honor.
The Court: All right, Mr. Manson, you are
page 200 } excused. You are free to leave now. You may go back to your work.

(Witness excused.)

Mr. Wickham: Arthur L. Price.

ARTHUR L. PRICE,

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. Arthur L. Price, Arthur Leonard Price, 3012 Marshall Avenue, Newport News.

Q. Will you state your occupation?

A. I am a machinist, Newport News Shipbuilding Dry Dock.

Q. Are you a plaintiff in the Newport News segregation case that was brought in 1956?

A. Yes.

Q. Are you married?

A. Yes.

Q. Does your wife work?

A. No.

Q. She does not.

Who are your attorneys in that lawsuit?

A. Mr. Thompson, Hale Thompson, and Mr. Phillip Walker.

Q. Did you make any arrangements with them

page 201 } as to the payment of expenses and legal fees?

A. I don't quite understand what you mean, arrangements.

Q. Well, have you discussed with your attorneys who would pay the cost of the lawsuit?

A. Well, in a way, yes.

Q. In what way?

A. Well, I understand that we are to pay for the suit, the complainants.

Q. Have you paid anything to date?

A. Paid anything to date?

Q. Yes.

A. No, I haven't paid anything.

Q. Do you expect to pay something?

A. Oh, yes.

Q. But your attorneys have not billed you anything?

James E. Manson.

Mr. Robinson: If Your Honor please, the witness has been asked more than once just what his income is, and he says he doesn't remember. I don't see any point in pursuing the line of questions that the defendants are pursuing just to try to reach up into the air and get the figure.

The Court: I overrule the objection, Mr. Robinson. He said he couldn't estimate it, and I think the attorney ought to be allowed to come to it generally if he couldn't get it specifically.

I want you to answer the question as near as you can, nobody may know to the exact penny or dollar.

By Mr. Wickham:

Q. Would you say your income was approximately $60,000 in 1956?

A. I would not, because I can't remember.

Q. Was it within a thousand dollars of that figure?

A. I can't remember.

page 196 } The Court: Now, Mr. Wickham, I would rule that insofar as estimating this year's income, he can do that. I think when he says that he just can't remember about 1956 and 1957, that probably ends it.

By Mr. Wickham:

Q. Can you estimate what your income will be this year?

A. I imagine about $4,000, four or five.

Q. Four or five?

A. I imagine.

Q. And you can't remember what it was last year?

A. No, I cannot.

Q. Now, as to your real estate, would you say that the value of your real estate was $30,000?

A. I have never had it checked.

Q. What would you sell your real estate for?

A. I have never thought about it.

Q. Think about it. If you had to sell it today, what would you sell it for?

Mr. Hill: Your Honor, that question is ridiculous, the man said that he has never thought about selling it. What a person would sell his real estate for would depend on a lot of circumstances. How can he tell that? He might sell it for a hundred thousand dollars if he wanted to.

James E. Manson.

Mr. Robinson: Your Honor, what this man
page 197 } might take for his real estate certainly doesn't represent the fair market value of it.

The Court: Well, we are not in a condemnation case, and we are not establishing fair market value as a test, but it is a pretty unusual person who hasn't got an idea of the fair market price of his property.

The Court is going to overrule the objection.

Mr. Hill: Exception.

By Mr. Wickham:

Q. Would you say that the appraised value of your real estate was as much as $25,000?

A. I would.

Q. As much as $30,000?

A. I imagine it would be, I would have to figure it up first.

Q. More than thirty?

A. I imagine around thirty.

Mr. Wickham: No further questions.

CROSS EXAMINATION.

By Mr. Hill:

Q. Mr. Manson, did you attend a meeting with some of the other parents at either Mr. Thompson's office or the Presbyterian Church or the Cosmos Inn?

A. No.

Q. Did you attend any meeting with other parents?

A. We met at the Newport News school board.

page 198 } Q. You met at the Newport News school board?

A. Yes.

Q. Did you attend any meetings other than at the Newport News school board?

A. I have attended meetings, yes.

Q. Back in 1956 or just before this suit was filed, leading up to the filing of this suit?

A. Yes.

Q. At one of those meetings did you sign an authorization?

A. I did.

Q. Authorizing Mr. Thompson and others to represent you?

A. Yes.

Q. Just one other question.

James E. Manson.

Mr. Hill: Same objection, Your Honor.
The Court: Same ruling.
Mr. Hill: Exception.
The Court: You may answer the question.
The Witness: I can't remember that.

By Mr. Wickham:
Q. Do you know what your income was last year?
A. I can't remember.
Q. Do you own any real estate in the City of Newport News?
A. Yes.
page 194 } Q. How many parcels of real estate do you own in the City of Newport News?
A. I do not know.
Q. Can you estimate the value of the real estate you own in the City of Newport News?
A. I cannot.
Q. The land books in the City of Newport News show that you own five parcels of land, is that correct?
A. Maybe so.
Q. You don't know?
A. Not offhand.
Q. Could it be four parcels of land?
A. I don't know.
Q. Do you own any personal property?
A. I reckon so.
Q. I say, do you own any personal property, answer yes or no.
A. I imagine so.
Q. How many trucks do you own in your business?
A. Four.
Q. Do you own a station wagon?
A. I do.
Q. Do you have any income from renting any real estate?
A. Yes.
Q. How much?
page 195 } A. I do not know.
Q. Can you estimate what your income will be this year?
A. I cannot.
Q. You can't estimate what it was last year?
A. I can't remember.
Q. Would you say that your income was approximately $60,000?

James E. Manson.

Q. You mean you don't know whether you have had any personal contact with your attorneys or not?

A. No.

page 192 } Q. Are you a member of the N. A. A. C. P.?

A. I am affiliated with it.

Q. Is that why you became a plaintiff in the case?

A. It was a community project.

Q. Well, how did you first learn about the lawsuit?

A. From the papers, I imagine.

Q. You have had no contact with any attorneys?

A. No.

Q. And who do you expect to pay the expenses of the litigation?

A. The community, I imagine, would pay some of it.

Q. What do you mean by the community, the N. A. A. C. P.?

A. No—the community met, and they discussed it with me, and that is what I meant.

Q. Who in the community, what people are you talking about?

A. Neighbors and friends—I couldn't call the name, because I don't know.

Q. But you just told a person in your community to put your name down, is that right?

A. It was discussed in the community.

Q. You never authorized anybody, though, to represent you?

Mr. Robinson: If Your Honor please, I object to that as leading—I certainly think that last question was

page 193 } particularly leading.

The Court: The objection is sustained as to the form of the question.

By Mr. Wickham:

Q. Did you authorize anyone to bring a lawsuit for you in the City of Newport News?

A. I signed the affidavit.

Q. Well, who brought you that affidavit?

A. The community, neighbor.

Q. A neighbor?

A. Yes.

Q. Do you know the name of that neighbor?

A. I don't.

Q. What was your income in 1956?

to Newport News. Please do not *disucss* the case with any witnesses who have not testified.

(Witness excused.)

Mr. Wickham: James E. Manson.

JAMES E. MANSON,
was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:
Q. Please state your name and address.
A. James E. Manson, 3808 Marshall Avenue, Newport News, Virginia.
Q. Were you a plaintiff in the Newport News segregation suit that was brought in 1956?
A. Yes.
Q. What is your occupation?
A. Contractor.
page 191 } Q. Do you work for yourself?
A. Yes.
Q. Who were your attorneys in the Newport News segregation case?
A. I do not know.
Q. You do not know?
A. No.
Q. How did you come to be a plaintiff in the case?
A. It was a community project.
Q. A community project?
A. Yes.
Q. Who contacted you?
A. Someone in the community.
Q. You don't remember who contacted you?
A. I don't remember.
Q. But you do know that you were a plaintiff in the case?
A. I do.
Q. But you don't know the names of your attorneys?
A. No.
Q. You never had any personal contact with them?
A. I do not know.

Mr. Hill: Exception.
The Witness: Do you want me to answer that?

By Mr. Wickham:
page 189 } Q. Yes.
A. Approximately—I can't say definitely, because I don't have my income tax report with me—but it was approximately $8,100.
Q. In 1956?
A. That is right.

Mr. Wickham: No further questions.

CROSS EXAMINATION.

By Mr. Hill:
Q. Mr. Fauntleroy, you haven't paid anything to your lawyers, have you?
A. Not yet.
Q. You knew the N. A. A. C. P. was sponsoring the case, did you not?
A. Oh, yes.

Mr. Hill: That is all.

RE-DIRECT EXAMINATION.

By Mr. Wickham:
Q. One further question. You said that you knew the N. A. A. C. P. was sponsoring the case. What do you understand that to mean?
A. Well, for one thing, I know that the N. A. A. C. P. lawyers are just about the best in the world, and naturally I want the best that can be afforded me, for the opportunity I am seeking.
page 190 } Q. Do you expect to pay the N. A. A. C. P. lawyers?
A. Oh, yes, when they present their bill.
Q. Do you expect them to present their bill?
A. I am expecting my bill to come from the attorney I hired, but that is up to them.

Mr. Wickham: No further questions.
The Court: May this witness be excused?
All right, you are excused. You may leave and return

Josie F. Pravad.

Q. Where are you employed?

A. I am employed with the Justice Department, Bureau of Prisons, Washington, D. C.

Q. Don't you have an annual salary from your employer?

A. Yes, of course, government salary.

Q. What is your salary?

A. I really couldn't tell you, I am a GS-4, and you would have to look at the table, I wouldn't know.

Q. You couldn't estimate?

A. I would be afraid to.

Q. And you have no idea what your hasband makes?

A. None whatever.

Q. You couldn't estimate what your salary was within $1,500?

A. Hardly, I would be afraid to. You have a table, there is a GS-4 Table that would tell you that.

Q. GS-4 Table?

A. Yes.

Q. Well, do you know what rating your hasband has with the *governemtn?*

A. I really don't.

Q. Is it higher than a GS-4?

page 234 } A. They don't go by that, they go by levels, and I am not sure about that, I don't know.

Q. You don't know what level?

A. No.

Q. Would you be surprised if you and your husband made more than $7,000 a year?

A. I am sorry, I can't say that, because I don't fill out my forms, I tell you; we go to a woman, she puts the things in and we send them in, I do know that we filed the forms, but as to the amount I couldn't tell you that.

Q. Would you be surprised if you and your husband made more than $5,000 a year?

A. If we do we don't see it. But I couldn't tell you, I am sorry.

Mr. Wickham: No more questions.

CROSS EXAMINATION.

By Mr. Robinson:

Q. Mrs. Pravad, did you attend some meetings that were held with reference to the school situation in Arlington some

Josie F. Pravad.

A. File clerk in the government.
Q. Are you married?
A. Yes, I am.
Q. Does your husband work?
A. Yes, he does.
Q. Where is he employed?
A. Washington Navy Yard, Washington, D. C.
Q. Were you a plaintiff in the Arlington School segregation case that was brought in 1956?
A. Yes.
Q. Who represented you in that case, or who is representing you?
A. Who is representing me? I haven't a lawyer representing me, if that is what you mean.
Q. You do not?
page 232 } A. No, I don't.
Q. How did you become a plaintiff?
A. How did I become a plaintiff? Well, because education in Arlington, Virginia, is so very unequal, until I decided that I would like for my daughter to go to either school where she would have equal opportunity in education. And so I decided to try to enter her. And when she was turned down, I understood that I could be represented by the National Association for the Advancement of Colored People, who had a case, and consequently I did go under—well, as I said, I sent my child to the school and she was turned down, that is all I know.
Q. And you are being represented by the N. A. A. C. P.?
A. Yes.
Q. Did you and your husband file a joint income tax return in 1956?
A. We did.
Q. Could you estimate the income in that year?
A. I am sorry—

Mr. Hill: Same objection.
The Court: Same ruling.
Mr. Hill: Exception.
The Witness: I couldn't any way.

By Mr. Wickham:
Q. Could you estimate it in 1957?
page 233 } A. I could not, because we carried our W-2 forms to a woman and she fills them out, and we have a joint return, that is all I know.

Audrey T. Newman.

Mr. Hill: Exception.

The Witness: Well, I couldn't tell you what my husband makes, I don't question him on it.

By Mr. Wickham:

Q. Well, did you file a joint income tax return?

A. That is right.

Q. Did you sign it?

A. I signed it.

Q. But you didn't read it?

A. But he takes care of it, and I trust him.

Q. You did not read it?

A. I don't read it all, he takes care of the bills.

Q. So you don't know what your income was?

A. Not exactly, I couldn't say exactly.

Q. Could you estimate it? Just approximately what was the income? Was it over $6,000?

A. No, it wasn't.

Q. Was it over $5,000?

A. I just can't say exactly what it is.

Q. Well, could you estimate it in 1957, this last page 229 } year?

A. It runs about the same each year, but I don't guess it is over $4,000.

Q. You don't know what your husband makes?

A. Not exactly, I do not know the exact figures he makes, because I don't ask him about it.

Q. Who were your attorneys in this case, in the Arlington School case?

A. Well, what do you mean?

Q. Who represented you—your children were also plaintiffs, weren't they?

A. One boy.

Q. One boy?

A. Yes.

Q. Who represented you and your child?

A. Well, that was more than one—I didn't talk to any certain lawyer, they gave us some advice, and we had a meeting, I didn't talk to them until after I filed my pupil placement report.

Q. You say they gave you some advice at a meeting, was that a meeting of the N. A. A. C. P.?

A. This was a meeting of mothers first.

Q. And then when was the next meeting?

Josie F. Pravad.

A. I don't know exactly when it was, it was some time during this summer.

page 230 } Q. What went on at that meeting?

A. We decided that we wanted our children to go to school, the one that was nearest us.

Q. Do you know whether or not the State Conference of the N. A. A. C. P. is to pay the expenses of this litigation?

A. I can't say for sure.

Q. You don't have any knowledge of that at all?

A. Not exactly.

Q. What do you mean by "not exactly"? Do you expect to pay any part of the expenses in the litigation?

A. No, I don't. I do know the N. A. A. C. P. will help us in legal advice, I don't expect to pay.

Mr. Wickham: No further questions.

CROSS EXAMINATION.

By Mr. Hill:

Q. You haven't paid anything to your lawyers, have you?

A. None whatsoever, I haven't paid one cent.

Mr. Hill: That is all.

The Court: All right, Mrs. Newman, you may be excused now, you may leave and return to your home, or sit in the courtroom if you like.

(Witness excused.)

Mr. Wickham: We call Josie F. Pravod.

page 231 } Whereupon,

JOSIE F. PRAVAD,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. Josie F. Pravad, 2900 South 20th Street, Arlington Virginia.

Q. What is your occupation?

George L. Nelson.

A. I am a policeman in Washington, D. C.

page 225 } Q. Were you a plaintiff in the Arlington segregation suit?

A. Yes, sir.

Q. Are you still a plaintiff in that suit?

A. Yes, I am.

Q. Will you approximate your income for the year 1956?

Mr. Hill: I object.

The Court: Same ruling.

Mr. Hill: Exception.

The Court: Repeat the question.

By Mr. Wickham:

Q. Will you estimate your income for the year 1956?

A. About $4,990.

Q. Are you married?

A. Yes, I am.

Q. Does your wife work?

A. No, she doesn't.

Q. You estimate it at $4,990. Is that after social security?

A. No, that was my base salary at the time the social security and taxes are taken out.

Q. That is your base salary, you get more for overtime?

A. If I worked overtime, yes, sir.

page 226 } Q. Did you work overtime in 1956?

A. I worked a little overtime.

Q. So you might say that your income possibly was over $5,000 in 1956?

A. It could have been.

Q. Do you know whether or not the State Conference of the N. A. A. C. P. was going to pay the expenses in this litigation, and the attorneys' fees?

A. Do I know—

Q. Do you know whether or not the State Conference of the N. A. A. C. P. was to pay the expenses and attorneys' fees in the Arlington segregation case?

A. Well, I don't know—I don't—I wouldn't say that I knew.

Q. Who was your attorney?

A. Mr. Brown, Mr. Reeves.

Q. Did you have any other attorneys?

A. No.

Q. Did you ever make any arrangements with Mr. Brown

and Mr. Reeves as to the payment of the expenses in this litigation?

A. Well, I never approached them.

Q. And they never approached you about it?

A. No. Well, the case isn't over, is it?

Q. Do you expect them to render a bill for
page 227 } their services?

A. If they render a bill I would try to pay it, sir.

Mr. Wickham: No further questions.

The Court: You are excused now, and you may either leave, or if you care to, you may sit in the room.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Audrey T. Newman.

Whereupon,

AUDREY T. NEWMAN;

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. Audrey T. Newman, 5554 Lee Highway, Arlington.

Q. Are you a plaintiff in the Arlington segregation suit that began in 1956?

A. Yes.

Q. What is your occupation?

A. Housewife.

Q. Are you married?

A. Yes.

Q. What is the occupation of your *hsband?*

A. He works for the Federal Government.

page 228 } Q. Do you all file a joint income tax return?

A. Yes.

Q. Could you estimate what that income was in 1956?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:
Q. Could you estimate what her income was in 1956?
A. I would estimate $3,000.
Q. Do you own any real estate in Arlington County?
A. Yes.
Q. Is it your home?
A. Yes.
Q. Can you estimate the value of your home in dollars?
A. I would estimate $18,000.

Mr. Wickham: No further questions.
The Court: Any cross examination?

(No response.)

The Court: Mr. Hamm, you are excused, and you may go back to Arlington if you wish.

(Witness excused.)

Mr. Wickham: Edward D. Strother.

Whereupon,

EDWARD D. STROTHER,

page 223 } was called as a witness, and having been first duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION.

By Mr. Wickham:
Q. Will you state your name and address, please.
A. My name is Edward D. Strother, 2819 South 18th Street, Arlington.
Q. What is your occupation?
A. I am a horseshoer.
Q. Do they have any horses left in Arlington County?

A. We don't have too many in Arlington, I have got to go out and get them.
Q. Were you a plaintiff in the Arlington Segregation Case that was brought in 1956?

A. Yes, sir.
Q. Are you married?
A. Yes, sir.
Q. Does your wife work?
A. Yes, sir.
Q. Would you estimate—first of all, do you and your wife file joint returns, tax returns?
A. Yes, sir.
Q. Could you estimate the total income for 1956?

Mr. Hill: I object, Your Honor.
The Court: Same ruling.
Mr. Hill: Exception.

page 224 } By Mr. Wickham:
Q. You may answer the question.
A. What did you say?
Q. Could you estimate the total income for yourself and your wife in 1956?
A. Oh, my income tax, about $8,000.

Mr. Wickham: No further questions.
Mr. Hill: No questions.
The Court: Mr. Strother, you are excused, you may leave and return to your home or your business, or if you care to, you may still stay in the courtroom.

(Witness excused.)

The Court: Next witness.
Mr. Wickham: George L. Nelson.

Whereupon,

GEORGE L. NELSON,
was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:
Q. Will you state your name and address, please.
A. George L. Nelson, 2005 North Camden Street, Arlington.
Q. What is your occupation?

thereof. Therefore, I think it is very material that it be determined whether or not Mrs. Marks was induced by the financial aid offered by the State Conference.

The Court: Read the question again, please?

(Question read.)

Mr. Hill: We would also like to state, Your Honor, before you rule, that not only is this question speculative, but also this is the defendants' witness, and he is asking those speculative questions.

The Court: I am going to overrule the objection.

The Witness: I would certainly have started in this suit, whether I would have gotten up to the Supreme Court and back again on my own finances, I doubt, but I certainly would have started and gone as long as I could have financed it.

page 219 } Mr. Wickham: No more questions.

The Court: You are excused. You may return, if you like, to Arlington, or wherever you care to go, but don't discuss the case with any other witnesses.

(Witness excused.)

The Court: We will recess until ten minutes to eleven.

(Recess.)

page 220 } The Court: Next witness.

Mr. Wickham: We call E. Leslie Hamm.

Whereupon,

E. LESLIE HAMM,

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please.

A. E. Leslie Hamm, 1900 North Camden Street, Arlington, Virginia.

Q. And what is your occupation?

A. Architectural draughtsman.

E. Leslie Hamm.

Q. Are you a plaintiff in the Arlington Segregation Case?
A. I am.
Q. Are you one of the original plaintiffs that brought suit in 1956?
A. Yes.
Q. Who were your attorneys in that suit?
A. Edwin C. Brown represented me.
Q. No other attorney?
A. Well, he had associates, Mr. Robinson and Mr. Hill.
Q. Did you have any understanding with Mr. Brown concerning the payment of expenses or legal fees?
page 221 } A. We didn't discuss payment of fees.
Q. Did you know whether or not if the N. A. A. C. P. would bear the expenses and the legal fees in that litigation?
A. I did not.
Q. You did not know?
A. No.
Q. Have you received a bill from Mr. Brown or any other attorney for services rendered to date in that case?
A. No, I haven't.
Q. Do you expect to?
A. Well, I don't know, we haven't discussed it as I said; if they present a bill I will have to be obligated to them, I suppose.
Q. What was your income in 1956?

Mr. Hill: Same objection, Your Honor.
The Court: Same ruling.
Mr. Hill: Exception.

By Mr. Wickham:
Q. Can you estimate just approximately what your income was in 1956?
A. Approximately $5,000.
Q. Are you married?
A. Yes.
Q. Are you separated?
A. No.
page 222 } Q. Does your wife work?
A. Yes.
Q. Could you estimate what her income was in 1956?

Mr. Hill: Same objection.
The Court: Same ruling.

about Arlington soon, because I had been very impatient to get the Arlington schools desegregated.

Q. Did you personally employ them to represent you, or did you work through the local branch of the N. A. A. C. P. either as a member or as an officer?

A. No, I realized that the setup was that the suit was not brought by the branch, that the suit was brought by the plaintiffs as individuals, but I knew that they would be the lawyers who would be drawing up the brief when it was finally drawn up.

Q. You mean that they would be the attorneys to represent all the plaintiffs in the case?

A. Yes.

Q. You knew that before you had obtained the plaintiffs?

Mr. Robinson: If Your Honor please, that is a forked question. I think that Mr. Wickham should reframe it. He has got two questions in one there, and I don't think it is proper to ask this witness that kind of a ques-
page 216 } tion.

The Court: I overrule the objection.

Mr. Robinson: I except, Your Honor.

The Court: Read the question back, please.

(Question read.)

The Witness: I did not obtain any plaintiffs. I obtained some signatures to a petition. Later some of those people became plaintiffs, some of them didn't.

By Mr. Wickham:

Q. Well, you became a plaintiff later?

A. Yes, I became a plaintiff. I signed an authorization when the time came and became a plaintiff.

Q. And who did you employ to represent you?

A. I signed an authorization for Attorney Edwin C. Brown, and I think the authorization form stated "and other attorneys" but the authorization I signed in the presence of Attorney Brown.

Q. Did you have any arrangement with Attorney Brown as to the payment of expenses and legal fees?

A. No, because I knew that in cases of this kind that the State Conference would finance the suit, and I made contributions to the N. A. A. C. P., but there was never any legal fee, except I did pay, I think it was, $15 to have a

brief, printing the brief when the suit came up in Baltimore before the Fourth Circuit Court.

Q. Did you have ample means to help defray
page 217 } the expenses of the litigation?

Mr. Hill: Objection. The question is leading, Your Honor.

The Court: Will you read the question, please?

(Question read.)

The Court: I overrule the objection.

Mr. Robinson: Your Honor, I further object to that same question on the ground that we have objected to questions of the same character.

The Court: Objection overruled.

Mr. Robinson: Exception.

The Witness: In Mr. Thompson's report he tells you what my income is. They went down to the courthouse and looked at my divorce decree, and they tell you that I got $4,000 a year alimony. That isn't enough to go up to the Supreme Court and back twice.

By Mr. Wickham:

Q. Do you own any real estate in Arlington County?

A. Yes, I own the house in which I live.

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

By Mr. Wickham:

Q. What is the value?

A. It is assessed, I think, at around $31,000.

Q. If you knew that the Arlington case was not
page 218 } to be financed by the State Conference, would you have been a plaintiff in that suit or continue the prosecution of that suit?

Mr. Hill: I object to that, Your Honor. That is speculation. Here it is two or three years later.

Mr. Wickham: If Your Honor please, again I refer to Chapter 36, which uses the word "inducement," and the prohibition of the provisions of that chapter prohibit anyone who has no financial interest in the litigation from inducing another person to litigate against the state or an agency

BARBARA S. MARKS,

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you please state your name and address?

A. My name is Barbara S. Marks, 6897 North

page 212 } Washington Boulevard, Arlington.

Q. Mrs. Marks, were you a plaintiff in the Arlington school segregation cases brought in 1956?

A. I was.

Q. Are you a member of the Caucasian race?

A. I assume you would say so. I question these race definitions, but I assume you would say so.

Q. What is your occupation?

A. Housewife.

Q. Do you hold any office in the local branch of the N. A. A. C. P. in Arlington County?

A. I am the vice president.

Q. You are today?

A. Yes.

Q. Were you in 1956?

A. Yes.

Q. How did you become a plaintiff in this suit?

A. I became a plaintiff in this suit because I object strongly to my children attending segregated schools, and I would like to see schools desegregated in Arlington.

Q. How did you become a plaintiff in this suit?

A. I signed a petition which was presented to the school board on July, 28th, requesting Arlington school board to cease assigning children on a basis of race.

page 213 } Q. Where did you obtain that petition?

A. I think that the branch received a copy of that petition probably through the mail from Richmond.

Q. From the State Conference?

A. Probably.

Q. And what did that petition say?

A. Well, I am sure you have seen a copy of it. I don't have it here, but it requested that the Arlington school board reorganize their school system so that assignment would not be based on race, and it was a petition to be signed by parents of school-age children, and it was presented on July 28th to the Arlington school board at a school board meeting.

Barbara S. Marks.

Q. Well, what action did the school board take on that petition?

A. The school board said they were going to follow instructions they had received from the State Department of Education, I guess it was, and continue the segregated setup for the following school year.

Q. Did you say you received that petition as an officer of the N. A. A. C. P., local branch of the N. A. A. C. P.?

A. I don't think the petition was sent to me, it was sent to the president.

Q. To the president?

page 214 } A. We discussed it in Executive Committee meeting, and I signed it in Executive Committee meeting.

Q. And then did you help circulate that petition?

A. I helped circulate that petition.

Q. Now, after the school board refused to grant the request contained in the petition, what step did you take next, leading up to the bringing of the lawsuit?

A. Well, I think in conversation with Attorney Hill and Attorney Robinson I asked if we were not going to do something to follow up on that petition after it had been refused.

Q. What was Attorney Hill and Attorney Robinson—how did you happen to be talking to them?

A. I met them at the State Convention of the N. A. A. C. P. in Charlottesville, and asked them if we couldn't follow up in Arlington, that was in October 1950, if we couldn't follow up as long as the school board had refused to do anything on our petition.

Q. What capacity did Mr. Hill and Mr. Robinson hold?

A. Well, you knew that Mr. Hill was chairman of the State Legal Staff.

Q. And Mr. Robinson?

A. Well, he is on the legal staff, too.

Q. So this was—was this discussed, you say, at the State Conference?

page 215 } A. It was discussed very fleetingly, because they were very busy, and they said they would get in touch with us later.

Q. Well, did you expect to employ Mr. Hill and Mr. Robinson to represent you?

A. Well, I knew that when the time came to file the suit that they would be the ones who would probably prepare the brief, and I was trying to urge them to do something

A. $7,000.

Mr. Hill: Same objection.
The Court: Same ruling.
Mr. Hill: Exception.

By Mr. Wickham:
Q. What was it?
A. $7,000.
Q. Are you married?
A. Yes.
Q. Is your wife employed?
A. Yes.
Q. What is her occupation?
A. Teacher.
Q. Where is she employed?
A. Burley.
Q. In the city of Charlottesville?
A. Yes, joint high school.
Q. Was she employed in 1956?
page 258 } A. Yes.
Q. Is she still employed there?
A. Yes.
Q. Could you estimate your wife's income for 1956?
A. I think about $4,000.
Q. And it has been about the same in 1957?
A. Yes.

Mr. Wickham: That is all, thank you.
The Court: You are excused, Doctor, you are free to leave.

(Witness excused.)

The Court: Next witness.
Mr. Wickham: George R. Ferguson.

Whereupon,

GEORGE R. FERGUSON,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:
Q. Will you state your name and address, please?

Marshal T. Garrett.

A. Well, the arrangement was that we would pay the costs of the Court if the School Board or State didn't take care of our expenses.

Q. Will you repeat that? I don't quite understand what you mean by the School Board.

A. I meant that someone else would take care, the one that would bring the charges against would pay for it—

Q. You mean that the court costs would be assessed against the School Board?

A. Or someone, I don't know.

Q. But that you would bear the expenses if they were assessed against the plaintiff?

page 256 } A. That is right.

Q. How about the attorneys' fees?

A. That is the same thing, that would be taken care of.

Q. But you would pay the attorneys' fees?

A. Yes, if necessary.

Q. Well, have you ever been billed for any services rendered by your attorneys?

A. Not yet, no.

Q. But you expect to be billed?

A. Well, maybe, I can't say.

Q. Do you know whether or not the State Conference of the N.A.A.C.P. is financing the litigation?

A. Well, they were supposed to help out with it, but I can't say; my understanding was that if someone had to pay it, and it came down to a final basis, I would be responsible for it.

Q. For your share?

A. For my share.

Q. Doctor, do you own any real estate in the city of Charlottesville?

A. Yes, a little bit.

Q. How much?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

page 257 } Mr. Hill: Exception.

The Witness: Do I answer?

The Court: Yes.

The Witness: Well, I guess my holdings would be approximately $50,000.

By Mr. Wickham:

Q. And what was your income in 1956?

Eugene Williams.

Q. You make up your own pay-roll, and yet you don't have any idea of what your income is?

Mr. Hill: Your Honor, the witness estimated his income.

Mr. Robinson: This is Mr. Wickham's witness, and he is not on cross-examination.

The Court: I sustain the objection.

Mr. Wickham: If Your Honor please, I would like to subpoena this witness' income tax return for 1956 and 1957, unless he can furnish us with the amount of his income for those years.

The Court: I don't believe that question has ever been put to them, has it? I don't know that any precise question has ever been put to them as to whether he can furnish it.

Mr. Wickham: I will put it to him.

By Mr. Wickham:

Q. Mr. Williams, can you furnish the Court with your income for 1956 and 1957?

A. I will try.

Q. I would like to have a "yes" or "no" answer on that.

A. I will try to get it, that is the best I can do.

page 253 } Q. Well, when do you think you could obtain that information, if you can obtain it?

A. In the next two or three days.

Q. You couldn't obtain it today from the Richmond office?

Mr. Hill: Your Honor, the witness said he would try to get it, he would get it in the next two or three days, he said he didn't know whether he could get it from the Richmond office; obviously he wouldn't know that.

Mr. Wickham: He didn't say he would get it yet.

Mr. Hill: He said he would try.

The Court: At what time can you obtain the figures on your 1956 and 1956 income?

The Witness: I will try to have it in the next two or three days.

Mr. Wickham: We have no further questions, Your Honor.

Mr. Robinson: If Your Honor please, the Court understands that we object to this witness being required to supply this information on the same basis that we made objections to questions that were asked for testimony concerning his income, that is, the income of this witness, and the same question asked of other witnesses.

The Court: The objection is overruled.

Mr. Robinson: Exception.

page 254 } The Court: Mr. Williams, would you use that envelope, or at least that address, which is the collection address, a self-addressed stamped envelope, and try to obtain that information, and could you get the letter here by Monday morning?

The Witness: Yes.

The Court: All right.

(Witness excused.)

Mr. Wickham: Marshal Garrett.

Mr. Hill: May it please the Court, let the record show the witness was excused.

The Court: All right. The last witness was excused.

Whereupon,

MARSHAL T. GARRETT,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please?

A. Marshal T. Garrett, 320 West Main Street, Charlottesville, Virginia.

Q. What is your occupation?

A. Physician.

Q. Are you a plaintiff in the Charlottesville School segregation case that was brought in 1956?

page 255 } A. I was.

Q. Who are your attorneys?

A. Mr. Hill and Mr. Robinson.

Q. Are you an officer in the local chapter of the N.A.A.C.P?

A. I was.

Q. You were in 1956?

A. Yes, 1956.

Q. And you are no longer an officer?

A. No.

Q. What arrangements did you make with your attorneys as to the payment of expenses and attorneys' fees in the Charlottesville case?

never believed in separate but equal education, and after May 17, 1954, that affirmed my belief.

page 249 } Q. What was your first contact with your attorneys?

A. Well, my first contact with my attorneys was that I told them of my action, that I had made application for my children to enter Johnson Elementary School, and, well, there it went on.

Q. Where did you tell your attorneys this, did you come to Richmond to tell them that?

A. I don't remember.

Q. You don't remember?

A. I don't remember if I came to Richmond, or if I talked to them in Charlottesville.

Q. Well, if you told them in Charlottesville, where would that place have been?

A. I don't remember where I told them.

Q. Do you remember talking to them?

A. Sure.

Q. But you don't remember where?

A. You see, my home office is here in Richmond, I am in Richmond as much as in Charlottesville, so I don't remember.

Q. If it was in Charlottesville, where would it have been?

A. I don't remember where I told them, it could have been in the street, it could have been in church, I don't remember.

page 250 } Q. Will you state what your income was the last year?

Mr. Hill: Same objection.

The Witness: No, I would not state that.

The Court: Overruled.

Mr. Hill: Exception.

By Mr. Wickham:

Q. What was your income in 1957?

A. I would not state it.

Do I have to state it?

The Court: Yes, the Court has ruled that material as far as you and the rest of the witnesses are concerned in the proceeding.

The Witness: Well, I don't remember my income either;

Eugene Williams.

I am under oath and I don't remember it.

By Mr. Wickham:
Q. You can't estimate your income?
A. I can estimate it.
Q. What is your estimate?
A. Maybe as much as $4,000.
Q. It wouldn't be as much as $6,000?
A. I just told you I didn't remember, and you asked me to estimate.
Q. Would it be as much as $6,000?
A. I don't remember.

Mr. Robinson: Your Honor, I object, I think
page 251 } the witness is right about this, he said he couldn't state definitely, and he estimated it when he was asked, and I think that is all the witness can be expected to do.
The Court: Objection sustained.

By Mr. Wickham:
Q. Have you got your W-2 form?
A. No.
Q. Have you got it available?
A. Not as far as the Federal Government—
Q. Have you got it at home?
A. I don't know that.
Q. Didn't you state a few minutes ago that you had the W-2 form?
A. I don't know, if not, I can get it from the Federal Government.
Q. Did you have any income other than as manager of the insurance company?
A. No.
Q. Could you call your office here in Richmond and find out what your income was in 1957?
A. They may have it.
Q. Wouldn't they have it?
A. I work in Charlottesville, I don't know what they have in Richmond.
Q. Did you get paid out of Richmond or out
page 252 } of Charlottesville?
A. I get paid out of Charlottesville; I make up my own pay-roll.

The Witness: Your Honor, I object to that question.

The Court: Your attorney has already objected to it, and I have already overruled it. The Court wants the information in the record. So if you have the information or can get approximately the figure—

The Witness: I don't have it, I don't know.

By Mr. Wickham:

Q. Would you say it was more than $5,000?

A. I couldn't say.

Q. Would you say it was more than $4,000?

page 246 } A. I couldn't say.

Q. You have no idea?

A. I think that is my personal affair, I refuse to answer the question.

Mr. Wickham: If Your Honor please, I believe the witness knows the answer to the question, and he is refusing to answer. I think that he should be made to answer the question. He keeps saying it is not anybody's affair but his own.

The Court: Mr. Davis, the question regarding the income of you and the other witnesses this morning has been ruled material by the Court to the proceeding here, and although objection has been made by the complainants' lawyers in each case to this question, the Court has required it to be given in each case. So you are requested to furnish the Court with such information as you have, an approximation of the figures of your income for the period in question.

State the question again.

By Mr. Wickham:

Q. Would you approximate your income for 1956?

A. For 1956?

Q. That was the year in which you became a plaintiff in the Charlottesville School Segregation case.

A. Approximately $3,500.

Q. No more than that?

page 247 } A. That is as close as I can get to it offhand.

Mr. Wickham: We have no further questions.

Mr. Hill: No questions.

The Court: You are excused, you may leave.

(Witness excused.)

Eugene Williams.

The Court: Next witness.
Mr. Wickham: Eugene Williams.

Whereupon,

EUGENE WILLIAMS,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you please state your name and address?

A. Eugene Williams, 620 Ridge Street, Charlottesville, Virginia.

Q. What is your occupation.

A. District manager for Richmond Beneficial Insurance Company.

Q. Is that a life insurance company?

A. Yes.

Q. Were you a plaintiff in the Charlottesville segregation case that was brought in 1956?

A. Yes—well, not in 1956, because my children weren't old enough to enter school.

page 248 } Q. When did you become a plaintiff?

A. Last summer.

Q. In 1958 of this year?

A. Yes.

Q. Who are your attorneys in that suit?

A. I used the attorneys of the N.A.A.C.P.

Q. Who are they?

A. Well, I wouldn't know all of them, I know the chief counsel, Mr. Oliver Hill, and Spotswood Robinson.

Q. Are there any others that you can think of?

A. As I say, I wouldn't know all of them.

Q. Do you know a Mr. Tucker?

A. I know Mr. Tucker, yes.

Q. Is he one of your attorneys in that suit?

A. I am using the lawyers of the N.A.A.C.P., was my answer.

Q. Have you made an arrangements with those lawyers as to the payment of expenses or attorney's fees?

A. Well, if the N.A.A.C.P. failed to pay them, well, I have agreed that I would accept the bill.

Q. How did you come to be a plaintiff in the School case?

A. I came to be a plaintiff because, number one, I have

Harry Stother.

A. Well, the group of parents got together in a meeting and said that our children should go to the nearest school to where they lived, and the lawyers said they would represent us if we had to go to court.

Q. When did they tell you that?

A. At one of the meetings.

Q. Well, what meeting was this?

A. The meeting of the parents at the church.

Q. Well, were the N. A. A. C. P. attorneys present at that meeting?

A. When they told us that they were?

Q. Do you know how they got to that meeting?

A. No, sir, I do not.

Q. Did you ask them to come to the meeting?

A. No, I didn't.

page 243 } Q. I know it would be hard as a taxicab driver, but can you estimate what your income is going to be this year?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: I couldn't estimate.

By Mr. Wickham:

Q. What was your income in 1957?

A. As well as I can remember, a little over $3,800.

Q. Does your wife work?

A. No, sir.

Q. She does not work.

Mr. Wickham: We have no further questions.

The Court: Any cross?

Mr. Hill: No questions.

The Court: All right, Mr. Stother, you are excused, you are free to leave and go back to your business, if you like.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: Alex M. Davis.

Whereupon,

ALEX M. DAVIS,
was called as a witness, and having been first duly sworn, was examined and testified as follows:

page 244 } DIRECT EXAMINATION.

By Mr. Wickham:
Q. Will you state your name and address, please.
A. Alex M. Davis, 607 10½ Street, Northwest, Charlottesville, *Virgina*
Q. What is your occupation?
A. Carpenter.
Q. How long have you been a carpenter?
A. Since September 15.
Q. Of this year?
A. Of this year.
Q. What was your occupation before that time?
A. I was a general field superintendent for an insurance company.
Q. You were what?
A. General field superintendent for an insurance company.
Q. I see. As a carpenter, have you got your own business, or are you employed by someone else?
A. I am employed by private people.
Q. Are you a plaintiff in the Charlottesville Segregation case that was brought in 1956?
A. I am.
Q. What was your occupation at that time?
A. I was a district superintendent in the Char-
page 245 } lottesville district for the insurance company.
Q. Did you have any other job on the side at that time?
A. No.
Q. Are you married?
A. I am married.
Q. Does your wife work?
A. No.
Q. Will you estimate what your income was in 1956?

Mr. Hill: Same objection, Your Honor.
The Court: Same ruling.
Mr. Hill: Exception.

By Mr. Wickham:
Q. What was your income in 1956, approximately, just an estimate?

Ruth M. Rout.

Q. Well, what arrangements did you make with Mr. Reeves and Mr. Tucker as to the payment of expenses and attorney's fees?
A. Payments?
Q. Yes.
A. We didn't make any arrangement for payment.
Q. Well, you don't expect to pay anything?
A. No.
Q. Do you know whether or not the N. A. A. C. P. is going to pay for the expenses in that suit?
A. That is the usual—they usually do.
Q. Did you and your husband file a joint return, income tax return in 1956, or 1957?
A. Joint?
Q. Yes.
A. We filed this year for last year joint, yes.
Q. Can you estimate what the income is?

Mr. Hill: Same objection, Your Honor.
The Court: Same ruling.
Mr. Hill: Exception.
The Witness: I can't recall.

page 239-240 } By Mr. Wickham:
Q. Are you on *slary* with the government?
A. Yes.
Q. Do you know what your salary is with the government?
A. Yes.
Q. What is your salary?
A. I didn't work for a whole year in 1957.
Q. Well, what is your salary in 1958?
A. I am sorry, I can't tell you exactly now.
Q. Can you approximate it within $500?
A. I can't see what that has to do with this. I can't recall it exactly.
Q. I say, can you approximate it?
A. It is about $3,400.
Q. Did your husband make more than you?
A. He makes more, yes.
Q. He makes more than you do?
A. Yes.

Mr. Wickham: No further questions.
Mr. Hill: No questions.
The Court: All right, you are excused, you may leave.

Harry Stother.

(Witness excused.)

The Court: Next witness.
Mr. Wickham: Harry Stother.

page 241 } Whereupon,

HARRY STOTHER,
was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:
Q. Will you state your name and address, please.
A. Harry Stother, 2102 North Dinwiddie Street.
Q. What is your occupation?
A. I am a cab driver.
Q. How long have you been a cab driver?
A. Since April of this year.
Q. What was your employment before that time?
A. Washington Terminal, Washington, D. C.
Q. What did you do there?
A. Coach cleaner at the terminal.
Q. Are you a plaintiff in the Arlington School segregation case?
A. Yes, I am.
Q. When did you become a plaintiff in that case?
A. Well, either in July or August, I don't remember exactly.
Q. Of this year?
A. Of this year.
Q. Who is your attorney in that case?
page 242 } A. My attorney—I don't know—we had the N. A. A. C. P. lawyers, I don't know which one it is.
Q. The N. A. A. C. P. attorneys are your attorneys, representing you?
A. Yes, sir.
Q. When did you first—when did they first get in contact with you?
A. I don't think—they have never been in contact with me.
Q. Well, how did you become a party to the suit?

time during the summer of this year, the summer of 1958?

A. Yes, I did.

Q. And other parents of Negro children in Arlington County also attended?

page 235 } A. Yes, they did.

Q. Did you know about how many such meetings you did attend?

A. Well, to be frank with you, I only attended one, because we went on our vacation around that time, and I was not available.

Q. Do you know attorney Frank D. Reeves from Washington?

A. Yes, I do.

Q. Was Mr. Reeves present at that meeting?

A. Yes, he was.

Q. Do you know Attorney Otto L. Tucker from Alexandria?

A. I have met him.

Q. Was he present at that meeting?

A. I think he was, I am not too sure.

Q. Wasn't it at this meeting that you authorized Mr. Reeves and/or Mr. Tucker to represent you in litigation concerning your child in the schools of Arlington County?

A. Yes, I did.

Q. And that was during the summer of 1958?

A. Yes.

Mr. Robinson: That is all.

The Court: You may be excused, you are free to leave and return *hom.*

(Witness excused.)

page 236 } Mr. Wickham: Ruth M. Rout.

Whereupon,

RUTH M. ROUT,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you state your name and address, please.

Ruth M. Rout.

A. Ruth Rout, 3011 Seventeenth Road, Arlington, Virginia.

Q. What is your occupation?

A. Government clerk.

Q. From what department?

A. Army, Department of Defense.

Q. In Washington?

A. Yes.

Q. Are you a plaintiff in the Arlington School Segregation case?

A. Yes.

Q. Are you married?

A. Yes.

Q. What is the occupation of your husband?

A. Government clerk.

Q. And where does he work?

A. Department of Defense, Washington, D. C.

page 237 } Q. Does he work at the same place you work?

A. Yes.

Q. What type of job do you do there, what type of work?

A. I am a clerk-typist.

Q. And what does your husband do there?

A. He is a clerk.

Q. What type of work?

A. Supervisor.

Q. Clerk-supervisor?

A. Yes.

Q. Is he your supervisor?

A. No.

Q. He is not in the same office?

A. No.

Q. When did you become a plaintiff in the Arlington School case?

A. Just this year.

Q. 1958?

A. Yes.

Q. Who is your attorney in that suit?

A. Mr. Tucker, Mr. Reeves.

Q. Did you go to them and retain them—did you go to them and get them to represent you in this suit?

A. Yes.

page 238 } Q. Where does Mr. Reeves—where is his office?

A. I didn't go to his office, we parents of the children, we decided that we would get help from the attorney.

W. Lester Banks.

Mr. Mays: I would like to call Mr. Banks.

Mr. Robinson: If Your Honor please, while we are waiting, I would like to say that during the luncheon hour I made photostatic copies of the documents appearing as Plaintiffs' Exhibit No. 2, and I have shown the photostatic copy to counsel that I would propose to put in the record in substitution of the original.

The Court: Thank you, Mr. Robinson.

Whereupon,

W. LESTER BANKS,

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION—resumed.

Mr. Mays: I think, Your Honor, that in the three quarters of an hour session since we had the recess, we have clarified much, and I think we can save a great deal of time.

page 281 } By Mr. Mays:

Q. Mr. Banks, I will ask you whether or not you have prepared a summary sheet of expenses and legal fees expended by the conference?

A. Yes.

Q. Beginning with July 28, 1956, and extending through September 26, 1958, have you prepared such a sheet?

A. Yes, sir, I have.

Q. Do you have it in your hand?

Mr. Hill: Mr. Mays, will you let the record show that this was in school cases?

Mr. Mays: I am not done yet. I don't mind the interruption at all.

By Mr. Mays:

Q. I have just handed, Mr. Banks, to His Honor a sheet of paper which I believe is the original of the document you hold in your hand.

A. Yes, sir.

Q. And they have conformed, so that what you are testifying from is exactly what His Honor has. If you will look at that you will note four typewritten columns. The first column is headed "Date." Does that indicate date of payment of the individual checks?

moned for 2:00 o'clock tomorrow, but we will certainly conclude tomorrow.

The Court: Is it possible by any chance to get your 2:00 o'clock witnesses in in the morning tomorrow, by phone call or otherwise?

Mr. Mays: We will endeavor to do so.

The Court: If possible, you might consider it, if it doesn't work out, I am available to be here at any time.

page 279 } Mr. Mays: We will get them here if we can.

The Court: Since we are recessing early for lunch, I understand, Mr. Mays, that you are going to consult Mr. Banks in regard to this in order to expedite putting in the proof this afternoon.

Mr. May: With Mr. Banks, and with counsel?

The Court: With counsel, of course.

Mr. Hill: May I inquire this: I notice that Mr. Mays said he had one or two brief witnesses for tomorrow at 2:00 o'clock.

Mr. Mays: That is what I am informed, and he requested that they come at this time.

Mr. Hill: What I was wondering, I could get on the phone and try to get Mr. Tucker this afternoon, in case you can get to him.

Mr. Mays: We will try.

Mr. Hill: I thought maybe you could try to get the other witness in the morning, and it might save a half a day of the Court's time.

Mr. Mays: The question is whether we can get those other witnesses in earlier. Mr. Tucker is for tomorrow morning. And that won't take very long.

Mr. Hill: In other words, if you can get your afternoon witnesses in in the morning, you will take Mr. Tucker.

Mr. Mays: That is right. We are trying to

page 280 } cause counsel as little inconvenience as possible.

I fear we may impose on the Court, but that is not what we intended.

The Court: We will take a recess, then, until nine minutes after two.

(Recess for lunch was taken from 12:27 p.m. until 2:09 p.m.)

AFTERNOON SESSION.

(The trial was resumed pursuant to noon recess at 2:09 p.m.)

page 277 } Whereupon,

W. LESTER BANKS,

was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION—resumed.

By Mr. Mays:

Q. Mr. Banks, yesterday I requested you to produce certain documents. Have you been able to find them?

A. Yes, sir.

Q. Do you have them with you?

A. Yes, sir.

Q. May I see them?

Mr. Mays: Your Honor I had asked to see the documents and Mr. Banks said he wanted to explain them to me. I take it the explanation ought to be for the record. It occurred to me that when I looked at them it might be we would request the Court to indulge us until after adjournment, because we might save the Court a great deal of time by examining the documents first and determining a method to put them in evidence.

The Court: Do you want to recess to do that?

Mr. Mays: I would suggest that. And it might be Your Honor would want to carry it on until after lunch and put Mr. Banks on thereafter.

I might say this, Your Honor, because of the page 278 } time element, and I know you have that under consideration. We have two witnesses this afternoon in addition to Mr. Banks, and we have one or two items of very formal proof which would require very little time. And we had thought that that would take up practically all of the day. We had not wanted to inconvenience anyone, and we had summoned Mr. Tucker, the attorney from Emporia for tomorrow. As I see it, we should conclude this case tomorrow morning, so far as the taking of evidence is concerned. And since we have made that much progress, it occurred to me that the Court might feel it wise for us to recess until after lunch, then we could go into all of these documents and determine how readily we might put the evidence in.

The Court: Do you gentlemen concur that that might be a time-saving factor in this?

Mr. Mays: May I correct one thing, Your Honor? Mr. Wickham advises me that one or two witnesses are sum-

James W. Harris.

A. Yes, I did.

Mr. Hill: May it please the Court, we would like to introduce this, but in order that we may retain the original, we would like to substitute a copy. This is an authorization for Mr. Thompson and his associate to represent Mr. Harris' child in the segregation case.

Maybe we could just read it in the record.

The Court: Do you gentlemen have any objections to substituting a photostatic copy or any other authenticated copy?

Mr. Mays: Not the slightest, sir. We would have put it in if they hadn't, and a photostatic copy is quite satisfactory.

Mr. Hill: If the reporter will mark it, it can page 276 } on the copy.

I think this would be Complainants' Exhibit 1.

Mr. Wickham: If Your Honor please, the first exhibit was introduced, the transcript and complaints and answers in the Federal case would be Exhibit No. 1, would they not"

The Court: Actually this certificate with these various references on it, are 1 through 22, has never actually been identified as Complainants' Exhibit No. 1. We can do so at this time, if that is what the intention was.

Mr. Hill: Yes, sir.

The Court: We would identify this first as Complainants' Exhibit No. 1, and this other as Complainants' Exhibit No. 2.

(The certificate with references R-1 through R-22 were marked Complainants' Exhibit 1 for identification, and received in evidence.)

(The document entitled "Authorization" was marked Complainants' Exhibit No. 2 for identification and received in evidence.)

Mr. Hill: We have no further questions of this witness, Your Honor. I think he may be excused.

Mr. Wickham: We have no questions, Your Honor.

The Court: You are excused, you are free to leave.

(Witness excused.)

Mr. Mays: I understand that Mr. Banks has returned.

Mr Hill: Yes, he is here, he is calling him now.

Mr. Mays: There was one they were going to call back after he got the authorization.

Mr. Robinson: That was James W. Harris.

The Court: The Court wants to take a re-
page 274 } cess in order for the counsel for the complain-
ants to see where Mr. Banks is, and how long it will be before we can continue his testimony.

Mr. Mays: We had summoned also for today Mr. Griffin and Mr. Henderson. I don't know whether they are here.

Mr. Wickham: They were summoned for 2:00 o'clock.

Mr. Mays: I beg your pardon, they were summoned for 2:00.

The Court: What I want to do is excuse and let go any witnesses who have already testified and are not going to be needed. And there is one witness, Mr. Harris, that he wanted to stay. We will take a recess, and during that interval I would like for the witness and counsel to find out whether Mr. Banks will be here. He might be downstairs some place.

(At this point a recess was taken.)

Mr. Hill: May it please the Court, we ask that a witness be retained so that we could ask one or two questions.

We would like to complete our examination of Mr. Harris now. It will take only a few minutes.

The Court: You may recall him for cross-examination.

Whereupon,

JAMES W. HARRIS,

was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

page 275 } CROSS EXAMINATION.

By Mr. Hill:

Q. Mr. Harris, I show you a sheet of paper entitled "Authorization," and ask you to look at it and see if you recognize that paper.

A. Yes, I do.

Q. The name James W. Harris is written down there, is that your signature?

A. Yes, it is.

Q. And is this the authorization that you signed for Mr. Thompson to represent you?

Moses C. Maupin.

Q. If the N.A.A.C.P. law did not pass?
A. If it failed.
Q. Now, what law is that, do you know?
A. That was when we had this Boatwright Committee, I was here on that.
Q. You mean some laws that they passed in 1956 at the Extra Session of the General Assembly?
A. No, if the Court didn't grant the N.A.A.C.P. laws to let the children go to school mixed, then we would get the people, Mr. Hill, to represent us in the case.
Q. If the laws failed, then there would be no fee?
A. He didn't say.
Q. What was your understanding about that?
A. My understanding was that if the law said that the children could go to school together, there wouldn't be any fee, it was done with then.

Mr. Wickham: We have no further questions, Your Honor.

page 273 } CROSS EXAMINATION.

By Mr. Hill:
Q. It was generally understood that the N.A.A.C.P. was going to finance the case, was it not?
A. Oh, yes; sure.
Q. Were you present at the meeting in the basement of the church, I don't know which church it was.
A. I wasn't there.
Q. Was your wife there?
A. I assume she was, I don't know.

Mr. Hill: That is all.
The Court: Mr. Maupin, you are excused, you are free to leave and go about your business.

(Witness excused.)

Mr. Mays: Your Honor, these are all the witnesses on this phase of the case, and I wonder whether Mr. Banks is with us now with the information we sought?
Mr. Hill: He was here, Your Honor.
The Court: I want to excuse all witnesses that want to leave except the ones you are counting on for further testimony.

Moses C. Maupin.

A. Moses C. Maupin, 915 Henry Avenue, Charlottesville, Virginia.

Q. What is your occupation?

A. I am a cashier down in my hotel.

Q. Are you a plaintiff—were you a plaintiff in the Charlottesville School case that was started in 1956?

A. Yes.

Q. Who were your attorneys in that case?

A. Who were they?

A. Yes.

A. Well, we asked Mr. Hill to represent us.

Q. Who is "we"?

A. The parents of the children in Charlottesville.

page 271 } Q. But you have,—you say that you and other patrons, school patrons, asked Mr. Hill to represent you?

A. We asked him to represent us.

Q. Did you ever have any personal contact with Mr. Hill?

A. No, I haven't.

Q. Well, how did you ask him?

A. Well, we asked Mr. Hill to come and give us some advice as to what to do, and he explained to us, he did come and explain to the group what we might do for our legal rights. And therefore we sent for Mr. Hill to represent us in this case.

Q. Well, have you seen before today—have you seen Mr. Hill since that time, since he came to this meeting?

A. No, sir.

Q. You have had no contact with him?

A. No, sir.

Q. No communication with him of any kind?

A. No, sir.

Q. You haven't received a letter from him?

A. No, sir.

Q. You have made no arrangements with Mr. Hill to pay any expenses of this suit, have you, of that law suit?

A. No, he explained to us that if the N.A.A.C.P. law did not pass, that there would be a little fee.

page 272 } Q. Would be what?

A. A little fee.

Q. A little fee?

A. Yes, sir. He didn't say what it would be or anything.

Q. A little fee?

A. A little fee.

Q. But that is your understanding?
page 269 } A. That is the understanding.
Q. The laws to which you refer are certain laws which were passed by the Extra Session of the General Assembly in 1956?
A. That is right.
Q. What was your income in 1956?

Mr. Hill: Same objection, Your Honor.
The Court: Same ruling.
Mr. Hill: Exception.

By Mr. Wickham:
Q. You may answer the question.
A. About $5900, I think it was.
Q. Does your wife work?
A. Part time, yes, sir.
Q. Did she work part time in 1956?
A. Yes, sir, part time.
Q. Where does she work, or what does she do?
A. She does beautician work.
Q. Could you estimate what her income would be in that type of work?
A. No, I couldn't very well estimate it, because it is just a part time thing, and she doesn't do it regularly.

Mr. Wickham: We have no further questions, Your Honor.
The Court: All right, you are excused, you
page 270 } are free to return to your business.

(Witness excused.)
The Court: Next witness;
Mr. Wickham: Moses C. Maupin.

Whereupon,

MOSES C. MAUPIN,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:
Q. Will you state your name and address, please.

J. Russell Arnett.

Q. For what company?
A. For North Carolina Mutual.
Q. Well, were your wife and children the original plain-lottesville School Segregation case?
A. We were until we moved out of the city limits, sir.
Q. And when did you move out of the city?
A. We moved out of the city limits in September.
Q. September of this year?
A. That is right.
Q. Well, were your wife and children the orignal plaintiffs in the case back in 1956?
A. That is correct.
Q. And they have now withdrawn from the suit?
A. Yes, they are withdrawn, I suppose, because we moved out of the city.
Q. But you haven't done anything to take them out of the suit, nobody has done anything to get their names off as plaintiffs, have they?
A. I don't think we were listed as plaintiffs the last time—

Q. But you haven't seen the court papers?
page 268 } A. No.
Q. You yourself were not actually a plaintiff?
A. No. I was not in town at the time they gave the attorneys the authority.
Q. You were not in town?
A. So my wife signed, that is right.
Q. Do you know what attorneys are representing your children?
A. Do I know?
Q. Do you know, or do you not know?
A. Yes.
Q. Who are they?
A. I knew Mr. Hill, and Mr. Robinson.
Q. Have any arrangements been made to pay the expenses and the attorneys' fees in the litigation?
A. Well, she was told from the beginning that possibly the plaintiffs might have to pay for the litigation.
Q. You don't know if they might have to pay?
A. Well, at that time we didn't know whether the law would prohibit the N.A.A.C.P from paying the costs.
Q. You mean the N.A.A.C.P. was going to pay the expenses and attorney's fees if they could legally?
A. I don't know whether they said it like that or not.

A. They said if it was necessary they would, so I suppose they will.

Q. If it was necessary?

A. Not if it was necessary, but in the due course of time I expect we will get a bill.

Q. You don't know if the N.A.A.C.P. will pay the bill?

A. Well, from what I have read in the paper,
page 266 } I assume they will, but I am one of a group, and
I expect to pay my share.

Q. What was your income, Mr. Smith, in 1956?

Mr. Hill: Same objection.

The Court: Same ruling.

Mr. Hill: Exception.

By Mr. Wickham:

Q. You may answer the question.

A. 1956—I don't recall exactly, but around $5,000, I imagine.

Mr. Wickham: We have no further questions, Your Honor.

Mr. Hill: No questions.

The Court: You are excused, Mr. Smith, you are free to leave.

(Witness excused.)

The Court: Next witness.

Mr. Wickham: J. Russell Arnett.

Whereupon,

J. RUSSELL ARNETT,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Wickham:

Q. Will you please state your name and address.

A. J. Russell Arnett, Route 5, Box 152 A.B.
page 267 } Charlottesville.

Q. What is your occupation?

A. Life insurance salesman.

William M. Smith.

Q. Who are your attorneys in the Charlottesville case?

A. To my knowledge, Mr. Hill and Mr. Robin-
page 264 } son.

Q. How did you come to retain them or employ them?

A. Well, I felt that since the group—you say how did I come to retain them?

Q. Yes.

A. Well, we just got together and felt that they would be the capable lawyers to support us.

Q. Are you a member of the local branch of the N.A.A.C.P?

A. I am.

Q. And when you refer to "we," do you mean other members of the local branch?

A. The plaintiffs in the case.

Q. When you refer to "we," do you mean all of the plaintiffs in the case?

A. No, the group of plaintiffs that were filing this—

Q. The group to which you refer, I am trying, Mr. Smith, to identify that group. I say, this group to which you refer, are they members of the local branch of the N.A.A.C.P?

A. To my knowledge.

Q. They were?

A. As far as I know.

Q. And so you all decided to employ the counsel of the N.A.A.C.P?

page 265 } A. Yes.

Q. Did you make any arrangements with your counsel as to the payment of expenses and attorneys' fees?

A. Well, we knew that if they ever came up we would reimburse them.

Q. Reimburse them for what?

A. For the services.

Q. If it ever came up, what do you mean if it ever came up?

A. I mean, if they ever presented a bill we would pay for it.

Q. Do you expect them to present a bill?

A. I couldn't tell you.

Q. Have they told you?

A. I couldn't tell you, whenever they do we will have to pay it.

Q. They haven't told you that they were going to present a bill?

A. Yes.
Q. What is her income as a school teacher?
A. I would say around $3600 a year.

Mr. Wickham: We have no further questions.
The Court: Any cross?
Mr. Hill: No questions.
The Court: All right, you are excused, you are free to return to Charlottesville.

(Witness excused.)

The Court: Next witness.
Mr. Wickham: William M. Smith.

Whereupon,

WILLIAM M. SMITH,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

page 263 } DIRECT EXAMINATION.

By Mr. Wickham:
Q. Will you state your name and address, please?
A. William M. Smith 1709 Preston Avenue, Charlottesville, Virginia.
Q. What is your occupation?
A. I am a government worker, railway transportation clerk.
Q. I didn't hear you.
A. Railway transportation clerk.
Q. For the U.S. Government?
A. That is right.
Q. Is that in the Post Office Department?
A. That is right.
Q. Are you a plaintiff in the Charlottesville School Segregation case?
A. I am.
Q. Were you one of the original plaintiffs when the suit was brought in 1956?
A. Yes.
Q. Are you married?
A. Yes, sir.
Q. Does your wife work?
A. No, she doesn't.

George R. Ferguson.

By Mr. Wickham:

Q. That is right—are you in business by yourself?

A. Yes.

Q. Well, what is your income from all sources, after the expenses of operating your business, of course? In other words, I am not asking you how much gross you took in in your business, naturally you have got expenses to offset that gross amount, and I am trying to find out what your adjusted gross income was in 1957.

A. I don't know whether I could give you an accurate answer on that.

page 261 } Q. Could you estimate it?

A. I would say around $1800.

Q. $1800. And that is including your income from your business as funeral director?

A. That is the only income I have.

Q. As a funeral director?

A. That is right.

Q. Do you have a hearse?

A. Yes.

Q. How many hearses do you have?

A. One.

Q. Do you own your own home?

A. I am buying it.

Q. Buying it?

A. Yes.

Q. Can you estimate what your income may be for 1958?

A. That is impossible to do.

Q. Well, don't you have to file quarterly returns with the Federal Government?

A. No.

Q. You do not?

A. No.

Q. Are you married?

A. Yes.

page 262 } Q. Is your wife employed?

A. Yes.

Q. Where does she work?

A. Albemarle County School Board.

Q. Is she a teacher?

A. Yes.

Q. How long has she been a teacher in the Albemarle School system?

A. Since 1942.

Q. And she is still employed there?

George R. Ferguson.

A. George R. Ferguson, 702 Ridge Street, Charlottesville, Virginia.

Q. What is your occupation?

A. Mortician.

page 259 } Q. Were you a plaintiff in the Charlottesville School Segregation case that was brought in 1956?

A. Yes.

Q. Who represented you in that case, or who is representing you?

A. Mr. Hill and Mr. Robinson.

Q. Are you an officer in the local branch of the N.A.A.C.P?

A. I am.

Q Were you an officer in 1956?

A. Yes.

Q. Were you president?

A. Yes.

Q. In 1956?

A. Yes.

Q. And you still are president?

A. Yes.

Q. What arrangements have been made between you and your attorneys as to the payment of expenses and legal fees in that school case?

A. Well, when the State put up these N.A.A.C.P. laws, the parents agreed to pay the attorneys whatever fee they charged, when the law went into effect.

Q. You are talking about the laws that were passed by the extra session of 1956?

A. That is right.

page 260 } Q. Before that time, what was the arrangement with your attorneys?

A. The arrangement was that the N.A.A.C.P. would handle it.

Q Bear the expenses and attorneys' fees?

A Yes, that is right.

Q. You say you are a funeral director in the city of Charlottesville?

A. Yes.

Q. What was your income last year?

Mr. Hill: Same objection, Your Honor.

The Court: Same ruling.

Mr. Hill: Exception.

The Witness: You mean my net income?

A. Yes.

Q. And the second column is "Amount," and
page 282 } that is the amount of the individual checks?

A. Yes.

Q. And the third column is headed "Paid to." Does that indicate the pages, the individuals?

A. Yes, sir.

Q. And the last column is headed "Description." Does that indicate the individual school cases in connection with which these checks were expended?

A. It does, sir.

Q. Now, if you will notice first, in the second column, and item under June 30, 1958, it was originally typed $1,000, and has been changed in pencil to $2,000. That was your change, was it not?

A. Yes, it was, sir.

Q. Will you state to the Court just why that change was made?

A. Your Honor, that was a typographical error that I discovered, and I made the change accordingly.

Q. Now, at the bottom you had also totalled in pen $11,-378.61, and drawn a line through that, and put in a new total of $12,378.61. Was that to take care of the thousand dollar error just mentioned?

A. Yes, it was, sir.

Q. So that this sum of $12,378.61 is an exact total of that column as corrected?

page 283 } A. That is right, sir.

Q. Now, if you will look between the third and fourth columns, that is, the third and fourth typewritten columns, you have made some pen insertions after each item. Were those insertions to indicate the amount of money paid for expenses and the amount of money paid to fees?

A. They were, sir.

Q. So that as we look down that column "Expenses and Fees," they give that explanation?

A. That is right, sir.

Q. Now, if you will observe the item under June 17, 1957, after the name "Victor J. Ashe," you have $170 expenses. I take it the rest was fee?

A. That is right, sir.

Q. And the next item "Paid to J. Hugo Madison," you have noted $28 expenses, I take it the rest of that was fee?

A. That is correct, sir.

W. Lester Banks.

Q. Now, if you will notice the fourth column, that is, under "Description," the fourth item, June 6, 1957, $495.75, paid to Lawyers Publishing Company, and Holay, Court Reporter, that does not identify the case, will you state to the Court what case that was, or do you know?

A. I don't know, sir.

Q. Now, if you will look again to that $2,000
page 284 } item, under date of June 30, 1958, to Oliver W.
Hill, you have an asterisk following that item. Will you please explain to the Court just what that asterisk means?

A. Yes, just a minute. If Your Honor please, the asterisk opposite the item of June 30, of $2,000, that amount was paid on account submitted to us which included $1,407.86 in expenses, and $5,020 in fees. The $2,000 item was prorated in the following manner:

$991.01 was charged to expenses in School cases, $816.85, expenses other than School cases, and $592.14 is credited to fees, out of that $2,000 item.

Q. I take it that the payees of all of the checks on this summary sheet from which you are testifying are members of the legal staff of the Conference?

A. That is correct, sir.

Q. No payments were made during this period to any other lawyers, were there?

A. No, sir.

Q. Now, do you have in hand any unpaid bills, which of course would not be reflected here?

A. I do, sir.

Q. Can you summarize for the Court, without detailing each bill, the amount of fees and expenses owed to each lawyer by name?

A. I can, sir.

page 285 } Q. Will you do that, please?

A. If your Honor please, the fees and expenses as submitted are as follows:

Attorney Frank H. Reeves, expenses, $368, and fees, $960.
Attorney Victor J. Ashe, expenses, $9.50, fees $300.
Attorney J. Hugo Madison, fees, $100.
Attorney S. W. Tucker, expenses, $182.04, fees, $600.
Attorney Otto L. Tucker, expenses, $61.28, fees, $270.
Attorney Martin A. Martin, fees, $90.
Attorney Roland D. Ely, fees, $90.
Attorney Oliver W. Hill, expenses, $934.52.

W. Lester Banks.

Q. Now, does that include all legal charges that you expect to receive from Mr. Hill?

A. No, sir, it does not.

Q. Has he indicated to you any approximation as to what the unpaid balance is as of this time?

A. No, he hasn't, sir.

Q. As far as you know, is that the total amount due the other lawyers whose names you just read out?

A. As far as I know, sir.

Q. Now, are those lawyers whose bills are now unpaid all members of the legal staff of the conference?

page 286 } A. They are, sir—I beg your pardon, Mr. Mays. They are all members of the State Conference of Attorneys, Frank H. Reeves.

Q. Frank H. Reeves?

A. Frank D.

Q. And in what case was he engaged?

A. Attorney Reeves has been engaged in the Arlington County case, as far as I know.

Q. Now, this sheet from which you have been testifying is captioned "Statement of Legal Fees and Expenses in 1956, 1957 and 1958."

Does that mean that no fees and expenses were paid from the first of January, 1956 until July twenty-eight, the first item which appears on it?

A. As far as School cases are concerned, yes sir.

Q. I take it that all of these charges are School fee cases, and none of it involves committee appearances before the legislative groups and things like that?

A. That is right, sir.

Q. That is entirely independent of this?

A. That is right.

Mr. Mays: Your Honor, we would like to mark that in evidence, please.

The Court: That will be Defendants' Exhibit D-3. Does the Court have the original here?

page 287 } Mr. Mays: Yes, sir; the Court has the original.

(The document was marked Defendants' Exhibit D-3 for identification.)

W. Lester Banks.

By Mr. Mays:

Q. Mr. Banks, this exhibit which has just been offered in evidence was prepared by you personally, was it not?

A. Yes; it was, sir.

Q. Since you were asked on yesterday to produce the records?

A. Yes, sir.

Q. And I take it of course that the records from which this was produced are in exactly the same form they were before your original testimony was given in the case?

A. That is correct, sir.

Q. I believe you testified, or I believe you stated to me that your secretary is out sick, the person normally in charge of the records, is that correct?

A. That is correct, sir.

Q. You may remember that when you were testifying on yesterday I asked you to produce a copy or cite to us the exact reference to an address made by Mr. Hill which was published in the Sentinel. Did you have an opportunity to check for that?

A. No, I didn't, sir.

Q. Well, we are going to be here tomorrow
page 288 } morning, I am sorry to say, and I wonder if you could have it then?

A. I will try to get it.

Mr. Mays: Unless Mr. Hill has been able in the meantime to get it.

Mr. Hill: Mr. Mays, I know the reporter made a running account of my speech in the Sentinel, which a weekly published in Front Royal. I could determine the date of it, and I am sure that you could get a copy of it from the newspaper.

Mr. Mays: Maybe after the hearing today we could get together on that and save the Court some time.

Mr. Mays: Yes.

By Mr. Mays:

Q. Mr. Banks, on yesterday, Mr. Hill was asked a question about one document which apparently should be shown to you rather than to him. It was put in evidence, I think, marked for identification as D-2. It is a three-page document which is headed "Exhibit Hill, B-17."

I show you, Mr. Banks, a photostate of that document of three pages, which was put in evidence as Defendants' Exhibit D-2, and I will ask you to look at that, since Mr. Hill

could not identify it, and tell us whether or not that was something which you prepared in your capacity as executive secretary of the Conference?

A. Yes, sir.

page 289 } Q. Now, if you will look at the third page—and I might say that as I understand it, the first two and a half pages were a factual summary of events that have taken place, sent out to your members, is that correct?

A. Yes, sir.

Q. To whom was this circulated, all of your branches?

A. Yes, it was.

Q. That is, all the branches in the State of Virginia?

A. That is right, sir.

Q. Was it circulated to any other persons as far as you know, any other persons or organizations?

A. As far as I know, it wasn't. It of course went to our Executive Board.

Q. Yes, of course. Now, if you will look at the third page, please, slightly below the middle, there is a sub-heading "IV," and the heading is "Up-to-date picture of Action by N.A.A.C.P. Branches since May 31." Under that you have a heading "A," "Petitions filed and replies," showing that a total of fifty-five branches have circulated petitions. Were those petitions total School Boards in those localities? What did you mean by petitions there?

A. They were petitions to School Boards.

Q. Now, the next subheading is "B", and that is entitled "Where suits are contemplated." Will you state to the Court what was meant by that heading "suits

page 290 } contemplated"? Were you referring to suits not already pending?

A. I think that refers to the fact that petitions had been presented to the School Board, and negative replies had been received.

Q. Well, is it a fair question to ask whether you meant that the suits would follow automatically if the school superintendents refuse to honor the petitions?

A. No, we didn't mean that suits would follow automatically.

Q. What did you mean? You say "Where suits are contemplated."

A. That was meant where individuals had asked for relief, and they had been denied relief, and it was an assumption that a suit might be contemplated.

W. Lester Banks.

Q. It was your expectation that those suits would be brought if the school superintendents did not comply with your request?

A. May I say, Mr. Mays, it wasn't a request from the N.A.A.C.P., it was a request from the individual parents?

Q. Well, who was contemplating the suits? Did you have in mind the individual parents were contemplating the suits?

A. Yes, that it was a contemplation.

Q. And that the N.A.A.C.P. would not be involved?

A. The N.A.A.C.P. would not be involved any
page 291 } more than it would normally be.

Q. Well, normally—let's get what we mean by that—what was normal for them?

A. By that I mean that if requests had been made to the N.A.A.C.P., in all probability financial aid would have been forthcoming.

Q. Well, the probability would be a certainty, wouldn't it, if in those suits the parties were insisting on doing away with integration in the schools, it would be a certainty then, wouldn't it?

A. That aid would be forthcoming, sir?

Q. Yes.

A. If the chairman of the legal staff and the president concurred in recommending to the Conference, aid would be forthcoming.

Q. Now, you will notice in the next subheading, "C", "Readiness of lawyers for legal action in certain areas." What was meant by that observation?

A. By that was meant that if there were individuals who desired to bring action, then the N.A.A.C.P. was willing to offer financial aid.

Q. Now, you mentioned in certain areas, what was the significance of that adjective "certain"?

A. Well, I don't actually recall, Mr. Mays, what the significance was, but I imagine that there were
page 292 } certain areas that would have made the request more readily than other areas.

Q. Well, you were ready to go in any area, were you not, as long as the people bringing the suits were conforming to the N.A.A.C.P's established policy?

A. If that were recommended, we were ready to offer financial assistance.

Q. Then the word "certain" had no significance insofar as your willingness was concerned?

A. I don't recall that it had any particular significance.

W. Lester Banks.

Q. The next sentence states "Selection of suit site reserved for legal staff."

What was the meaning of that particular sentence?

A. I actually don't know what I meant by that, Mr. Mays.

Q. It seems fairly plain to me, but I wondered if you had any independent recollection?

A. No, I don't.

Q. It means you were leaving it to the lawyers, didn't it, to pick the places where the suits would be brought?

A. Well, I think it did in that particular—looking at it from that standpoint.

Q. Well, look at it from any other standpoint you like, wouldn't it be the same thing?

page 293 } A. Well, it seems to me, Mr. Mays, that that might have a very definite connection with the fact that before N.A.A.C.P. would offer assistance, then the situation would have to be concurred in by the chairman of the staff and the president. So that might be what that meant.

Q. Yes, but it didn't say that here. What it said here was that the legal staff would be the one that picked the cite of the suit.

A. Maybe that was a poor choice of words on my part, sir.

Q. It seems a rather clear choice to me, but I wondered if there was any other construction in your mind?

A. I don't think so.

Q. If you will look to the next line it states, "State legal staff ready for action in selected areas."

What did you have in mind with reference to selected areas?

A. That would be back to my first question, I mean by that my first answer, sir, if the Conference concurred in supporting the request, that would have been a selected area.

Q. Well, is it a fact that after the decision in the Brown case in 1954, the policy of the N.A.A.C.P. and its affiliated associations, that is, the Conference and branches here in Virginia, it had as a fixed policy to go into cases

page 294 } where integration in the schools was to be accomplished, and segregation to be avoided, that is quite true, isn't it?

A. Yes, that is true.

Q. And isn't it true that after that decision, when the course of action seemed clear from the standpoint of the Confernce of branches, that it was expected that suits would

be brought anywhere where the parents wanted to do away with a segregation in the Schools?

A. Would you mind stating that again, sir.

(The question as recorded was read by the reporter.)

The Witness: That is correct, sir.

By Mr. Mays:

Q. Going back to the financial arrangements, did you have occasion at any time, or did the branches have occasion, Conference of branches have occasion at any time to reimburse parents for any fees or expenses advanced in connection with any school case?

A. No, sir, not to my knowledge.

Mr. Mays: Your Honor, I asked on yesterday that this be put in for identification, since it had not been identified. I ask now, sir, that it be marked as an exhibit.

The Court: We referred to it on yesterday as Defendant's Exhibit D-2, and subject to its identification made by the witness who prepared it. It is now formally
page 295 designated by the Court as Defendants' Exhibit D-2.

(The document previously marked Defendants' Exhibit D-2 for identification was received in evidence.

By Mr. Mays:

Q. Mr. Banks, I show you a photostat of a document which has at the head, "Exhibit Hill, B-14, September 13," and I can't make out the year—I take it to be 1957—and it is a photostat of a letter dated July 1st, 1953, addressed to Mr. Jones B. Smith, 22 Court Street, Hampton, Virginia, and signed—or rather, it is not signed, but obviously was prepared for the signature of the secretary. I ask you whether or not that was a letter which was prepared by you?

A. It appears to be, sir; this copy is rather indistinct.

Q. Take a good look, isn't that a letter you wrote?

A. I say, it appears to be. Isn't your copy a little more legible?

Q. Mine is the same. And it was before one of the State committees that this came out. And all I have, therefore, is the photostat?

A. Yes, sir.

Q. Now, was that written in response to a request for

help on the part of the Conference from Jones
page 296 } B. Smith, financial help?

A. It appears as if it were.

Q. I will call your particular attention to the fourth paragraph in which you say "not having details of your particular case, I cannot properly classify it. However, from the content of the first page of your letter, it is apparent that your particular case will not fit any of the above-mentioned limitations."

Will you state to the Court in general what the character of that problem was?

Q. Would you re-state your question, sir?

Mr. Mays: Will you please read it.

(The question, as recorded, was read by the reporter.)

The Witness: I don't recall what the particular problem was that Mr. Smith was complaining of, sir.

By Mr. Mays:

Q. Well, this letter of July 1st, 1953 did in any event reflect the policy of the Conference branches?

A. As it was stated in the third paragraph.

Q. Well, as stated in the letter as a whole, didn't you have some statement in the second paragraph, too?

A. Yes, we did, sir.

Q. In other words, the letter, to the extent that it went, correctly reflected the policy of the Conference?

A. I would think so, with perhaps an ex-
page 297 } ception of paragraph 5.

Q. Well, will you state to the Court what exception that is?

Do you mean the exception as stated in the letter, or that you have a reservation in your mind?

A. No, I don't have a reservation in mind, but in reading the letter, reading the last paragraph, it seems to say that the N.A.A.C.P., the Virginia State Conference, was obligated to appoint an attorney. I don't think that was the policy, or that it has ever been the policy. That was an error.

Q. No, you misread your letter. The letter says the State of Virginia is obligated to appoint an attorney.

A. Oh, yes—

Q. You are speaking obviously of a public defender who

would be appointed for someone who didn't have funds.

A. I see. It was indistinct, I thought that was the Virginia State Conference.

Q. So that the letter then does correctly reflect the policy of the Conference?

A. I would say so.

Mr. Mays: If Your Honor please, would you like to mark that in evidence?

The Court: Yes, that may be marked Defendants' Exhibit D-4 for identification.

page 298 } (The document referred to was marked Defendants' Exhibit D-4 for identification and received in evidence.

By Mr. Mays:

Q. During the course of your testimony, Mr. Banks, you referred to rendering financial aid to litigants. Did that mean just money, or did it mean furnishing the services of the attorneys as such?

A. Oh, it meant furnishing the services of attorneys as such.

Mr. Mays: Your Honor, that is all we have of the witness at this time. We don't wish to excuse him from the case because we still have one or two unfinished items. But we are done for the present, and certainly we would have very little more. Part one depends upon the introduction of other testimony which is not yet forthcoming.

CROSS EXAMINATION.

By Mr. Hill:

Q. Mr. Banks, referring back ot the memorandum which was designated Defendants' Exhibit No. 2, I ask you, can you tell from the document when it was prepared?

A. I don't see anything that would indicate when it was prepared, Mr. Hill.

Q. Well, in view of the fact that you refer to things during the school term 1955-1956, is it not a fair assump-
page 299 } tion that it was prepared at least the latter part of 1955 or early 1956, on the third page in "I" I have reference to.

A. From that statement it would appear that it was prepared along that time.

W. Lester Banks.

Q. Now, directing your attention to the latter part of 1955, after the Supreme Court's decision implementing the decision of May 17, 1954, I ask you, was it not a fact—

Mr. Mays: I object to the form of the question, Your Honor.

Mr. Hill: Your Honor. I am asking some questions on cross-examination now, I think I am entitled to ask the questions in the form I wish.

Mr. May: He was brought here as their witness, Your Honor—we certainly ought not to have any difficulty about it, for he certainly knows how to ask the questions properly, he has been doing it a long time.

The Court: Objection sustained.

By Mr. Hill:

Q. What was the state of feeling among Negroes after that decision?

A. You refer to the implementation decision of 1955?

Q. Yes.

A. I think it was generally felt by those persons that I came in contact with, as well as others, that there would be ready compliance with the decision throughout

page 300 } the state.

Q. During the course of your duties as Executive Secretary of the Virginia State Conference, will you state whether or not you know, or whether it was called to your attention, the amount of interest among Negroes in desegregation?

A. Yes. In my capacity as Executive Secretary, and as a lay citizen, it was increasingly evident that the vast majority of Negroes in Virginia were vitally interested in desegregation in the public schools.

Q. After the Governor and State Board of Education had declared its policy to be the continuance of segregation, was it contemplated that there might be a large number of suits?

A. Contemplated by whom, sir?

Q. Well, the people with whom you came in contact.

A. I think that the people, that is the Negroes of Virginia, were anxious to have the schools and the school officials to comply with the law, and that meant exhausting all of our legal rights; I suppose that is what it would mean.

Q. Let me ask you this. Considering the interest that had been manifested, was there any feeling among the State Con-

ference officials that they may have more requests for assistance than they could reasonably furnish?

page 301 } A. Yes, there was a definite feeling on the part of the State Conference officials, because of the widespread interest in compliance with the law, that there would be more requests than the Conference could reasonably handle.

Mr. Hill: That is all.

RE-DIRECT EXAMINATION..

By Mr. Mays:

Q. You are saying that the Conference expected there would be more requests than they could reasonably handle. What do you mean by "requests"?

A. The request for assistance.

Q. Of what sort, with the superintendents of the schools, or in the courts?

A. Well, I imagine it would have been both, perhaps.

Q. I gathered the burden of the examination a moment ago was to show that compliance was to be expected in Virginia as of the time this memorandum was sent out. Did you indicate in your reply that that was your understanding, that the people in Virginia were going to comply?

A. We confidently expected Virginia to comply with the decision, sir.

Q. As of the time this memorandum from which you are now testifying was issued?

A. We still had hoped that Virginia would comply.

Q. I call your attention again to the third page

page 302 } under heading "IV," subheading 2, where it was said, and I quote, "Petitions have been filed in seven counties. Graduated negative response received in all cases."

So that all said no, didn't they?

A. To a degree.

Q. Well, had any of them to any degree said yes, they were going ahead and comply?

A. I don't know whether any of these had said it, sir, but there were a number of instances in Virginia where the school authorities had indicated that they would comply with the decision

Q. Well, you had at least several here, didn't you, that said no, and you were on notice at that time?

A. That there were several who had said no in varying degrees.

Mr. Hill: No further questions.

The Court: Step down, Mr. Banks, please.

Did I understand counsel to say that they expected to confer before the day was out with regard to this address by Mr. Hill that appeared in this Sentinel?

Mr. Mays: Yes, sir; we thought that he might be able to put his hand on it and save time.

The Court: Before we conclude for the day, then we will get back on that and see within what time that is expected to be forthcoming. In view of the fact that that page 303 } first request was made through Mr. Banks for that material, he is now excused, subject to recall.

Mr. Mays: We would like to have him back in here tomorrow morning, because there are one or two documents which may come in on which we will need his testimony.

The Court: Subject to those qualifications, may Mr. Banks be excused for the rest of the day until 9:00 o'clock tomorrow?

Mr. Mays: Yes, sir.

(Witness temporarily excused.)

Mr. Mays: We would like, sir, to call Edwin B. Henderson.

The Bailiff: He doesn't respond, Your Honor, to a call.

Mr. Mays: We don't know whether he has been served, sir: the offices are closed, and they have no report on him, and probably will not until the first thing in the morning.

The Court: He would be a local witness?

Mr. Mays: No, sir; Falls Church, Virginia.

The Court: Well, with the Clerk's offices closed, I guess we will have no way of knowing. We will just have to reserve the question for tomorrow, I suppose.

Mr. Mays: I should like to call Mr. L. F. Griffin. Whereupon,

page 304 } L. FRANCIS GRIFFIN,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mays:

Q. Will you give your full name to the reporter.

A. L. Francis Griffin.

L. Francis Griffin.

Q. And your address.
A. 116 Ely Street, Farmville.
Q. And I believe you are a minister?
A. That is right.
Q. What church?
A. First Baptist Church, Farmville, Virginia.
Q. You were living there, were you not, in 1951, at the time the School Segregation matter began to develop?
A. That is right.
Q. Do you recall having occasion to send out any kind of communication to parents of children in that area?
A. Yes, I recall having sent them.
Q. I don't have a copy except as it appears in another hearing, but I believe you testified before the so-called Thompson Committee some months ago?
A. That is right.
Q. And I think the question then was propounded to you as to whether you had put out such a letter, and page 305 } it was put in the record. I will show to you in Volume II of the transcript of that hearing what purports to be a communication sent out by you, which begins on page 199 and extends over through the first line of page 200, and ask you whether or not that is a correct copy of the letter which you sent out?

The Court: We will take a five-minute recess.

(At this point a five-minute recess was taken.)

Mr. Mays: Should we proceed without Mr. Robinson?
Mr. Hill: I think you can go ahead.
Mr. Mays: That is agreeable with me.
The Court: Let us let the Sheriff check on him, Mr. Mays.
Mr. Mays: All right, sir
The Court: Here he is now.
Will you proceed.

By Mr. Mays:
Q. Mr. Griffin, I show you Volume II of the transcript of the Thompson Committee hearing beginning on page 199, I believe it is, and there is set forth what purports to be a letter which you have addressed to parents in the Prince Edward County. You have had an opportunity to look at that transcript, have you not?
A. That is right.

* * * * *

page 341 }

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Mr. Mays: We can use the Court's time with stipulations. Your Honor, Mr. Carter and I are prepared to enter into a stipulation, which I shall state, and trust it is agreeable the way I stated it to him.

page 342 } There is a publication put out by the N.A.A.C.P., called "The Crisis." And there is an article in Volume 28 beginning on page 228 which is entitled "The Virginia School Fight—a Clarification."

I have four of these, Your Honor, and I can put them in as four exhibits, or one, as Your Honor pleases.

The Court: Is it contemplated that they would be read in the record?

Mr. Mays: No, we contemplated putting them in as exhibits and saving the Court's time.

The Court: Let us make them separate exhibits.

Mr. Mays: Very well. This will be Defendant's Exhibit D-5.

(The volumes were marked Defendants' Exhibit D-5 for identification and received in evidence.)

Mr. Mays: I call attention to the fact that that is an article over the signature of Spotswood W. Robinson, III, Regional Special Counsel for N.A.A.C.P., southeast region, and dated January 29, 1951. I think Mr. Robinson will state for the record that that was an article prepared by him.

Mr. Robinson: I wrote that as a letter, if Your Honor please, as I recall, to the editor of "The Crisis," and it is at least a substantial copy of it, I think one word at least was misprinted, but I will stipulate that I wrote that letter.

page 343 } The Court: Thank you.

Mr. Mays: Then in "The Crisis," the same volume, that is, Volume 28, at page 5 there was an article with the caption, "Virginia Schools: A Study in Frustration," written by Marvin Caplan, an article to which Mr. Robinson's letter just put in evidence referred. We will ask, sir, that that be marked in evidence as Defendants' Exhibit D-6.

The Court: D-6.

N.A.A.C.P., either by the Conference or the local branch—or I may not have been compensated at all.

Q. Since we don't know whether you were compensated at all we won't pursue those cases. I will ask you one thing more about Jodie Bailey. Was there more than one trial?

A. Jodie's case went to the Court of Appeals, was reversed, and went back to the Circuit Court of Greenville County and was tried, went to the Court of Appeals again, a petition of certiorari was denied, habeas corpus was sought from the U.S. District Court, and an appeal from the refusal was taken to the U.S. Court of Appeals, and the District Court was sustained, and the U.S. Supreme Court denied certiorari.

Q. Now, who controlled that litigation?

A. I did.

Q. You did? Were you instructed to take those several steps by the Conference, by the local branch, or by Jodie Bailey?

A. I can't say I was instructed by any of them. I advised Bailey, of course, and naturally a man in prison for life would consent to anything his lawyer is willing to do for him, but so far as anybody else instructing me, no.

page 332 } Q. Were you told by anybody, independent of any advice you may have given, were you told by somebody what course of action to pursue after you had given that advice?

A. I had Bailey's authority, if that is what you are speaking of.

Q. That is what I am asking, in other words, Bailey instructed you to do it in that way?

A. Bailey trusted his lawyer to do whatever his lawyer could do to get him out of trouble for good.

Q. My only question is, what you did was pursuant to the instruction or the say-so or whatever general words you want to use that came from Bailey?

A. On the consent of my client, yes.

Mr. Mays: All right.

No further questions.

The Court: Do you care to cross-examine?

Mr. Hill: No, we have no questions.

The Court: Is there any reason why Mr. Tucker cannot be excused?

Mr. Mays: No reason at all.

The Court: All right, Mr. Tucker, you are excused.

explanation as to why you were brought into the Charlottesville case?

A. No, Mr. Mays—the relationship between Mr. Hill and myself dates back so far and so long and has been so pleasant and so profitable, that he wouldn't have to tell me why he would want me to do anything.

page 328 } Q. I am sure it has been pleasant and profitable, and I am wondering if there was any particular statement made at the time of your employment as to the reason for bringing you in from Emporia?

A. If course, I don't know whether it was so profitable. No, I couldn't say there was any particular reason for it, Mr. Mays.

Q. You were getting the $60 per day per diem, of course, for services rendered?

A. I don't think that I have gotten any of it yet.

Q. Well, you understand you will get it, from the Conference?

A. That is the possibility, yes.

Q. Isn't there on the part of a man named Tucker a very reasonable expectation of that?

A. There is the hope, sir.

Q. Do you know why you were brought particularly into the Warren County litigation?

A. Well, I can recall Mr. Hill and I worked out the papers, deeds, memorandum, and what have you. I myself feel that I was brought into it because it was something to which I could contribute—I like to feel that way anyhow—as a matter of fact, unless I feel there is something I can contribute, I don't bother to submit a bill.

page 329 } Q. I can appreciate that. But what I have in mind, and you can realize this, that Warren County gets pretty close to the Arlington and Alexandria area, and already counsel in Richmond are in that area, and I wondered if there was any particular reason that you know of that you were brought up from Emporia to be associated with counsel there?

A. Mr. Mays, that wasn't strange, even since I have been in Emporia, I have handled cases in various parts of the state, it is known that I just have a willingness to do whatever is necessary to be done, where I can do it.

Q. Now, you are speaking of general law practice, aren't you, not as being associated with the staff of the Conference?

A. That could be both.

Q. Well, is it both? In other words, did you go all over the

state as a member of the staff, in cases other than the school cases?

A. I see what we are getting into—

Mr. Carter: I would like to raise an objection to that. I think that the question as to the reasons why Mr. Tucker came to a case or whether he has been all over the state, it seems to me, if Your Honor please, that has nothing to do with the issues before this Court. The issue before this Court is in terms of whether the reach of the statute, whether or not the N.A.A.C.P. brought counsel from California, or why they brought him down has nothing to do with the issues before this Court.

The Court: Do you gentlemen care to be heard
page 330 } on that objection?

Mr. Mays: No, sir. I think that the purpose of the question is perfectly clear. I don't care to pursue it indefinitely, Your Honor.

The Court: Well, I overrule the objection at this stage. You may continue.

Mr. Mays: Will you repeat the question, Mr. Reporter.

Mr. Carter: I note an exception to that.

(The question, as recorded, was read by the reporter.)

By Mr. Mays:

Q. May I clarify that, In connection with litigation, I am not talking about the speeches you made, I am not interested in that, but just in litigation.

A. My answer now is going to involve cases that I have handled in different parts of the state.

Q. I am not asking you to go into the detail in any of them, I want to know whether or not that is a fact.

A. Whether what is a fact, sir.

Q. Whether or not you went about in other parts of the state as a member of the legal staff in handling cases independent of the school cases?

A. Yes, I have handled cases in other parts of the state as a member of the legal staff, yes.

Q. And compensated by the Conference for that service?

A. I wouldn't want to pinpoint that I was com-
page 331 } pensated by the Conference, I may have been compensated by a local branch, I may have been compensated by the Conference—well, if they were handled for the

but it is going very far away, and it is not before the Court.

Mr. Mays: The witness has indicated that this was one of the cases in which the Conference participated fundwise, and I am trying to develop how he became counsel in the case and get the entire background. This is the one case, Your Honor, in which he was connected with the Conference, and therefore I would like a few minutes to develop what this case is about. I think it is quite relevant insofar as these particular statutes are concerned.

Mr. Carter: If the Court please, I think that there is a possibility in terms of relevancy with respect to Mr. Tucker's connection with this case in respect to the Virginia State Conference, but it seems to me that we have not touched upon the connection with the Conference for the last fifteen minutes in terms of questions, and how Mr. Tucker was engaged, and who accompanied Mrs. Bailey or whatever the person's name was, seems to me to have no relevancy in terms of this at all.

Mr. Mays: Our position is simply this, Your Honor, and we are not going into this because it is interesting to opposing counsel, we are going into this because here is a specific case which has been brought to our attention by the

page 325 } witness, and of which he had plenty of knowledge, in which he has indicated that the Conference itself came in as an interested party in order to contribute to the cost, and we are trying to develop how that case was created and exactly how the Conference functions in connection with this type of case. It comes squarely under the interpretation of the statute on running and capping, it comes squarely under the one that has to do with maintenance. And if we interpret those statutes, it has to do with how the corporation functions.

Your Honor will remember that at the very outset in counsel's position it was stated first of all that N.A.A.C.P. and its affiliates were not bound by those statutes, and if they were, they were unconstitutional. The first contention they make is that the statutes do not apply to them, and I want to show the Court they do, and I am taking this as a case. There are a number of others I could go to, but I am taking just this particular one that the witness himself has adverted to.

The Court: Insofar as any details of the case, of course, the Court would sustain any objection of immateriality in regard to that, but insofar as anything leading to his employment in it with relationship to the Virginia Conference with him or with the party involved would be admissible.

Mr. Carter: I will take an exception.

S. W. Tucker.

By Mr. Mays:

Q. Did you ever send any bills for services or
page 326 } expenses to Bailey or his wife?

A. When I was first employed in the case Bailey had his week's pay check, as I recall, something like $45.00 that was paid to him.

Q. He endorsed that over?

A. Yes. I don't recall that I ever billed him and his wife since, because frankly, it would have been a waste of postage.

Q. Your compensation, therefore, came either from the branch or from the Conference, is that correct?

A. What compensation I drew—I don't actually think I was compensated, I may have called on the branch or Conference for expenses. That case went to the Court of Appeals twice, as I recall.

Q. I am not speaking of whether you feel you were adequately compensated, but you did receive some payment?

A. I received something from either the Conference or the branch or maybe both, yes.

Q. In this particular instance, was there a meeting of the branch in order to seek funds in order to aid in the defense?

A. I don't recall any special meeting for that purpose, no.

Q. Now, you are in some of the school cases, are you not?

A. That is correct.

Q. Which ones?

page 327 } A. Of record, in the Charlottesville and Warren County.

Q. Did you go into the Warren County case initially at the time it was first brought?

A. Yes.

Q. At whose instance was that?

A. Mr. Hill.

Q. Did you go into the Charlottesville case at the time that was first brought?

A. I think I am of record on the initial papers in that.

Q. And who brought you into that?

A. Mr. Hill.

Q. Did he tell you why?

A. No more than a lawyer would associate another lawyer in a case.

Q. I understand. Well, you were living at Emporia?

A. That is correct.

Q. And you have the members of the legal staff scattered over the state, and I wonder if he gave you any particular

A. As a regular practice, no.

Q. But you don't know in specific instances whether they did or not?

A. There was one case that was handled in Greenville in which I wouldn't want to say whether the branch did or not, it is possible that the branch made some direct contributions. That is the only exception I recall, that is the reason for my hesitancy.

Q. What was the name of the person involved there?

A. That was the case of Jodie Bailey.

Q. J-o-d-i-e B-a-i-l-e-y?

A. That is right.

page 321 } Q. Were you counsel for him?

A. I was counsel.

Q. Was he a man charged with murder in Greenville County?

A. That is correct.

Q. Can you fix the approximate time of the commission of that offense?

A. It has been something like five or six years ago, maybe more.

Q. I think it has been several years ago, maybe forty-five or fifty. When did you first hear of the commission of the crime?

A. I suppose about fifteen minutes after it happened.

Q. What day of the week, do you recall?

A. I think it was a Saturday.

Q. And what time of day?

A. Oh, something like three or four o'clock in the afternoon. It happened right in front of my office.

Q. And you heard about it about fifteen minutes later. You were employed in the case?

A. Yes.

Q. And by whom?

A. By Bailey's wife initially.

Q. Do you remember her name?

A. I do not.

Q. Well, how long after the offense was it when

page 322 } she made contact with you?

A. Possibly the same day, I am not sure, within twenty-four hours or less than twenty-four hours.

Q. When did you first begin to function in the case?

A. After she contacted me.

Q. It was not within minutes after the crime, then, it was hours or days afterwards, is that correct?

A. Within twenty-four hours—I say I heard about it within

S. W. Tucker.

fifteen minutes, but I didn't start working within fifteen minutes.

Q. That is what I am trying to develop. When was it that she got in touch with you for the first time?

A. To the best of my recollection it was on the same day.

Q. And you don't know how much later it was after the commission of the offense?

A. No, it could have been a couple of hours, it could have been longer.

Q. Of course, it could have been two or three months?

A. I know it wasn't two or three months, because I know I was working on the case within twenty-four hours.

Q. Now, what did you first do in connection with the case?

A. Well, the first thing I did was try to contact my client, who had been spirited away from the county be-
page 323 } cause the sheriff feared that there might be a lynching party.

Q. Well, where was he taken?

A. To Lawrenceville.

Q. And when did you first see him?

A I believe it was on the following Monday; I think I spent Saturday afternoon and Sunday and part of Monday trying to find out where he was.

Q. Did you make any effort to have him removed there for his safety?

A. No, I said, I spent that time trying to find out where he was.

Q. Now, did anyone else see you in connection with employing you? Was it just the wife who saw you?

A. Before I saw him?

Q. Yes.

A. That is all.

Q. Was anyone accompanying her when she talked to you about it?

A. No, not that I remember—you are taxing my memory on something five or six years ago.

Q. I don't expect you to stand an examination on every possible thing, but I am trying to develop it as far as your memory goes.

A. If someone was with her, it was some member of the family or a close friend.

page 324 } Q. Where did you meet her, at your office?

A. At my office.

Mr. Carter: This is all very interesting, it seems to me,

World War II interrupted by legal practice, and
page 317 } so I suppose it was no problem at all for my being
nominated and taken on the legal staff.

Q. I am not suggesting in the slightest that there was any problem, but I wondered how it came about, either you spoke to somebody or somebody spoke to you, and I wonder just how the relationship was established?

A. To get the detail on it, to be specific about that would be very difficult, Mr. Mays. The lawyers that were working in this program were friends of mine, some of us met in college, and our interests are known, but just as to the mechanics of it I wouldn't be able to say.

Q. What did you understand your duties to be as a member of the legal staff?

A. In a nutshell, I would say it would be to do whatever was necessary to advance our program. That would entail a study of cases, preparation of cases, trial of cases.

Q. Do you have any other connection with the N.A.A.C.P. or any of its branches other than membership in the N.A.A.C.P., which I suppose you have?

A. I have membership in the N.A.A.C.P., I have no office as such, other than a possibility, I am never certain of it, at least I function as such, whether I am officially named as such, as a member of the Executive Board or Committee of the legal branch.

Q. As a member of the Executive Committee
page 318 } of your legal branch—which I think is the Green-
ville Branch, is that correct?

A. That is correct.

Q. —what are your duties there?

A. Actually the Executive Committee might function in the absence of a meeting of the branch. As a matter of fact, I don't even recall a specific committee meeting, a formal specific committee meeting, for the last two or three years, that is the reason I express doubt as to whether I am officially named as such.

Q. I think you have a brother on the legal staff, too, do you not?

A. Otto L. Tucker.

Q. And when did he become a member of the legal staff?

A. A year ago, I think.

Q. Was that at your suggestion, or do you know whose suggestion that was?

A. I don't recall at whose suggestion, I am sure it was not at my suggestion.

S. W. Tucker.

Q. Before you became a member of the legal staff, were you employed by the Conference in any of its litigation?

A. By the Conference?

Q. Yes.

A. I do not recall that I was ever employed by the Conference; I do recall being employed on doing some work at the instigation of our local branch.

page 319 } Q. Before you became a member of the local staff were you compensated by the Conference for any of the work you did in connection with Civil Rights?

A. I think not.

Q. Were you compensated by the local branch?

A. I wouldn't want to positively say one way or another, I probably was, it has been so long ago, and everything was of such little consequence, it turned out there was so little I could do about it—it was quite serious, but I wouldn't want to at this time say whether I was or wasn't.

Q. Did they at any time take up collections for the benefit of people who had Civil Rights problems for the payment of counsel at your Greenville local branch?

A. I don't recall any that the Greenville branch itself was interested in. I can remember some times probably for some other defense, but I don't recall any collections in which I was personally interested.

Q. Do you remember taking up collections for local defense at the Greenville branch?

A. I will say raising funds, yes; whether it was done in the way of taking up collections, I don't know.

Q. I don't mean to use a disparaging term, what I am trying to get at in one way or another, is didn't the Greenville branch raise funds in order to aid people in defenses in criminal actions?

page 320 } A. The Greenville County branch raises funds and makes contributions to the State Conference for the legal program just like all the branches do.

Q. Do they make any direct contributions to the defense of people charged with crime?

A. Direct contributions?

Q. In other words, if somebody is in trouble in Greenville County, does the Greenville branch ever raise money for his defense, whether the money is paid directly to him or his counsel?

A. I think I understand your question. I am trying to recall. As a practice, I can definitely say no.

Q. You mean as a regular practice?

L. Francis Griffin.

I do recall that I gave them advice on any number of occasions.

Q. We expect that. But I wonder, did you suggest at the time of the strike what they should do about legal representation?

A. No, indeed.

Q. There was no discussion between you and the children concerning the employment of lawyers?

A. No, indeed.

Q. No discussion between you and the parents of the children on the employment of lawyers?

A. No, indeed.

page 310 } Q. So insofar as their contact with counsel was concerned, you had nothing to do with it at all?

A. That is right.

Q. I notice that you signed the letter as coordinator of the N.A.A.C.P., of Prince Edward County. Did you have communication with the branches or any other society affiliated with N.A.A.C.P?

A. Association did you say? I didn't hear your question.

Q. Let me state it again, maybe it wasn't a good question. I say, I notice here that you signed this in your capacity as coordinator of N.A.A.C.P. for Prince Edward County. Did you confer with any other persons who was affiliated with N.A.A.C.P., or its affiliated organizations concerning the subject matter of the letter?

A. No, as I recall, it was hastily done, and I did it on my own accord.

Q. I mentioned that word "coordinator," what does that mean? Is that actually what you had?

A. Well, in that particular county, you see, it is divided into six units, a unit in each district.

Q. You mean there are six different chapters—

A. No, no, units.

Q. I see. What is a unit?

A. It is one branch, Prince Edward County branch.

Q. And you have six units in the branch?

page 311 } A. That is right.

Q. And you are the coordinator for all six?

A. That is right.

Q. And that is an official title that you have?

A. That is right.

Q. And who confers that?

A. Well, I mean that it was the title between the secretary and myself.

S. W. Tucker.

Q. That is something that you decided on?
A. That is right.

Mr. Mays: No further questions.
Mr. Hill: We have no questions, Your Honor.

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page 315 }

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S. W. TUCKER,
was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mays:
Q. Will you please give the reporter your full name and address.
page 316 } A. I am S. W. Tucker, of 111 East Atlantic, Emporia, Virginia.
Q. And state, please, your business or profession.
A. I am an attorney at law.
Q. Qualified to practice in Virginia?
A. Yes.
Q. And since what time?
A. 1934, I believe it was.
Q. Do you have any connection with the legal staff of the N.A.A.C.P., that is to say, the conference of branches of Virginia?
A. I am a member of the legal staff of the Virginia State Conference of the N.A.A.C.P.
Q. When did you become a member of the legal staff?
A. I don't recall exactly, it was possibly in 1947 or 1948 or thereabouts.
Q. Can you recall how it was you become a member of the staff?
A. I beg your pardon?
Q. Can you recall how it was you became a member of the staff?
A. Well, I have always had a tremendous interest in Civil Rights litigation, as a matter of fact I engaged in some of it even before I was a member of the legal staff, even before

L. Francis Griffin.

"It is necessary that all of us support the efforts being made to get our just rights.

"We shall expect you to be present and bring others with you.

"Remember, the eyes of the world are on us. The intelligent support we give our cause will serve as a
page 308 } stimulant for the cause of free people everywhere. We shall expect you to comply with our request, and to be present at the First Baptist Church on Thursday evening, May 3rd, at 8:00 o'clock p.m.

"Sincerely yours, L. F. Griffith, Coordinator of N.A.A.C.P. for Prince Edward County."

Is that a correct reading of your letter?

A Yes.

Q. Now, will you state briefly to the Court how it was that you decided to write that particular letter?

A. I think it was in order to stimulate interest in the meeting.

Q. I take it that it was your position and not someone else's?

A. That is right.

Q. Did anyone request you to write the letter?

A. No.

Q. I noticed in it, and I think it must be an error that you referred to a meeting to be held on Thursday evening May 31st, 1951. Do you recall whether the suit in Prince Edward had already been brought then?

A. No, I don't.

Q. So when the letter went out you can't say for certain whether the litigation had actually begun?

A. No.

page 309 } Q. Had you been in communication with any of the students of Moten High School or the parents of the students of the High School before the letter went out?

A. Yes.

Q. Are you familiar with the strike which students had there at Moten High School?

A. Yes.

Q. Did you have occasion to talk with those students?

A. Yes, I did.

Q. Did they ask your advice?

A. Yes, they did.

Q. And what advice did you give?

A. Well, I can't point out specific instances, I mean, but

L. Francis Griffin.

Q. And that does correctly state what you had in your letter?

page 306 } A. As far as I can recall.

Q. Well, you have no reason to think that that isn't a correct copy?

A. No.

Mr. Mays: Your Honor, I don't want to remove pages from that transcript. It occurred to me, sir, that either the witness might read the letter directly into the record, or I will read it and the witness might follow it and state whether or not I have correctly read from the record. If you gentlemen are satisfied with the copy, I will put that in.

Mr. Robinson: If you tell us it is O.K., that is all right with us.

Mr. Mays: I will tell you I think so, I am not a witness.

Mr. Robinson: It is all right, Mr. Mays.

Mr. Mays: Your Honor, counsel has suggested on our side of the table that we read it into the record rather than put it in as an exhibit, if it is agreeable, and if the witness will follow me and let me know at the end whether I have read it correctly—or he may if he likes—shall I read?

"This letter is relative to the emergency at the Robert R. Moten High School.

"The National Association for the Advance-

page 307 } ment of Colored People has been requested to take action in this matter, and its attorneys are now working on the problem. You are requested to keep your children absent from the Robert R. Moten High School until you are further advised to send them back to school.

"In making this request we are following the advice of our attorneys, and no changes should be made in our plans until our attorneys advise us to make them.

"We must all cooperate fully to get results, and this request must be followed at all costs.

"An important emergency meeting of the County-wide PTA will be held Thursday evening, May 31, 1951 at 8:00 o'clock p.m., at the First Baptist Church, South Main Street, Farmville, Virginia.

"It is important that as many parents and patrons as possible be present at this important meeting. Our attorneys, Hill, Martin and Robinson, will be present to meet with you and discuss the procedures necessary for securing our Constitutional rights.

Your Honor, I have before me this page 43 which I said I was not offering in evidence, but I have presented Mr. Robinson with a photostat of the letter itself which he says is agreeable for me to put in. I therefore will ask the Court to consider this "Appendix 7", which is Appendix 43, and on the reverse side of the excerpt of the minutes of the Board, as part of the evidence, to be a part of that same exhibit.

The Court: That would be Defendants' Exhibit D-9.

Mr. Mays: That is right.

Mr. Hill: In other words, 43 and 44 are both going to be Exhibit 9?

Mr. Mays: That is right, being one document will be much simpler.

The Court: I will actually mark both sides of it, gentlemen.

Mr. Mays: Very well.

(The document referred to was marked Defendants' Exhibit D-9 for identification and received in evidence.)

Mr. Mays: I wish to offer in evidence, if Your Honor please, a photostat of a letter from Mr. Oliver W. Hill, to Mr. W. Lester Banks, Executive Secretary, Virginia State Conference, N.A.A.C.P., and the caption is "Re Commonwealth v. Robert Edwards and Willie Savage," page 346 } a letter dated April 6, 1950, and ask that that be marked in evidence as Defendants' Exhibit D-10.

The Court: It will be so marked.

(The document referred to was marked defendants' Exhibit D-10 for identification and received in evidence.)

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Mr. Wickham: If Your Honor please, it will be recalled that Dr. Harold Johnson, of Arlington, Virginia, testified that he did not know the number of parcels of real estate that he owned in Arlington, nor the value of his real estate. It has been agreed with counsel for the plaintiff that the following may be read into the record and treated as a part of the record.

(The article referred to was marked Defendants' Exhibit D-6 for identification and received in evidence.)

Mr. Mays: In the same volume of "The Crisis," Volume 28, beginning at page 475, there is a publication of "Resolutions adopted by the Forty-Second Convention of the N.A.A.C.P., at Atlanta, Georgia, June 30, 1951," and I ask that that be marked as Defendants' Exhibit D-7.

The Court: It will be so marked.

(The document referred to was marked Defendants' Exhibit D-7 for identification and received in evidence.)

Mr. Mays: And in Volume 62 of "The Crisis," beginning at page 339, there is a publication of what is described in the caption as "Directives to the branches adopted by
page 344 } emergency south-wide N.A.A.C.P. Conference."
And I ask that that be marked as Defendants' Exhibit D.8.

The Court: What was the volume and page number?

Mr. Mays: The volume is 62, and the beginning page is 339.

The Court: It is received as Defendants' Exhibit D-8.

(The document referred to was marked Defendants' Exhibit D-8 for identification and received in evidence.)

Mr. Mays: Your Honor, I should like to have marked in evidence a printed report of the meeting of the Board of Directors of the National Association for the Advancement of Colored people, held on October 9, 1950, this has been printed as "Appendix 8," in a state document, and is Appendix 44 of that document, the title of which is, that is of the document, it is, "Report of the Committee on Offenses against the Administration of Justice," and I understand that Mr. Hill is prepared to stipulate that as a part of the record.

Mr. Carter: So that the record will be accurate, that is an excerpt from the minutes of the Board of the particular date that you referred to.

Mr. Mays: Very well, then I will call that excerpt, if Your Honor please.

I call Your Honor's attention to the fact that
page 345 } on the reverse side of the page as "Appendix
7" is a letter of Mr. Robinson, which I am not offering in evidence.

Q. My present question is, did you receive compensation in any of the school cases from the N.A.A.C.P., itself?

A. From the national office?

Q. Yes.

A. No.

Q. Did you receive any compensation from the N.A.A.C.P. legal education fund?

A. From what period?

Q. From the middle of 1956 on down through 1958, the period of his account?

A. Not that I recall.

Q. Well, you would remember, would you not?

page 362 } A. Put it this way. I am certain that I haven't received anything in the way of fees; it could have been in connection with some of these matters I received some money as expenses or some lawyers' services, or something of that sort.

Q. And would the same answer be true of individual branches of the N.A.A.C.P.?

A. Oh, I haven't received anything from any of the individual branches that was not reported to the Conference and reflected as Conference fees.

Q. And you would expect no compensation in the future as far as you know in these cases, except for the the Conference itself?

A. Except as I stated to you on yesterday, that after the passage of these laws I did contact the plaintiffs in Charlottesville, and I so instructed fellow counsel in the other localities to reach a similiar understanding with their respective plaintiffs with respect to the payment of fees and expenses, in the event that these laws should be held constitutional and we were prohibited from functioning as we functioned in the past.

Mr. Mays: That is all. Thank you.

(Witness excused.)

Mr. Mays: We recall Mr. Banks.

Whereupon,

page 363 } W. LESTER BANKS,

was recalled as a witness, and having been previously duly sworn, was examined and testified further as follows:

The Court: Which witness, now, was this?

Mr. Wickham: Dr. Harold Johnson, of Arlington, Virginia.

The Court: All right.

Mr. Wickham: The land books of Arlington County show that fourteen parcels of real estate are in the name of the witness Harold Johnson, and the records in the real estate division of the offices of the Commissioner of Revenue in Arlington, Virginia, indicate that assessors in that office have placed appraised value on these fourteen parcels in the amount of $87,650.

Mr. Hill: Well, the only thing I would like to state, Your Honor, is that we do not object to anything Mr. Wickham has stated in the record, but of course we do not page 348 } waive any of our objections to the material quality of the evidence, nor do we agree to anything other than that which the public records in Arlington show.

The Court: The Court understands your position on that, Mr. Hill, it has been made for the record numerous times.

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OLIVER W. HILL,

was recalled as a witness, and having been pre-
page 361 } viously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION.

By Mr. Mays:

Q. Mr. Hill, you heard the testimony on yesterday of Mr. Banks about the payment of counsel fees?

A. Yes, sir.

Q. And I take it that the statement that he made as to the payments to you by the Conference of expenses and counsel fees were correct?

A. You mean that I have received the money that he said?

Q. Yes.

A. I am sure I did.

session. I would now ask the Court to take judicial notice of those three statutes in addition to the other materials to which the request made on Monday pertained, for the same purpose that we ask the Court to judicially notice the other materials.

page 365 } With that, if Your Honor please, the Complainants rest.

• • • • •

A Copy—Teste:

H. G. TURNER, Clerk.

W. Lester Banks.

DIRECT EXAMINATION—resumed.

By Mr. Mays:

Q. Mr. Banks, I have one question. There was put in evidence during your absence from the courtroom a photostat of what is designated as Directives to the branches adopted by the emergency south-wide N.A.A.C.P. Conference. If you are not quite familiar with that directive, I will ask you to take a look at it, please.

The Court: Exhibit number what?

Mr. Mays: Exhibit No. D-8.

By Mr. Mays:

Q. You are familiar with that?

A. I think I have seen it, yes.

Q. My question is whether or not the Virginia Conference has substantially followed the directive which you have just read. Has it been the policy of the Virginia Conference to follow that in its operations?

A. Generally speaking, yes.

Q. Do you know of any specific exceptions?

A. As I recall, that sample petition was not used in Virginia.

Q. Otherwise the directives that came out of
page 364 } Atlanta have been followed by the Conference of Virginia?

A. As a general policy.

Mr. Mays: That is all.

Mr. Hill: No questions.

The Court: Step down, Mr. Banks.

(Witness excused.)

Mr. Mays: The Defendants rest, Your Honor.

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Mr. Robinson: On Monday morning I requested the Court to take judicial notice of certain material, including certain of the statutes that were enacted at the 1956 Extra Session of the General Assembly of Virginia. As I recall, in making that request I failed to specifically request that judicial notice be taken of Chapters 31, 32 and 35, enacted at that

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