

UNEQUAL TEACHER PAY

Duval v. the Board and Thompson v. Gibbes

Until 1944, the salaries for black and white teachers in South Carolina were unequal. White teachers earned one-third more than black teachers and had smaller classes and better equipment in the classrooms. This all came to light one day when Modjeska Simkins was standing behind a white teacher in the teller line at a local bank and looked over the teacher's shoulder to discover that the white woman's check was almost twice the amount of her check. She knew this teacher, and she also knew that this lady had less formal education and less teaching experience than she herself had. This was in 1941. Simkins brought this matter to the attention of the state NAACP to consider for legal action.

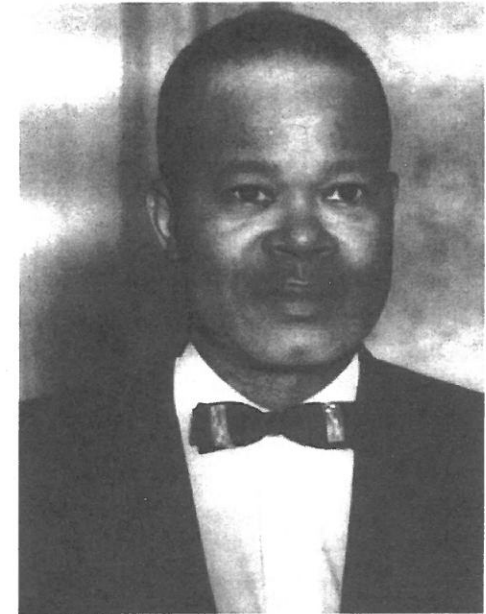
Black teachers in South Carolina during those years were members of the Palmetto State Teachers Association (PSTA), their trade organization. The name would change in later years to the Palmetto Education Association (PEA). The group's leadership was conservative and was not a proponent of rocking the boat. It had no interest in initiating any kind of lawsuit against white authorities.

In the spring of 1941, a group of younger teachers in the PSTA independently approached Osceola McKaine and asked him to help them prepare a salary equalization lawsuit. James T. McCain, Osceola's cousin, known to his friends as "Nooker," was teaching at Morris College in Sumter and was a leader of this faction. McKaine agreed to take on this task, and he began traveling the state gathering the data that would be needed to document the inequities in black teachers' pay. When he returned from Europe, he had brought with him a small fortune, and he absorbed his own travel expenses as he canvassed the state.

From Peaceful Protests to Groundbreaking Rulings

McKaine was involved in raising the funds to underwrite the cost of the equalization campaign. He sought the help of S.J. McDonald Sr., a leader of the Sumter NAACP and chair of the state NAACP executive committee, to assist in the fundraising efforts. McDonald contacted a group of black Sumter professionals and businessmen. Ten of these men promised to provide sufficient funds to cover any outstanding and unexpected costs that might arise. This anonymous group came to be called the "Ten Angels," and each made initial donations of \$100. Some of those donors were S.J. McDonald Sr., Dr. S.J. McDonald Jr., attorney E.A. Parker, Dr. B.T. Williams, Dr. Edmond McDonald Sr., Edmond P. Palmer, Dr. E.C. Jones Sr., James T. McCain and Osceola McKaine.

One of the above benefactors, E.A. Parker, made another contribution to the civil rights cause in late 1941. Parker was a leading black attorney in Sumter and South Carolina for a long time. To supplement his law practice, he served as a pastor and presiding elder in the AME church. He also published a weekly newspaper, the *Sumter People's Informer*. McKaine hoped that Parker would work as the local attorney for the teacher equalization suit, as well as publicize the cause in his newspaper. Parker declined to serve in a formal legal capacity because of advancing age. Also, the *People's Informer* was



John H. McCray, publisher of the *Lighthouse & Informer*.

in poor fiscal shape, and he was seeking a merger with another newspaper, the *Charleston Lighthouse*, published by John H. McCray. Parker took McKaine with him to Charleston for a meeting with McCray in McCray's office at 54 Line Street. The two publishers agreed to a merger, and the *Lighthouse & Informer* was born. They decided that the combined paper would be the official organ for the teachers' equalization drive. McKaine joined the staff as head of the Sumter Bureau. It was at this time that McCray and McKaine commenced a close professional relationship that would last a lifetime. McCray moved the *Lighthouse & Informer* to Columbia, where it was easier to cover the state.

In June 1942, McKaine was invited to Columbia for a two-day meeting with the State Conference NAACP executive committee and Thurgood Marshall. S.J. McDonald asked for a motion to publicly endorse the "equal pay project" that McKaine had been promoting for a year. The motion was passed. Marshall outlined what needed to be done at the local level. The two most important acts were raising a defense fund and finding a plaintiff who could withstand the reprisals, rebukes and scare tactics that would confront him or her. Once these matters were in place, Marshall would make legal counsel available from the NAACP staff.

By late summer 1942, McKaine had completed all the necessary field research for the lawsuit. He continued traveling the state, reaching out to black organizations such as the Congaree Medical, Dental and Pharmaceutical Society and the Baptist Educational & Missionary Convention. These groups not only endorsed "the cause" but also made financial contributions to the Teachers Defense Fund. The list of donors was kept confidential so as to protect contributors from retaliation by irate white authorities. Funds were raised at public rallies and mass meetings by passing the hat. With funds raised, research data in hand and the endorsement of the NAACP, the next step was to find a plaintiff. McKaine wanted someone from Sumter to play that role but could not find a taker. At the quarterly meeting of the state NAACP held in Sumter in February 1943, the committee decided to take over the search from the Sumter Branch and expand it into other parts of the state. Conference president James M. Hinton thanked the Sumter Branch for its dedicated work and announced that a female plaintiff had been indentified in Charleston.

During the course of this equalization pay effort, three plaintiffs were involved in three different proceedings. They were Melissa T. Smith and Viola Duval of Charleston and Albert N. Thompson Sr. of Columbia.

The first plaintiff, Melissa T. Smith, was a graduate of South Carolina State College and had taught at Burke High School for four years. She

was brought to the South Carolina Conference NAACP annual meeting in Florence in 1943 by Jesse E. Beard, president of the Charleston Branch. She met privately with Thurgood Marshall and Harold Boulware. It was planned that she would take a one-year leave of absence and attend graduate school at Columbia University in New York City. She would leave for New York five days after her salary equity petition was filed with the Charleston School Board. NAACP officials thought it desirable that Smith be out of South Carolina while the suit was progressing so that she would not be subjected to professional and social ostracism by her frightened colleagues and public harassment by white racists angered by the litigation. On June 24, 1943, Smith's petition for salary equity was delivered by registered mail to Dr. A. Burnett Rhett, superintendent for the City of Charleston Schools. This document was prepared by Boulware for "Melissa T. Smith individually, and on behalf of the Negro public school teachers and principals of the City of Charleston Schools." The petition stated that "the School Board and Superintendent had for many years maintained a policy of paying Negro teachers and principals of Charleston less salary than white teachers with equal qualifications and experience and performing the same duties." Boulware added bluntly that this difference in pay was "based solely on race and color." He further wrote that this policy clearly violated the equal protection clause of the Fourteenth Amendment of the U.S. Constitution. In conclusion, the petition demanded "that immediate action on this petition be taken at the School Board's next meeting in order that the petitioner's legal rights in the premises may not be jeopardized by further delay."

On August 6, 1943, at a special meeting, the Charleston County School Board did an end run around Smith's petition. In order to avoid dealing with the racial aspects of salary inequities, it adopted a resolution eliminating race or color references on applications for employment. All teachers and principals of the district would be graded and classified in respect to their certificates, preparation, teaching abilities and general fitness. This was a subjective approach to the matter, and it would give the school board another way to pay black and white teachers different salaries. This tactic had been used by other southern states to avoid equal pay for black and white teachers. While the lawyers were jockeying for position, Melissa Smith decided she did not want any part of this anymore. In September, she informed President James M. Hinton, of the state NAACP, that she was taking a full-time teaching position in New York City. The time had come to start a new search for a plaintiff to start the matter all over again.

Again with the help of Jesse E. Beard, president of the Charleston NAACP, a new plaintiff was located by the second week of October 1943. Thurgood Marshall and Harold Boulware traveled to Charleston to interview Viola Louise Duval. Ms. Duval was a graduate of Howard University and had taught chemistry at Burke High School for three years. The legal team was pleased with the interview with Duval, and preparation began for another try at equal pay for teachers and principals. When the Charleston School Board denied Duval's petition, a lawsuit was filed in the Federal District Court for the Eastern District of South Carolina. Both sides agreed that the litigation would be resolved by a consent decree and would not be appealed by the losing party. The official title of the lawsuit was *Duval v. Seigneus*, and it was scheduled to be on the court docket for February 1944.

During the period leading up to her court date, Duval discovered that she had become persona non grata to many of her black teaching associates in Charleston County. She was shunned by her fellow teaching associates and neighbors, who were fearful of the stand she was taking. She was especially shaken when one of her female colleagues who shared yard patrol duty with her at Burke High School stopped speaking to her. While she was an active member of the Palmetto State Teachers Association, the organization made no gesture of support on her behalf. A rumor was circulating in Charleston that any black educator found supporting the Duval cause would be promptly fired. Various white supremacists sent hate mail to her, and she was forced to live in seclusion.

On the day of the trial, February 10, 1944, John H. McCray and Osceola McKaine, of the *Lighthouse & Informer*; Modjeska Simkins; and Thurgood Marshall and his legal team traveled to Charleston together. This was Marshall's first trial in South Carolina, and he did not know what to expect. He and his team immediately learned that the judge for the case was J. Waites Waring, a federal judge appointed by President Franklin D. Roosevelt in 1942. The local community did not think he was a liberal judge but did not know what to expect from him on the bench. They were encouraged when they learned that the first act by the judge was to desegregate the courtroom. Also, he had appointed a black bailiff.

Waring was a Charleston aristocrat who had spent all of his years practicing law in Charleston. He had served as the corporation counsel for the city. For the first fifteen minutes of the hearing, according to John McCray, Waring left Harold Boulware, Edward Dudley and Cassandra Marshall shocked and Thurgood Marshall surprised beyond all words. Waring began the trial by facing the lawyers representing the school board. He asked them to recall the

date of the Alston decision, which had been sustained by the U.S. Supreme Court. The Alston decision was a case in Norfolk, Virginia, in which the plaintiff sought equal teacher pay and was granted the same. When Marshall stood to answer, Judge Waring said to him curtly, "I did not ask you, Mr. Marshall." After fumbling through some documents, the defense lawyers found the answer and told Judge Waring that the date was 1940. Waring then asked the defense counsel when the Montgomery County, Maryland teacher equalization pay lawsuit was decided. Again, Marshall attempted to answer the question, and Judge Waring ordered him to be silent. After that, Marshall and his staff sat confused and bewildered, according to McCray. At this point, the black observers in the courtroom were muttering to one another. One woman sitting next to Modjeska Simkins shouted out, "See there, child! They don't even let her lawyer talk. Dear Jesus!"

McCray recalled that he was clearly disturbed by Judge Waring's conduct. Duval was sitting behind her attorneys and was about to cry, frustrated by all that was taking place in front of her. In contrast to the black observers, the white observers were smiling with pleasure. Eventually, the defense lawyers told Judge Waring that the Maryland case had been handed down on July 30, 1937. At that point, Waring swung his chair around to Marshall and his team and said:

Mr. Marshall, I don't want you to think I was being rude in not permitting you to answer those questions. I knew you knew the answers. I was trying to determine how long it has been that the school board of Charleston has known that it must pay equal salaries to all of its teachers. This is a simple case, and there is no need to take up the court's time. I have a question for you. What kind of order do you want entered? Do you want salaries equalized immediately? Do you want to give the board some time to equalize?

A stunned Marshall, standing with his mouth open, finally said that he needed to confer with his legal team before giving an answer. Waring told Marshall he wanted a written answer in his office in three days and announced abruptly that court was adjourned. Judge Waring had awarded black South Carolinians their first major legal victory in civil rights in over five decades. It only took him fifteen minutes to do it. McCray reported that pandemonium broke out in the courtroom. Suddenly, Duval was surrounded by well-wishers. He further reported that a woman was heard to say, loud enough to be heard across the Cooper River, "Child, I was with you all the time, but I could not show my hand!"



Judge J. Waties Waring was the federal district court judge who ruled in favor of blacks in the five cases that came before him between 1944 and 1951. He had to leave the state because of his rulings.

The white political power structure of South Carolina was outraged by Waring's decision. However, within a year of the salary equity ruling, Waring divorced his wife of thirty-two years and married a twice-divorced northern Yankee, Elizabeth Avery. It was that act that commenced his bitter break with most of his longtime friends in Charleston.

Viola Duval did not remain in South Carolina following the lawsuit to enjoy the fruits of her labor. She met her future husband, Nathaniel C. Stewart Sr., on a blind date while he was serving with the Tuskegee Airmen at a military base in Walterboro, South Carolina, fifty miles north of Charleston. They were married on August 14, 1945, and later moved to Philadelphia, his hometown, so that he could attend pharmacy school. He graduated and went on to become the first African American department head at Philadelphia General Hospital as the director of pharmacy services. Now Viola Duval Stewart, she took a teaching position in the public schools and retired in 1981. In 1938, at Howard University, Mrs. Stewart was initiated into the Alpha Chapter of the Alpha Kappa Alpha Sorority, and she remained active throughout her life. Her last "night out" was spent celebrating her seventieth year in the sorority at its centennial gala in Washington, D.C. She died on December 14, 2010. She is buried in Chelton Hills Cemetery near Germantown, Maryland.

The third plaintiff in these equal pay lawsuits was Albert N. Thompson of Columbia. This action, *Thompson v. Gibbes et al*, was necessary because the

Duval case only affected black teachers in Charleston County. This case was heard in Columbia, and Judge Waring presided. Thompson was a graduate of Tuskegee Institute in the class of 1940. After graduation, he returned to Columbia and taught at the Booker T. Washington Heights Elementary School. His wife was a graduate of Benedict College, and she taught in Richland School District 1 as well. In Thompson's suit, Judge Waring simply cited the Duval case and ruled in his favor. After his successful victory, Thompson was fired from Richland District 1 and had to seek employment in small rural schools outside Columbia. Once those districts found out that he was the plaintiff in that lawsuit, he was dismissed. He had taught in Edgefield and Chester Counties. Everywhere he went, the lawsuit followed him. In 1948, he left South Carolina and journeyed to New York, where he enrolled in New York University and earned an MS, followed by an MS from Boston College and finally a PhD from the University of Pittsburgh. He moved his family to Houston, Texas, where he would complete a fifty-year teaching career at Texas Southern University, retiring in 1999. He returned to South Carolina often, and when he died in 2004 at age eighty-four, the family brought his remains back to Columbia for burial in historic Randolph Cemetery. He was a member of Omega Psi Phi Fraternity. His son, Albert N. Thompson Jr., is chair of the Chemistry Department at Spellman College in Atlanta. He was most helpful in providing information that helped account for his father's tenure in Columbia.

Harold Boulware, chief counsel for the state NAACP, did not participate in the Thompson case. Following the Duval case, Boulware was drafted into the army. However, he would return for the next series of lawsuits in Judge Waring's court.