

JURY VERDICTS - STATE

CHARLESTON COUNTY COMMON PLEAS

(Information supplied by Clerk of Court's Office)

08-CP-10-3061 Eric Unger and Richard Unger vs. Richard H. Coen

Attorneys:

Plaintiffs: William A. Scott
Defendant: Hugh W. Buyck

Cause of Action: Negligence, Fraud, Unfair Trade Practices, Violation of Interstate Land Sales Full Disclosure Act

Verdict: For the Defendant.

2008-CP-10-4259 Marie Adams vs. South Carolina Department of Transportation, City of Charleston, and BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina

Attorneys:

Plaintiff: W. E. Jenkinson, III, Amanda H. Shuler, and Gerald Templeton
Defendants: Elliott T. Halio, James A. Stuckey, Jr., and Jennifer S. Ashburn

Cause of Action: Personal Injury

Verdict: In favor of Defendant AT&T; in favor of Plaintiff against City of Charleston in the amount of \$412,000.00 after reduction of 25% due to 25% comparative negligence by Plaintiff. Pursuant to Tort Claims Act, and by consent of the parties, total judgment against City of Charleston further reduced to \$300,000.

2008-CP-10-6256 Pamela L. Vaughn vs. Reverie on the Ashley LLC and Buist, Byars, Pierce & Taylor, LLC

Cause of Action: Negligent Misrepresentation

Attorneys:

Plaintiff: Frank M. Cisa
Defendants: Adam E. Barr and George Hamlin O'Kelley, III

Verdict: For the Plaintiff in the amount of \$142,400 actual damages against Defendant Reverie on the Ashley, LLC.

2009-CP-10-6476 Heidi McKenzie vs. Herman Winter

Attorneys:

Plaintiff: Thomas C. Nelson
Defendant: Michael J. Ferri

Cause of Action: Motor Vehicle Accident

Verdict: For the Defendant.

2009-CP-10-7488 Elizabeth Grimes vs. Travis Westervelt

Attorneys:

Plaintiff: O. Benjamin Peebles, Jr.
Defendant: Steven D. Murdaugh

Cause of Action: Debt Collection

Verdict: For the Plaintiff in the amount of \$33,749.67 actual damages.

2010-CP-10-0163 Lynn Mabry, individually and as Guardian for Brooke Mabry, a minor vs. James Island Public Service District

Attorneys:

Plaintiff: J. Kevin Holmes
Defendant: Robin L. Jackson

Cause of Action: Motor Vehicle Accident

Verdict: For the Plaintiff in the amount of \$9,000 actual damages.

2010-CP-10-145 Crystal Thomas vs. Robert Register

Attorneys:

Plaintiff: Jeffrey W. Buncher, Jr.
Defendant: Max G. Mahaffee

Cause of Action: Motor Vehicle Accident

Verdict: For the Plaintiff in the amount of \$2,700.00 actual damages.

CORRECTION TO FOLLOWING VERDICT PRINTED IN WINTER, 2011 NEWSLETTER

The Plaintiff's attorney was incorrectly typed as Malcolm M. Crosland, when it should have been David G. Pagliarini

08-CP-10-3392 Town of Mt. Pleasant, South Carolina vs. Patrick E. Talbott, Landowner, and Howell and Associates, LLC, Estate of Ronald Boals, and East Cooper Investments

Attorneys:

Plaintiff: David G. Pagliarini
Defendants: Ellison D. Smith, IV

Cause of Action: Condemnation

Verdict: For the Defendant Patrick E. Talbott, Landowner, in the amount of \$1,150,000.00 actual damages.

JURY VERDICTS - FEDERAL

(Information provided by the Clerk of Court's Office)

2:09-cv-03152-DCN RS Services of North America LLC, f/k/a Universal Solutions North America, LLC vs. Boyles Moak Brickell Marchetti Insurance, Inc., Boyles Moak Brickell Insurance, Inc., Boyles Moak & Stone, Inc., and Boyles Moak Insurance Services

Attorneys:

Plaintiff: Sean K. Trundy
Defendants: Warren C. Powell, Jr. and Brian P. Robinson

Cause of Action: Breach of fiduciary duty and negligence by an insurance broker

Verdict: For the Plaintiff in the amount of \$315,678.00 actual damages.

PRO BONO MOMENTS

By: Marvin H. Feingold

Director/Legal Counsel
Pro Bono Legal Services

Pro Bono Legal Services, Inc. (PBLs) facilitates pro bono work by Charleston's private attorneys and is at a critical juncture in its existence.

The Charleston Bar has, for the last five years, been in the unique position of creating and supporting a legal services program primarily based on the pro bono service of its members. There is not another County Bar in South Carolina, or in the Region, which has such a program.

The one-time Federal grant which has primarily sustained PBLs since 2005 was exhausted in 2011.

Over the last five years, PBLs has developed supplementary funding from city and county government, private foundations, and individual law firms and attorneys. We have also received significant support and funding from the Charleston County Bar Association which has committed to continue its support and has established a permanent committee under President John Massalon to address the future of this program.

We have received great results in service: over 800 cases referred to the private bar; more than 350 volunteer attorneys, and more that 2,200 cases of direct service by staff. During these years, we have also been a source of practical experience and mentorship for more than a hundred Charleston School of Law students working in our office as volunteers, externs, and through paid Ackerman Fellowships.

Despite all our success, we remain in dire need of funding to continue operating in 2012. PBLs is an agency that is vital to our community's justice system. I believe you would agree with me that we should not allow such an important service asset to become defunct or to continue in an any less robust format.

We are asking the major law firms in Charleston to make substantial contributions to keep the program going in 2012, and to commit to its future.

Despite the current financial constraints, PBLs will sponsor, as it has for the past four years, two seminars for Summer Law Interns working for Charleston law firms. The half-day sessions are at the Charleston School of Law on the mornings of June 10 and July 22. They will be presented as five half-hour talks on subjects related to practice skills not likely to be learned at law school.

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Our Sincere Appreciation and Thanks to Mia Maness

It is with great regret and sincere appreciation that we bid farewell to Mia Maness as the editor of this newsletter. Shakespeare must have anticipated Mia's service as editor when he penned the line that "some are born great, some achieve greatness, and others have greatness thrust upon them."

Mia was born great. She has a keen intellect, a diligent work ethic, a great sense of humor and a contagious enthusiasm that she brings to every task, including her service as editor.

After growing up in Spartanburg, she began to achieve excellence. Mia received a B.A. from the University of South Carolina magna cum laude in 1985, and a Juris Doctor degree from that same institution in 1988. She was introduced to the Charleston Bar as a law clerk to the Honorable C. Weston Houck, where she served with distinction from 1988 to 1991. At that time, she accepted a position with Holmes & Thomson and she remained there until 1999. Mia then transferred to the Law Office of Mark Tanenbaum, PA. She left that firm in 2005 to accept a partnership with Kernodle, Taylor & Root, but she returned to the Tanenbaum firm in 2007 and she has remained there ever since. While building her career, Mia also built a solid reputation as a vigilant, ethical advocate of the highest caliber.

Mia had greatness thrust upon her when she succeeded Danny Mullis as the editor of this newsletter. She was officially listed as the editor in the spring 1997 edition. However, prior to that Mia provided a significant contribution to the newsletter during her apprenticeship with Danny. Mia had the following to say when we asked her about her tenure as editor:

"Our newsletter is a wonderful resource for keeping up with the Charleston legal community and courts. Because I had to read everything that went into it, there's not much that's happened over the years that's gotten by me. Although at times it has been a lot of work, editing the newsletter has given me a strong sense of this community and the way that juries behave in this jurisdiction. It's been a good trade off for me and I hope my contribution to the newsletter has benefited the bar."

While we hate to see Mia's time as editor come to an end, we are thankful for her service and all that she has done for the Charleston County Bar Association. After more than fifteen years of faithful service, she has more than earned a break. She has also earned our respect and admiration.

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DISSENTING OPINION

This case has been brought for the express and declared purpose of determining the right of the State of South Carolina, in its public schools, to practice segregation according to race.

It is alleged that the defendants are acting under the authority granted them by the Constitution and laws of the State of South Carolina and that all of these are in contravention of the Constitution and laws of the United States. The particular portions of the laws of South Carolina are as follows:

Article XI, Section 5 is as follows:

'Free public schools.- The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years * * *.'

Article XI, Section 7 is as follows:

'Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race.'

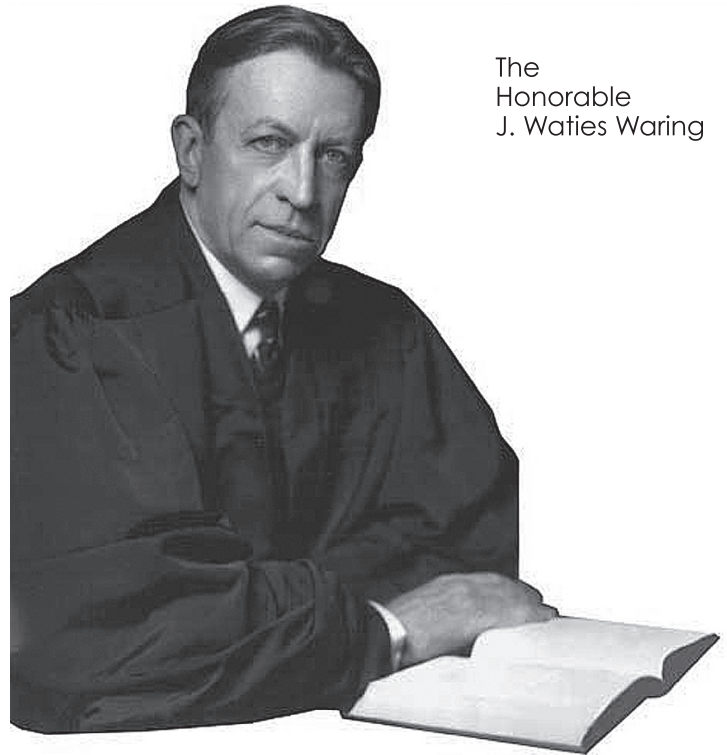
Section 5377 of the Code of Laws of South Carolina is as follows:

'It shall be unlawful for pupils of one race to attend the schools provided by boards of trustees for persons of another race.'

The case came on for a trial upon the issues as presented in the complaint and answer. But upon the call of the case, defendants' counsel announced that they wished to make a statement on behalf of the defendants making certain admissions and praying that the Court make a finding as to inequalities in respect to buildings, equipment, facilities, curricula and other aspects of the schools provided for children in School District 22 in Clarendon County and giving the public authorities time to formulate plans for ending such inequalities. In this statement defendants claim that they never had intended to discriminate against any of the pupils and although they had filed an answer to the complaint, some five months ago, denying inequalities they now admit that they had found some; but rely upon the fact that subsequent to the institution of this suit, James F. Byrnes, the Governor of South Carolina, had stated in his inaugural address that the State must take steps to provide money for improving educational facilities and that thereafter, the Legislature had adopted certain legislation. They stated that they hoped that in time they would obtain money as a result of the foregoing and improve the school situation.

This statement was allowed to be filed and considered as an amendment to the answer.

By this maneuver, the defendants have endeavored to induce this Court to avoid the primary purpose of the suit. And if the Court should follow this suggestion and fail to meet the issues raised by merely considering this case in the light of another 'separate but equal' case, the entire purpose and reason for the institution of the case and the



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Honorable
J. Waties Waring

convening of a three-judge court would be voided. The 66 plaintiffs in this cause have brought this suit at what must have cost much in effort and financial expenditures.

And in addition to all of this, these 66 plaintiffs have not merely expended their time and money in order to test this important Constitutional question, but they have shown unexampled courage in bringing and presenting this cause at their own expense in the face of the long established and age-old pattern of the way of life which the State of South Carolina has adopted and practiced and lived in since and as a result of the institution of human slavery.

If a case of this magnitude can be turned aside and a court refused to hear these basic issues by the mere device of admission that some buildings, blackboards, lighting fixtures and toilet facilities are unequal but that they may be remedied by the spending of a few dollars, then, indeed people in the plight in which these plaintiffs are, have no adequate remedy or forum in which to air their wrongs. If this method of judicial evasion be adopted, these very infant plaintiffs now pupils in Clarendon County will probably be bringing suits for their children and grandchildren decades or rather generations hence in an effort to get for their descendants what are today denied to them. If they are entitled to any rights as American citizens, they are entitled to have these rights now and not in the future. And no excuse can be made to deny them these rights which are theirs under the Constitution and laws of America by the use of the false doctrine and patter called 'separate but equal' and it is the duty of the Court to meet these issues simply and factually and without fear, sophistry and evasion.

...



We should be unwilling to straddle or avoid this issue and if the suggestion made by these defendants is to be adopted as the type of justice to be meted out by this Court, then I want no part of it.

And so we must and do face, without evasion or equivocation, the question as to whether segregation in education in our schools is legal or whether it cannot exist under out [sic] American system as particularly enunciated in the Fourteenth Amendment to the Constitution of the United States.

The Fourteenth Amendment to the Constitution of the United States is as follows: 'Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and and [sic] of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

It seems to me that it is unnecessary to pore through voluminous arguments and opinions to ascertain what the foregoing means. And while it is true that we have had hundreds, perhaps thousands, of legal opinions outlining and defining the various effects and overtones on our laws and life brought about by the adoption of this Amendment, one of ordinary ability and understanding of the English language will have no trouble in knowing that when this Amendment was adopted, it was intended to do away with discrimination between our citizens.

The Amendment refers to all persons. There is nothing in there that attempts to separate, segregate or discriminate

against any person because of their being of European, Asian or African ancestry. And the plaintiff intendment is that all of these persons are citizens. And then it is provided that no State shall make or enforce any law which shall abridge the privileges of citizens nor shall any state deny 'to any person within its jurisdiction the equal protection of the laws.'

Let us now come to consider whether the Constitution and Laws of the State of South Carolina which we have heretofore quoted are in conflict with the true meaning and intendment of this Fourteenth Amendment. The whole discussion of race and ancestry has been intermingled with sophistry and prejudice. What possible definition can be found for the so-called white race, Negro race or other races? Who is to decide and what is the test? For years, there was much talk of blood and taint of blood. Science tells us that there are but four kinds of blood: A, B, AB and O and these are found in Europeans, Asiatics, Africans, Americans and others. And so we need not further consider the irresponsible and baseless references to preservation of 'Caucasian blood'. So then, what test are we going to use in opening our school doors and labeling them 'white' and 'Negro'? The law of South Carolina considers a person of one-eighth African ancestry to be a Negro. Why this proportion? Is it based upon any reason: anthropological, historical or ethical? And how are the trustees to know who are 'whites' and who are 'Negroes'? If it is dangerous and evil for a white child to be associated with another child, one of whose great-grandparents was of African descent, is it not equally dangerous for one with a one-sixteenth percentage? And if the State has decided that there is danger in contact between the whites and Negroes, isn't it requisite and proper that the State furnish a series of schools one for each of these percentages? If the idea is perfect racial equality in educational systems, why should children of pure African descent be brought in contact with children of one-half, one-fourth, or one-eighth such ancestry? To ask these questions is sufficient answer to them. The whole thing is unreasonable, unscientific and based upon unadulterated prejudice. We see the results of all of this warped thinking in the poor under-privileged and frightened attitude of so many of the Negroes in the southern states; and in the sadistic insistence of the 'white supremacists' in declaring that their will must be imposed irrespective of rights of other citizens. This claim of 'white supremacy', while fantastic and without foundation, is really believed by them for we have had repeated declarations from leading politicians and governors of this state and other states declaring that 'white supremacy' will be endangered by the abolition of segregation. There are present threats, including those of the present Governor of this state, going to the extent of saying that all public education may be abandoned if the courts should grant true equality in educational facilities.

In the instant case, the plaintiffs produced in large number of witnesses. It is significant that the defendants brought but two. These last two were not trained educators. One was an official of the Clarendon schools who said that the school system needed improvement and that the school officials were hopeful and expectant of obtaining money from State funds to improve all facilities. The other witness, significantly named Crow, has been recently employed by

a commission just established which, it is proposed, will supervise educational facilities in the State and will handle monies if, as and when the same are received sometime in the future. Mr. Crow did not testify as an expert on education although he stated flatly that he believed in separation of the races and that he heard a number of other people say so, including some Negroes, but he was unable to mention any of their names. Mr. Crow explained what was likely and liable to happen under the 1951 State Educational Act to which frequent reference was made in argument on behalf of the defense.

...

On the other hand, the plaintiffs brought many witnesses, some of them of national reputation in various educational fields. It is unnecessary for me to review or analyze their testimony. But they who had made studies of education and its effect upon children, starting with the lowest grades and studying them up through and into high school, unequivocally testified that aside from inequality in housing appliances and equipment, the mere fact of segregation, itself, had a deleterious and warping effect upon the minds of children. These witnesses testified as to their study and researches and their actual tests with children of varying ages and they showed that the humiliation and disgrace of being set aside and segregated as unfit to associate with others of different color had an evil and ineradicable effect upon the mental processes of our young which would remain with them and deform their view on life until and throughout their maturity. This applies to white as well as Negro children.

...

From their testimony, it was clearly apparent, as it should be to any thoughtful person, irrespective of having such expert testimony, that segregation in education can never produce equality and that it is an evil that must be eradicated. This case presents the matter clearly for adjudication and I am of the opinion that all of the legal guideposts, expert testimony, common sense and reason point unerringly to the conclusion that the system of segregation in education adopted and practiced in the State of South Carolina must go and must go now.

Segregation is per se inequality (emphasis added).

...

To me the situation is clear and important, particularly at this time when our national leaders are called upon to show to the world that our democracy means what it says and that it is a true democracy and there is no under-coversuppression of the rights of any of our citizens because of the pigmentation of their skins. And I had hoped that this Court would take this view of the situation and make a clear cut declaration that the State of South Carolina should follow the intent and meaning of the Constitution of the United States and that it shall not abridge the privileges accorded to or deny equal protection of its laws to any of its citizens. But since the majority of this Court feel otherwise, and since I cannot concur with them or join in the proposed decree, this opinion is filed as a dissent.

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