

Judge Waring (who first wrote ‘separate is not equal’) presentation

One of the most popular items on the jam-packed agenda was when we all went down to the courthouse in Charleston for a presentation Judge Richard Mark Gergel’s presentation on Charleston’s own Judge Waites Waring and his landmark decision *Plessy v. Ferguson*. To be in the courtroom where Judge Waring sat, and hear the historical context of his decision, then meet the artist who did a painting of the scene, was inspiring! While we were unable to get a complete copy of Judge Gergel’s remarks, the following article by Bruce Smith of the Associated Press, is in essence, the same.

In a little-known chapter of American history, a federal judge who was the son of a Confederate soldier and presided in the city where the Civil War began was the first judge in the nation to write that segregated schools are unequal schools since separate but equal became the law of the land.

U.S. District Judge Waites Waring's opinions in cases ranging from opening the South Carolina Democratic primary to blacks, to equal pay for teachers and school desegregation made him a pariah in his hometown in the segregated South. A cross was burned in his yard, bricks were thrown through his windows and he received death threats.

Eventually he left his hometown, moving to New York and never to return until he was buried in Charleston.

“You don't think of *Brown vs. the Board* as a South Carolina story but it really is,” said U.S. District Judge Richard Gergel, who is also a historian, plans to write a book about Waring.

Gergel noted Waring was the first judge since the U.S. Supreme Court 1896's decision in *Plessey vs. Ferguson* establishing separate but equal in race relations as the law of the land to write an opinion challenging the doctrine. “It's been 55 years since *Plessey* and no judge has said anything like this,” Gergel told the AP in an interview. “Of all the judges in all the cases, only Waring said school segregation is per se inequality, which is what the U.S. Supreme Court said in *Brown*.”

In early rulings, Waring decided cases on separate but equal, but his thinking evolved as time passed.

At the time of the Clarendon County case, South Carolina had separate schools for blacks and white, although the amount of money spent on the black schools was far less. Waring wrote that beyond unequal facilities “segregation in education can never produce equality” and called it “an evil that must be eradicated.” The Clarendon County case, he wrote, demanded a “strike at the cause of the infection and not merely at the symptoms of the disease.”

When Waring and two other federal judges heard the Clarendon case in Charleston in 1951 – a case in which future Supreme Court Justice Thurgood Marshall argued for the plaintiffs – hundreds of blacks lined up outside the courthouse hoping to get seats, although there wasn't room for all. “They had come there on pilgrimage,” Waring recalled in an interview at Columbia University some years later. “It's awfully heartening when you get poor, illiterate, ignorant people to suddenly sniff a little breath of freedom.”

Largely forgotten in Charleston for decades, Waring is now being remembered for the role he played in school desegregation. A statue of Waring was recently dedicated at the federal courthouse where he heard his cases, along with a historical marker about the Clarendon County case placed outside the courthouse. Waring's 1951 dissent in a Clarendon County, S.C., case was largely followed by the U.S. Supreme Court in its landmark *Brown vs. Board of Education* outlawing segregated public schools. The *Brown* ruling came after the appeal of the South Carolina case was combined with similar cases from Kansas, Delaware and the District of Columbia.

After writing his opinion, Waring received a prophetic letter thanking him from A.J. Clement Jr., who at the time headed the Charleston branch of the National Association for the Advancement of Colored People. “Americans will thank God for you in the future and at some later date the South will raise a monument to you,” he wrote.

Noted artist Jonathan Green, whose brightly colored paintings of blacks on the coastal sea islands are known worldwide, painted a picture of the scene (called “A Breath of Freedom”) which shows Judge Waring in the window of his chambers looking out at the sea of African-Americans waiting to be allowed into the courtroom to watch the proceedings. This was especially significant because it marked the first time blacks were not afraid to come to court; before this, you did not see many attending because they were afraid of reprisals. “A Breath of Freedom” was used on the program for the statue dedication. A highlight of the remarks was when the artist signed copies of his print, which were then provided to all FJAA educational conference attendees.