Arlington's Battle to Integrate Private Schools

By Richard Samp

Brown v. Board of Education held in 1954 held that the Constitution prohibits racially segregated public schools, and in 1959 Arlington became the first Virginia county to integrate its public schools. But the battle to integrate *private* schools continued for several more decades. Arlington once again led the way when in 1976 the Supreme Court—in a case involving an Arlington preschool—ruled that a federal statute prohibited private schools from refusing to accept students because of their race.[1]

The Court's decision in *Runyon v. McCrary* has not received significant attention in Arlington, perhaps because private schools in the Washington metropolitan area were already largely integrated by the 1970s. The Catholic Church in Northern Virginia, for example, integrated all of its schools almost immediately after the *Brown* decision.[2] But the 1976 *Runyon* decision had a dramatic impact on schooling in the deep South, where "white academies" flourished for decades after *Brown*.

The lawsuit that led to the *Runyon* decision was largely the handiwork of one young mother and a Fairfax County lawyer who worked for the National Labor Relationship by day and moonlighted as a civil rights attorney. The mother, Sandy McCrary, worked for the Navy in Bailey's Crossroads as an equal employment opportunity officer. Looking for daycare for her two-year-old son Michael in August 1972, she called the nearest pre-school—Bobbe's Private School, located a block away on Carlin Springs Road in Arlington. Bobbe's, which had an enrollment of more than 200 students ranging from age two through second grade, had been recommended to Sandy by a coworker. All went well during her conversation until her final question: do you accept black students? The response: "We don't take blacks and we never

intend to."

Sandy McCrary and her husband Curtis, both of whom are African-American, were stunned. Neither had faced previous racial discrimination in the Washington area. Because her job involved preventing racial discrimination in employment, Sandy was acquainted with a number of civil rights attorneys in the area. She approached the Washington Lawyers Committee for Civil Rights Under Law seeking assistance with a lawsuit against the school and was put in touch with a Fairfax County attorney named Allison R. Brown, Jr.

Brown arranged for others to call Bobbe's, and each caller received the same "no blacks" response. He then agreed to take on the McCrary family's case without fees. Although Brown worked full time for the NLRB, he maintained an active law practice on the side and had argued and won several major civil rights cases in the prior decade. Perhaps his most famous victory was *Harper v. Virginia State Board of Elections*, in which the Supreme Court in 1966 struck down state laws requiring payment of poll taxes as a requisite for voting.[3]

His first piece of advice to Sandy McCrary: find another set of parents willing to join the lawsuit. He told her that the chances both of winning the suit and of getting the case before the Supreme Court increased considerably if she could find other plaintiffs. Sandy spent weeks posting fliers about her potential lawsuit on residential bulletin boards in both Arlington and Falls Church. Her efforts finally paid off when her babysitter mentioned that two of her other clients had a son who also had been denied admission to Bobbe's because of race.

Those other clients, Raymond and Margaret Gonzales, had recently immigrated from Trinidad and lived in Falls Church. In 1969, they sought to enroll their almost-six-year-old son Colin in first grade at Fairfax-Brewster School, a K-6 elementary school on Glen Forest Drive in

Bailey's Crossroads—less than a mile from Bobbe's Private School. All seemed to be proceeding smoothly in the enrollment process until Colin and his parents visited the school in May 1969 in preparation for joining the Fairfax-Brewster summer camp program. Soon thereafter, the Gonzales family received a letter returning their application fee and medical forms and stating cryptically, "The school is, at this time, unable to accommodate the application."

Raymond called the school to seek an explanation and was told by its founder, Steuart Reiss, that Fairfax-Brewster did not accept black students. Among the other schools the Gonzaleses then called was Bobbe's Private School; they received the same no-blacks response from Bobbe's that the McCrarys were to receive three years later. They eventually enrolled Colin at Congressional School, an integrated private school in Falls Church.

According to Raymond, he was incensed by the responses from Fairfax-Brewster and Bobbe's; they had never previously been victims of racial discrimination in the Washington area. He called an official at the U.S. Department of Health, Education and Welfare to complain but was told that federal law did not prohibit racial discrimination by private schools. The family took no further action until contacted by Sandy McCrary in 1972, at which point they were enthusiastic about participating in a civil right lawsuit against the two schools.

Any racial discrimination by private schools in the Washington area was not advertised publicly. Indeed, both the Fairfax-Brewster School and Katheryne and Russell Runyon (the owners of Bobbe's) denied the discrimination charges when Brown filed consolidated lawsuits against them in federal court in Alexandria in December 1972. But private schools in other parts of the South openly acknowledged that they discriminated and defended their rights to do so. Thousands of private, whites-only schools were founded in the South in the 1960s as court orders

made integration of public schools increasingly likely. Studies conducted in the early 1970s concluded that 750,000 white students in the South attended whites-only private schools, about 10% of the white student population.[4]

The Southern Independent School Association (SISA), a group representing many such schools and headquartered in Jackson, Mississippi, intervened as a defendant in the Alexandria lawsuits. It viewed the McCrary/Gonzales suits as a threat to its members' "right" to select students based on race. SISA submitted to the court its research purporting to show that students perform better in school if their fellow students are of similar socioeconomic and racial backgrounds.

When the case came to trial in July 1973 in front of Judge Albert Bryan (the same judge who ordered integration of Arlington public schools in 1959), he rejected the schools' claims that they had not engaged in racial discrimination.[5] He noted that multiple witnesses testified that they had been told on the phone by an official at Bobbe's that the school did not admit blacks. And he ruled that Fairfax-Brewster failed to provide a plausible non-discriminatory reason for rejecting Colin Gonzales's application. The most damning piece of evidence: Fairfax-Brewster (which opened in 1955) and Bobbe's (which opened in 1958) had never enrolled even one black student.

The more difficult issue was whether federal law actually prohibits racial discrimination by private schools. The U.S. Constitution's guarantee of "equal protection of the laws" is no barrier to such discrimination; that provision only protects against discrimination by the government itself. In filing the lawsuit, Mr. Brown relied on a statute known as Section 1981, part of the Civil Rights Act of 1866. Section 1981 states that all persons should have the same

right "to make and enforce contracts ... as is enjoyed by white citizens."[6] Some prior court decisions had held that this post-Civil War statute was adopted merely to require courts in Southern states to allow blacks to file lawsuits to enforce contracts. But in ruling for the McCrary and Gonzales families, Judge Bryan held that Section 1981 also applies to individuals who refuse to enter into a contract with another solely because of the person's race.[7] He awarded damages and ordered Bobbe's and Fairfax-Brewster to stop discriminating on the basis of race.

Judge Bryan's decision was affirmed 4-3 by a closely divided appeals court in Richmond.[8] The three dissenters argued not only that Section 1981 did not prohibit private discrimination but also that forcing private schools to enroll unwanted students violated parents' and schools' rights to freedom of association, protected by the First Amendment. The Supreme Court then agreed to review the case during its 1975-76 sitting.

The freedom-of-association issue attracted nationwide interest as the Supreme Court was considering the case. Both of the Republican presidential candidates, Gerald Ford and Ronald Reagan, expressed some skepticism about government interference with the admissions decisions of private schools that receive no federal aid.[9] On the other hand, then-U.S. Solicitor General Robert Bork filed a friend-of-the-court brief on behalf of the United States that supported the McCrary and Gonzales families.

The Supreme Court's June 1976 ruling affirmed the lower-court decisions and established that the prohibition against racial discrimination in schooling extends to private schools. All nine of the Supreme Court justices rejected arguments that the First Amendment protects the right of individuals to establish schools limited to a single racial group. And by a 7-2 vote, they held that Section 1981 prohibits refusals to enter into contracts (including school enrollment contracts)

based on the race of the other party.[10]

The decision was widely applauded by local newspapers. An editorial in the Northern Virginia Sun said, "School officials should know by now that discrimination is not only against the law, but contrary to the principles of freedom and democracy."[11] There is no record of any racially segregated private schools in the Washington area after 1976.

Although the lawsuit originated in Arlington, it had significant impact nationwide. The Supreme Court's decision, together with efforts by the Internal Revenue Service to deny tax-exempt status to racially segregated schools, led to a dramatic enrollment decrease at whites-only private school in the South beginning in the mid-1970s. Unsurprisingly, many of the schools that survived remained overwhelmingly white, given their steep tuition charges and the aversion that many blacks likely felt to enrolling in schools with a history of excluding blacks. But those schools were required to repeal their no-blacks policies; and under pressure from the IRS, they were required to adopt policies designed to encourage African-Americans to enroll.[12]

Southern schools have long since stopped claiming the right to exclude blacks. But *Runyon v. McCrary* remains highly relevant to 21st-century lawsuits; its expansive interpretation of Section 1981 plays an important role in the many employment discrimination lawsuits filed each year.

Epilogue. The two defendant schools reacted differently to their courtroom defeat. The Reiss family continued to operate Fairfax-Brewster School until 1988, and from 1975 onward the school enrolled black students. The Runyon family, on the other hand, put Bobbe's Private School up for sale, reportedly to avoid being required to operate an integrated school.[13] The new owner, Norma Brill, purchased the school in 1976 and only learned about the pending litigation

when the Supreme Court handed down its decision several weeks later. Her first act as the new owner was to change the school's name to the Fairfax Academy of Early Learning. Brill's two daughters continue to operate the school under that name at its same Carlin Springs Road location.

Brill also immediately began recruiting students from all racial backgrounds. Sandy McCrary visited the school in the late 1980s and expressed great satisfaction in seeing the school's vibrant and racially integrated student body. Brill purchased the nearby Fairfax-Brewster School from the Reiss family in 1988; the large Fairfax-Brewster campus provided room to expand her educational operations. Fairfax-Brewster closed in 2002, and the campus was sold for residential development.

Neither Michael McCrary nor Colin Gonzales ever attended either of the two defendant schools. They had become well settled in new schools by the time the four-year lawsuit concluded. Both were too young to remember the Supreme Court decision in which they played leading roles, although both read quite a bit about it in later years. Colin went on to study music at Northern Virginia Community College and now lives and works in Prince William County, Virginia. Michael McCrary attended Wake Forest University on an athletic scholarship and played for ten years in the National Football League as a stand-out defensive end for the Seattle Seahawks and the Baltimore Ravens. He was a two-time Pro Bowl selection and helped lead the Ravens to their 2001 Super Bowl championship.

Sandy McCrary later attended George Mason Law School in Arlington and become a lawyer. While she was still in law school, the Supreme Court announced in 1988 that it was considering overruling *Runyon v. McCrary*. Sandy responded by filing a friend-of-the-court brief

urging the Supreme Court not to do so. The Court ultimately backed down, and *Runyon v. McCrary* remains the law of the land.[14] Sandy and Curtis McCrary now live in Florida.

Raymond and Margaret Gonzales are retired and live in Prince William County, not far from their son Colin. Both recently expressed pride in having played a role in ending segregation in private schools. Margaret remains convinced that the defendants, despite their denials at trial, intended to discriminate against Colin solely because of his skin color. "This was outright prejudice," she said.

Allison Brown, the Fairfax County lawyer who represented the Gonzales and McCrary families throughout the litigation, died in 1984 at age 60. He is widely regarded as one of the leading civil rights attorneys of his era.

1. *Runyon v. McCrary*, 427 U.S. 160 (1976). This article is based primarily on court records of the case, as well as conversations in 2020 with various case participants. The author wishes to thanks the following individuals for providing invaluable information about the case and its aftermath: Plaintiffs Raymond, Margaret, and Colin Gonzales and Sandra (Sandy) McCrary; Keith W. Reiss, who served on the board of directors of Fairfax-Brewster School at the time of the litigation; Valerie Bason, the daughter of attorney Allison W. Brown, Jr.; and Katherine Webster and Tina West, the daughters of Norma Brill—who purchased the two defendant schools after the litigation concluded.

2. James McGrath Morris, *A Chink in the Armor: The Black-Led Struggle for School Desegregation in Arlington, Virginia and the End of Massive Resistance*, 13 Journal of Policy History at 14 (2001).

3. 383 U.S. 663 (1966).

4. *See, e.g.,* Comment, *Segregation in Private Schools*, 122 U. Penn. L. Rev. 471 (1973).

5. *Gonzales v. Fairfax-Brewster School, Inc.*, 363 F. Supp. 1200 (E.D. Va. 1973).

6. 42 U.S.C. § 1981.

7. *Gonzales*, 363 F. Supp. at 1203-04.

8. *McCrary v. Runyon*, 515 F.2d 1082 (1975).

9. Lesley Oelsner, *High Court Curbs Private Schools on Racial Barrier*, New York Times (June 26, 1976); David Savage, *At Center of '76 Segregation Ruling, High Court Action Puzzles Campus of 'Melting Pot,'* Los Angeles Times (April 30, 1988).

10. *Runyon v. McCrary*, 427 U.S. 160 (1976).

11. *Just Ruling*, Northern Virginia Sun at 4 (June 28, 1976).

12. *See, e.g., Bob Jones University v. United States*, 461 U.S. 574 (1983).

13. Michael Ollove, *Tackling Discrimination*, Baltimore Sun (May 22, 2001).

14. *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989).