IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

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Nos. 614 and 667

G. W. McLAURIN,

Appellant,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, BOARD OF REGENTS OF UNIVERSITY OF OKLAHOMA, et al.,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

HEMAN MARION SWEATT,

Appellant,

vs.

THEOPHILIS SHICKEL PAINTER, et al.,

Appellee.

APPEAL PURSUANT TO WRIT OF CERTIORARI GRANTED TO THE SUPREME COURT OF THE STATE OF TEXAS.

MOTION AND BRIEF FOR THE AMERICAN FEDERATION OF TEACHERS AS AMICUS CURIAE.

PAUL G. ANNES,
Counsel for the American Federation of Teachers.

A. MARK LEVIEN,
JOHN LIGTENBERG,
Of Counsel.

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States.

The undersigned, as counsel for and on behalf of the American Federation of Teachers, respectfully move this Honorable Court for leave to file the accompanying brief as *Amicus Curiae.*

The American Federation of Teachers is an organization of more than 800 locals of 60,000 teachers throughout the country, committed to a policy of "Democracy in Education: Education for Democracy."

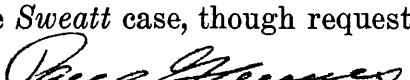
The Federation believes that education is democracy's first line of defense. It is, for this reason, vitally interested in the issues of the Sweatt and McLaurin cases—issues which will determine how much more effective education can be in strengthening the democratic way of life.

The institutions of a democratic government are under duty to protect such a government from both external and internal dangers. The Federation maintains that segregation in public schools is discriminatory and as such is an internal danger to our democracy, which the Supreme Court should enjoin as violative of our Constitution.

The question presented by these two cases is whether the segregation of Negroes in the public educational institutions as practiced in Texas and Oklahoma violates the Fourteenth Amendment. We believe it does.

It is to present written argument on this issue, so fundamental to our democracy, that movants seek leave to file a brief *amicus curiae.*

Consent of counsel for petitioners has been given to the filing of this brief. Consent of counsel for respondents in the *McLaurin* case has been given. Consent of counsel for respondents in the *Sweatt* case, though requested, has been refused.



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BRIEF OF THE AMERICAN FEDERATION OF TEACHERS AS AMICUS CURIAE.

The American Federation of Teachers submits this brief as *amicus curiae* in view of the great importance to democracy and the cause of education of the constitutional issue involved in these cases.

Opinions Below.
Statutes Involved.

The opinions below and the statutes involved are set out in the briefs of the appellants in the two cases.

Question Presented.

The general question presented by both these appeals is whether the States of Texas and Oklahoma are violating the mandates of the Fourteenth Amendment by their practices of segregating Negroes in their public educational institutions.

Statement.

In the *McLaurin* case, McLaurin, seeking admission to classes at the University of Oklahoma leading to a doctor's degree in education, after first being refused, was admitted on a segregated basis. At classes he was placed in a different room and "attended" class through an open door. He was excluded from the regular classroom, the regular library rooms and the main part of the cafeteria.

In the *Sweatt* case, the validity of Texas constitutional and statutory provisions requiring the separation of the races in professional schools is attacked. Likewise questioned is whether, under the Fourteenth Amendment, Texas may refuse a Negro admission to the regular law school of the University of Texas and send him to a separate Negro law school specially established for him—the lone student.

Summary of Argument.

The American Federation of Teachers whose motto is: "Democracy in Education: Education for Democracy" will concern itself in this *amicus curiae* brief chiefly with the effect on education of segregation, to show that segregation in public educational institutions violates the equal protection clause of the Fourteenth Amendment.

The American Federation of Teachers maintains that segregation violates basic principles of the education process; that Negroes attending segregated schools, or segregated from their fellow students in regular schools, are being denied the equal protection of the laws, mandated by the Fourteenth Amendment.

ARGUMENT.

I.

Segregation of students in the Public Educational Institutions of Oklahoma and Texas, as shown by the records in these cases, violates the requirements of the equal protection clause of the Fourteenth Amendment.

The Fourteenth Amendment to the Constitution, in Section 1, provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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."

The chief object of the first sentence of Section 1 of the Amendment, which became a part of the Constitution shortly after the close of the Civil War, was to guarantee the Negro the status of a citizen; Cf. *Elk* v. *Wilkins,* 112 U. S. 94, 101 (1884). The chief purpose of the adoption of the Fourteenth Amendment was the desire to extend federal protection to the recently emancipated race from unfriendly and discriminatory legislation by the states—Cf. *Buchanan* v. *Warley,* 245 U. S. 60, 76 (1916); *The Slaughter House Cases,* 16 Wall. 36 (1872).

The Fourteenth Amendment made Negroes citizens of the United States and was intended further to protect them fully in the exercise of their rights and privileges. To

make sure that this intent was fully known, Congress refused to readmit Southern States or seat their representatives until the states accepted the Fourteenth Amendment. Texas was one of these states and on March 30, 1870, after its acceptance of the Fourteenth and Fifteenth Amendments, its representatives were admitted to Congress. Cf. *Encyclopedia Britannica,* Vol. 21—Texas, p. 98, 1942.

Discussing the purpose of the Fourteenth Amendment, this Court, in *Strauder* v. *West Virginia,* 100 U. S. 303, 307 (1879), said:

> "It (the Amendment) ordains that no state shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the states shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states, and in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?"

This, however, did not stop the practice of segregation in the Southern States, and when that issue was presented to this Court in 1896, in *Plessy* v. *Ferguson,* 163 U. S. 537, 550 (1896), involving a Louisiana statute which required separation of Negro and white passengers, this Court said:

> ". . . We cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures."

In *Missouri ex rel. Gaines* v. *Canada, registrar,* 305 U. S. 337, 344, this Court said:

> "In answering petitioner's contention . . . the state court has fully recognized the obligation of the State to provide Negroes with advantages for higher education substantially equal to the advantages afforded to white students. The State has sought to fulfill that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions."

And at page 349 this Court said:

> "The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State."

Recently, the doctrine of "separate but equal" facilities expressed in the above quoted *Plessy* and *Gaines* cases was found to be a menace to American democracy and indefensible by the President's Committee on Civil Rights which unequivocally advocated that it be eliminated. In its report, the Committee said:

> "The separate but equal doctrine has failed in three important respects. First, it is inconsistent with the fundamental equalitarianism of the American way of life in that it marks groups with the brand of inferior status. Secondly, where it has been followed, the results have been separate and unequal facilities for minority peoples. Finally, it has kept people apart despite incontrovertible evidence that an environment favorable to civil rights is fostered whenever groups are permitted to live and work together. There is no adequate defense of segregation."*

Furthermore, recent decisions of this Court enunciate principles in conflict with the rationale of the *Plessy and Gaines* cases. These include: *Takahashi* v. *Fish & Game Commission,* 332 U. S. 410; *Oyama* v. *California,* 332 U. S. 633, 640, 646 (1948); *Sipuel* v. *Board of Regents of the*

* "To Secure These Rights"—U. S. Government Printing Office, 1947, p. 166.

University of Oklahoma, 332 U. S. 631 (1948); *Shelley* v. *Kraemer,* 334 U. S. 1 (1948).

In *Sipuel* v. *Board of Regents of the University of Oklahoma,* 332 U. S. 631 (1948), this Court said that a Negro was entitled to receive legal education afforded by a state institution; that the state must "provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."

In the *Shelley* case, this Court, in considering private agreements to exclude persons of designated race or color from the use or occupancy of real estate for residential purposes and holding that it was violative of the equal protection clause of the Fourteenth Amendment for state courts to enforce them said (at p. 22):

> ". . . The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. It is therefore no answer to these petitioners to say that the courts may also be induced to deny white persons rights of ownership and occupancy on grounds of race or color. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities."

At p. 23:

> "The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

These principles cast doubt on the soundness of the rule laid down in the *Plessy* and *Gaines* cases. We submit that it should no longer be followed.

To paraphrase the decision in the *Shelley* case, it seems to us that the segregation of students in public educational institutions as practiced by Texas and Oklahoma as shown by the records, violates the primary object of the Fourteenth Amendment: ". . . the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color."

II.

Segregation in public institutions of learning inevitably results in inferior educational opportunities for the Negro.

Commenting on the study of Dr. John Norton and Dr. Eugene Lawler—Public School Expenditures (1944) W. Harden Hughes states:

> "The contrasts in support of white and Negro schools are appalling . . . the median expenditure per standard classroom unit in schools for white children is $1,160 as compared with $476 for Negro children. Only 2.56% of class rooms in the white schools fall below the $500 cost level while 52.59% of the class rooms for Negro children are below this level."[1]
>
> "The state supported institutions of higher learning for Negroes are far inferior" states Charles S. Mangum, Jr., "to their sister institutions for whites. Most of the inequalities which have been noted herein with respect to the public schools for whites and Negroes are also present in the Negro normal and technical schools. . . . There is hardly one among them

[1] Negro Year Book, Tuskegee Institute 1947. "The Negro and Education." W. Harden Hughes, p. 56.

that could compare with any good white college in the same area.''[2]

Statistics on vocational education in the land grant schools and colleges among Negroes show:

''that of the federal funds allotted for vocational training in 1934-35 white schools received 88.2% and Negro schools 11.8%.''[3]

A recommendation of this report (1934-35) was:

''that individuals and groups interested in the improvement of educational facilities continue and increase their efforts to promote equitability of educational opportunity and equitability in the distribution of funds without regard to race or color.''[3]

In Texas, the expenditure for public schools is $1400 for whites per classroom unit and $700 for Negroes.[4] There is a corresponding discrimination in school transportation, salaries of teachers, library service and provision for training beyond the secondary school.

Several recent studies[5], as well as many previous ones, all indicate the great disparity between the educational opportunities afforded white youth and those offered to Negro youth in the states where a segregated and discriminatory system of education prevails.

So obvious are the inequalities that in Vol. 1 of the National Survey of the Higher Education of Negroes we find this statement: ''No one with a knowledge of the facts

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[2] The Legal Status of the Negro (p. 134), Charles S. Mangum, Jr., Chapel Hill University of N. C. Press, 1940.

[3] Vocational Education and Guidance of Negroes, Bulletin No. 38, 1937, U. S. Dept. of Interior, Office of Education, p. 13.

[4] Public School Expenditures, Dr. John Norton and Dr. Eugene S. Lawler, American Council on Education, 1944.

[5] The Black & White of Rejections for Military Service, American Teachers Assn. Studies, ATA Montgomery, Ala., 1944; Public School Expenditures in the U. S., Dr. John K. Norton and Dr. Eugene S. Lawler; American Council on Education, Wash., D. C., 1944; Journal of Negro Education, Summer 1947.

believes that Negroes enjoy all the privileges which American democracy expressly provides for the citizens of the U. S. and even for those aliens of the white race who reside among us. The question goes much deeper than the Negro citizens' *legal right* to *equal educational opportunity.* The question is whether American democracy and what we like to call the American way of life, can stand the strain of perpetuating an undemocratic situation; and whether the nation can bear the *social cost of utilizing only a fraction of the potential contribution of so large a portion of the American population.*[6]

The Constitution is a living instrument, and a "separate but equal" doctrine based upon antiquated considerations, should not, at this time, and in this advanced era, be permitted to perpetuate a situation which denies full equality to Negroes in the pursuit of education.

III.

Segregation in public institutions of learning deprives the Negro student of an important element of the education process and he is thereby denied the equal educational opportunities mandated by the Fourteenth Amendment.

The practice of segregation in the field of education is a denial of education itself. Education means more than the physical school room and the books it contains, and the teacher who instructs. It includes the learning that comes from fre and full asociation with other students in the school. To restrict that association is to deny full and equal opportunities in the learning process. To restrict that association is to deny the constitutional guarantee.

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[6] Socio-Economic Approach to Educational Problems, Misc. No. 6, Vol. 1, p. 1, Federal Security Agency, U. S. Office of Education, Wash., 1942.

Psychologists show us that learning is an emotional as well as an intellectual process: that it is social as well as individual, and is best secured in an environment which encourages and stimulates the best effort of the individual and holds out the hope that this best effort will be accepted and used by society.

From infancy to adulthood the most satisfactory personality development occurs when the individual:

a. feels he is accepted and wanted by his community
b. secures aid and encouragement in his activities
c. has the satisfaction of contributing to the group without too many frustrating experiences
d. receives the approval of the group or some evidence of recognition.

"Another obvious fact about human development is that it is greatly facilitated by social contacts. . . . Social contacts make possible the enlargement of personal experience by fusing into it the accumulated experiences of the race."[7] (Here human race is intended.)

"More recently psychologists and other students of education have gained a livelier appreciation of the fact that learning does not take place merely because there exists an intelligence or mind. The physical condition of boys and girls, their emotional responses both in school and out, *all the environmental factors* which impinge upon them have influence upon their growth and development."[8]

"The security needs of children (and adults too) are more numerous and complicated than the elimination of gross fears suggests. They seem to be related to a larger but more subtle need which may be here labeled as the need for orientation. A person finds it desirable to know where he is in the world and how he stands with his fellows. To be 'lost' in either re-

[7] Judd, Charles H., Educational Psychology, p. 3, Houghton Mifflin, 1939.

[8] Hartmann, George W., Educational Psychology, Foreword, p. VI, American Book Co., 1940.

> spect is to be in an uncomfortable frame of mind. Not to be spatially, temporally and socially oriented is to be deprived of the *prime conditions for effective learning and growth.*"[9]

In every situation there is the inter-relation of the individual to his group—which is one that increases with his maturity. First it is the family, then the local community, then the state, the nation, and finally the entire world. At no stage of development should any barriers be erected to prevent the individual from moving from a narrower group to a larger one, particularly barriers on race. As Lewin states:

> "The group to which an individual belongs is the ground on which he stands, which gives or denies him social status, gives or denies him security and help. The firmness or weakness of this ground might not be consciously perceived, just as the firmness of the physical ground on which we tread is not always thought of. Dynamically, however, the firmness and clearness of this ground determine what the *individual wishes to do, what he can do, and how he will do it.* This is equally true of the social ground as of the physical."[10]

Again he states:

> "It should be clear to the social scientist that it is hopeless to cope with this problem (discrimination) by providing *sufficient self esteem for members of minority groups* as individuals. The discrimination which these individuals experience is not directed against them as individuals, but as group members and only by raising their self *esteem as group members* to the normal level can a remedy be produced."[11]

An interesting survey of the opinion of social scientists on the effects of enforced segregation was made by Drs.

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[9] Hartmann, George W., Educational Psychology, p. 240, American Book Co., 1940.

[10] Kurt Lewin, "Resolving Social Conflicts," p. 174, Harper & Bros., 1948.

[11] *Ibid,* p. 214.

Max Deutscher and Isidore Chein through a questionnaire[12] to 849 social scientists in all parts of the country. The questionnaire was answered by 571.

> "Ninety percent of the total sample express the opinion that enforced segregation has detrimental effects on the segregated groups."[13]
>
> "Eighty-three percent of the respondents believe that enforced segregation has detrimental psychological effects on the group which enforces segregation."[14]

A few quotations from the social scientists make clear their views: "Feelings of not being wanted, of being classified as inferiors, of being assigned to low places are destructive to personality and development and injurious alike to slave and master."[15]

> "Clinical experience and experimental evidence point unmistakably to the conclusion that segregation implies a value judgment which in turn arouses hostility in the segregated and guilt feelings in the segregator. The effect is to set up a vicious circle making for group conflict."[16]
>
> "I don't see how anyone could question the statement that power over others—to segregate or any other power—has a phychological effect on both parties or that this effect is bad in any sense for the less powerful groups. The more powerful group may like the effect it has on itself in short term values, but hatred, rebellion, or dispair are attitudes they have aroused toward themselves and they will always have to cope with these results sooner or later unless they can practically eradicate the whole minority as Europeans did with the American Indian."[17]

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[12] Max Deutscher and Isidor Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, Journal of Psychology, 1948-26, pp. 259-287.

[13] Page 265—above survey.

[14] (See Footnote 12), p. 265.

[15] (See Footnote 12), p. 274.

[16] (See Footnote 12), p. 275.

[17] (See Footnote 12), p. 279.

A practical example of the disastrous effects of segregation in training developed in the early years of the war program. Though the federal government appropriated $60,000,000 for vocational training in the technical fields of work required for the defense program, thousands of Negroes were kept out of the training and consequently out of jobs. Southern cities which had large Negro labor supply at hand, found themselves overcrowded and short of housing, school facilities and other social services because of the great influx of white workers.

In "The Negro and the War", the authors state:

> "As a result of discrimination in defense training courses as well as in employment, there has been a great deal of waste of training facilities. Of a total of 12,472 persons being trained for defense industries in Texas in February 1942 only 206 were Negroes. Yet more than 23,000 defense workers could have been trained with full use of the available equipment."[18]

The Fair Employment Practices Act—Executive Order 8802—changed the picture considerably by making it possible for Negroes to get training for war industries. With the training and with enforcement of 8802 by the Fair Employment Practices Committee, thousands of Negroes developed skills and additional earning power which were decided assets to this country during the war.

The results of an equal opportunity for training for war jobs were so beneficial that the Archbishop of San Antonio sent a statement to the House Labor Committee (June, 1944) supporting legislation for a permanent FEPC. In part the statement reads:

> "It has been my privilege to observe at close hand the working of the Fair Employment Practices Committee in this part of Texas. I am convinced that this

[18] Earl Brown and George R. Leighton, "The Negro and the War"—Public Affairs Pamphlet No. 71—1942, pp. 14-15.

> work is necessary and eminently constructive. It is a work of justice and therefore of peace and democracy. It is an adventure in good government that ought to be made permanent. . . .
>
> "If the people of the United States are glad to pour out treasure and their blood in defense of justice and the human spirit everywhere in the world, they must also be glad to practice justice at home. It is inconceivable that we should willingly deny to our own citizens that measure of justice which we purchase for others with our blood."[19]

If education can be made available to all so that each may develop to the fullest and give his contribution to society, we will find a peaceful way—rather than one of human destruction and tragedy—to bring freedom and justice to peoples.

The American Federation of Teachers believes that segregated and discriminatory education is undemocratic and contrary both to sound educational development as well as to the basic law of the land—the United States Constitution. We subscribe to the principle that democratic education provides a total environment which will enable the individual to develop to his capacity, physically, emotionally, intellectually and spiritually.

For such training to be fully effective, it is essential that each individual participate, without barriers of race, creed, or national origin, as a full fledged member in the home, the community, the state and the nation.

Accordingly, any restriction, particularly in the form of segregated and discriminatory schooling, which prevents the interplay of ideas, personalities, information and attitudes, impedes a democratic education and ultimately prevents a working democracy.

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[19] Hearings Before the Committee on Labor, House of Representatives on HR 3986, HR 4004 and HR 4005. Vol. 1, U. S. Govt. Printing Office, 1944, p. 127.

Conclusion.

Segregation of Negroes in public educational institutions in Southern States inevitably results in depriving Negroes of educational opportunities provided by those States for white citizens. Negroes in such States are thereby denied the equal protection of the laws mandated by the Fourteenth Amendment. This Court should end these violations of the constitutional mandate by reversing the judgments in these cases and granting the appellants *McLaurin* and *Sweatt* the relief they pray for.

Respectfully submitted,

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