SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 34

G. W. McLAURIN,

Appellant,

vs.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, ET AL.,

Appellees

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

BRIEF OF AMERICAN VETERANS COMMITTEE, INC. (AVC) Amicus Curiae

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BRIEF OF AMERICAN VETERANS COMMITTEE, INC. (AVC) Amicus Curiae

Preliminary Statement. This case, and the case of *Sweatt* v. *Painter* (No. 44, this Term), squarely raise the issue, for the first time, whether it is constitutional for a State to refuse to admit a Negro, solely because of race or color, into a State college to secure graduate education on the same basis as is afforded to white persons. In addition, this case raises the issue whether a State may impose substantial psychological disadvantages on a Negro student at a State college, under the pretext of effectuating its "public policy," and thereby deprive him of equality of opportunity to secure an education.

The American Veterans Committee, Inc. (AVC) has today filed an *amicus curiae* brief in *Sweatt* v. *Painter,* No. 44, setting forth AVC's interest and views on the first issue mentioned above. In this brief, AVC seeks to aid this Court on the second issue.

The Facts. In January 1948, McLaurin applied for admission to the Graduate College of the University of Oklahoma, the only school maintained by the State of Oklahoma offering a doctorate degree in the field of education. He met

the required standards for admission in all respects except that he is a Negro. He was refused admission only because of his race. He then sought an injunction in a federal district court. That court, convened as a 3-judge district court, ruled that the Oklahoma statutes which penalized the teaching and attendance of white and colored students at the same school (70 Okla. Stats., 1941, secs. 455, 456, 457) were unconstitutional, but refused to grant injunctive relief although jurisdiction was reserved "for the purpose of entering any such further orders as may be deemed proper in the circumstances" (R. 34). McLaurin again applied for, and was refused, admission (R. 38), but when he sought further judicial relief, the Board of Regents of the University of Oklahoma voted to admit him "under such rules and regulations as to segregation as the President of the University shall consider to afford to Mr. G. W. McLaurin substantially equal educational opportunities as are afforded to other persons seeking the same education in the Graduate College" (R. 97). McLaurin was admitted in October 1948.

Under the administrative rules of the University, he must sit by himself in an alcove or ante-room outside the door of the class-room, behind a partially concealing section of a wall (R. 51, 52, 56-57, 59, 61, 40). He is not permitted to study in the Library unless he sits by himself at a designated desk beside "half a carload of newspapers" on the fourth level of the library stacks (R. 55, 60-62, 53-56). He is apparently not permitted to take library books home for study, although other students are permitted to do so (R. 56). In addition, he is not permitted to use the University cafeteria; food from the cafeteria is brought to him which he may eat by himself, at other than regular cafeteria hours, in a separate dining room known as "The Jug" (R. 63, 68, 41).

I. THE COMPULSORY ISOLATION OF McLAURIN IS DESIGNED SOLELY TO HUMILIATE HIM AND IMPOSE UPON HIM AN OSTENTATIOUS "BRAND OF INFERIORITY." IT DENIES HIM EQUALITY OF OPPORTUNITY TO LEARN, STIMULATES RACE PREJUDICE, AND PRODUCES PSYCHOLOGICAL LACERATIONS IN BOTH McLAURIN AND HIS WHITE CLASSMATES.

The only possible purpose of the State University's ostentatious and ceremonial compulsory isolation of McLaurin is to symbolize that McLaurin is "of an inferior order; and altogether unfit to associate with the white race." *Dred Scott* v. *Sanford,* 60 U. S. (19 How.) 393, 407 (1857). In bold view of all, he is dramatically marked as an American "untouchable", whose very shadow defiles.[1] See the photographs in LIFE magazine (Nov. 1, 1948, p. 32) and in TIME magazine (Oct. 25, 1948, p. 44), showing McLaurin and his fellow students seated in class. *Cf.* Pl. Exh. 1-5, R. 92-96, 52.

McLaurin came to the University of Oklahoma to study. But the humiliation and degradation which the University purposely heaps upon him produce psychological burdens and emotional obstacles infinitely more detrimental to his ability to study than physical disadvantages such as his pillar-obstructed obtuse angle of vision of the blackboard and his inability to see the students at the rear of the classroom. The uncontradicted evidence in this case is that the "strange and humiliating" constant reminders of his "inferiority" are "really handicapping" him so that he "can't study and concentrate"; and that they impair his

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[1] Perhaps the University officials also hope that the stigma imposed on McLaurin will discourage other Negroes from seeking admission to the University.

"ability to take in what the professor is giving", and hinder him "from learning and grasping things as fast" (R. 59-60).

During class time he and all his fellow students are subjected to the patent and constant reminder that he is of an inferior caste—that his presence contaminates. That reminder does not end when class time is over. The University continues, both during his study time and during his meal time, to enwrap him in the consciousness of his enforced seclusion, deep in the fourth level of the Library stacks beside "half a carload of newspapers", and hidden away in the confines of "The Jug".

McLaurin is thus being subjected to the full thrust of the deep-seated feelings of humiliation, shame, frustration, resentment, and personal insecurity which compulsory racial segregation, with its blatant advertisement of the Negro's "inferiority", inflicts on almost all Negroes exposed to it. Psychologists and sociologists almost unanimously agree that the resulting psychological tensions generally warp the Negro's personality and set up psychosomatic disturbances with substantial detrimental effects on the Negro's nervous and cardiovascular systems. Deutcher and Chein, *The Psychological Effect of Enforced Segregation: A Survey of Social Science Opinion,* 26 Journ. of Psychology 259 (1948); Cooper, *The Frustrations of Being a Member of a Minority Group: What Does It Do to the Individual and to His Relationships With Other People?,* 29 Mental Hygiene 189 (1945); McLean, *Psychodynamic Factors in Racial Relations,* 244 Annals of the American Academy of Political and Social Science 159, 161 (March 1946). Where human beings are beset with such frustrations, tensions and resentments, they "simply cannot function efficiently." Deutcher and Chein, *supra,* 272.

Manifestly, a person who is purposely singled out for hostile treatment under circumstances which inevitably give rise to nervous strain and emotional tension is not being

treated equally, no matter how "equal" may be the physical facilities afforded to him.[2] Particularly is this true where, as here, McLaurin is being subjected to this nervous and emotional ordeal while he is engaged in the mental task of learning.

Nor are the psychological lacerations resulting from segregation confined solely to the Negro. The whites are harmed too. Deutcher and Chein, *supra,* 268. The hypocrisy of this patent demonstration of racism, in the very midst of a great institution of higher education professedly consecrated to the American ideal of equality of opportunity, produces "a kind of moral dry rot which eats away at the emotional and rational bases of democratic beliefs." *To Secure These Rights,* Report of the President's Committee on Civil Rights, 139 (Govt. Printing Off., Oct. 29, 1947); Deutcher and Chein, *supra,* 272. McLaurin's fellow students, many of whom undoubtedly are opposed to this ludicrous vindication of the State's "public policy",[3] are themselves degraded by this living example of the intolerance, prejudice and animosity which education is supposed to eradicate. The bias of a few, given respectability and institutional fixity by the official sanction of the University, is imposed on all. The resultant guilt feelings and degeneration of moral values lead to hypocritical rationalization of the gap between practice and ideal. The theory of race inferiority is perpetuated and race hatred is stimulated. A cycle of guilt, insecurity, distrust, antagonism,

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[2] Compare the Nazis' effective use of ostentatious ostracism, by compelling Jews to wear the Yellow Star, as a device for imposing discrimination; and the outmoded practice of shaming a student by compelling him to sit on a stool in a corner, wearing a dunce cap.

[3] There is nothing in the Record, and the State of Oklahoma does not even contend, that McLaurin's fellow students desire that McLaurin be thus isolated. In any event, "The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals." *Shelley* v. *Kraemer,* 334 U. S. 1, 22 (1948).

and prejudice is created, directed at the Negro and ricocheted back at the whites. Deutcher and Chein, *supra*, 277-279. Booker T. Washington epigrammatized the phylogeny of segregation when he remarked that "the white man could not hold the Negro in the gutter without getting in there himself." Gunnar Myrdal, *An American Dilemma, The Negro Problem and Modern Democracy*, 644 (1944).

II. OKLAHOMA'S IMPOSITION OF COMPULSORY OSTRACISM ON McLAURIN IS AN UNJUSTIFIABLE DISCRIMINATION WHICH DENIES HIM THE EQUAL PROTECTION OF THE LAWS.

The court below recognized that "the same facilities might be afforded under conditions so odious as to amount to a denial of equal protection of the law", but held that "we cannot find any justificably [sic] legal basis for the mental discomfiture" and "conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, having its foundation in the public policy of the State, and does not therefore operate to deprive this plaintiff of the equal protection of the laws" (R. 42).

We submit that the court below erred in holding that Oklahoma may constitutionally subject McLaurin to "mental discomfiture which makes concentration and study difficult, if not impossible" and impose on him "a badge of inferiority which affects his relationship, both to his fellow students, and to his professors" (Finding of Fact III, R. 41).

The claim that Oklahoma's imposition of compulsory ostracism on McLaurin is justifiable as a part of the State's "public policy", whatever that means, is indeed a watered-down version of the "convenient apologetics of the police power" usually evoked in race litigation. *Morgan* v. *Vir-*

ginia, 328 U. S. 373, 380 (1946). In fact, the State does not even attempt to pretend that the symbolic isolation of McLaurin is essential "to keep peace and good order among the races" [as does the Southern Railway Company in *Henderson* v. *United States,* No. 25, this Term, R. 170; Brief, So. Ry. Co., p. 26], or to "better preserve the peace" [as does the Attorney General of Texas in *Sweatt* v. *Painter,* No. 44, this Term; *The Washington Post,* p. 17, Dec. 30, 1949].

Racism, of course, is no justification for any governmentally imposed discrimination. This Court has consistently held that "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality" [*Hirabayashi* v. *United States,* 320 U. S. 81, 100 (1943)]; that "discriminations based on race alone are obviously irrelevant and invidious" [*Steele* v. *Louisville & Nashville R. Co.,* 323 U. S. 192, 203 (1944)]; that "racial antagonism never can" justify legal restrictions based on race [*Korematsu* v. *United States,* 323 U. S. 214, 216 (1944)]; that "racial discrimination . . . is at war with our basic concepts of a democratic society" [*Smith* v. *Texas,* 311 U. S. 128, 130 (1940)]; and that "hostility to the race . . . in the eye of the law is not justified . . . is, therefore, illegal" [*Yick Wo* v. *Hopkins,* 118 U. S. 356, 374 (1886)]. Oklahoma's "public policy", and its effect upon the fundamental personal rights and liberty which the United States Constitution promises to McLaurin, must therefore be measured "in the light of a Constitution that abhors . . . racism." Justice Murphy (concurring), *Steele* v. *Louisville & Nashville R. Co., supra,* at p. 208.

The fact that the discrimination here imposed on McLaurin is partially psychological and relates to community attitudes and individual feelings does not make it any less cognizable in law. Anglo-American law has long granted

judicial protection against defamations which subject a person "to contempt, hatred, scorn, or ridicule, and which, by thus engendering an evil opinion of him in the minds of right-thinking men, tend to deprive him of friendly intercourse and society" [*Odgers on Libel and Slander,* p. 16 (4th ed., 1905)], or which "tends to disgrace a man, lower him in or exclude him from society or bring him into contempt or ridicule" [Newell, *The Law of Slander and Libel,* p. 2 (4th ed., 1924)].

The essence of the injury is the imposition of public obloquy and odium, whether done with or without writing or words, *e. g.* "riding skimmington" to ridicule a henpecked husband publicly;[4] portraying a person as the Beast in a painting of Beauty and the Beast;[5] painting a man "playing at cudgels with his wife";[6] making a drawing of a person in a pillory;[7] or setting a lamp in front of a person's dwelling where the popular significance, in the social setting and circumstances of the place and time, was to mark a brothel, and thus to impute reproach, odium and ignominy.[8] Chief Justice Holt's statement of 250 years ago is applicable today: "Scandalous matter is not necessary to make a libel, it is enough if the defendant induces an ill opinion to be had of the plaintiff, or to make him contemptible and ridiculous."[9]

Moreover, the numerous decisions of Southern courts awarding damages for "humiliation" to a white person who

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[4] *Mason v. Jennings,* Sir. T. Raym. 401, 83 Eng. Repr. 209 (1680); *Sir William Bolton* v. *Deane,* cited in *Austin* v. *Culpepper,* 2 Show. K.B. 313, 89 Eng. Repr. 960 (1682).

[5] *Du Bost* v. *Beresford,* 2 Camp. 511, 170 Eng. Repr. 1235 (1810).

[6] *Anon.,* 11 Mod. 99, 88 Eng. Repr. 921, 922 (1707).

[7] *Austin* v. *Culpepper,* 2 Show. K.B. 313, 89 Eng. Repr. 960; Skin. 123, 90 Eng. Repr. 57 (1682).

[8] *Jefferies* v. *Duncombe,* 11 East 226, 103 Eng. Repr. 991; 2 Camp. 3, 170 Eng. Repr. 1061 (1809).

[9] *Cropp* v. *Tilney,* 3 Salk. 225, 226, 91 Eng. Repr. 791 (1699).

has been compelled to ride in the Negro section of a train,[10] or who is excluded from an office-building elevator set apart for whites and compelled to ride in an elevator set apart for Negroes,[11] or who has been called "colored" or "mulatto",[12] are all based on the proposition that strong feelings of contempt and scorn are directly associated with the view that Negroes have an inferior caste status and that the compulsory segregation of Negroes is intended to reflect such inferior caste status. The Supreme Court of Oklahoma, in *Collins* v. *Oklahoma State Hospital,* 76 Okla. 229, 231, 184 Pac. 946, 947 (1919), has candidly recognized this proposition:

> ". . . In this state, where a reasonable regulation of the conduct of the races has led to the establishment of separate schools and separate coaches, and where conditions properly have erected insurmountable barriers between the races when viewed from a social and a personal standpoint, and where the habits, the disposition, and characteristics of the race denominate the colored race as inferior to the Caucasian, it is libelous per se to write of or concerning a white person that he

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[10] *Louisville & N. R. Co.* v. *Ritchel,* 148 Ky. 701, 147 S. W. 411 (1912); *Missouri, K. & T. Ry. Co. of Texas* v. *Ball,* 25 Tex. Civ. App. 500, 61 S. W. 327 (1901); *Chicago, R. I. & P. Ry. Co.* v. *Allison,* 120 Ark. 54, 178 S.W. 401 (1915).

[11] *O'Connor* v. *Dallas Cotton Exchange,* 153 S.W. (2d) 266 (Ct. Civ. App., Texas, 1941).

[12] *Flood* v. *News & Courier Co.,* 71 S. Car. 112, 50 S.E. 637 (1905); *Wolfe* v. *Georgia Ry. & Electric Co.,* 2 Ga. App. 499, 58 S.E. 899 (1907); *Collins* v. *Okla. State Hosp.,* 76 Okla. 229, 184 Pac. 946 (1919); *Upton* v. *Times-Democrat Publ. Co.,* 104 La. 141, 28 So. 970 (1900) ("outrageous wrong"); *Spotorno* v. *Fourichon,* 40 La. Ann. 423, 4 So. 71 (1888); *Spencer* v. *Looney,* 116 Va. 767, 82 S. E. 745 (1914); *Hargrove* v. *Okla. Press Publ. Co.,* 130 Okla. 76, 265 Pac. 635 (1928); *Jones* v. *R. L. Polk & Co.,* 190 Ala. 243, 67 So. 577 (1915). *Cf. King* v. *Wood,* 1 Nott & McCord, 184 (S. Car., 1818); *Atkinson* v. *Hartley,* 1 McCord 203 (S. Car. 1821); *Eden* v. *Legare,* 1 Bay 171 (S. Car. 1791).

> is colored. Nothing could expose him to more obloquy or contempt, or bring him into more disrepute, than a charge of this character."

The Fourteenth Amendment was adopted with full recognition of the disadvantages resulting from an inferior caste status imposed by law. Chief Justice Taney, in the historic decision in *Dred Scott* v. *Sanford,* 60 U. S. (19 How.) 393, 407 (1857), had described Negroes as having "for more than a century before been regarded as beings of an inferior order; and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect." The Fourteenth Amendment was particularly intended to repudiate the *Dred Scott* decision. It therefore reached beyond the Thirteenth Amendment (which abolished slavery and involuntary servitude) to elevate the Negro to full citizenship and complete equality before the law. It did not provide for "second-class citizenship" or prescribe "separate but equal" treatment; instead, it "made the rights and responsibilities, civil and criminal, of the two races *exactly the same.*" *Virginia* v. *Rives,* 100 U. S. 313, 318 (1880) (emphasis supplied).

In *Strauder* v. *West Virginia,* 100 U. S. 303 (1880), this Court pointed out that the Fourteenth Amendment was framed and adopted to protect the colored race, which "had long been regarded as an *inferior* and subject race", against state action designed "to perpetuate the *distinctions* that had before existed." (at p. 306). The Fourteenth Amendment granted "a positive immunity, or right, most valuable to the colored race,—*the right to exemption from unfriendly legislation against them distinctively as colored,*—exemption from legal discriminations, *implying inferiority in civil society,* lessening the security of their enjoyment of the

rights which others enjoy, and discriminations which are steps toward reducing them to the condition of a subject race. . . . The very fact that colored people are *singled out* . . . is practically *a brand upon them,* affixed by the law, *an assertion of their inferiority,* and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." (pp. 307-308) (Emphasis supplied).

In *Ex parte Virginia,* 100 U. S. 339, 344-345 (1880), this Court said: "One great purpose of these amendments was to raise the colored race from that *condition of inferiority* and servitude in which most of them had previously stood, into *perfect equality of civil rights* with all other persons within the jurisdiction of the States. They were intended to take away *all possibility of oppression by law because of race or color.*" (Emphasis supplied).

Even *Plessy* v. *Ferguson,* 163 U. S. 537 (1896) (which we have roundly criticized in AVC's *amicus curiae* briefs in *Henderson* v. *United States,* No. 25, and *Sweatt* v. *Painter,* No. 44, now pending before this Court) recognized the impact of the Constitution against a State-imposed inferior caste status. By asserting, as an assumed fact, that segregation laws "do not *necessarily* imply the inferiority of either race to the other" (pp. 544, 551) (emphasis supplied), *Plessy* indicated that segregation laws would be unconstitutional where they implied that one race is inferior to another race.

Justice Harlan's prophetic dissent in *Plessy* against "state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit" with white people (at p. 560) has been underscored by more than 50 years of experience. Every survey of racial segregation and every scientific

study of its effects have confirmed "this basic fact: a law which forbids a group of American citizens to associate with other citizens in the ordinary course of daily living creates inequality by imposing a caste status on the minority group." *To Secure These Rights,* Report of the President's Committee on Civil Rights, p. 82 (Oct. 29, 1947). See also Gunnar Myrdal, *An American Dilemma, The Negro Problem and Modern Democracy,* p. 581 (1944); *Higher Education in American Democracy,* Report of the President's Commission on Higher Education, Vol. II, p. 31 (Dec. 11, 1947); *Segregation in Washington,* Report of the National Committee on Segregation in the Nation's Capital (Dec. 10, 1948).

The evident purpose of Oklahoma's imposition of compulsory ostracism on McLaurin is to humiliate and degrade him, to subject him to public obloquy and contempt, "to put him in his place" as a creature "of an inferior order; and altogether unfit to associate with the white race." The natural and actual effect of this compulsory isolation is to create nervous and emotional tensions under which he "simply cannot function efficiently." And all scientific studies of racial segregation have demonstrated that its compulsion by force of law operates to submerge the Negro into an inferior caste status. In the light of these facts, and in view of the historic purpose of the Fourteenth Amendment to bar the States from using the power of government to submerge the Negro into an inferior caste status, we submit that the compulsory isolation which the State of Oklahoma imposes on McLaurin denies him the equal protection of the laws commanded by the Fourteenth Amendment. The Constitution "nullifies sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson,* 307 U. S. 268, 275 (1939); *Yick Wo* v. *Hopkins,* 118 U. S. 356 (1886); *Yu Cong Eng* v. *Trinidad,* 271 U. S. 500, 525-

527 (1926); *Takahashi* v. *Fish & Game Commission,* 334 U. S. 410, 420 (1948).

Respectfully submitted,

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