IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 369

ADA LOIS SIPUEL,
Petitioner,

VERSUS

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, GEORGE L. CROSS, MAURICE H. MERRILL, GEORGE WADSACK and ROY GITTINGER,
Respondents.

BRIEF OF RESPONDENTS

MAC Q. WILLIAMSON,
Attorney General of Oklahoma,

FRED HANSEN,
First Assistant Attorney General,
State Capitol,
Oklahoma City, Oklahoma,

MAURICE H. MERRILL,
JOHN B. CHEADLE,
Norman, Oklahoma,
Attorneys for Respondents.

OCTOBER, 1947.

KING LAW BRIEF COMPANY, 418 NORTHWEST THIRD, OKLAHOMA CITY—PHONE 3-2969

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STATEMENT OF THE CASE

The "Statement of the Case" set forth on Page 8 of petitioner's brief, in which is incorporated by reference her petition for writ of *certiorari,* is substantially correct with the exception that respondents did not, as stated in said

petition (R. 2 and 3), refuse petitioner admission to the Law School of the University of Oklahoma on the ground:

> "(2) That scholarship aid was offered by the State to Negroes to study law outside the State, * * *."

While certain allegations of fact set forth in said statement and incorporated petition are not, in all respects, accurate, and certain conclusions of law set forth therein not, in our opinion, sound, respondents will fully clarify their position in relation to said allegations and conclusions in our "Argument" herein.

However, before concluding this "Statement of the Case," respondents desire to call attention to the "Order Correcting Opinion—June 5, 1947," which appears on Pages 51 and 52 of the record, and to the fact that said correction was not made in the pertinent language of the decision of the Supreme Court of Oklahoma, which opinion appears on Pages 35 to 51 of the record. In this connection it will be noted that said correction should have been made in the first line of the fourth paragraph of said opinion, which paragraph appears on Page 41 of the record, so that said line would read:

> As we view the matter the State itself could *not* place complete * * *

By an examination of said decision, as it appears in 180 Pac. (2d) 135-138, it will be noted that said correction was likewise not made therein.

ARGUMENT

There is but one real issue involved in this case and that is *whether or not the trial court,* that is, the District Court of Cleveland County, Oklahoma, *erred in declining to issue a writ of mandamus,* as prayed for by petitioner, *to require the respondents,* Board of Regents of the University of Oklahoma, George L. Cross, Maurice H. Merrill, George Wadsack and Roy Gittinger, *to admit the petitioner,* Ada Lois Sipuel, *to the School of Law of the University of Oklahoma.*

Before discussing the above issue respondents deem it advisable to call attention to 12 O.S. 1941, Sec. 1451, relating to the right of issuance of a writ of mandamus in Oklahoma, the material part of which is as follows:

> *"The writ of mandamus may be issued by the* Supreme Court or the *district court,* or any justice or judge thereof, during term, or at chambers, to any inferior tribunal, corporation, board or person, *to compel the performance of any act which the law specially enjoins as a duty, resulting from an office, trust or station; * * *."*

The Oklahoma Supreme Court, in construing the above language, held in the second paragraph of the syllabus of *Payne, County Treasurer et al.* v. *Smith, Judge,* 107 Okla. 165, 231 Pac. 469, as follows:

> "To sustain a petition for mandamus *petitioner must show a legal right to have the act done sought by the writ, and also that it is plain legal duty of the defendant to perform the act."*

In the case of *Stone* v. *Miracle, Dist. Judge,* 196 Okla. 42, 162 Pac. (2d) 534, the syllabus is as follows:

> "Mandamus is a writ awarded to correct an *abuse of power or an unlawful exercise thereof by an* inferior court, *officer,* tribunal or *board by which a litigant is denied a clear legal right,* especially where the remedy by appeal is inadequate or would result in inexcusable delay in the enforcement of *a clear legal right.*"

In the case at Bar petitioner evidently recognized the principles of law announced in the above decision. In this connection it will be noted that petitioner, *as a basis for this action in mandamus,* alleged in her petition (R. 2 to 6) that although she was duly qualified to attend the School of Law of the University of Oklahoma when she, on January 14, 1946, "duly applied for admission to the first year class" of said school for the term beginning January 15, 1946, she was by respondents:

> "* * * *arbitrarily* refused admission" (Para. 1 of petitioner's pet.).
>
> "* * * *arbitrarily and illegally* rejected" (Para. 2 of petitioner's pet.).

And that said refusal or rejection was:

> "* * * *arbitrary and illegal*" (Para. 5 of petitioner's pet.).

Therefore, *the real issue* involved in this case is whether or not respondents, on January 14, 1946, *arbitrarily and illegally* rejected the application of petitioner for admission to the School of Law of the University of Oklahoma.

Said issue is summarized herein as follows:

> Mandamus will not lie to require respondents to violate the public policy and criminal statutes of Oklahoma by directing respondents to admit petitioner, a colored person, to the School of Law of the Univer-

sity of Oklahoma, same being attended only by white persons, since petitioner has not:

(1) Applied, directly or indirectly to the Oklahoma State Regents for Higher Education for them, under authority of Article 13-A of the Constitution of Oklahoma, to prescribe a school of law equal or "substantially equal" to that of the University of Oklahoma as a part of the "standards of higher education" and/or "functions and courses of study" of Langston University, same being a State institution of higher education attended only by colored persons, or

(2) Indicated, directly or indirectly, to said State regents or to the governing board of Langston University, that she would attend such a school in the event it was established.

Respondents will present their argument in support of the above summarized issue under the following propositions.

FIRST PROPOSITION

THE DECISION OF THE SUPREME COURT OF OKLAHOMA APPEALED FROM HEREIN ACCORDS FULL RECOGNITION TO THE ASSERTED CONSTITUTIONAL RIGHT OF THE PETITIONER TO HAVE PROVISION MADE FOR HER LEGAL EDUCATION WITHIN THE STATE AND ESTABLISHES THAT THE STATE OF OKLAHOMA HAS PROVIDED THE INSTITUTIONAL BASIS ON WHICH THE PETITIONER MAY SECURE SUCH EDUCATION.

(a) The decision of the Supreme Court of Oklahoma fully accepts the proposition that the Equal Protection Clause of the Fourteenth Amendment requires a state which provides education in law to white students at an institution within its borders to likewise provide such education within the state to students belonging to other races, and that this right is available to any

applicant of one of said other races who indicates an intention to accept such training.

The decision of the Oklahoma Supreme Court, as above outlined, is in accord with the basis upon which the decision in *Missouri ex rel. Gaines* v. *Canada,* 305 U.S. 337, rests. The decision of the Supreme Court of Oklahoma recognizes this fully and repeatedly. "That it is the State's duty to furnish *equal facilities* to the races goes without saying" (R. 38). "Negro citizens have an equal right to receive their law school training within the State if they prefer it" (R. 42). Said court expressly stated that it is the duty of the proper state authorities, upon proper notice or information "to provide for her [petitioner] an opportunity for education in law at Langston or elsewhere in Oklahoma" (R. 45). "The reasoning and spirit of that decision [the *Gaines case*], of course, is applicable here, that is, that the State must provide either a proper legal training for petitioner in the State, or admit petitioner to the University Law School" (R. 47). The opinion specifically holds that "petitioner is fully entitled to education in law with *facilities equal* to those for white students, * * *."

(b) The decision of the Supreme Court of Oklahoma establishes that the law thereof vests in the petitioner a right to education in law within the State, at a public educational institution of higher education, on a basis of equality with white students admitted to law courses at the University of Oklahoma.

It is expressly stated in said decision that "the State Regents for Higher Education has undoubted authority

to institute a law school for Negroes at Langston. It would be the duty of that board to so act, not only upon formal demand, *but on any definite information* that a member of that race was available for such instruction and desired the same" (R. 42). Said duty is summed up in the concluding portion of the opinion in the statement "we are convinced that it is the *mandatory duty* of the State Regents for Higher Education to provide equal educational facilities for the races to the full extent that the same is necessary for the patronage thereof. That board has full power, and as we construe the law, the *mandatory duty* to provide a separate law school for Negroes upon demand or substantial notice as to patronage therefor" (R. 50).

This determination rests upon a substantial basis (as is shown by Paragraphs 1 to 5, below), in the constitutional and statutory law of Oklahoma:

1. The constitution and laws of said State prescribe the policy of segregated education of the white and the colored races, but with equal facilities, from the common schools, Oklahoma Constitution, Article 13, Section 3 (R. 16, Par. 14), on through the colleges and other institutions, 70 O.S. 1941, Sections 455, 456 and 457 (printed in full in the appendix to petitioner's brief, P. 21).

2. In pursuance of this policy, the State has established, among other institutions of higher education, the University of Oklahoma, to which white students are admitted. Likewise the State has established Langton University, to which colored students are admitted. 70 O.S. 1941, Section 1451 (plaintiff's appendix, P. 21).

3. The Oklahoma State Regents for Higher Education is established as "a co-ordinating board of con-

trol" for all institutions of higher education. As such, it is empowered and directed to "prescribe standards of higher education applicable to each institution," to "determine the functions and courses of study in each of the institutions to conform to the standards prescribed," and to "recommend to the State Legislature the budget allocations to each institution." Oklahoma Constitution, Article 13-A, Section 2 (printed in full in appendix to petitioner's brief, P. 20). This last function of recommending budget allocations is merely for the information of the Legislature, since Section 3 of said article is as follows:

> "The appropriations made by the Legislature for all such institutions shall be made in consolidated form *without reference to any particular institution* and the Board of Regents herein created shall allocate to each institution *according to its needs and functions.*"

The *mandatory character* of this constitutional provision was given effect by the Supreme Court of Oklahoma in the case of *Board of Regents* v. *Childers, State Auditor* (July 9, 1946), 197 Okla. 350, 170 Pac. (2d) 1018, approximately one year prior to its decision in the case at Bar. From these constitutional provisions it is clear that the State Regents for Higher Education, and not the governing board of each educational institution, have the power to prescribe the functions and courses of study of each institution, and that said State Regents have under their control all the financial resources which the State has appropriated for higher education. Hence, it is clear that the State Regents have full power to provide a legal education for the petitioner within the State and to prescribe the institution at which it shall be given, and that no other authority of the State possesses such power.

4. The Constitution of Oklahoma, Article 1, Section 1, provides that "the State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land." The same constitution, in Article 15, Sec-

tion 1, prescribes an official oath to be taken by all State officers, including, of course, the State Regents for Higher Education, that they will "support, obey and defend the Constitution of the United States, and the Constitution of the State of Oklahoma." It is the established practice of the courts of Oklahoma to construe grants of power in such a way as to comply with constitutional requirements. *Ex parte Tindall,* 102 Okla. 192, 200, 229 Pac. 125, 132; *In re: Assessment of Kansas City Southern Railway Company,* 168 Okla. 495, 33 Pac.(2d) 772. "The statutes of Oklahoma are construed in connection with and in subordination to the Constitution of the United States * * *." *Overton* v. *State,* 7 Okla. Cr. 203, 205, 114 Pac. 1132.

5. Fitting these constitutional and statutory provisions and established practice together, recognizing the unquestionable fact that the State Regents for Higher Education can give effect to the State's policy of segregation, consistently with obedience to the Constitution of the United States, only by providing education in law within the State to such Negroes as requested it, so long as such instruction is afforded to whites, it is neither a "strange construction" (Pet. B. 16), a "stretch of the imagination" (Pet. B. 17) nor "sophistical and circuitous reasoning" (Pet. B. 18), for the Oklahoma Supreme Court to hold that the State Regents are under a *mandatory duty* to provide for that training, consistently with the policy of segregated education, whenever it is clear that there are Negroes who are willing to receive it. It is merely compliance with the command of the State's highest law that the Constitution of the United States shall be obeyed. It is adherence to the sound doctrine expressed by the Supreme Court of Missouri in *State ex rel. Bluford* v. *Canada* (1941), 348 Mo. 298, 309, 153 S.W.(2d) 12, 17:

> "It is the duty of this court to maintain Missouri's policy of segregation so long as it does not come in conflict with the Federal Constitution. It

> is also our duty to follow the interpretation placed on the Federal Constitution by the Supreme Court of the United States."

It is but giving effect to the principle enunciated by this Court in *American Power and Light Company* v. *Securities and Exchange Commission,* 329 U.S. 90:

> "Wherever possible statutes must be interpreted in accordance with constitutional provisions."

Counsel for the petitioner are hardly in a position to criticize a statement of the law with which they concurred, when they said in their brief in the Supreme Court of Oklahoma:

> "The Constitution and laws of the United States and State of Oklahoma require that equal facilities be afforded all citizens of the State. *The duty of making such equal provisions was delegated to the Board of Regents of Higher Education.* This duty is incumbent upon the Board by virtue of their office" (R. 49, 50).

This reasonable and tenable declaration of the law of Oklahoma, by its highest court, will be accepted by this Court as an authoritative definition of the *mandatory duty* of the State Regents for Higher Education under the State law. *Tampa Water Works Company* v. *Tampa,* 199 U.S. 241, 244; *Douglas* v. *New York, New Haven and Hartford Railroad Company,* 279 U.S. 377, 386; *Atchison, Topeka and Santa Fe Railroad Company* v. *Rail Commission of California,* 283 U.S. 380, 390; *Senn* v. *Tile Layers Protective Union,* 301 U.S. 468, 477; *United States* v. *Texas,* 314 U.S. 480, 487; *Allen-Bradley Local* v. *Wisconsin Employment Relations Board,* 315 U.S. 740, 746. This Court will not accept an argument which "but disputes the correctness of the construction affixed by the court below to the State statute and assumes that that construction is here susceptible of being disregarded upon the theory of the existence of the discrimination contended for when, *if the meaning affixed to the statute by the court below be ac-*

cepted, every basis for such contended discrimination disappears." *Quong Ham Wah Co.* v. *Industrial Accident Commission,* 235 U.S. 445, 449.

(c) The Oklahoma law, thus interpreted, accords with the Equal Protection Clause of the Fourteenth Amendment, as interpreted by this Court.

The decisions of this Court consistently have recognized the validity of racial segregation in education under the Fourteenth Amendment, provided that all races are accorded equal, or substantially equal, facilities. *Plessy* v. *Ferguson,* 163 U.S. 537, 544; *Cumming* v. *County Board of Education of Richmond County,* 175 U.S. 528; *Berea College* v. *Kentucky,* 211 U.S. 45, 55; *Long Lum* v. *Rice,* 275 U.S. 78.

In *Missouri ex rel. Gaines* v. *Canada,* 305 U.S. 337, 344, this Court reaffirmed this principle, stating it as "the obligation of the state to provide Negroes with advantages for higher education *substantially equal* to the advantages afforded to white students," and that the fulfillment of said obligation, "by furnishing *equal facilities* in separate schools, * * * has been sustained by our decisions." The petitioner's counsel accept this view repeatedly in their brief (Pp. 8, 10, 13), and take their stand upon the proposition that "The decision of the Supreme Court of Oklahoma is inconsistent with and directly contrary to the decision of this Court in *Gaines* v. *Canada*" (Pet. B. 8). But the distinctions between the legal and factual situation presented in the *Gaines case* and that presented in this case are significant and controlling under the very doctrine to which the petitioner appeals.

Said distinctions, as will hereinafter be shown, have been accurately apprehended and correctly applied by the Supreme Court of Oklahoma.

1. The basic ground of the decision in the *Gaines case* is stated thus by Mr. Chief Justice Hughes:

> "By the operation of the laws of Missouri a privilege has been created for white law students which is denied to Negroes by reason of their race. The white resident is afforded legal education within the State; the Negro resident having the same qualifications *is refused it there and must go outside the State to obtain it*" 305 U.S. at 349.

2. Subsidiary to this main proposition, the opinion in the *Gaines case* points out that under the decision of the Missouri court the curators of the Lincoln University were not under a duty to provide the petitioner therein with training in law, but merely had an option to do so or to remit him to the procuring of a legal education outside Missouri at state expense. 305 U.S. at 346 and 347. The decision herein of the Supreme Court of Oklahoma expressly declares (R. 42) that:

> "The State Regents for Higher Education has undoubted authority to institute a law school for Negroes at Langston. *It would be the duty of that board to so act,* not only upon formal demand, but on any definite information that a member of that race was available for such instruction and desired the same."

3. Inasmuch as the first decision of the Supreme Court of Missouri in the *Gaines case* maintained that the constitutional rights of the petitioner therein were provided for adequately by the opportunity to have his tuition paid in an out-of-state law school, this Court declared that:

> "We must regard the question whether the provision for the legal education *in other states* of Negroes resident in Missouri is sufficient to satisfy the

constitutional requirement of equal protection, *as the pivot upon which this case turns*" 305 U.S. at 348.

The decision of the Supreme Court of Oklahoma expressly recognizes that the provision in the Oklahoma law for the payment of tuition in out-of-state schools "does not necessarily discharge the State's duty to its Negro citizen" (R. 42).

4. In the *Gaines case,* the decision did not rest upon the point that no law school presently existed for Negroes, but upon the ground that the discrimination arising from its absence "may nevertheless *continue for an indefinite period* by reason of the discretion given to the curators of Lincoln University and the alternative of arranging for tuition in other states, as permitted by the state law as construed by the state court, *so long as the curators find it unnecessary and impracticable* to provide facilities for the legal instruction of Negroes within the state." This Court continued "In that view, we cannot regard the discrimination as excused by what is called its *temporary character*" 305 U.S. at 351, 352. This language implies that a state is not required to maintain in its institution for Negroes a duplication of all departments existing in its institution for whites, *regardless* of whether students present themselves for training therein.

The decision of the Supreme Court of Oklahoma specifically points out that "authority already exists" (R. 44) for the establishment of a separate law school within the State, and that, contrary to the situation in the *Gaines case, "it is the mandatory duty"* of the State Regents for Higher Education "to provide a separate law school for Negroes upon demand or substantial notice as to patronage therefor" (R. 50). Hence, the possibility of indefinite continuance of discrimination, upon which the Gaines decision turned, does not exist in Oklahoma.

5. The petitioner's counsel make much of an alleged misconception by the Supreme Court of Oklahoma

that the petitioner in the *Gaines case* had unsuccessfully demanded from Lincoln University an education in law. This alleged misconception vanishes if the opinion of the Oklahoma court is read with attention. The opinion in the *Gaines case* (305 U.S. 342) states that the petitioner, on applying for admission to the University of Missouri, was advised:

> "To communicate with the president of Lincoln University *and the latter directed petitioner's attention*"

to the Missouri statute providing for the payment of tuition in out-of-state schools.

From this it is evident that the petitioner in the *Gaines case did communicate* with the Lincoln University authorities and that this communication must have revealed his desire for training in law at the hands of the Missouri authorities. The Supreme Court of Oklahoma, recognizing that said opinion did not reveal the exact nature of the communication to Lincoln University, stated that "we *assume* he applied to Lincoln University for instruction there in the law" (R. 45), but its stress upon the effect of this communication was that after it "the authorities in charge of the school for higher education of Negroes [in Missouri] had specific notice that petitioner, Gaines, was prepared and available and therefore there existed a need and at least one patron for a law school for Negroes" (R. 46). So treated, there is clearly no misconception.

The Oklahoma court found, with support in the record, that the petitioner in this case had not brought home to the proper state authorities a desire for, and willingness to accept, legal education in a separate school in accordance with State policy. When it was suggested that this conduct justified the inference that a law course in a separate school would not be acceptable to her, no disclaimer was made on her behalf (R. 39). The Oklahoma court was thus justified in finding that neither by express demand nor conduct had the petitioner brought home to the proper authorities her availability as a student in a separate law school

for Negroes. In the absence thereof, said Court held that *the failure to maintain a school of law for Negroes, in readiness for some possible future Negro applicant,* was not a violation of the Fourteenth Amendment. Until a reasonable notice is given that a Negro student desires local instruction and will accept it on the terms which the State constitutionally may prescribe, there is no need for the State to maintain unused facilities. This rule finds support in numerous well-reasoned authorities. *Bluford* v. *Canada,* 32 Fed. Supp. 707; *State ex rel. Bluford* v. *Canada,* 348 Mo. 298, 153 S.W.(2d) 12; *State ex rel. Michael* v. *Witham,* 179 Tenn. 250, 165 S.W.(2d) 378.

6. The petitioner's counsel make much of the agreed stipulation of fact concerning the special facilities for training in the Oklahoma law and procedure afforded by the University of Oklahoma School of Law (Pet. B. 19). This stipulation covers matters which this Court in the *Gaines case* held to be "beside the point" 305 U.S. at 349. These special advantages can be furnished petitioner as well in a separate school for Negroes as in the University of Oklahoma, if she will but indicate effectively to the proper authorities her willingness to accept training therein.

7. The petitioner's counsel calls attention to a stipulation concerning the action of the State Regents for Higher Education subsequent to the filing of this action (Pet. B. 12, 13). The opinion of the Supreme Court of Oklahoma adequately demonstrates the immateriality of this (R. 50), and, since counsel makes no effort to rebut the same in their brief, we assume that they do not make any point of it in this Court. Compare *Gilchrist* v. *Interborough Rapid Transit Company,* 279 U.S. 159, 208.

SECOND PROPOSITION

THE PETITIONER HAS FAILED TO SEEK RELIEF FROM OR AGAINST THE OFFICIALS WHO MAY PROVIDE IT UNDER THE LAW OF OKLAHOMA.

As the analysis herein of the local law already has demonstrated, the State Regents for Higher Education have full control over the functions, the courses of study and the budgets of the several Oklahoma institutions of higher education. The Board of Regents of the University of Oklahoma and its administrative authorities have no power to alter its functions from those of an institution for the education of *white students* to those of an institution for the education of *white and colored students.* The authority to prescribe functions rests in the State Regents. They have complete control over the purse strings of the State's higher educational institutions. It is they who must make the decision whether the resources available will enable them to provide separate education in law for the two races in accordance with the State's policy, and what budgetary adjustments must be made for that purpose. If they find this to be impossible, they might elect to comply with the Constitution of the United States by discontinuing all State provision for instruction in law, or by opening up the single State law school to students of all races. Hence, it is they, and not the authorities of the University of Oklahoma, from whom and against whom the petitioner should seek relief. This case, therefore, comes under the rule enunciated and applied in *Copperweld Steel Company* v. *Indus-*

trial Commission of Ohio, 324 U.S. 780, 785, wherein this Court held:

> "The question of the propriety of taking the appeal need not be decided, in the view we take of the basis of the state court's judgment. Inasmuch as we conclude that decision was grounded upon the view that the appellant *had not pursued the remedy afforded by State law for the vindication of any constitutional right it claimed was violated,* we must dismiss the appeal and deny *certiorari.*"

See also, as to the need for pursuing State administrative remedies before resorting to judicial action, *Prentis* v. *Atlantic Coast Line Company,* 211 U.S. 210, 230; *Lawrence* v. *St. Louis-San Francisco Railway Company,* 274 U.S. 588, 592; *St. Louis-San Francisco Railway Company* v. *Alabama Public Service Commission,* 270 U.S. 560, 563.

The decision of the Supreme Court of Oklahoma expressly holds and determines:

> (1) That the petitioner, a Negro, is entitled to education in law within the State so long as the State maintains facilities for such education available to white students;
>
> (2) That such education must be furnished on a basis of equality of facilities, but, under the established law and policy of the State, in a separate institution;
>
> (3) That only the State Regents for Higher Education have the authority to provide such education, since they constitute the only official body of the State having authority to prescribe the standards and the functions and courses of study of the several State institutions of higher education;

(4) That the duty of the State Regents to provide the petitioner with legal training on a basis of equality with that afforded to white students *is mandatory* and not discretionary;

(5) That this duty attaches whenever, either by formal demand or through information arising in some other way, the State Regents properly are chargeable with notice that a Negro student desires the provision of training in law at a separate law school;

(6) That the State Regents are the only State officers that have at their command the State's revenue provided for purposes of higher education.

On the basis of this analysis of the pertinent law, the petitioner's road to secure a legal education within Oklahoma, if she is willing to accept the State's valid policy of segregated education, is clear. If she applies to the State Regents for Higher Education to provide her facilities for a legal education, it is inconceivable that, with the instant opinion of the Supreme Court of Oklahoma before them, they will refuse to do so. Should they, the remedy through judicial recourse is clear.

The petitioner could have set this machinery in motion on April 29, 1947, when the opinion of the Supreme Court of Oklahoma was filed. The constitutional and statutory provisions upon which the decision rests were in existence at all times, and certainly her attention was called to the respondent's contention respecting their interpretation as early as the filing of respondents' answer in the District Court of Cleveland County, Oklahoma, on May 14, 1946. Thus, at any time since then, she might have

evinced her willingness and desire to accept an education in law furnished according to the valid policy of the State. Instead, she insisted at all times, and still insists, on her alleged right to attend the Law School of the University of Oklahoma regardless of that policy.

Her disregard of the State Regents for Higher Education, as aforesaid, and her failure to make them parties to this action, combine to indicate that her interest was in breaking down the State's policy of segregated education, not in securing provision for legal training in accordance therewith. It fully justifies the comment of the Supreme Court of Oklahoma: "The effect of her actions was to withhold or refrain from giving to the proper officials, the right or option or opportunity to provide separate education in law for her * * *" (R. 47). This attitude, so manifested and continued, gives no assurance that she would accept legal training in a separate law school, and justifies the State Regents in taking no action, in so far as she is concerned, until she indicates a willingness to do so. For all delay resulting from this conduct, the petitioner alone is responsible.

CONCLUSION

We respectfully submit that the petition for *certiorari* herein should be denied for want of a substantial Federal question in that:

(1) The judgment of the Supreme Court of Oklahoma herein correctly applies the Constitution of the

United States in holding that petitioner has not been denied the equal protection of the law by operation of the constitution and statutes, and the administrative action, of the State of Oklahoma herein brought in question, and

(2) The judgment of the Supreme Court of Oklahoma is based upon the non-Federal ground that the petitioner has failed to seek relief from the only administrative officers authorized to provide her the facilities for legal education which she desires.

Respectfully submitted,

MAC Q. WILLIAMSON,
Attorney General of Oklahoma,

FRED HANSEN,
First Assistant Attorney General,
State Capitol,
Oklahoma City, Oklahoma,

MAURICE H. MERRILL,
JOHN B. CHEADLE,
Norman, Oklahoma,

Attorneys for Respondents.

OCTOBER, 1947.