TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 369

ADA LOIS SIPUEL, PETITIONER,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED SEPTEMBER 24, 1947.

CERTIORARI GRANTED NOVEMBER 10, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No.

ADA LOIS SIPUEL, PETITIONER,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D.C., SEPTEMBER 18, 1947.

—2514

[fols. 1-2] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32756

ADA LOIS SIPUEL, Plaintiff in Error,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, GEORGE L. CROSS, Maurice H. Merrill, George Wadsack and Roy Gittinger, Defendants in Error

PETITION IN ERROR—Filed Aug. 17, 1946

The said Ada Lois Sipuel, plaintiff in error, complains of said defendants in error for that the said defendants in error on the 9th day of July, 1946, in the District Court of Cleveland County, Oklahoma, recovered a judgment, by the consideration of said court, against the said plaintiff in error, in a certain action then pending in the said court, wherein the said Ada Lois Sipuel was plaintiff and the said Board of Regents of the University of Oklahoma, George L. Cross, Maurice H. Merrill, George Wadsack and Roy Gittinger were defendants.

[fol. 3] The original case-made, duly signed, attested, and filed is hereunto attached, marked "Exhibit A," and made a part of this petition in error; and the said Ada Lois Sipuel avers that there is error in the said record and proceedings, in this, to wit:

(1) Error of the court in denying the petition of the plaintiff for a writ of mandamus.

(2) Errors of law occurring at the trial which were accepted to by the plaintiff.

Wherefore, plaintiff in error prays that the said judgment so rendered may be reversed, set aside, and held for naught, and that a judgment may be rendered in favor of the plaintiff in error and against the defendants in error, upon the agreed statement of facts, and that the plaintiff in error be granted the relief prayed for in her petition and for such other relief as to the court may seem just.

Ada Lois Sipuel, by Amos T. Hall, Attorney for Plaintiff in Error.

[fols. 4-6] IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA

No. 14807

ADA LOIS SIPUEL, Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, GEORGE L. CROSS, Maurice H. Merrill, George Wadsack and Roy Gittinger, Defendants.

Case Made

APPEARANCES:

Amos T. Hall, Tulsa, Oklahoma; Thurgood Marshall, New York, New York; and Robert L. Carter, New York, New York, Attorneys for Plaintiff.

Mac Q. Williamson, Attorney General of Oklahoma; Fred Hansen, First Assistant Attorney General of Oklahoma; Dr. Maurice H. Merrill, Acting Dean of the School of Law, University of Oklahoma; and Dr. John B. Cheadle, Professor of Law, University of Oklahoma, Attorneys for Defendants.

Hon. Ben T. Williams, District Judge.

Bob Hunter, Jr., Court Reporter.

[fol. 7] IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA

[Title omitted]

[fol. 8] PETITION FOR WRIT OF MANDAMUS—Filed April 6, 1946

Now comes the plaintiff, Ada Lois Sipuel, and for her cause of action against the defendants and each of them alleges and states:

1. That she is a resident and citizen of the United States and of the State of Oklahoma, County of Grady, and city of Chickasha. She desires to study law in the School of Law of The University of Oklahoma, which is supported and

maintained by the taxpayers of the State of Oklahoma, for the purpose of preparing herself to practice law in the State of Oklahoma and for public service therein and has been arbitrarily refused admission.

2. That on January 14, 1946, plaintiff duly applied for admission to the first year class of the school of law of the University of Oklahoma. She then possessed and still possesses all the scholastic, moral and other lawful qualifications prescribed by the Constitution and statutes of the State of Oklahoma, by the Board of Regents of the University of Oklahoma and by all duly authorized officers and agents of the said University and the school of law for admission into the first year class of the school of law of the said University. She was then and still is ready and willing to pay all lawful uniform fees and charges and to conform to all lawful uniform rules and regulations established by lawful authority for admission to the said class. Plaintiff's application was arbitrarily and illegally rejected pursuant to a policy, custom or usage of denying to qualified Negro applicants the equal protection of the laws solely on the ground of her race and color.

[fol. 9] 3. That the school of law of the University of Oklahoma is the only law school in the state maintained by the state and under its control and is the only law school in Oklahoma that plaintiff is qualified to attend. Plaintiff desires that she be admitted in the first year class of the school of law of the University of Oklahoma at the next regular registration period for admission to such class or at the first regular registration period after this cause has been heard and determined and upon her paying the requisite uniform fees and conforming to the lawful uniform rules and regulations for admission to such class.

4. That the defendant Board of Regents of the University of Oklahoma is an administrative agency of the State and exercises overall authority with reference to the regulation of instruction and admission of students in the University, a corporation organized as a part of the educational system of the state and maintained by appropriations from the public funds of the State of Oklahoma. The defendant, George L. Cross, is the duly appointed, qualified and acting President of the said University and as such is subject to the authority of the Board of Regents as an immediate

agent governing and controlling the several colleges and schools of the said University. The defendant, Maurice H. Merrill, is the Dean of the school of law of the said University whose duties comprise the government of the said law school including the admission and acceptance of applicants eligible to enroll as students therein, including your plaintiff. The defendant, Roy Gittinger, is the Dean of admissions of the said University and the defendant George Wadsack is the Registrar thereof, both possessing [fol. 10] authority to pass upon the eligibility of applicants who seek to enroll as students therein, including your plaintiff. All of the personal defendants come under the authority, supervision, control and act pursuant to the orders and policies established by the defendant Board of Regents of the University of Oklahoma. All defendants herein are being sued in their official capacity.

5. That the school of law specializes in law and procedure which regulates the courts of justice and government in Oklahoma and there is no other law school maintained by the public funds of the state where plaintiff can study Oklahoma law and procedure to the same extent and on an equal level of scholarship and intensity as in the school of law of the University of Oklahoma. The arbitrary and illegal refusal of defendants Board of Regents, George L. Cross, Maurice H. Merrill, George Wadsack and Roy Gittinger, to admit plaintiff to the first year of the said law school solely on the ground of race and color inflicts upon your plaintiff an irreparable injury and will place her at a distinct disadvantage at the bar of Oklahoma and in the public service of the aforesaid state with persons who have had the benefit of the unique preparation in Oklahoma law and procedure offered to white qualified applicants in the law school of the University of Oklahoma.

6. That the requirements for admission to the first year class of the school of law are as follows: applicants must be at least eighteen (18) years of age and must have graduated from an accredited high school and completed two full years of academic college work. In addition applicants must have maintained at least one grade point for each semester carried in college or two grade points during the [fol. 11] last college year of not less than thirty semester hours. Plaintiff is over eighteen (18) years of age, has completed the full college course at Langston University, a

college maintained and operated by the State of Oklahoma for the higher education of its Negro citizens. Plaintiff maintained one grade point for each semester point carried and graduated from the above named college with honors. She is of good moral character and has in all particulars met the qualifications necessary for admittance to the school of law of the University of Oklahoma which fact defendants have admitted. She is ready, willing and able to pay all lawful charges and tuition requisite to admission to the first year of the school of law and she is otherwise ready, willing and able to comply with all lawful rules and regulations requisite for admission therein.

7. O January 14, 1946, plaintiff applied for admission to the school of law of the University of Oklahoma and complied with all the rules and regulations entitling her to admission by filing with the proper officials of the University an official transcript of her scholastic record, Said transcript was duly examined and inspected by the President, Dean of the School of Law and Dean of Admissions and Registrar of the University; defendants aforementioned, and found to be an official transcript as aforesaid entitling her to admission to the school of law of the University. Plaintiff was denied admission to the school of law solely on the ground of race and color in violation of the Constitution and laws of the United States and of the State of Oklahoma.

8. Defendants have established and are maintaining a policy, custom and usage of denying to qualified Negro [fol. 12] applicants the equal protection of the laws by refusing to admit them into the law school of the University of Oklahoma solely because of race and color and have continued the policy of refusing to admit qualified Negro applicants into the said school while at the same time admitting white applicants with less qualifications than Negro applicants solely on account of race and color.

9. The defendants, George L. Cross, Maurice H. Merrill, George Wadsack and Roy Gittinger refuse to act upon plaintiff's application and although admitting that plaintiff possesses all the qualifications necessary for admission to the first year in the school of law, refused her admission on the ground that the defendant Board of Regents had established a policy that Negro qualified applicants were not eligible for admission in the law school of the University of

Oklahoma solely because of race and color. Plaintiff appealed directly to the Board of Regents for admission to the first year class of the law school of said University and such board has so far refused to act in the premises.

10. Plaintiff further shows that she has no speedy, adequate remedy at law and that unless a Writ of Mandamus is issued she will be denied the right and privilege of pursuing the course of instruction in the school of law as hereinbefore set out.

Wherefore, plaintiff being otherwise remediless, prays this Honorable Court to issue a Writ of Mandamus requiring and compelling said defendants to comply with their statutory duty in the premises and admit the plaintiff in the school of law of the said University of Oklahoma and have such other and further relief as may be just and proper.

[fol. 13] (Signed) Amos T. Hall, 107½ N. Greenwood Avenue, Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York 18, N. Y.; Robert L. Carter, 20 West 40th Street, New York, 18, N. Y., Attorneys for Plaintiff.

Duly sworn to by Ada Sipuel. Jurat omitted in printing.

[fol. 14] [File endorsement omitted]

IN DISTRICT COURT OF CLEVELAND COUNTY

MINUTE ENTRY OF ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS

4-9-46—C/M: Alternative writ of Mandamus issued to defendants to admit Plaintiff to Law School of University of Oklahoma or appear April 26, 1946, at 10 o'clock A.M., and show cause as per Alternative Writ of Mandamus.

Of the Records of Cleveland County, State of Oklahoma, in District Court. Civil Appearance Docket No. 24, Page 272.

[fol. 15] IN DISTRICT COURT OF CLEVELAND COUNTY

[Title omitted]

ALTERNATIVE WRIT OF MANDAMUS AND RETURN—April 9, 1946

On this the 9th day of April, 1946, upon due and proper application of the plaintiff showing the following facts, to-wit:

1. That she is a resident and citizen of the United States and of the State of Oklahoma, County of Grady, and city of Chickasha. She desires to study law in the School of Law of the University of Oklahoma, which is supported and maintained by the taxpayers of the State of Oklahoma, for the purpose of preparing herself to practice law in the State of Oklahoma and for public service therein and has been arbitrarily refused admission.

2. That on January 14, 1946, plaintiff duly applied for admission to the first year class of the school of law of the University of Oklahoma. She then possessed and still possesses all the scholastic, moral and other lawful qualifications prescribed by the Constitution and Statutes of the State of Oklahoma and by all duly authorized officers and agents of the said University and the school of law for admission into the first year class of the school of law of the [fol. 16] said University. She was then and still is ready and willing to pay all lawful uniform fees and charges and to conform to all lawful rules and regulations established by lawful authority for admission to the said class. Plaintiff's application was arbitrarily and illegally rejected pursuant to a policy, custom or usage of denying to qualified Negro applicants the equal protection of the laws solely on the ground of her race and color.

3. That the school of law of the University of Oklahoma is the only law school in the state maintained by the State and under its control and is the only law school in Oklahoma that plaintiff is qualified to attend. Plaintiff desires that she be admitted in the first year class of the school of law of the University of Oklahoma at the next regular registration period for admission to such class or at the first regular registration period after this cause has been heard and determined and upon her paying the requisite uniform fees

and conforming to the lawful uniform rules and regulations for admission to such class.

4. That the defendant Board of Regents of the University of Oklahoma is an administrative agency of the State and exercises overall authority with reference to the regulation of instruction and admission of students in the University, a corporation organized as a part of the educational system of the State and maintained by appropriations from the public funds of the State raised by taxation from the citizens and taxpayers of the State of Oklahoma. The defendant, George L. Cross, is the duly appointed, qualified and acting President of the said University and as such is subject to the Authority of the Board of Regents as an immediate agent governing and controlling the several colleges and schools of the said University. The defendant, [fol. 17] Maurice H. Merrill, is the Dean of the school of law of the said University whose duties comprise the government of the said law school including the admission and acceptance of applicants eligible to enroll as students therein, including your plaintiff. The defendant, Roy Gittinger, is the Dean of Admissions of the said University and the defendant George Wadsack is the Registrar thereof, both possessing authority to pass upon the eligibility of applicants who seek to enroll as students therein, including your plaintiff. All of the personal defendants come under the authority, supervision, control and act pursuant to the orders and policies established by the defendant Board of Regents of the University of Oklahoma. All defendants herein are being sued in their official capacity.

5. That the school of law specializes in law and procedure which regulates the courts of justice and government in Oklahoma and there is no other law school maintained by the public funds of the state where plaintiff can study Oklahoma law and procedure to the same extent and on an equal level of scholarship and intensity as in the school of law of the University of Oklahoma. The arbitrary and illegal refusal of defendants Board of Regents, George L. Cross, Maurice H. Merrill, George Wadsack and Roy Gittinger, to admit plaintiff to the first year of the said law school solely on the ground of race and color inflicts upon plaintiff an irreparable injury and will place her at a distinct disadvantage at the bar of Oklahoma and in public service of the aforesaid state with persons who have had

the benefit of the unique preparation in Oklahoma law and procedure offered to white qualified applicants in the law school of the University of Oklahoma.

[fol. 18] 6. That the requirements for admission to the first year class of the school of law are as follows: applicants must be at least eighteen (18) years of age, and must have graduated from an accredited high school and completed two full years of academic college work. In addition applicants must have maintained at least one grade point for each semester carrier — and graduated from the above named college with honors. She is of good moral character and has in all particulars met the qualifications necessary for admittance to the school of law of the University of Oklahoma which fact defendants have admitted. She is ready, willing and able to pay all lawful charges and tuition requisite to admission to the first year of the school of law and she is otherwise ready, willing and able to comply with all lawful rules and regulations requisite for admission therein.

7. On January 14, 1946, plaintiff applied for admission to the school of law of the University of Oklahoma and complied with all the rules and regulations entitling her to admission by filing with the proper officials of the University an official transcript of her scholastic record. Said transcript was duly examined and inspected by the President, Dean of the School of Law and Dean of Admissions and Registrar of the University; defendants aforementioned, and found to be an official transcript as aforesaid entitling her to admission to the school of law of the University. Plaintiff was denied admission to the school of law solely on the ground of race and color in violation of the Constitution and laws of the United States and of the State of Oklahoma.

[fol. 19] 8. Defendants have established and are maintaining a policy, custom, and usage of denying to qualified Negro applicants the equal protection of the laws by refusing to admit them into the law school of the University of Oklahoma solely because of race and color and have continued the policy of refusing to admit qualified Negro applicants into the said school while at the same time admitting white applicants with less qualifications than Negro applicants solely on account of race and color.

9. The defendants, George L. Cross, Maurice H. Merrill, George Wadsack and Roy Gittinger refuse to act upon plaintiff's application and although admitting that plaintiff possesses all the qualifications necessary for admission to the first year in the school of law, refused her admission on the ground that the defendant Board of Regents had established a policy that Negro qualified applicants were not eligible for admission in the law school of the University of Oklahoma solely because of race and color. Plaintiff appealed directly to the Board of Regents for admission to the first year class of the law school of said University and such board has so far refused to act in the premises.

10. Plaintiff further shows that she has no speedy, adequate remedy at law and that unless a Writ of Mandamus is issued she will be denied the right and privilege of pursuing the course of instruction in the school of law as hereinbefore set out.

Therefore, the Court being fully advised in the premises finds that an Alternative Write of Mandamus should be issued herein.

It is therefore ordered, considered and adjudged that all of the said defendants, Board of Regents of the University [fol. 20] of Oklahoma, George L. Cross, Maurice H. Merrill, and George Wadsack, each and all of them, are hereby commanded that immediately after receipt of this writ, you admit into the School of Law of the said University of Oklahoma, the said plaintiff, Ada Lois Sipuel, or that you and each and all of you, the said defendants, appear before this court at 10:00 o'clock A.M., on the 26th day of April, 1946, to show cause for your refusal so to do and that you then and there return this writ together with all proceedings thereof.

(Signed) Ben T. Williams, Judge of the District Court.

Witness the signature of Honorable Ben T. Williams, Judge of the said Court and seal affixed to the 9th day of April, 1946.

(Signed) Dess Burke, Court Clerk. (Seal)

STATE OF OKLAHOMA,
Cleveland County, ss:

I received this alternative Writ of Mandamus this 9th day of April, 1946, and served the same on the persons

named therein as defendants on the date and in the manner following to-wit: On the Board of Regents by serving Emil R. Kraettli, he being the Secretary to the Board of Regents; On George L. Cross, President of the University of Oklahome; On Maurice H. Merrill, Dean of Law, University of Oklahoma, and on Roy Gittinger, Dean of Admissions, University of Oklahoma; on George Wadsack, Registrar, University of Oklahoma, by delivering to each of the above named individually and in their official capacity as above set forth, personally, a full- true and correct copy of the foregoing alternative Writ of Mandamus on the 10th day of April, 1946, in Norman, Cleveland County, Oklahoma.

[fol. 21] Key Durkee, County Sheriff. By (Signed) Geo. N. Jones, Deputy Sheriff.

Sheriff's Fees

Serving Summons, first person	$ .50
4 additional persons	1.00
5 copies of summons	1.25
Mileage: 10 Miles	1.00
Total	$3.75

Endorsed on front as follows: Filed in District Court, Cleveland County, Okla., Apr. 10, 1946. (Signed) Dess Burke, County Clerk. C.J. 31, P. 4, 5, 6.

Endorsed on back as follows: Alternative Writ of Mandamus. Writ allowed this 9th day of April, 1946. (Signed) Ben T. Williams, Judge of District Court.

[fol. 22] In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Application for Time to Prepare and File Response—Filed April 23, 1946

Comes now the above named defendants, and each of them, and respectfully inform the court that on April 9,

1946, an alternative writ of mandamus was issued in the above case in which defendants were commanded

> "immediately after receipt of this writ, you admit into the School of Law of the said University of Oklahoma, the said plaintiff, Ada Lois Sipuel, or that you and each and all of you, the said defendants, appear before this court at 10:00 o'clock A.M. on the 26th day of April, 1946, to show cause for your refusal so to do and that you then and there return this writ together with all proceedings thereof."

That by reason of the fact that it will be necessary for the Attorney General of Oklahoma, as attorney for the above named defendants, to consult with the Oklahoma [fol. 23] Board of Regents for Higher Education, as well as the Board of Regents of the University of Oklahoma, together with the Governor of the State, on the important questions raised by this litigation before preparing and filing an answer or response to plaintiff's petition and said alternative writ of mandamus, it will be necessary for the court to grant defendants twenty (20) days additional time within which to prepare and file said answer or response.

That telegraphic notice of this application was given by the Attorney General on April 20, 1946, to Mr. Amos T. Hall, one of the attorneys of record for the plaintiff herein, who on the same date acknowledged by telegram to the Attorney General that he had received said notice and that "in view of the circumstances set out in your message you are advised that we offer no objection to the court granting you twenty (20) days additional time * * *."

Wherefore, premises considered, the above named defendants and each of them, respectfully ask the court to grant them twenty (20) days additional time within which to prepare and file an answer or response to plaintiff's petition and alternative writ of mandamus in the above cause.

(Signed) Mac Q. Williamson, Attorney General of Oklahoma; (Signed) Fred Hansen, First Assistant Attorney General, Attorneys for Defendants.

[fol. 24] [File endorsement omitted.]

[fol. 25] In District Court of Cleveland County

Minute Entry re Extension of Time to Respondent

4-23-46—C/M: Defendants granted 20 days additional time to respond to alternative writ as per order.

Of the Records of Cleveland County, State of Oklahoma, in District Court. Civil Appearance Docket No. 24, Page 272.

In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Order Giving Defendants Additional Time to Prepare and File Response—April 23, 1946

Now on this the 23rd day of April, 1946, the application of defendants for twenty (20) days additional time within which to prepare and file an answer or response to plaintiff's petition and alternative writ of mandamus in the above cause came on to be heard, after due notice, in regular [fol. 26] order; and the court having examined said application and the allegations set forth therein finds that said application should be granted.

Wherefore, premises considered, it is ordered and decreed by the court that defendants and each of them have twenty (20) days additional time within which to prepare and file their answer or response to plaintiff's petition and alternative writ of mandamus, to wit, until Thursday, May 16, 1946, inclusive.

(Signed) Ben T. Williams, Judge.

[File endorsement omitted.]

[fol. 27] In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Answer—Filed May 14, 1946

Comes now the above-named defendants, and each of them, and in answer to the petition of plaintiff and the

alternative writ of mandamus issued herein, allege and state:

[fol. 28] 1. That the material allegations of fact set forth in plaintiff's petition and in said alternative writ of mandamus are not sufficient to constitute a cause of action in favor of plaintiff and against defendants, or either of them.

2. That defendants, and each of them, deny the material allegations of fact set forth in Paragraphs 1 to 10, inclusive, of plaintiff's petition and in said alternative writ of mandamus (said paragraphs being identical in said petition and writ both as to number and phraseology), except such allegations as are hereinafter alleged or admitted.

3. Defendants admit the material allegations of fact set forth in Paragraph 1 of said petition and writ, except the allegation that plaintiff was "arbitrarily refused admission" to the School of Law of the University of Oklahoma.

4. Defendants admit the material allegations of fact set forth in Paragraph 2 of said petition and writ, except the allegation that plaintiff possessed all "other lawful qualifications" for admission to the first year class of the School of Law of the University of Oklahoma, and the allegation that plaintiff's application for admission to said class was "arbitrarily and illegally rejected."

5. Defendants admit the material allegations of fact set forth in Paragraph 3 of said petition and writ, except the allegation which implies that plaintiff is "qualified to attend" the School of Law of the University of Oklahoma.

6. Defendants admit the material allegations of fact set forth in Paragraph 4 of said petition and writ.

7. Defendants admit the material allegations of fact set forth in Paragraph 5 of said petition and writ, except the [fol. 29] allegation which implies that the refusal of defendants to admit plaintiff to the first year class of the School of Law of the University of Oklahoma was an "arbitrary and illegal refusal."

8. Defendants admit the material allegations of fact set forth in Paragraph 6 of said petition and writ, except the allegation that plaintiff has "in all particulars met the qualifications necessary for admittance to the School of Law of the University of Oklahoma which fact defendants

have admitted," and in this connection allege that while plaintiff is "scholastically qualified for admission to the Law School of the University of Oklahoma" (which fact has been admitted by defendant), she does not have the qualifications necessary for admittance at said school for the reason that under the constitutional and statutory provisions of this State, hereinafter cited and reviewed (Paragraphs 14 to 21 hereof), only white persons are eligible for admission to said school.

9. Defendants admit the material allegations of fact set forth in Paragraph 7 of said petition and writ, but deny the conclusion of law therein that the refusal of defendants to admit plaintiff to the School of Law of the University of Oklahoma on the ground of race and color was "in violation of the Constitution and laws of the United States and of the State of Oklahoma."

10. Defendants admit the material allegations of fact set forth in Paragraph 8 of said petition and writ, but deny the conclusion of law therein that the "policy, custom and usage" of defendants in refusing to admit negro applicants, otherwise qualified, to the School of Law of the University [fol. 30] of Oklahoma while continuing to admit white applicants, otherwise qualified, is a denial to said negro applicants of "the equal protection of the laws."

11. Defendants admit the material allegations of fact set forth in Paragraph 9 of said petition and writ, except the allegation which implies that the defendants, George L. Cross, Maurice H. Merrill, George Wadsack and Roy Gittinger, have admitted that plaintiff "possesses all the qualifications necessary for admission to the first year in the school of law" of the University of Oklahoma, and the allegation which implies that plaintiff was denied admission by defendants to said school solely "on the ground that the defendant, Board of Regents, had established a policy that negro qualified applicants were not eligible for admission in the law school of the University of Oklahoma solely because of race and color," and in this connection allege that plaintiff was denied admission by said defendants to said school not only by virtue of said policy, but by reason of the constitutional and statutory provisions of the State of Oklahoma, hereinafter cited and reviewed (Paragraphs 14 to 21 hereof).

12. Defendants deny the conclusions of law set forth in Paragraph 10 of said petition and writ.

13. Defendants, and each of them, allege and admit that the plaintiff, Ada Lois Sipuel, a colored or negro citizen and resident of the United States of America and the State of Oklahoma, duly and timely applied on January 14, 1946, for admission to the first year class of the School of Law of the University of Oklahoma for the semester beginning January 15, 1946, and that she then possessed and still [fol. 31] possesses all the scholastic and moral qualifications required for such admission by the constitution and statutes of this State and by the Board of Regents of the University of Oklahoma, but deny that she was then possessed and still possesses all "other qualifications" required by said constitution, statutes and board, for the reason that under the public policy of this State announced in the constitutional and statutory provisions hereinafter cited and reviewed (Paragraphs 14 to 21 hereof), colored persons are not eligible for admission to State school established for white persons, such as the School of Law of the University of Oklahoma.

14. That Section 3, Article 13 of the Constitution of Oklahoma provides, in part, that:

> "Separate Schools for white and colored children with like accommodation shall be provided by the Legislature and impartially maintained."

15. That 70 O. S. 1941 § 363 provides in part that:

> "All teachers of the negro race shall attend separate institutes from those for teachers of the white race, * * *."

16. That 70 O. S. 1941 § 455 makes it a misdemeanor, punishable by a fine of not less than $100.00 nor more than $500.00, for

> "Any person, corporation or association of persons to maintain or operate any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction,"

and provides that each day same is so maintained or operated "shall be deemed a separate offense."

[fol. 32] 17. That 70 O. S. 1941 § 456 makes it a misdemeanor, punishable by a fine of not less than $10.00 no- more than $50.00, for any instructor to teach

> "in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction,"

and provides that each day such an instructor shall continue to so teach "shall be considered a separate offense."

18. That 70 O. S. 1941 § 457 makes it a misdemeanor, punishable by a fine of not less than $5.00 nor more than $20.00, for

> "any white person to attend any school, college or institution, where colored persons are received as pupils for instruction,"

and provides that each day such a person so attends "shall be deemed a distinct and separate offense."

19. That 70 O. S. 1941 § § 1591, 1592 and 1503, in effect, provide that if a colored or negro resident of the State of Oklahoma who is morally and educationally qualified to take a course of instruction in a subject taught only in a State institution of higher learning established for white persons, the State will furnish him like educational facilities in comparable schools of other States wherein said subject is taught and in which said colored or negro resident is eligible to attend.

20. That the material part of Senate Bill No. 9 of the Twentieth Oklahoma Legislature (same being the general departmental appropriation bill for the fiscal years ending June 30, 1946 and June 30, 1947), which was enacted to finance the provisions of 70 O. S. 1941 § § 1591, 1592 and 1593, supra, is as follows:

[fol. 33] STATE BOARD OF EDUCATION

	Fiscal Year ending June 30, 1946	Fiscal Year ending June 30, 1947
"For payment of Tuition Fees and transportation for certain persons attending institions outside the State of Oklahoma as provided by law	$15,000.00	$15,000.00."

21. That 70 O. S. 1941 §§ 1451 to 1509, as amended in 1945, established a State institution of higher learning now known as "Langston University" for "male and female colored persons" only, which institution, however, does not have a school of law.

22. That the constitutional and statutory provisions of Oklahoma, heretofore cited and reviewed (Paragraphs 14 to 21 hereof), have been uniformly construed by defendants and their predecessors as prohibiting the admission of persons of the colored or negro race to the School of Law of the University of Oklahoma, and pursuant to such interpretation it has been their administrative practice to admit only white persons, otherwise qualified, to said school.

23. That petitioner has not applied, nor in her petition and/or alternative writ of mandamus alleged that she has applied, to the Board of Regents of Higher Education of this State for it, under authority of Article 13a of the Constitution of Oklahoma, to prescribe a school of law similar to the school of law of the University of Oklahoma as a part of the standards of higher education of Langston University, and as one of the courses of study, thereof, so that she will be able as a negro citizen of the United States and [fol. 34] the State of Oklahoma to attend said school without violating the public policy of said State as evidenced by the constitutional and statutory provisions of Oklahoma heretofore cited and reviewed (Paragraphs 14 to 21 hereof).

24. That by reason of the foregoing constitutional and statutory provisions and administrative interpretation and practice, it cannot properly be said that "the law specifically enjoins" upon defendants, or either thereof (within the meaning of 12 O. S. 1941 §§1451 to 1462, inclusive, relating to "Mandamus"), the duty of admitting plaintiff to the School of Law of the University of Oklahoma.

Wherefore, premises considered, defendants, and each of them, respectfully ask the court to decline to issue the writ of mandamus prayed for in this cause, that plaintiff take nothing by her petition, and that defendants recover their cost herein expended.

Mac Q. Williamson, Attorney General of Oklahoma.
(Signed) Fred Hansen, First Assistant Attorney General, Attorneys for Defendants.

Duly sworn to by George L. Cross. Jurat omitted in printing.

[fol. 35] [File endorsement omitted.]

[fol. 36] IN DISTRICT COURT OF CLEVELAND COUNTY

MINUTE ENTRIES RE SETTING CASE FOR TRIAL

5-21-46—C/M: Cause set for trial Friday, May 31, 1946, at 10:00 o'clock A. M., by agreement and clerk ordered to notify counsel.

Of the Records of Cleveland County, State of Oklahoma, in District Court. Civil Appearance Docket No. 24, Page 272.

Thereafter, and under date of May 31st, 1946, the Clerk of the District Court entered herein a Minute, same appearing in words and figures as follows, to-wit:

5-31-46—C/M: Cause continued at request of plaintiff's counsel to be reset by agreement.

Of the Records of Cleveland County, State of Oklahoma, in District Court. Civil Appearance Docket No. 24, Page 272.

Thereafter, and under date of June 11th, 1946, the Clerk of the District Court entered herein a Minute, same appearing in words and figures as follows, to-wit:

6-11-46—C/M: Cause set for trial by agreement of counsel for Tuesday, July 9, 1946, at 10:00 o'clock A. M.

Of the Records of Cleveland County, City of Oklahoma, in District Court. Civil Appearance Docket No. 24, Page 272.

[fol. 37] IN DISTRICT COURT OF CLEVELAND COUNTY

MINUTE ENTRIES RE TRIAL, ETC.

Now on this the 9th day of July, 1946, the above styled and numbered cause came regularly on for trial before the

Honorable Ben T. Williams, District Judge in and for the Twenty-First Judicial District, State of Oklahoma, upon plaintiff's petition for a Writ of Mandamus filed herein.

The plaintiff, Ada Louis Sipuel, appeared in person and by counsel, Amos T. Hall; and the defendants, Board of Regents of the University of Oklahoma, et al., appeared by counsel, Fred Hansen, First Assistant Attorney General of Oklahoma, and Dr. Maurice H. Merrill, Acting Dean of the School of Law, University of Oklahoma, and both parties announced ready for trial.

Whereupon, the following proceedings were had and entered herein, to-wit:

Thereupon, Mr. Hall, Counsel for Plaintiff, offered into evidence Plaintiff's Exhibit "1", being a written stipulation of facts, signed by counsel, and there being no objections, the Court ordered same marked Plaintiff's Exhibit "1" and introduced in evidence.

Thereupon, Mr. Hall, Counsel for Plaintiff, offered into evidence Plaintiff's Exhibit "2," being a written stipulation of facts, and there being no objections, the Court ordered same marked Plaintiff's Exhibit "2" and introduced in evidence.

And Thereupon the Plaintiff rested and the Defendants rested.

Whereupon, there being no further evidence or testimony in this case, Mr. Hall, of Counsel for Plaintiff, made the opening argument on behalf of plaintiff; Mr. Hansen and Dr. Merrill, of Counsel for Defendants, made the argument on behalf of the defendants; and Mr. Hall made the closing argument to the Court on behalf of the plaintiff.

[fol. 38] Thereafter, and at the conclusion of the argument in this case the following remarks were made by the Court and Counsel for Plaintiff, to-wit:

By the Court: Let the record show that at the conclusion of the argument in this case the Court suggests to Mr. Hall that while the Court is not suggesting that Mr. Hall's remarks might be improper in any way, still the law, in the Court's estimation, presumes that all Courts have the courage to do their duty and certifies to the record that to the best of his understanding and ability that this Court feels that he has the courage to do his duty in this or any other judicial proceeding.

By Mr. Hall, of Counsel for plaintiff: If the Court please, I do not mean to imply that this Court hasn't the courage to do his duty. In cases of this kind it does require courage, but I feel sure that if your honor holds and finds and renders judgment against us that would not indicate to me at all that you do not have the courage. I didn't mean that this Court doesn't have the courage, but all courts must have the courage to give the the colored people their rights. They have been to the Legislature and to the Board of Regents and haven't received their rights, and the courts are the last resort. I realize that we have dropped a hot potato in the court's lap, and whatever the judgment is, we know it will be the court's honest decision and judgment. I am sorry that the Court misunderstood me as I had no intention of inferring that your Honor didn't have the courage to render a just decision in this case.

[fol. 39] Thereupon, the Court ordered the hearing in this cause recessed to the hour of 7:30 P. M., this date.

And Thereafter, at the hour of 7:45 P. M. the Court reconvened and the Court made and entered herein the following judgment, to-wit:

IN DISTRICT COURT OF CLEVELAND COUNTY

ORAL JUDGMENT OF THE COURT

By the Court: Gentlemen, the Court adopts the view advanced by Mr. Hansen in his argument wherein, among other things, we find this quotation from a Kansas case (Sharpless *vs.* Buckles, 70 Pac. 886):

> "Mandamus will not lie to require a county canvassing board to recanvass returns and exclude from the count certain votes because cast and returned under a law that is claimed to be unconstitutional, since the determination of such question is not a duty imposed upon the board, nor within its power."

And the quotation found in an Indiana case (State ex rel. Hunter *vs.* Winterrowd (Ind.), 92 N. E. 650):

> "It is quite a different thing to hold that such an officer must at his peril disobey the specific commands of a law duly enacted and promulgated, at the behest

> of any one who may be of the opinion that such law is unconstitutional. The proper function of mandamus is to enforce obedience to law, and not disobedience, or even to litigate its validity."

And also the quotation found in a Connecticut case (Comley *vs.* Boyle, 162 A. 26):

> [fol. 40] "The court properly refused to consider constitutionality of ordinance. Court in such case properly refused to consider the constitutionality of the ordinance, whether such conclusion be based upon the trial court's valid exercise of its discretion in refusing the building permit or upon the broader ground that it was not the province of that court to pass upon the question."

The Court heard with interest the argument of Dr. Merrill, but does not pass either pro or con upon the validity of such argument.

The application for mandamus is denied and exceptions allowed.

[fol. 41] In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Plaintiff's Exhibit "1" Agreed Statement of Facts

1. That the plaintiff is a resident and citizen of the United States and of the State of Oklahoma, County of Grady and City of Chickasha; that she desires to study law in the School of Law in the University of Oklahoma for the purpose of preparing herself to practice law in the State of Oklahoma.

2. That the School of Law of the University of Oklahoma is the only Law School in the State maintained by the State and under its control.

3. That the Board of Regents of the University of Oklahoma is an administrative agency of the State and exercising overall authority with reference to the regulation of instruction and admission of students in the University;

that the University is a part of the educational system of the State and is maintained by appropriations from the public funds of the State raised by taxation from the citizens [fol. 42] and taxpayers of the State of Oklahoma; that the School of Law of Oklahoma University specializes in law and procedure which regulates the Court of Justice and Government in Oklahoma; that there is no other law school maintained by the public funds of the State where the plaintiff can study Oklahoma law and procedure to the same extent and on an equal level of scholarship and intensity as in the School of Law of the University of Oklahoma; that the plaintiff will be placed at a distinct disadvantage at the bar of Oklahoma and in the public service of the aforesaid State with persons who have had the benefit of the unique preparation in Oklahoma law and procedure offered to white qualified applicants in the School of Law of the University of Oklahoma, unless she is permitted to attend the School of Law of the University of Oklahoma.

4. That the plaintiff has completed the full college course at Langston University, a college maintained and operated by the State of Oklahoma for the higher education of its Negro citizens.

5. That the plaintiff duly and timely applied for admission to the first year class of the School of Law of the University of Oklahoma on January 14, 1946, for the semester beginning January 15, 1946 and that she then possessed and still possesses all the scholastic and moral qualifications required for such admission.

6. That on January 14, 1946, when plaintiff applied for admission to the said school of law, she complied with all [fol. 43] of the rules and regulations entitling her to admission by filing with the proper officials of the University, an official transcript of her scholastic record; that said transcript was duly examined and inspected by the President, Dean of Admissions and Registrar of the University and was found to be an official transcript, as aforesaid, entitling her to admission to the School of Law of the said University.

7. That under the public policy of the State of Oklahoma, as evidenced by the constitutional and statutory provisions referred to in defendants' answer herein, plaintiff was

denied admission to the School of Law of the University of Oklahoma solely because of her race and color.

8. That the plaintiff at the time she applied for admission to the said law school of the University of Oklahoma was and is now ready and willing to pay all of the lawful charges, fees and tuitions required by the rules and regulations of the said University.

9. That plaintiff has not applied to the Board of Regents of Higher Education of the State of Oklahoma for it, under authority of Article 13-A of the Constitution of Oklahoma, to prescribe a School of Law similar to the School of Law of the University of Oklahoma as a part of the standards of higher education of Langston University, and as one of the courses of study thereof.

Dated this 8th day of July, 1946.

[fols. 44-45] (Signed) Amos T. Hall, 107½ North Greenwood Ave., Tulsa, Oklahoma; Thurgood Marshall, 20 West 40th Street, New York 18, New York; Robert L. Carter, 20 West 40th Street, New York 18, New York, Attorneys for Plaintiff.

(Signed) Mac Q. Williamson, Attorney General of Oklahoma; (Signed) Fred Hansen, First Assistant Attorney General; Maurice H. Merrill, Attorneys for Defendants.

[fol. 46] In District Court of Cleveland County

Plaintiff's Exhibit "2"—Agreed Statement of Facts

It is hereby stipulated and agreed by and between counsel for plaintiff and defendants that the court may consider the following as an admitted fact:

That after the filing of this cause the Board of Regents of Higher Education, having knowledge thereof, met and considered the questions involved therein; that it had no unallocated funds in its hands or under its control at that time with which to open up and operate a law school and has since made no allocation for that purpose; that in order to open up and operate a law school for negroes in this state, it will be necessary for the board to either withdraw existing allocations, procure moneys, if the law per-

mits, from the Governor's contingent fund, or make an application to the next Oklahoma legislature for funds sufficient to not only support the present institutions of higher education but to open up and operate said law school; and that the Board has never included in the budget which it submits to the Legislature an item covering the opening up and operation of a law school in the State for negroes and has never been requested to do so.

[fol. 47] In District Court of Cleveland County

Minute Entry Re Denial of Writ of Mandamus

7-9-46—C/M: Evidence submitted by written stipulation, argument heard. Peremptory Writ of Mandamus denied as per Journal Entry.

Of the Records of Cleveland County, State of Oklahoma, in District Court. Civil Appearance Docket No. 24, Page 272.

[fol. 48] In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Motion for New Trial—Filed July 11, 1946

Comes now the plaintiff and moves the Court to vacate the judgment rendered in this cause on the 9th day of July, 1946, and to grant a new trial herein for the reasons hereinafter set out which materially affect the substantial rights of the Plaintiff:

(1) Error of the Court in denying the petition of the plaintiff for a writ of mandamus.

(2) Errors of law occurring at the trial which were excepted to by the plaintiff.

Wherefore, plaintiff prays the Court to vacate, set aside and hold naught the judgment heretofore rendered in this cause and to grant a new trial herein.

(Signed) Amos T. Hall, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 49] In District Court of Cleveland County

Minute Entry re Denial of Motion for New Trial, etc.

7-12-46—C/M: Motion for new trial comes on by agreement of the parties, is considered and overruled and exceptions allowed. Plaintiff gives notice in open Court of her intentions to appeal to the Supreme Court of the State of Oklahoma and asks that such intentions be noted upon the Minutes, Dockets and Journals of the Court, and it is so ordered and done. Plaintiff, praying an appeal but no extension of time, is granted 15 days to make and serve case-made defendants to have 3 days thereafter to suggest amendments, same to be settled and signed upon 3 days notice in writing by either party.

Of the Records of Cleveland County, State of Oklahoma, in District Court. Civil Appearance Docket No. 24, Page 273.

[fol. 50] In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Order Overruling Motion for New Trial—July 24, 1946

Now on this 12th day of July, 1946, there comes on before me, by agreement of the parties, the hearing on the plaintiff's motion for new trial in the above entitled cause. Upon consideration of the same, the court is of the opinion that the motion should be overruled.

It is, therefore, ordered, adjudged, and decreed that the motion for new trial filed by the plaintiff herein be, and the same is, hereby overruled, to which the plaintiff excepts and which exception is allowed.

[fol. 51] Thereupon, plaintiff gives notice in open court of her intentions to appeal to the Supreme Court of the State of Oklahoma and asks that such intentions be noted upon the minutes, dockets, and journals of the court, and it is so ordered and done.

Plaintiff, praying an appeal, but no extension of time, is granted fifteen (15) days to make and serve case-made, the defendants to have three (3) days thereafter to suggest

amendments and the same to be settled and signed upon three (3) days notice in writing by either party.

(Signed) Ben T. Williams, District Judge.

[File endorsement omitted.]

[fol. 52] In District Court of Cleveland County

Minute Entry re Extension of Time to Make and Serve Case-Made

7-24-46—C/M: Plaintiff granted extension of 15 days to make and serve case-made, defendants to have 3 days thereafter to suggest amendments, same to be settled and signed upon 3 days notice in writing by either party.

Of the Records of Cleveland County, State of Oklahoma, in District Court. Civil Appearance Docket No. 24, Page 273.

In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Order Extending Time to Make and Serve Case-Made—August 2, 1946

[fols. 53-54] Now on this the 24th day of July, 1946, the above styled and numbered cause came regularly on for hearing upon the oral application of the Plaintiff for an extension of time within which to prepare and serve the case-made herein, and it being shown to this Court that the Plaintiff has not had sufficient time under the prior order of this Court within which to prepare and serve the case-made in this case because the Court Reporter has been busy in actual court room work and work on case-mades ordered prior to the time the case-made herein was ordered, and has not had sufficient time to complete this case-made, this Court finds that an extension of time should be granted herein.

It is therefore hereby ordered, upon good cause being shown, that the plaintiff be, and he is hereby allowed fifteen (15) days time, in addition to the time heretofore allowed by prior order of this Court, within which to prepare and

serve the case-made in this case, and the defendants are allowed three (3) days thereafter within which to suggest amendments to said case-made, and said case-made to be signed and settled upon three (3) days written notice by either party.

(Signed) Ben T. Williams, District Judge.

[File endorsement omitted.]

[fol. 55] IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA

No. 14,807

ADA LOIS SIPUEL, Plaintiff,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, et al., Defendants

JOURNAL ENTRY—August 6, 1946

This cause coming on to be heard on this the 9th day of July, 1946, pursuant to regular assignment for trial, the said plaintiff being present by her attorney, Amos T. Hall, and the said defendants by their attorneys, Fred Hansen, First Assistant Attorney General, and Maurice H. Merrill; and both parties announcing ready for trial and a jury being waived in open court, the court proceeded to hear the evidence in said case and the argument of counsel, said evidence being presented in the form of a signed "Agreed Statement of Facts" and a supplemental agreed statement of facts.

And the court, being fully advised, on consideration finds that the allegations of plaintiff's petition are not supported by the evidence and the law, and the judgment is, therefore, rendered for the defendants, and it is adjudged that the defendants go hence without day and that they recover their [fols. 56-57] costs from the plaintiff; to which findings and judgment plaintiff then and there excepted, and thereupon gave notice in open court of her intention to appeal to the Supreme Court of the State of Oklahoma, and asked that such intentions be noted upon the minutes, dockets and

journals of the Court and it is so ordered and done, and plaintiff praying an appeal is granted an extension of 15 days in addition to the time allowed by Statute to make and serve case-made, defendants to have 3 days thereafter to suggest amendments thereto, same to be settled and signed upon 3 days notice in writing by either party.

(Signed) Ben T. Williams, District Judge.

O.K. (Signed) Fred Hansen, First Assistant Attorney General; Amos T. Hall, by F. H.

[File endorsement omitted.]

[fols. 58-61] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 62] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 63] IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA

[Title omitted]

SERVICE OF CASE-MADE

To the Above Named Defendants and Their Attorneys of Record:

The above and foregoing case-made is hereby tendered to and served upon you and each of you, as a true and correct case-made in the above entitled cause, and as a true and correct statement and complete transcript of all the pleadings, motions, orders, evidence, findings, judgment and proceedings in the above entitled cause.

Dated this the 7th day of August, 1946.

Amos T. Hall, Attorneys for Plaintiff.

Acknowledgment of Service

I do hereby accept and acknowledge service of the above and foregoing case-made, this the 7th day of August, 1946.

Mac Q. Williamson, Atty. Gen. of Okla; Fred Hansen, 1st Asst. Atty. Gen. of Okla.; Maurice H. Merrill, Attorneys for Defendants.

[fol. 64] In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Certificate of Attorneys to Case-Made

We hereby certify that the foregoing case-made contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, including all pleadings filed and proceedings had, all the evidence offered or introduced by both parties, all orders and rulings made and exceptions allowed, and all of the record upon which the judgment in said cause were made and entered, and that the same is a full, true, correct and complete case-made.

Witness our hands this 10th day of Aug., 1946. Amos T. Hall, Attorneys for Plaintiff.

[fol. 65] In the District Court of Cleveland County, State of Oklahoma

[Title omitted]

Stipulation of Attorneys to Case-Made

It is hereby stipulated and agreed by and between the parties hereto that the foregoing case-made contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, all pleadings filed and proceedings had, all the evidence offered and introduced, all objections of counsel, all the orders and rulings made and exceptions allowed and all of the record upon which the judgment in said cause were made; and the same is a full, true, correct and complete case-made; and the defendants

waive the right to suggest amendments to said case-made and hereby consent that the same may be settled immediately and without notice, and hereby join in the request of the plaintiff that the Judge of said Court settle the same and order the same certified by the Court Clerk and filed according to law.

Dated this 7th day of August, 1945.

Amos T. Hill, Attorneys for Plaintiff; Mac Q. Williamson, Atty. Gen. of Okla.; Fred Hansen, 1st Asst. Atty Gen. of Okla., Maurice H. Merrill, Attorneys for Defendants.

[fol. 66] IN THE DISTRICT COURT OF CLEVELAND COUNTY, STATE OF OKLAHOMA

[Title omitted]

CERTIFICATE OF TRIAL JUDGE TO CASE-MADE

Be It Remembered, that on this the 13th day of August, 1946, in the city of Norman, Cleveland County, Oklahoma, the above and foregoing case-made was presented to me, Ben T. Williams, regular Judge of the District Court of Cleveland County, State of Oklahoma, and before whom said cause was tried, to be settled and signed as the original case-made herein, as required by law, by the parties to said cause, and it appearing to me that said case-made has been duly made and served upon the defendants within the time fixed by the orders of this Court, and in the time and form provided by law; that the said defendants have waived notice of the time and place of presentation hereof, and the suggestion of amendments hereto, and said plaintiff is present by his Attorney of Record, Amos T. Hall, and the said case-made having been examined by me is true and correct and contains a true and correct statement and complete transcript of all the pleadings, motions, orders, evidence, findings, judgment and proceedings had in said cause.

I now therefore hereby allow, certify and sign the same as a true and correct case-made in said cause and hereby [fol. 67] direct that the Clerk of said Court shall attest the same with her name and the seal of said Court and file the

same of record as provided by law, to be thereafter withdrawn and delivered to the plaintiff herein for filing in the Supreme Court of the State of Oklahoma.

Witness my hand at Norman, Cleveland County, State of Oklahoma, on the day and year above mentioned and set out.

Ben T. Williams, District Judge.

Attest: Dess Burke, Court Clerk, Cleveland County, Oklahoma. (Seal.)

[fol. 68] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
No. 32756

ADA LOIS SIPUEL, Plaintiff in Error,

vs.

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA, GEORGE L. CROSS, Maurice H. Merrill, George Wadsack, and Roy Gittinger, Defendants in Error

STIPULATION EXTENDING TIME TO FILE BRIEF—Filed October 18, 1946

It is hereby stipulated and agreed, by and between counsel for the plaintiff in error and the defendants in error, that the plaintiff in error may have 30 days from date hereof in which to file a brief in the above entitled appeal.

Amos T. Hall, Attorney for Plaintiff in Error; Fred Hansen, 1st Asst. Atty. Gen., Attorney for Defendants in Error.

[fol. 69]—No. 32756—Ada Lois Sipuel v. Board of Regents of University of Oklahoma, et al., Plaintiff in error granted until November 22, 1946, in which to file brief, as per stipulation.

T. L. Gibson, Chief Justice.

[fol. 70] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

STIPULATION EXTENDING TIME TO FILE BRIEF—Filed November 22, 1946

It is hereby stipulated and agreed, by and between counsel for the plaintiff in error and the defendants in error, that the plaintiff in error may have 15 days from date hereof in which to file a brief in the above entitled appeal.

Amos T. Hall, Attorney for Plaintiff in Error.
Mac Q. Williamson, Atty. Gen.; Fred Hansen, 1st Asst. Atty. Gen., Attorney for Defendants in Error.

[fol. 71] The Clerk is hereby directed to enter the following orders:

32756—Ada Lois Sipuel v. Board of Regents of the University of Oklahoma, et al. Plaintiff in error granted until December 7, 1946 to file brief, per stipulation.

T. L. Gibson, Chief Justice.

[fol. 72] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

MOTION FOR ORAL ARGUMENT—Filed January 24, 1947

Comes now the plaintiff in error and respectfully moves the court to grant leave to submit oral argument in this cause, and in support thereof represents and shows to the court as follows:

1. This appeal presents questions of general and statewide interest and importance involving the constitutionality of the separate school laws of the State of Oklahoma.

2. The apeal in this case involves a novel question of general interest and importance which has not heretofore been decided by this court, to-wit:

The refusal of the Board of Regents and the administrative officers of the University of Oklahoma to admit [fol. 73] plaintiff in error to the School of Law constitutes a denial of rights secured under the Fourteenth Amendment of the constitution of the United States.

3. The nature and *affect* of this appeal is such that a proper presentation of the questions involved warrants submission of oral argument.

Respectfully submitted, Amos T. Hall, Thurgood Marshall, Robert L. Carter, Attorneys for Plaintiff in error.

[fol. 74] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

MOTION TO ADVANCE CAUSE—Filed January 24, 1947

Comes now said plaintiff in error and respectfully moves this Honorable Court to advance the above-entitled cause for early hearing, and in support thereof represents and shows as follows:

1. This is an action in mandamus wherein the plaintiff in error seeks to compel the Board of Regents of the University of Oklahoma to admit her into the Law School of said university, and the cause involves the refusal to [fol. 75] admit plaintiff in error to the said School of Law and as alleged by the plaintiff in error constitutes a denial of her constitutional rights.

2. The appeal herein has been pending in this court since August 17, 1946; that the legislature of the State of Oklahoma is now in session and because of the nature of the action should be decided by this court while the legislature is still in session.

Amos T. Hall, Thurgood Marshall, Robert L. Carter, Attorneys for Plaintiff in Error.

[fol. 76] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER ASSIGNING CASE—February 6, 1947

For good cause shown, it is hereby ordered that the above styled and numbered cause be assigned for oral argument on the docket for Tuesday, March 4, 1947, at 9:30 A.M. or as soon thereafter as same may be heard in regular order, and the Clerk is directed to notify the parties of such setting.

Thurman S. Hurst, Chief Justice.

[fol. 77] IN THE SUPREME COURT FOR THE STATE OF OKLAHOMA

[Title omitted]

ARGUMENT AND SUBMISSION

March 4, 1947. J. E. Orally Argued and Submitted upon the Records and Briefs.

[fol. 78] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

No. 32756

ADA LOIS SIPUEL, Plaintiff in Error,

vs.

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

OPINION—Filed April 29, 1947

SYLLABUS

1. It is the state's policy, established by constitution and statutes, to segregate white and negro races for purpose

of education in common and high schools and also institutions of higher education. (State ex rel. Bluford v. Canada, 153 S. W. 2d 12.)

2. It is the State Supreme Court's duty to maintain state's policy of segregating white and negro races for purpose of education so long as it does not come in conflict with Federal Constitution. (State ex rel Bluford v. Canada, 153 S. W. 2d 12.)

3. It is the State Supreme Court's duty to follow United States Supreme Court's interpretation of Federal Constitution. (State ex rel. Bluford v. Canada, 153 S. W. 2d 12.)

4. Upon demand or substantial notice it is the duty of the Board of Regents of Higher Education and the board of control for Langston University to provide negroes with equal facilities of instruction as those enjoyed by students of the University of Oklahoma, under statute, but the proper board is entitled to reasonable advance notice of the intention of negro students to require such facilities. (State v. Witham, 165 S. W. 2d 378.)

[fol. 79] 5. A negro student, citizen and resident of Oklahoma, has the same right as a white student to be educated in Oklahoma in preference to education in out of state schools with tuition aid from Oklahoma, if desired, but when the latter plan has been in operation for a number of years a negro student preferring such education in the state should be required to make such preference definitely known to the proper authorities before such student may successfully claim adverse and unlawful discrimination in the lack of furnishing such educational facilities in Oklahoma.

6. The practice in Oklahoma of furnishing tuition aid to negro students for higher education in schools out side of Oklahoma does not amount to a full discharge of the state's duty to its negro students, but when such practice is followed for a long number of years and applied to many negro students, with apparent satisfaction to taxpayers and students of both races, it may demonstrate lack of intention to discriminate against negro students and may be accepted as the satisfactory policy of the state and as being free from discrimination until demand for such education within the state is made.

Appeal from the District Court of Cleveland County. Hon. Ben T. Williams, Judge.

Action in mandamus by Ada Lois Sipuel against Board of Regents of University of Oklahoma, and president, registrar and two named deans of the University, to compel Negro petitioner's admittance and enrollment in law school of the University of Oklahoma. From a judgment for defendants, the petitioner appeals.

Affirmed.

[fol. 80] Amos T. Hall, Tulsa, Okla, Thurgood Marshall and Robert L. Carter of New York, N. Y., for Plaintiff in Error.

Franklin H. Williams, of New York, N. Y., of Counsel; Mac Q. Williamson, Attorney General, Fred Hansen, First Assistant Attorney General; Maurice H. Merrill and John B. Cheadle, both of Norman, Oklahoma, for Defendants in Error.

WELCH, J.:

Petitioner Ada Lois Sipuel, a negro, sought admission to the law school of the State University at Norman. Though she presented sufficient scholastic attainment and was of good character, the authorities of the University denied her enrollment. They could not have done otherwise for separate education has always been the policy of this state by vote of citizens of all races. See Constitution, Art. 13, Sec. 3, and numberous statutory provisions as to schools.

Since statehood, and for that matter in the two Territories prior to statehood, separate schools have been systematically maintained and regularly attended by and for the races respectively. This policy has been established and perpetuated, and these schools have been so instituted and maintained by voters and taxpayers and educators and patrons of both races, as if for the greater good of both races [fol. 81] in Oklahoma. So that, without regard to distances, conveniences or desires, or any other consideration, a negro child or pupil may not enter a white school nor a white child or pupil enter a negro school.

It is a crime for the authorities of any white school to admit a negro pupil, likewise a crime for the authorities

of any negro school to admit a white pupil. 70 O.S. 1941, Sec. 455. And it is a crime for any teacher in either such school to give instruction therein to pupils of the other race. 70 O.S. 1941, Sec. 456. The law school of the University is maintained for white students and therefore the authorities and instructors thereof could not have enrolled and taught petitioner therein lest they suffer the criminal penalty therefor.

Petitioner's failure to obtain this enrollment was followed by this action in mandamus, seeking to compel the school authorities to admit and instruct petitioner, notwithstanding the force of the above laws. Serious questions arise as to the propriety of the remedy sought, but we prefer to discuss the merits of the rights claimed by petitioner.

There is no controversy as to the facts presented. Trial was had upon stipulation, not necessary to be copied herein at length, as parts relied upon will be discussed in order.

Petitioner contends that since no law school is maintained for negroes, she is entitled to enter the law school of the University, or if she is denied that, she will be discriminated against on account of race contrary to the 14th Amendment [fol. 82] to the United States Constitution. This is specious reasoning, for of course if any person, white or negro, is unlawfully discriminated against on account of race, the Federal Constitution is thereby violated. But in this claim for University admission petitioner takes no account, or does not take fair account, of the separate school policy of the State as above set out.

That it is the state's duty to furnish equal facilities to the races goes without saying. The record would indicate the state has fully done so as to the lower grades, the high school, and as to general university training. It is a matter of common knowledge that for the past fifty years, ten years in the Territory and forty years since statehood, Langston University, (as it is now named), hereafter referred to as "Langston" has been and is now maintained for separate higher education of negroes, with large sums appropriated therefor and thereto by the State Legislature at each session and large sums allocated thereto by the State Regents for Higher Education. Oklahoma Constitution, Art. XIII. A.

It is demonstrated by allegations of petitioner, and admission of answer and stipulation, that petitioner has in no

manner been discriminated against as to lower grades, high school and pre-law college instruction, for petitioner specifically claims that she has fully completed all scholastic work required for pre law and is therein as well qualified as any white student to study law. That is not controverted, but is admitted and it is clear that petitioner attained such [fol. 83] status in the separate schools of Oklahoma including Langston.

Here we must notice the important point that it is not wholly clear whether petitioner seeks to overturn the complete separate school policy of the state, or seeks to compel equal facilities for the races by obtaining an extension of such facilities to include a separate law school for negroes. That point is made uncertain by the pleadings and brief of petitioner and by the stipulation. There is much to indicate petitioner does not assail and seek to destroy the entire separate school policy, and there is some statement to that effect by her or for her in the oral argument. But there is contradiction thereof in petitioner's brief.

There is an assumption or a charge in respondent's brief that petitioner does not desire the institution of a separate law school, does not desire to attend such a school, and would not attend same if it should be duly and adequately instituted. That assertion is not effectively or satisfactorily denied by petitioner since no reply brief was filed, the usual time for reply brief was allowed, and her position on the point is not made wholly clear in oral argument.

The authority of a state to maintain separate schools seems to be universally recognized by legal authorities. Missouri ex rel. Gaines v. Canada, 305 U. S. 337, 344, 83 L. Ed. 208, — S. Ct. —; Plessy v. Ferguson, 163 U. S. 537, 544, 41 L. Ed. 256, 258, 16 S. Ct. 1138; McCabe v. Atchison T. & S. F. Ry. Co. 235, U. S. 151, 160, 59 L. Ed. 169, 173, 35 S. Ct. 69; Gong Lum v. Rice, 275 U. S. 78, 85, 86, 72 L. Ed. 172, 176, 177, 48 S. Ct. 91.

[fol. 84] In Bluford v. Canada, D. C. 32 F. Supp. 707, 710-711 (appeal dismissed 8 Cir. 119 F. 2nd 779) it was said:

> "The State has the constitutional right to furnish equal facilities in separate schools if it so desire. Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256; McCabe v. Atchison, T. & S. F. Ry. Co., 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169. Absent notice and

a reasonable opportunity to furnish facilities not theretofore requested, the state's right to follow its established policy is destroyed for reasons noted. Such a result should not be brought about absent an impelling necessity to secure to the citizen his or her constitutional rights.

"We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land." Cummings v. Board of Education, 175 U. S. 528, loc. cit. 554, 20 S. Ct. 197, loc. cit. 201, 44 L. Ed. 262.

[fol. 85] "Furthermore, if plaintiff may maintain this action without alleging previous notice of her desire and opportunity for compliance, will on tomorrow the individual members of the Board of Curators of Lincoln University or the University of Missouri be liable in damages to another negro, if, perchance, late today he or she demands instruction at Lincoln University, for which facilities are lacking, and then in the morning demands admittance to the University of Missouri? Yet such would seem to be the result contended for by plaintiff unless the curators should maintain at Lincoln University at all times all departments of instruction, whether used or not, which are available at the University of Missouri. It does not appear that 'a clear and unmistakable disregard of rights secured by the supreme law of the land' would result from a failure on the part of those curators to keep and maintain in idleness and non-use facilities at Lincoln University which no one had requested or indicated a desire to use.

"Since the State has made provision for equal educational facilities for negroes and has placed the mandatory duty upon designated authorities to provide those facilities, plaintiff may not complain that defendant has deprived her of her constitutional rights until she has applied to the proper authorities for those

> rights and has been unlawfully refused. She may not [fol. 86] anticipate such refusal. Highland Farms Dairy v. Agnes, 300 U. S. 608, loc. cit. 616, 617, 57 S. Ct. 549, 81 L. Ed. 835. * * *"

We conclude from the over-all presentation that petitioner does not attack the separate school policy of Oklahoma, or if she does the attack by this method is wholly without merit.

It would seem that petitioner's grievance is founded on the fact that the state has not established a law school for Negroes at Langston or elsewhere in the state, assuming a desire on her part to attend such separate law school if it existed.

In response to such a claim or asserted grievance the respondents assert petitioner has never made a demand for the establishment of a law school for negroes, and it is stipulated no such demand has ever been made.

As we view the matter the state itself could place complete reliance upon the lack of a formal demand by petitioner. We do not doubt it would be the duty of the state, without any formal demand, to provide equal educational facilities for the races, to the fullest extent indicated by any desired patronage, whether by formal demand or otherwise. But it does seem that before the state could be accused of discrimination for failure to institute a certain course of study for negroes, it should be shown there was some ready patronage therefor, or some one of the race desirous of such instruction. This might be shown by a formal demand, or by some character of notice, or by a condition so prevalent [fol. 87] as to charge the proper officials with notice thereof without any demand. Nothing of such kind is here shown. It is stated in oral argument by attorneys for petitioner that so far as this record shows petitioner is the first member of her race to seek or desire education in the law within the state, and upon examination we observe the record is blank on the point. That is not important as being controlling of petitioner's individual rights, but it should be considered in deciding whether there is any actual or intentional discrimination against petitioner or her race.

If some specific course is now or should hereafter be offered to negroes in their University at Langston, but not at the same time made available in college courses for white

pupils, would the state be guilty of discrimination for not offering such a course to white pupils before it knew of any white pupils desiring such particular instruction? And in such a case would the remedy of a white pupil be to demand and seek to force entry into Langston to get such instruction, or to let be known his desire to have instruction in such course in the school maintained for his race?

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. The fact that petitioner has made no [fol. 88] demand or complaint to that board, and has not even informed that board as to her desires, so far as this record shows, may lend some weight to the suggestion that petitioner is not available for and does not desire such instruction in a legal separate school.

If the state in fairness to all taxpayers, and in good faith, deferred the installation of a law school for negroes, with its attendant expense, till at least some need therefor occurred, or was made manifest, it would hardly be fair for one of that race, refraining from demand or notice or information to that board, to take advantage of the situation then to choose a character of relief contrary to the lawful separate education policy of the state heretofore noticed.

Attention is called in the briefs to the fact that for a number of years the state, in lieu of a law school for negroes, has provided a fund whereby members of that race could attend law school outside the state, in law schools open to negroes, at expense of this state. Various members of that race have taken advantage of such opportunity, and several are now doing so. That plan does not necessarily discharge the state's duty to its negro citizen. See Gaines v. Missouri, above cited. Negro citizens have an equal right to receive their law school training within the state if they prefer it. However, the above plan does not necessarily demonstrate a discrimination against negroes. Financial consideration, the saving to taxpayers, is not controlling, but is important to both races.

With both races believing in and practicing the policy of separate schools, it is possible that both races, including taxpayers and pupils of both races, might prefer the plan of

[fol. 89] furnishing education in law to negroes in established law schools outside the state, which are open to negroes, rather than the establishment of a separate law school in Oklahoma. It is certainly possible that negro pupils desiring to attend law school would prefer this provision for out of state study. If all negroes, qualified and desiring law school education, had such preference then they surely could not contend that such plan would discriminate against them. That is, while the furnishing of such out of state education would not necessarily discharge the state's obligation to negro citizens eligible to study law, since we have the policy of separate education which is a lawful policy, the furnishing of out of the state law education to negroes would free the state from any charge of discrimination as long as both races preferred that plan to a separate law school in the state for negroes. Under these circumstances there is no more discrimination against negroes than there is in favor of negroes insofar as concerns their receiving law education in law schools out side of the state.

If a white student desires education in law at an older law school out side the state he must fully pay his own way while a negro student from Oklahoma might be attending the same or another law school out side the state, but at the expense of this state.

[fol. 90] It is a matter of common knowledge that many white students in Oklahoma prefer to and do receive their law training outside the state at their own expense in preference to attending the University law school. Perhaps some among those now attending the University law school would have a like preference for an older though out of state school but for the extra cost to them. Upon consideration of all facts and circumstances it might well be, at least in some cases, that the negro pupil who receives education outside the state at state expense is favored over his neighbor white pupil rather than discriminated against in that particular.

While there is nothing in this record to show that this petitioner would prefer law education outside of the state under this plan, the record is equally blank as to any preference on her part for law instruction in a separate school in the state instead of such instruction outside the state, but at the expense of the state.

It seems clear to us that since our state policy of separate education is lawful, the petitioner may not enter the University Law Schools maintained for white pupils. Certainly she could not do so without a destruction of this state policy of separate education. She does not expressly claim any right to destroy this separate educational policy and under the facts shown, no such right would exist if she did claim it. It is equally certain, however, that petitioner is entitled to pursue her law studies and that without any unlawful discrimination against her. That is to say, she may not attend the law school for white pupils for that would be unlawful and would involve illegal acts by herself, the authorities of the school, the instructors therein and the white pupils therein, but for emphasis we repeat that this [fol. 91] does not change the fact that she is entitled at the expense of the state to pursue her studies in law and be educated therein. This she may do either in a separate law school to be established in the state, which as we have shown, may well be done and for which authority already exists, or if petitioner acquiesces in the plan she may have her education in law outside the state, but at the expense of this state.

As we have shown, for some years the state has followed the plan of financing out of state law education for negroes in place of a separate law school for negroes in the state. It is but fair to assume that such plan is both adequate and satisfactory if not preferable, to negroes, at least until some character of showing is made to the contrary.

The petitioner places reliance upon the decision of the Supreme Court of the United States in Missouri ex rel. Gaines v. Canada, 305 U. S. 337, 83, L. Ed. 208, but between that case and this there are various distinguishing features both of law and of fact.

In Missouri, Lincoln University maintained separately for negroes occupies a position similar to Langston University in Oklahoma. Gaines was a graduate of Lincoln University as petitioner was a graduate of Langston. When Gaines applied to the law school of the University of Missouri maintained separately for white pupils his admission was denied, but he was advised to and did communicate with the authorities of Lincoln University. The opinion does not disclose the exact nature of his communication or application to Lincoln University, but since Gaines was follow-

ing through on his application for and his efforts to obtain law school instruction in Missouri, we assume he applied to Lincoln University for instruction there in the law. The authorities then, instead of making provision for petitioner's education in the law within the state, sought to discharge [fol. 92] the obligation of the state by tendering Gaines instruction in law out side the state. In the case at bar no such application or notice of any kind was given by petitioner Sipuel to the authorities of Langston, or to the State Regents of Higher Education. Thus in Missouri there was application for and denial of that which could have been lawfully furnished, that is, law education in a separate school, while in this case the only demand or request was for that which could not be lawfully granted, that was education of petitioner, a negro, in a white school. Had this petitioner made application or given notice to those in charge of Langston they had authority and it would have been their duty to provide for her an opportunity for education in law at Langston or elsewhere in Oklahoma.

As to distinguishing points in law we observe that in Oklahoma, but not in Missouri, there are specific statutes prohibiting education of whites and negroes together and that a crime would be committed in Oklahoma, but not in Missouri, if whites and negroes were taught together, and apparently in Missouri, but not in Oklahoma, the authorities of the University for negroes have, or at that time had, a discretion to either provide educational facilities for negroes in Missouri or require negroes ready for higher education to attend schools out side the state. Also that in Missouri, the constitution provided for separate public schools, but contained no express provision for race separation for the purpose of higher education. Furthermore, in Missouri the out of state education was restricted to states adjacent to Missouri, while, as heretofore pointed out, such out of state education provided for Oklahoma negroes is not so restricted, the negro pupil here has complete freedom of choice, and it is a matter of common knowledge that Okla- [fol. 93] homa negro students have attended schools in more than twenty states extending from New York to California, and including the Nation's Capitol.

This freedom of choice supplying in Oklahoma and this wider use of our out of state privilege is not to be taken as a complete discharge of the state's obligation to negro

pupils in higher education, but it is important in considering whether this plan might not be more desirable to all negroes than the maintaining of separate schools for their respective courses in Oklahoma, and might tend to justify the conclusion that such plan was and is wholly satisfactory to all negroes affected, until and unless there should be contrary showing or indication by demand or request or notice to the authorities in charge of higher education for negroes. This all leads to the conclusion that petitioner here could and should have presented some application or notice or information to those authorities as did the petitioner Gaines in Missouri.

The decision in the Gaines case seems to have resulted from the failure and refusal of the proper authorities to make provision for the separate education of petitioner in law in Missouri, after specific demand or application therefor, or at least the failure so to do after the authorities in charge of the school for higher education of negroes 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.

The conclusion of the court in the Gaines case is stated in these words near the end of the opinion:

> "* * * We are of the opinion that the ruling was error, and that petitioner was entitled to be admitted to the law school of the State University in the absence of other and proper provision for his legal training within the State."

[fol. 94] There, as here, the petitioner could have no personal complaint as to the failure years ago to provide a law school for negroes long before petitioner was ready for such a course. So the "absence * * * of provision for his legal training in the State" noticed in the Gaines case must have been the failure to provide same for him, Gaines, when he was ready for it and made known his desire and his availability. This he did when he made application to Lincoln University as above observed, but this the petitioner Sipuel wholly failed to do.

Therefore there was not the same failure to provide as to petitioner Sipuel in Oklahoma as there was a failure to provide as to petitioner Gaines in Missouri. We are considering here not the political or economic question of the failure generally in years gone by to provide a law school

for negroes. We are considering the question of the legal rights of petitioner herself to have such provision made for her, and, certainly, as to an individual and his or her rights, the court should not adjudge a failure to provide until there is some demand or notice or knowledge of desire and availability on the part of that individual. Apparently petitioner Gaines in Missouri was seeking first that to which he was entitled under the laws of Missouri, that is, education in law in a separate school. Here petitioner Sipuel apparently made no effort to seek in law in a separate school, but instead sought only that to which she was not entitled under the law, that is, education in law in the school separately provided for white students.

Since there was not here the same failure to provide as in the Gaines case, for lack of opportunity here to furnish provision in compliance with a request or expressed desire [fol. 95] therefor, as existed in the Gaines case, we do not believe that the rule of the Gaines case is fully applicable here. The reasoning and spirit of that decision 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. But the very existance of the option to do the one or the other imports the right or an opportunity to choose the one of the two courses which will follow the fixed policy of the state as to separate schools, and before the courts should foreclose the option the opportunity to exercise it should be accorded. That opportunity which was afforded by Gaines by his acts, was denied by petitioner Sipuel here. 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, as instead she proceeded immediately to offer herself for enrollment in the University Law School for white students, and to insist upon that as her rightful remedy.

In State v. Witham, 165 S. W. (2d) 378, the Supreme Court of Tennessee held:

> "Upon demand it is the duty of the board of education to provide negroes with equal facilities of instruction as those enjoyed by students of University of Tennessee, under statute, but the board is entitled to reasonable advance notice of their intention to require such facilities."

That same philosophy was applied by the Federal Court in Bluford v. Canada, supra, as shown in part by the previous quotation from that opinion. We quote further therefrom as follows:

> "The petition does not allege any demand by plaintiff or any other negro for instruction in journalism at Lincoln University, nor does the petition allege that the governing body of Lincoln University had ample time to furnish those facilities after plaintiff first sought admission to the University of Missouri. The omission is not inadvertent. On oral argument counsel, with complete frankness, stated plaintiff's position to [fol. 96] be that although plaintiff should be the first to request the desired instruction she is entitled to it at the University of Missouri instanter, if it be now furnished there to white students and is not immediately available at Lincoln University. If her position is well taken to allegation of advance notice to the authorities of Lincoln University of her desire for the instruction demanded is necessary. On the other hand, if the State be entitled to an opportunity to furnish the instruction at Lincoln University before it or its administrative officers (such as the defendant), be convicted of violation of the equal protection clause, then the petition should be amended or defendant's motion sustained."

Then after discussion of the matter, including the reasoning first copied from this opinion, the court held the dismissal order would be sustained unless the amendment to petition should be made, thus fully approving the rule that the state is entitled to notice and an opportunity to furnish proper separate schools education before one may claim a denial amounting to a discrimination.

In State ex rel. Bluford v. Canada, 153 S. W. (2d) 12, the Supreme Court of Missouri held:

> "A demand by negro on board of curators of state's university for negroes to open journalism department and such board's refusal to do so within reasonable time are prerequisites to issuance of writ of mandamus compelling state university registrar to admit such negro as student in state university school of journalism."

In the body of the opinion of that case it was said:

> "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. The Supreme Court has many times approved the policy of segregation. Mr. Chief Justice Hughes, citing authorities, again approved the policy in the Gaines case, provided substantially equal facilities for colored persons be furnished within the State. Since that opinion, Missouri, by legislative enactment, has ordered that equal facilities be provided within her borders and has designated the Board of Lincoln University as the proper authority to furnish such facilities. The duty of the Lincoln Board to open new departments on proper demands is not mandatory. True, the Board cannot operate without funds. If its funds are insufficient to provide all courses taught at Missouri University, the Board shall allocate its funds to the courses most needed. But that very fact entitled the Board to have a demand made upon it before being required to open a new department, for surely the Board is [fol. 97] not required to maintain departments for which there are no students. We think also that the Board is entitled to a reasonable time in which to open a new department after demand is made. If, upon proper demand, the Lincoln Board had refused to establish a course in journalism within a reasonable time, or had informed appellant that it was unable to do so, appellant would have been entitled to admission to that course in the Missouri University."

And further in the opinion it was said:

> "* * * Here, because of the lack of a previous demand on Lincoln University, appellant was not entitled to admission to Missouri University at the time of her application. * * *"

In petitioner's brief it is said:

> "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. It was not necessary, therefore, that the plaintiff-in-error make a prior demand upon this Board to perform its lawful duty before she may request mandamus to obtain her lawful right to a legal education.
>
> "It is axiomatic that the law will not require an individual to do a vain and fruitless act before relief from a wrong will be granted. * * * "

It is then said by way of argument that any demand by petitioner would have been fruitless and vain. It is pointed out that the Regents of Higher Education had knowledge of this civil action after it was filed and that they met and considered "the questions involved" in the court action, but took no steps toward the setting up or operation of a law school for negroes in Oklahoma. There is a three-fold answer to this argument. First, the petitioner had no right at all to anticipate refusal or denial of her demand, and, two, the petitioner has not as yet indicated her desire or willingness to attend a separate law school for negroes in Oklahoma, and third, "the questions involved" in this court action embraced only the claimed right of petitioner to enter Oklahoma University.

The above quoted statement from petitioner's brief, how- [fol. 98] ever, does demonstrate acquiesence in the theory that in Oklahoma it is the fixed duty of the Board to make provisions for higher education of negroes, different from the mere discretion to do so as was noticed in the Gaines case and relied upon to support the conclusion there reached.

The Constitution of the United States is the Supreme Law of the land. It effectively prohibits discrimination against any race and all state officials are sworn to support, obey and defend it. When we realize that and consider the provisions of our State Constitution and Statutes as to education, 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.

We conclude that petitioner is fully entitled to education in law with facilities equal to those for white students, but that the separate education policy of Oklahoma is lawful and is not intended to be discriminatory in fact, and is not discriminatory against plaintiff in law for the reasons above shown. We conclude further that as the laws in Oklahoma now stand this petitioner had rights in addition to those available to white students in that she had the right to go out of the state to the school of her choice with tuition aid from the state, or if she preferred she might attend a separate law school for negroes in Oklahoma. We conclude further that while petitioner may exercise here preference between those two educational plans, she must indicate that preference by demand or in some manner [fol. 99] that may be depended upon, and we conclude that such requirement for notice or demand on her part is no undue burden upon her. We conclude that up to this time petitioner has shown no right whatever to enter the Oklahoma University Law School, and that such right does not exist for the reasons heretofore stated. We hold that this conclusion works not unlawful discrimination against petitioner, that she has not brought herself within the rule of the Gaines case, and has wholly failed to establish any violation of the Fourteenth Amendment of the Federal Constitution.

The judgment of the trial court denying mandamus is affirmed.

[fol. 100] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER CORRECTING OPINION—June 5, 1947

Now on this 5 day of June, 1947, it is ordered that the opinion filed herein on April 29th, 1947, be and the same is hereby corrected in the following particulars to-wit:

On page 4 or sheet 4 in the first line of the last paragraph after the word "could" and before the word "place" there is inserted the word "not" so that the sentence affected will read as follows to-wit: "As we view the matter the state

itself could not place complete reliance upon the lack of a formal demand by petitioner."

Done by order of the court in conference this 5 day of June, 1947.

Thurman S. Hurst, Chief Justice.

[fol. 101] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

NOTE RE MANDATE

May 15, 1947 Mandate Issued
May 17, 1947 Receipt for Mandate

[fol. 102] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

APPLICATION FOR LEAVE TO FILE PETITION FOR REHEARING

Leave is hereby granted to file this 2nd day of June, 1947, Thurman S. Hurst, Chief Justice.

Comes now the plaintiff-in-error, and respectfully shows the court that heretofore, to-wit: on the 29th day of April, 1947, a judgment and decision of this court was rendered affirming the judgment of the District Court of Cleveland County in favor of defendants in error and against plaintiff-in-error; that the chief counsel for the plaintiff-in-error reside in New York City and was not sent a copy of the [fol. 103] opinion in the case; that only a copy to the undersigned was sent, and the chief counsel of the plaintiff-in-error were out of their New York office and did not receive a copy of the opinion within the time prescribed by the rules of this court, in which a petition-in-error might be filed, and therefore no petition-in-error was filed within the fifteen day period as provided by rule 28 of this court.

That the plaintiff-in-error desires and requests leave of the court to file a petition-in-error which is in the course of preparation, and seriously desires to urge the same.

Wherefore, plaintiff-in-error prays the court for leave to file a petition-in-error within fifteen day- from date hereof.

Respectfully submitted, Amos T. Hall, Thurgood Marshall, Robert L. Carter, Attorneys for Plaintiff-in-error.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Amos T. Hall, of lawful age, being first duly sworn on oath, states:

[fol. 104] That he mailed a copy of the foregoing application to Mr. Fred Hansen, First Assistant Attorney General, State Capitol, Oklahoma City, on the 26th day of May, 1947, in an envelope properly addressed and with the postage thereon fully paid.

Amos T. Hall.

Subscribed and sworn to before me this 26th day of May, 1947. Henry Mae Lovejoy, Notary Public. My Commission expires October 30, 1950. (Seal.)

[fol. 105] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

ORDER

ORDER RECALLING MANDATE AND EXTENDING TIME TO FILE PETITION FOR REHEARING—June 3, 1947

For good cause shown, it is hereby ordered that the mandate issued in the above styled and numbered cause be, and the same is hereby recalled, and the plaintiff in error granted until June 12, 1947 to file petition for rehearing herein.

Done by order of the Court in Conference this 3rd day of June, 1947.

Thurman S. Hurst, Chief Justice.

[fol. 106] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

PETITION FOR REHEARING—Filed June 12, 1947

To the Honorable the Presiding Judge and Associate Judges of the Supreme Court of the State of Oklahoma:

Now comes plaintiff-in-error, Ada Lois Sipuel, in due time after filing of the opinion in the above-entitled case, and petitions the Court to grant plaintiff-in-error a rehearing on the grounds that questions decisive in the case and fully submitted by counsel in brief and arguments have been overlooked by the Court; that the opinion of the Court is unclear and apparently contradictory; and, that the decision violates the U. S. Constitution, the Fourteenth Amendment thereto and laws of the United States, and that it is in conflict with the controlling decisions of the United States Supreme Court.

[fol. 107] I

THE OPINION OF THE COURT IS UNCLEAR AND APPARENTLY CONTRADICTORY AND IN CONFLICT WITH CONTROLLING DECISIONS OF THE UNITED STATES SUPREME COURT

A. Court Failed To Decide Questions Raised by Plaintiff-in-Error.

This Court, speaking through Welch, J., in its opinion stated in part:

> ". . . It is not wholly clear whether petitioner seeks to overturn the complete separate school policy of the State, or seeks to compel equal facilities for the races by obtaining an extension of such facilities to include a separate law school for Negroes. . . There is much to indicate petitioner does not assail and seek to destroy the entire separate school policy . . ."

Plaintiff-in-error has consistently contended that since the State of Oklahoma has made provision for the legal education of its white citizens within the State, its failure to provide equal opportunity for Negro citizens violates

the Fourteenth Amendment to the United States Constitution. The United States Supreme Court in discussing a similar situation said in *Missouri Ex rel. Gaines* v. *Canada,* 305 U. S. 337, at 349:

> "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. That is a denial of the equality of [fol. 108] legal right to enjoyment of the privilege which the State has set up, and the provision for the payment of tuition fees in another State does not remove the discrimination."

Her contention is clear (see: brief for plaintiff-in-error, Argument I, A. B. C. (1), (2) and D). Oklahoma having made no provision for her legal education as required by the Fourteenth Amendment and the interpretation placed thereon by the U. S. Supreme Court (*Gaines* v. *Canada,* (supra)), she must of necessity be admitted into the only law school provided by the State.

In her brief submitted to this Court, plaintiff-in-error stated in part:

> "Despite the line of cases in support of the 'separate but equal' theory, this Court is under an obligation to reexamine the rule and the reasons on which it is based in the light of present day circumstances and to adopt and apply a rule which conforms with the requirements of our fundamental law."

This the Court has not done, and its failure to do so, it is felt, justifies a rehearing so that the issues can be squarely presented and clearly decided.

B. The Court Apparently Based Its Decision Upon an Incorrect Analysis of the Facts and Holding in the Case of Gaines v. Canada.

[fol. 109] Plaintiff-in-error contended in her brief submitted to this Court and in oral argument that the case of *Gaines* v. *Canada,* (supra), and the principles established therein were controlling. This Court erred in attempting to distinguish the two cases. The opinion herein stated in part:

> ". . . We assume he (Gaines) applied to Lincoln University for instruction in the law . . . Thus in

> Missouri there was application for and denial of that which could have been lawfully furnished, that is, law education in a separate school . . ."

The assumption made by the Court was incorrect for the only demand or request made by the plaintiff in the *Gaines* case was for admission into the law school of the University of Missouri—the same demand as made herein—placing the facts of the two cases squarely on all fours with one another. (See: Transcript of Record, *Gaines* v. *Canada,* Supreme Court of the United States, October Term, 1938, No. 57, Relator's Exhibits, Pp. 61-71). Gaines at no time, as assumed by this Court, applied to Lincoln University for instruction in the law. (See: Separate Opinion, Mr. Justice McReynolds)

> "Q. Now you never at any time made an application to Lincoln University or its Curators or its officers or any representative for any of the rights . . ., either to receive a legal education at a school to be established [fol. 110] in Lincoln University or, . . . ?
>
> "A. No, sir." (Transcript, *Gaines* (supra) p. 85)

From the above it is obvious that the facts in this case and the *Gaines* case are exactly the same.

The attempted distinction between the laws of Missouri and those of Oklahoma are considered by plaintiff-in-error irrelevant, for if the Constitution of the United States requires that a state treat its citizens in a particular manner, no state statute penalizing one violating such a law could be operative.

The Court's opinion herein states in part:

> "The decision in the *Gaines* case seems to have resulted from the failure and refusal of the proper authorities to make provision for the separate education of petitioner in law in Missouri after specific demand or application therefor, or at least the failure so to do after the authorities in charge of the school for higher education of Negroes 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."

In view of the clarification above of the facts in the *Gaines* case, this statement is equally applicable to the instant

situation. The same demand or application made by Gaines has been made by plaintiff-in-error. The State of Oklahoma herein, as the State of Missouri in the *Gaines* case, has failed to provide for the legal education of plaintiff-in-[fol. 111] error at any place within the state. The holding of the *Gaines* case quoted by this opinion:

> "We are of the opinion that the ruling was error, and that petitioner was entitled to be admitted to the law school in the State University in the absence of other and proper provision for his legal training within the State",

should have been the holding herein.

The opinion of this Court throughout apparently hinges upon this misconception of the facts in the *Gaines* case, and with a knowledge that the facts therein were the same as obtain herein, plaintiff believes that its decision would have been different, for it states in part:

> "Since there was not here the same failure to provide as in the *Gaines* case . . . we do not believe that the rule of the *Gaines* case *if* fully applicable here."

C. The Opinion of This Court Apparently Contains Patent Contradicitions Requiring a Rehearing and Clarification.

In the Court's opinion at one point it is stated:

> ". . . the State itself could place complete reliance upon the lack of a *formal* demand by petitioner."

The sentence immediately following is to the effect that:

> [fol. 112] "We do not doubt it would be the duty of the State, without any formal demand, to provide equal educational facilities for the races, to the fullest extent indicated by an- desired patronage, whether by formal demand or otherwise."

Subsequently it is stated:

> "This might be shown by a formal demand, or by some character of notice, or by a condition so prevalent as to charge the proper officials with notice thereof without any demand."

From this it would appear that in the one case the Court holds that a formal demand by plaintiff-in-error for the establishment of a separate law school would be requisite for the issuance of mandamus herein. It would also appear from these statements that a formal demand would not necessarily be requisite if "knowledge or notice" of a need or desire for the legal education of a Negro citizen were to be brought to the attention of the State in some manner.

Though it has been the contention of plaintiff-in-error throughout that the duty to provide facilities for her legal education rested upon the State and the officials thereof by virtue of their office and that no formal demand therefor [fol. 113] is necessary the opinion herein does not make clear whether formal demand is required or not. Certainly "some character of notice" that a Negro citizen desired a legal education within the State has been brought to the State by virtue of this action. Further, plaintiff's application for admission to the University of Oklahoma Law School brought to the attention of the State that some member of the Negro race desired "such instructions." Accordingly, for the reason that the opinion of this Court is unclear appears contradictory, plaintiff-in-error respectfully requests a rehearing and clarification of the Court's opinion.

D. The Decision in the Gaines Case is Controlling Herein

The facts obtaining in the case of *Gaines* v. *Canada,* (supra) are so similar to the facts obtaining herein as to defy differentiation. The public policy of the State of Missouri, as in Oklahoma, established by statute, that segregation of the races in educational institutions was requisite. The State of Missouri, as in Oklahoma, made provision for the education of Negro citizens in the law at out-of-state universities. The Court's opinion herein would seem to indicate that it considers out-of-state scholarships for Negroes "adequate and satisfactory." That such a system is a violative of the Fourteenth Amendment has been too clearly decided to warrant lengthy decisions.

> [fol. 114] "The basic consideration is not as to what sort of opportunities other States provide, or whether

> they are as good as those in Missouri, but as to what opportunities Missouri itself furnishes to white students and denies to Negroes solely upon the grounds of color . . . petitioner was entitled to be admitted to the law school of the state university in the absence of other and proper provisions for his legal training within the State." (*Gaines* v. *Canada,* supra)

Distinguishing between the instant case and the *Gaines* case would be impossible. The rule announced by the Supreme Court in the said case is applicable herein. Accordingly, the decision of the lower court reversed.

II

Decision Violates U. S. Constitution

That distinctions by states on the basis of race and color are forbidden under our Constitution is too clear and too well-settled to warrant discussion herein. *Strauder* v. *Virginia,* 100 U. S. 303 (1879), *Slaughter House Cases,* 16 Wall. (U. S.) 36 (1873), *Exparte Virginia,* 100 U. S. 339 (1879).

[fol. 115] There is no dispute in this case that provision is made by the state of Oklahoma for the legal education of its citizens. White students desiring such apply, and if qualified, are immediately admitted into the law school of the state university. Negro students desiring such education, however, must, according to the opinion herein, acquiesce in accepting scholarship aid to attend out-of-state universities or make some form of demand upon the "proper officials" for the establishment of a segregated law school at Langston University.

That the first alternative offered Negro students is unequal was clearly settled by the case of *Gaines* v. *Canada,* (supra). That the second alternative cannot be considered equal is clear when it is recognized that such requires of Negro students an added burden not required of white students.

The equality of treatment required by the Constitution is to be measured as of the time the citizen desires such treatment. *Mitchell* v. *U. S.,* 313 U. S. 80 (1941), *McCabe* v. *Atchison, T. & S. F. R. Co.,* 235 U. S., 151 (1914). No provision for a separate school had been made at the time

plaintiff-in-error applied to the University of Oklahoma nor has any been made since that time. No funds have been made available for such a school, and therefore even had plaintiff-in-error demanded its establishment, her education would have been necessarily interrupted and delayed by virtue of the non-existence of a law school at the state [fol. 116] university for Negroes. Demand, therefore, would obviously be an idle ceremony and accordingly cannot be required for the issuance of mandamus herein.

Even if the language of the instant opinion to the effect that some form of notice must be brought to the proper officials were to be followed, the decision of the lower court should be reversed. Such notice *has* been brought to the state and therefore to all of its agents. In the first instance, the State received notice by virtue of plaintiff-in-error's application to the University of Oklahoma. Notice was again received by the State through the institution of this suit. Nothing has since been done to indicate that the State of Oklahoma has any intention of making provision for plaintiff-in-error's legal education within the State according to the mandate of the Fourteenth Amendment and the interpretations placed thereon by the United States and amendments thereto.

All of which is respectfully submitted this 12 day of June, 1947.

Amos T. Hall, Tulsa, Oklahoma; Thurgood Marshall, Robert L. Carter, New York, New York; Attorneys for Plaintiff-in-Error.

Franklin H. Williams, New York, New York, of Counsel.

Receipt of a copy of the above instrument on this, the 12th day of June 1947, is hereby acknowledged.

Fred Hansen, 1st Asst. Atty. Gen.

[fol. 117] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ORDER DENYING PETITION FOR REHEARING—June 24, 1947

The Clerk is hereby directed to enter the following orders:
32756—Ada Lois Sipuel v. Board of Regents of the University of Oklahoma et al. Petition for rehearing is denied.

Thurman S. Hurst, Chief Justice.

[fol. 118] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

NOTE RE MANDATE

July 3, 1947—Mandate Issued.
July 8, 1947—Receipt for Mandate.
[fol. 119] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 120] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 10, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.