IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 369.

ADA LOIS SIPUEL, *Petitioner,*

v.

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

On Writ of Certiorari to the Supreme Court of the State of Oklahoma.

MOTION OF THE NATIONAL LAWYERS GUILD FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

NATIONAL LAWYERS GUILD,
ROBERT W. KENNY, *President.*
O. JOHN ROGGE,
ANDREW D. WEINBERGER,
Attorneys for
National Lawyers Guild.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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MOTION OF THE NATIONAL LAWYERS GUILD FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

The National Lawyers Guild respectfully prays leave to file a brief as amicus curiae in the above actioned case. The applicant has filed with the clerk the written consent of the counsel for petitioner. The applicant has in writing requested the consent of counsel for respondents and no reply has been received.

The National Lawyers Guild is an organization of members of the American Bar, devoted particularly to the protection of the civil rights guaranteed by the Constitution of the United States. It believes that the basic constitutional question presented in this case is of major importance to the nation. It believes that the judgment below and the

reasoning on which it is based seriously impairs constitutional doctrines established by this Court and subverts the protection accorded to civil rights under the Fourteenth Amendment. It conceives it to be its public duty, as an organization of members of the bar, to bring before this Court the reasons which impel its conclusion that the judgment below should be reversed. The National Lawyers Guild therefore respectfully requests leave to file a brief as *amicus curiae.*

BRIEF FOR THE NATIONAL LAWYERS GUILD AS AMICUS CURIAE.

STATEMENT OF THE CASE AND JURISDICTIONAL STATEMENT.

The statement of facts and the statement of jurisdiction are set forth fully in petitioner's brief and are adopted herein.

It is the contention of respondents that they must be given an opportunity to set up a segregated law school for the petitioner's legal education. They raise the Oklahoma Constitutional and statutory requirement of racial segregation as a complete defense to petitioner's present right to admission to the University of Oklahoma Law School, the only state-supported facility. The petitioner's brief has aptly pointed out that this defense, with the inherent requirement that Negroes wait long periods of time before securing the use of such a segregated school, is in itself an unequal burden. Further, petitioner's brief has dealt fully with both the legal and sociological invalidity of the doctrine of "separate but equal facilities." This brief will address itself to those aspects of a legal education which make the doctrine of "separate but equal" peculiarly specious.

ARGUMENT.

I.

History has Demonstrated that there can be no Equality Under a Segregated System.

The respondent's defense is bottomed on the doctrine of "separate but equal" facilities, first recognized by this Court in *Plessey* v. *Ferguson*[1] in 1895. Yet, even in that case, this Court stated that the object of the Fourteenth Amendment "was undoubtedly to enforce the absolute equality of the two races before the law." (163 U.S. 544). This basic requirement has been reiterated in many cases, and the assumption that equality exists underlies every attempt to establish the constitutionality of segregation statutes.

That essential fact may not be assumed today—and the facts establish, on the contrary, that equality under a segregated system cannot be had. The very record of this case demonstrates that the necessary result of a segregated system will be the denial to Negroes of educational opportunities—for here it is solely as a result of the segregated system that no provisions for the professional education of petitioner exist. That other Negroes, in the future, may get some modicum of the educational opportunities to which they are entitled does not make valid the denial of petitioner's rights.

From the more general viewpoint, however, the facts are conclusive that no equality is possible under a segregated system. The President's Committee on Civil Rights, considering segregation, concluded that:

> "The separate but equal doctrine stands convicted on three grounds. It contravenes the equalitarian spirit of the American heritage. It has failed to operate, for history shows that inequality of service has been the omnipresent consequence of separation. It has institutionalized segregation and kept groups

[1] 163 U. S. 537.

apart despite indisputable evidence that normal contacts among these groups tend to promote social harmony." [2]

After reviewing the damaging effect of segregation upon educational opportunities for Negroes, the President's Committee on Higher Education states:

> "The more advanced the field of endeavor, the more wasteful and futile become attempts to justify a double system." [3]

The doctrine of "separate but equal" relies for its validity under our constitution upon proof of absolute equality. Equality being impossible under a segregated system, the doctrine furnishes no justification for segregation statutes.

II.

A Student Cannot be Properly Trained to Fulfill the Role of a Lawyer in a Democratic Society in a Segregated School.

The events of the past quarter century in our country and the world have emphasized the new and broader concept of the role of the legal profession which was described by Mr. Chief Justice STONE when he said:

> "Law performs its function adequately only when it is suited to the way of life of a people. With social change comes the imperative demand that law shall satisfy the needs which change has created, and so the problem, above all others, of jurisprudence in a modern world is the reconciliation of the demands, paradoxical and to some extent conflicting, that law shall at once have continuity with the past and adaptability to the present and future. . . . We are coming to realize more completely that law is not an end, but a means to an end—the adequate control and protection of those

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[2] "To Secure These Rights," Report of the President's Committee on Civil Rights.

[3] "Higher Education for American Democracy," Report of the President's Committee on Higher Education, Vol. II, p. 32.

interests, social and economic, which are the special concern of government and hence of law."[4]

Perhaps never before have we known so well that the lawyer's is "a public profession charged with inescapable social responsibilities."[5]

Legal education today cannot be acquired by a mere drilling in techniques of practice. The aim of the law school must be, in the words of Mr. Justice Holmes, "not to make men smart, but to make them wise in their calling—to start them on a road which will lead them to the abode of the masters."[6] This must be true of a school which is training for a profession which supplies "our social mechanics and many, if not most of our social inventors."[7] It is the fundamental requirement of a school which is "training policy makers for the ever more complete achievement of the democratic values that constitute the professed ends of American policy."[8]

Our basic concept in America has been from the inception, equality of men. It has been asserted throughout our his-

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[4] Stone, *The Common Law in the United States,* 50 HARV. L. REV. 4, 11.

[5] Simpson, *The Function of a University Law School,* 49 HARV. L. REV. 1068, 1072. See also Stone, *The Public Influence of the Bar,* 48 HARV. L. REV. 1, "We may well pause to consider whether the professional school has done well to neglect so completely the inculcation of some knowledge of the social responsibility which rests upon a public profession." pp.12-13.

[6] Holmes, "The Use of Law Schools" in COLLECTED LEGAL PAPERS (1920), pp. 39-40.

[7] Simpson, *op cit* p. 1069. See also McCormick, *The Place and Future of the State University Law School,* 24 N. C. L. REV. 441, "As we rebuild our curricula, it seems that more attention should be given to the knowledge that a lawyer needs in order to be a community leader—such matters as planning, zoning, and housing come to mind—and to the adaptation of the public law courses not only to the needs of the lawyer serving private clients, but to the requirements of graduates who will enter the service of the state and national governments."

[8] Laswell and McDougal, *Legal Education and Public Policy; Professional Training in the Public Interest,* 52 YALE L. J. 206.

tory by our leaders. Our laws have been an unending attempt to find the devices which will bring the ideal into reality. More recently, this ideal has become our pledge to the world in the United Nations Charter.[9] For its achievement, the law and the lawyers must foster the realization of human dignity in a commonwealth of mutual deference. And it is the lawyer who must "determine which adjustments of human relationships are in fact compatible with the realization of democratic ideals, which procedures actually aid or hamper the realization of human dignity."[10] During the long period of training which is demanded of the lawyer, he is to develop the skills necessary for responsible leadership. He is to acquire "that enlargement and correction of perspective, that critical and inclusive view of reality,"[11] upon which his clients and the public rely.

Among the multitude of problems which confront the country from time to time—the conflicts between economic groups, between different branches of our government, between government and business, government and trade unions, the states and the federal government—the treatment of the Negro people in America constitutes a major source of inconsistency with our democratic professions and principles. It is a major challenge with which our present and future policy-makers must be constantly concerned.

We submit that no law student can receive adequate training for the role of policy maker in a segregated school. Neither the petitioner in the "jim-crow" school nor the students in the "lily-white" University of Oklahoma Law School can receive "conscious, efficient training for policy making[12] in a democratic society. More is required than a knowledge of the past and a blind adherence to the status

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[9] United Nations Charter, Article 55.

[10] Laswell and McDougal, *op. cit.* p. 214.

[11] *Ibid.* p. 211

[12] *Ibid.* p. 206.

quo. Such a student must be orientated not only to past trends but to future possibilities; such training must include experiences which will cause the student to clarify his moral values, to reexamine his role in society. The school in which the student will receive such training must in itself be a model of those essential ideals which the lawyer is to advance.

> "A duty to advance justice in human affairs is a more complicated duty and one far more difficult of achievement than is a duty to preserve human life and health. . . . Education in responsibility must be largely indirect, and *more by example than by precept. It must be breathed in with the very atmosphere of the law school.* To be effective it must pervade every aspect of the school's life."[13]

The existence of a segregated law school constitutes in itself an affront to American ideals. This has been recognized by the President's Committee on Civil Rights and the President's Committee on Higher Education, the latter report clearly stating that equality in education cannot be achieved in a segregated system. Respect for human dignity certainly means equality of access to opportunity to bring to fruition every capacity needed for the better functioning of our democracy.

No intelligent person can contend, on the basis of myths about heredity of races, that a Negro student seeking training in leadership responsibilities for American life needs different training from a white student, and must be kept from contact with white students. On the basis of what we know about the effects of segregation on the personalities of the segregated, both white and colored, the greatest damage is done to future policy-makers who breathe in with the atmosphere of their education the denial of the equality of men.[14]

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[13] Simpson, *op. cit.*, p. 1082.

[14] Frazier, NEGRO YOUTH AT THE CROSSWAYS (1940). "The . . . pathological features of the Negro community is of a more general

> "However, the case of the extension of equal education for the Negro rests only in part upon his equal educability. The basic social fact is that in a democracy his status as a citizen should assure him equal access to educational opportunity." [15]

The contention of respondent that the rights of the petitioner can be met by maintaining a segregated system and furnishing her with a segregated legal education cannot be upheld in "a nation that professes deep regard for the dignity of men and that in practice relies to an extraordinary degree upon the advice of professional lawyers in the formation and execution of policy." [16]

A SEPARATE LAW SCHOOL WHOSE FACILITIES ARE LIMITED TO NEGROES EXCLUSIVELY CAN NOT MEET THE REQUIREMENTS OF THE 14th AMENDMENT.

It is definitely established from the opinion of this Court in the Gaines case[17] and admitted by the Supreme Court of Oklahoma in the opinion on appeal [18] that petitioner is entitled to legal training within the geographical confines of the State of Oklahoma and of a caliber equal to that now offered to white persons. It is the conclusion of the Court below that this can be accomplished by the creation of a second, state-maintained school of law whose facilities would be available to Negroes only.

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character and grows out of the fact that the Negro is kept behind the walls of segregation and is in an artificial situation in which inferior standards of excellence or efficiency are set up. Since the Negro is not required to compete in the larger world and to assume its responsibilities, he does not have an opportunity to mature." p. 290.

[15] "Higher Education for American Democracy," Report of the President's Committee on Higher Education, Vol. II, p 30-31.

[16] Laswell & McDougal, op. cit., p. 291.

[17] Missouri ex rel. Gaines v. Canada, 305 U. S. 337.

[18] R. 42, 44.

It is submitted that such a project can be only an attempted compliance with the equal protection clause of the 14th Amendment for a number of reasons. Assuming, from a viewpoint of physical characteristics, that the State of Oklahoma were to construct and maintain a second school of law that would compare favorably with that now in existence and available to eligible white students, one must remember nonetheless, that a school of law is an institution that is distinguished primarily by factors other than mere physical assets and attributes. The sum total of the intangible qualities that reflect the status of a school of law most clearly comprise such concepts as heritage, tradition, reputation and scholastic standards, none of which can be instantly acquired as of the date of a new school's inception.

The State of Oklahoma may indeed furnish adequate funds to insure a well equipped library, large and comfortable class rooms, and other essentials necessary to launch such a school, but its contribution must, of necessity, end at this point. Years of adherence to the highest academic and ethical standards must be demonstrated to the nation before this second school will be an accredited institution, recognized by national and even local bar associations, other universities, and institutions or agencies which extend opportunities for employment to law graduates. This acceptance cannot be earned in advance of the passage of years and to even an aspiring enrollee of this newly created project, there is the colorlessness that stems from the absence of a firmly rooted tradition capable of being a source of inspiration. Instead, the newly enrolled student is confronted with a monument to the Jim Crow order, erected solely to remind him that he is deemed unfit to associate with other human beings sharing a common educational interest.

Moreover, the curriculum in such a school cannot equal that now offered in the present State university. Obviously. In view of the smaller number of students who would attend such a school, the number of courses offered would be proportionately reduced, thereby making available to

petitioner and others a course of study based upon practical dictates and not upon the varying needs of the students themselves.

As is apparent from the record (F. 31), the second school could not, by statutory mandate, even have a common faculty with that of the white school, with the result that eminent or distinguished professors who may be or become associated with the present State school of law would not be available to petitioner and her associate for lectures or instruction.

It is a well known fact that one of the most important aspects of legal training is the oportunity for discussion, debate and exchange of ideas. This becomes meaningless unless a class or student body is composed of persons having different and varied backgrounds and divergent views and attitudes toward current affairs, politics and other subjects. As is to be expected, a small student body cannot afford this opportunity to its constitutent members to any substantial extent and a segregated law school will further decrease this by making impossible the opportunity for both races to secure any exchange of ideas on a subject of such magnitude in the south as race relations.

By the same reasoning, the smallness of the student body of the segregated school would weaken the efficacy of, or render impossible, the spirited and enthusiastic participation in extra-curricular activities such as moot courts, law review and other fields of interest and the students would be relegated to the sole activity of class work and lectures.

It cannot be said that compliance with the equal protection clause of the 14th Amendment is even within the realm of possibility under handicaps that must inevitably confront a racially segregated school of law. Its graduates would have little else than a mere formal legal training in as varied a curriculum as its small enrollment would permit. Petitioner, upon her graduation, would not have either the prestige or the training that her white counterparts will receive. Apart from the further fact that no

such law school is even in the planning stage when she is now otherwise eligible, she will have imposed upon her the unequal burden of being required to wait until such an institution is equipped and ready to accept students.

It is, therefore, respectfully urged that the only equality that can be accorded to petitioner now, is to admit her as a student in the school now maintained by the State of Oklahoma for the study of law.

CONCLUSION.

This Court is called upon by the urgent needs of our democratic way of life to re-examine the doctrine of "equal but separate" in the light of the facts which have developed since 1895 and to make its decision one which is consonant with the basic concepts of American democracy. The protection of the Fourteenth Amendment must, in these critical days, take on new life. One can today be guided by no better precept than stated by Mr. Justice Cardozo in "Growth of the Law" that we "shall not drag in the dust the standards set by equity and justice to win some slight conformity to symmetry and order; the gain will be unequal to the loss."

Respectfully submitted.

National Lawyers Guild,
Robert W. Kenny, *President.*
O. John Rogge,
Andrew D. Weinberger,
Attorneys for
National Lawyers Guild.