TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1949

No. 44

HEMAN MARION SWEATT, PETITIONER,

vs.

THEOPHILIS SHICKEL PAINTER, ET AL.

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

PETITION FOR CERTIORARI FILED MARCH 23, 1949.

CERTIORARI GRANTED NOVEMBER 7, 1949.

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEB. 4, 1949.

[fol. 1]

IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, 126TH JUDICIAL DISTRICT

No. 74,945

HEMAN MARION SWEATT, Relator

vs.

THEOPHILIS SHICKEL PAINTER, et al., Respondents

Statement of Facts

Before Hon. Roy C. Archer, Judge.

APPEARANCES:

Mr. W. J. Durham, Mr. Thurgood Marshall, Mr. E. B. Bunkley, Jr., Mr. James M. Nabrit, Jr., Counsel for Relator.

Mr. Price Daniel, Attorney General of Texas; Mr. Jackson Littleton, Asst. Atty. Gen. of Texas; Mr. Joe Greenhill, Asst. Atty. Gen. of Texas, Counsel for Respondents.

Be It Remembered that on Monday, May 12, 1947, and succeeding days, all in the Regular March Term of said Court, there came on to be heard the above entitled and numbered cause; whereupon the Court admitted into evidence the following:

[fols. 2-7] AFTER SESSION

May 12, 1947

2:00 P. M.

STATEMENT BY THE COURT

The Court: It seems this morning that perhaps I wasn't as clear in making a statement of this trial as perhaps I should have been. This case was tried here on stipulations and on some testimony other than stipulations and went to our Court of Civil Appeals, and by agreement of all parties, the Court of Civil Appeals entered an order in which this cause was remanded generally to this Court for

further proceedings, without prejudice to the rights of any party to this cause. I think we needed that additional explanation. If we are ready now, we may go ahead.

Mr. Durham: Relator is ready, Your Honor.

The Court: Are you ready, Mr. Attorney General?

Mr. Daniel: Yes.

Thereupon counsel for relator and counsel for respondents presented to the Court a statement of their respective pleadings in this cause.

The Court: I think with the trial being had before the Court we will be able to hear your testimony and at the same time bear in mind your exceptions on either side. So, for the time being, I am just going to carry your exceptions along in the trial of this case. If at a later time it requires a little more time on your part to prepare to meet issues that may be raised, which might be somewhat of a surprise to [fol. 8] you, the Court will give you that time.

Mr. Durham: To save time, I thought we could go on with our testimony, we could go on this evening, and maybe talk about the stipulations after Court adjourns.

Mr. Daniel: Just so it is understood, we have no stipulations at this time.

Mr. Durham: That is right, we have no stipulations at this time.

The Court: I haven't heard it if you have.

Mr. Durham: It is agreed that respondents will put their testimony on first, and then we will put our testimony on, but in the record as it is made up, the relator's testimony will come first in the record.

The Court: All right.

Reporter's Note:—By agreement of counsel later, this statement of facts was ordered prepared setting out the testimony and proceedings in chronological order.

Mr. Daniel: Your Honor, we have a witness that we want to put on out of order, and I believe it is agreed we may do that.

The Court: All right.

D. A. SIMMONS, a witness produced by Respondents, having been by the Court first duly sworn as a witness testified as follows:

[fol. 9] Direct examination.

Questions by Mr. Daniel:

Q. State your name.
A. D. A. Simmons.
Q. Where do you reside, Mr. Simmons?
A. Houston, Texas.
Q. What profession are you in?
A. Attorney at law.
Q. Do you hold a law degree?
A. I do.
Q. From what school?
A. The University of Texas Law School.
Q. Do you hold any other law degrees?
A. I have an Honorary Doctor of Law degree from the University of Montreal and an Honorary Doctor of Law degree from Loyola University in New Orleans.
Q. How long have you practiced law?
A. Twenty-seven years.
Q. Have you during that time had any official association with The American Bar Association?
A. I have.
Q. Would you please state your official connection with the American Bar Association?
A. Well, if I may, I would like to go just a little back of that, because I understand I am called—I know nothing about the case, but I am called on as a witness on certain [fol. 10] phases of the American Bar standards.
The Court: Yes.
A. I have been President of the Houston-Galveston Bar Association, 1932 and 1933. I was President of the Texas Bar Association in 1937 and 1938. I was President of the American Judicature Society in 1940 and 1942. For the record, I would like to state the American Judicature Society is the second largest national organization of lawyers in the country, and I was President of the American Bar Association in 1944 and 1945, having heretofore been on the Board of Governors for five years.

Q. Have you in your American Bar Association work had occasion to be on any boards that inspected law schools or passed upon the requirements of whether or not certain law schools met requirements of the American Bar Association?

A. The standards of the American Bar Association are set by the House of Delegates. They are recommended by the Board of Governors and the Section of Legal Education. I have been a member of the Board of Governors in 1937 to 1940, and 1944 to 1946. I have been a member of the House of Delegates representing the lawyers of Texas, 1936 until today. I am still a member.

Q. In your experience with the American Bar Association, I will ask you if you have ever had occasion to study the standards of the American Bar Association as far as law [fol. 11] schools are concerned?

A. Yes, sir, I am familiar with them. I was a member of the House when they were voted.

Q. You are acquainted with the standards as they exist today?

A. Yes, sir.

Q. Are you acquainted with the physical facilities, the faculty, library, courses of instruction, and other matters related to the University of Texas School of Law?

A. Well, I would say that since I was graduated there in 1920, my late visits, I have not counted the law books. I know they have a very substantial law library. I do not know how many books, and I know a good many of the professors, and I am familiar in a general way with the course of instruction.

Q. Do you know whether or not the University of Texas Law School meets the standards of the American Bar Association for an accredited law school?

A. It is an approved school.

Mr. Durham: We object to that because it is an assumption of what those standards are. The witness hasn't testified what the standards are. It is assuming what the standards are.

The Court: I believe I will let him proceed, Counselor, along this line. You will save your point, and maybe we will get back to it.

A. My answer is: It is an approved law school. It has [fol. 12] been inspected and approved by the House of Delegates of the American Bar Association as having complied with the standards.

By Mr. Daniel:

Q. Are you acquainted——
A. I can say what the standards are, briefly.
Q. Will you briefly state what the standards are?

Mr. Marshall: I think the standards are the best evidence.
A. I think so.

The Court: The standards are.
A. I assume that counsel on both sides have them.

Mr. Marshall: Unfortunately, if Your Honor please, we do not have them, except that one person on our staff has them, and he is not in the court room at this time.
The Court: All right.

By Mr. Daniel:

Q. I will ask you if this page contains the standards of the American Bar Association with reference to approved schools?
A. That is the copy of the standards as approved by the House of Delegates of the American Bar Association.

Mr. Daniel: We wish to offer it. We offer from page 1. It is headed, "Standards of the American Bar Association."
Q. I believe your testimony was that the University of Texas Law School has been approved as having met those standards?

[fol. 13] Said instrument was admitted in evidence as Respondents' Exhibit No. 1.

A. That is correct.
Q. Now, I will ask you, Mr. Simmons, at my request, whether or not you have inspected the law school for the State University for Negroes here, adjoining the Capitol grounds in Austin?
A. Dean McCormick, of the Texas University Law School, took me when the Court recessed this morning, to the build-

ing just north of the Capitol, where on the ground floor I found three rooms and a hall and toilet facilities. The first room had three or four or five study desks, a law book case or two with approximately, I would say, one hundred and fifty to two hundred books, and there were two class rooms the Dean pointed out, one with students' study desks; the other one he said was a reserve room in case more than eight or ten students applied. I saw that. I know where that is. I walked over to the Capitol. I was informed, from the reading of the pleadings this morning, which is all I know about that phase of it. I learned that the Supreme Court Library was made available by the statutes. I have a little familiarity with that from twenty years ago as First Assistant Attorney General. I went back, and the books seemed to have been kept up to date, and it is about a hundred or a hundred and fifty yards from this school.

Q. You are speaking now of the State Library and the [fol. 14] Supreme Court Library?

A. Yes, sir; on the second floor on the north side in the Capitol Building.

Q. And that was about how far from the school?

A. The north entrance of the Capitol, I would say, was a hundred yards. This is on the second floor immediately above the north entrance.

Q. How many volumes of law books are required by the American Bar Association for a library that meets its standards?

A. Well, the standards themselves call for an adequate library. The interpretation of that, to get it down to actuality, has been seventy-five hundred well-selected books with cases, in complete sets.

Q. I would like to ask you if the Supreme Court Library, with which you say you are familiar, and the State Library there in the Capitol Building, has been kept up to date, and if the evidence shows there are over 40,000 books in that library,—would it meet the requirements of the American Bar Association for a law school library?

A. Well, I glanced over some of the sets. They are up to date. Whether there are 40,000, I would rather leave to the librarian, but obviously there are a great deal more than 7,500 books, and they are books of a character that would afford an adequate legal education.

Q. Now then, did you in talking with Dean McCormick [fol. 15] acquaint yourself as to the courses of instruction that are being offered to the law school of the Texas State University for Negroes?

A. Well, I was merely informed from the set-up, and from the books on the shelves that the freshmen, first year law school courses are the courses that would be available at this time, and that they were the identical books and the identical courses given the first year law students at the University of Texas Law School.

Q. I will ask you a hypothetical question. If the evidence in this case shows that in the building that you have already inspected, the University of Texas law faculty, the same faculty members, offered the same courses in law in that building, and with the library facilities of the Supreme Court Library that we have mentioned, and if the requirements for entrance are the same, the requirements for graduation are the same, as the Texas University Law School, if the evidence shows that the requirements for classroom study and all requirements contained in the catalogue of the University of Texas Law School must be met in the law school of the State University for Negroes, if the evidence shows what I have recited, in your opinion, will Texas University for Negroes Law School offer equal educational opportunities in law as that offered by the University of Texas?

Mr. Marshall: If Your Honor please, assuming he is an [fol. 16] expert, and assuming all that is in the hypothetical question, I don't thing this witness is entitled to give a conclusion as to what the law is in the case. I think that is your job.

The Court: I think he hasn't asked him a law question. I think he is asking him if, as an expert, it is substantially the same.

Mr. Marshall: The question was whether it furnishes the equality required.

The Court: Well, he wouldn't say whether there is an equality or not.

Mr. Marshall: May we have an exception, please, sir?

The Court: Yes, sir.

By Mr. Daniel:

Q. You may answer, please.

A. In my opinion, the facilities, the course of study, with the same professors, would afford an opportunity for a legal education equal or substantially equal to that given to the students at the University of Texas Law School.

Q. That is all.

Cross-examination.

Questions by Mr. Marshall:

Q. Mr. Simmons, what is the purpose of accreditation from the American Bar Association, of law schools?

A. To make standards—pardon me. Would you mind telling me your name?

[fol. 17] Q. Thurgood Marshall.

A. And you are from where?

Q. Originally from Baltimore, and now from New York.

A. I like to know who I am talking to.

Q. Good.

A. The purpose of any standards are to set a goal. The American Bar Association standards are to assure adequate legal education to those who are going to represent the public as lawyers. They are merely recommendations, and as—and your name?

Mr. Durham: Durham.

A. As Mr. Durham suggested a while ago, the American Bar Association is a private association of lawyers, about 40,000, and it set up these standards as a guide to the law schools, because when the standards were set up there were a great many law schools in the United States, mainly night schools, that were giving courses that were deemed to be inadequate, inadequate to prepare the lawyers of the future generation.

Q. And isn't it true that many studies have been made by the American Bar Association and the officials, including several past presidents, concerning the inferior education obtained in small, part-time law schools? Isn't that true?

A. The Association has been concerned with legal education since 1896, and it has made many studies. That part is entirely correct. We are now beginning to engage in a study [fol. 18] that used to be done by the Carnegie Foundation.

They used to make an annual survey of legal education, and Mr. Reed of that Foundation, I think, was assigned other duties about ten years ago, and the American Bar Association has taken over that officially.

Q. Are you using Mr. Reed officially?

A. No, sir; I happen to know him personally.

Q. Have you read any of his studies?

A. I have many of them in my library.

Q. You are familiar with his viewpoint on part-time law schools?

A. I would prefer to answer mine. I have studied at night part time law schools myself. I have studied law in every form, I think. I studied in my father's office as a boy. I came to the University of Texas not having funds to proceed through. I stopped for a couple of years and went to night law school, working in Houston, an unapproved part-time school, with no books except those you could borrow, and I came back after the First World War and came back here, and I believe I am familiar with the office study and small part-time school and the approved law school, and sympathetic with all three.

Q. As a matter of fact, as of the present time, isn't the American Bar Association opposed to part-time law schools?

A. No.

[fol. 19] Q. Hasn't the American Bar——

A. For the night school, what they want is legal education for the future lawyers, and as the small school or the night school obviously can't give as much time to the student as a day school, full-time, they require that they give four years of three hours in the evening instead of three years like the regular approved schools, but many of the part time schools are approved.

Q. Do you mean approved by the American Bar Association?

A. Yes, as having complied with these standards.

Q. There is another accrediting agency, the Association of American Law Schools?

A. Yes.

Q. Isn't this true; their standards are higher than the American Bar Association's?

A. In some instances, I think they are more stringent.

Q. Isn't it a fact that there are some schools approved by the American Bar Association that are not approved by the Association of American Law Schools?

A. I think that is true in some instances. I believe Lincoln University in St. Louis is approved, on our lists——

Q. It is on both of the sections?

A. That is the law school, I think. My last check, I think it had 35 students.

Q. Counting the faculty?

[fol. 20] A. Take Howard—that is a colored law school at St. Louis. Howard School of Law in Washington, the last time I had occasion to go to that, I believe it had—just before the war, I believe they had about 67 students. It is a fully approved school.

Q. Both associations?

A. I think so.

Q. Yes, sir. Is it not true that accreditation by the American Bar Association is an asset to the school and the pupil and the community?

A. We hope so.

Q. And it is your opinion that it is of value to any school?

A. Yes, sir.

Q. And would you not, therefore, say that attendance at an unapproved school does not give equal education to attendance at an approved school?

A. No, I wouldn't say that, because any school,—all of these schools we have named at one time were on the unapproved list. They had to prove how the facilities may be equal, but the student body, after all, is the one that is going to determine the standing of that school, and if the student body takes advantage of the facilities offered, and by the State Bar examination, which has no relationship to the school itself, passed the State Bar examination, and the students of that school, as many in proportion, uphold the [fol. 21] teaching of that school, it is likely, of course, to be approved more readily than one where the product does not stand the gaff of the State examination.

Q. The American Bar Association waits and watches what the school is doing before they approve it?

A. Yes, sir.

Q. They always do that, don't they?

A. Yes, sir.

Q. But you think in the meantime the school still should be giving the same training as an accredited school?

A. Absolutely. The training is for the individual.

Q. I understand——

A. It has got to be from the inside, what the man develops himself, what he can absorb himself. If he has the books and curriculum and physical facilities, the light, the books, the professors, I would venture to say that a student who had,—let's say that school had ten students, with four professors teaching ten students, that the ten students should absorb a great deal more law than with ten instructors teaching seven or eight hundred students.

Q. They approve the school, the curriculum and the plant?

A. And the product.

Q. You don't just approve it on the product?

A. No, these standards should show there are seven or eight hundred well-chosen volumes and should have pro-
[fol. 22] fessors who are full time professors in the field of law.

Q. Did you know that these proposed professors for the Negro school are to be part time professors? Did you know that?

A. I understood they were full time law teachers.

Q. Did you understand their work there was to be part time?

A. I would say that with ten students, it would have to be.

Q. I don't know what you mean by that.

A. I was advised by the Dean of the Texas University Law School they will be the same men that teach at the Texas University Law School. They are full time teachers, of course, employed by the State of Texas to teach students in law.

Q. But we are talking about the so-called Negro school. As to that school, they are part time?

A. Yes, sir, that is true. They would also be part time at the University of Texas.

Q. Did you find out where their offices are?

A. At the other school, but they have a desk here. I was pointed out,—all I know is what I was told this morning, and I told you who told me. I was pointed out the books, the desks, the chairs, and the rooms, and the distance from the State Supreme Court Library, and I went over there to see if it was where it used to be.

Q. Do your standards of the American Bar Association, in accrediting a school,—isn't it limited to what is in the school? To be specific——

A. Until students come, this isn't a school.

[fol. 23] Q. Thank you, sir; but the other question is this. If you have a school, for example; you are familiar with the fact, are you not, that the library in the Library of Congress is one of the best in the country? Are you not familiar with that?

A. Yes, sir.

Q. If you had a university in Washington with no law library, but access to the Library of Congress, would you accredit that school?

A. You are talking to me. I am only one of 185 delegates in the House of Delegates. I do not personally accredit anybody. If the law school you are talking about had trained professors, set up by Congress across the street, a hundred yards from that library, and the Act of Congress said this library shall be the library of that school, I would say, so far as I was concerned, I would say they had been furnished an adequate library, all of the books they could hope to read or study.

Q. I didn't say the library was made a part of the school. I said "made available", like it is to everybody else.

A. Yes.

Q. Because it is available, would you, therefore, use that as a part of the accrediting of the school?

A. Having used this one myself, I know there are not so many people there but what you can always find table space [fol. 24] and all of the books you want to study or read. We are trying to get some law and the standards of the law into the mind and soul of the individual student. I am not trying to build a building for you, or law books. We are trying to build lawyers with character.

Q. But you do require the building with the law books?

A. We require, as I said before, we require that a certain number of certain proper law books be available.

Q. What do you mean by "available"?

A. You are the one that asked me,—you said a while ago, questions on availability. I will say that any time you have a law library a hundred yards away from your school, and that the Legislature says these books are for the use of that school, that those books are available.

Q. I think you are familiar with the statute that says they shall be available. Isn't that the language?

A. I will let the Judge pass on the statute.

Q. You are quoting from it?

A. You were talking about Congress, if the Law Library of Congress was available, and I am trying to define what I mean by available.

Q. Do you know of any other school the Americann Bar Association approved that didn't have a library in the building where the school was?

A. All I can say is I haven't inspected over about eight [fol. 25] law schools personally.

Q. You have been passing on law schools for how many years?

A. Personally?

Q. Yes, on the Committee?

A. On the House of Delegates since it was established in Boston in 1936, and three years before that as a member of the General Council from Texas.

Q. During that period, has that body approved a law school that did not have a library in the building where the law school was?

A. I can't answer that.

Q. To your knowledge?

A. All we have ever passed on were——

Q. Can we first get an answer to that; and then you can go ahead? Do you know, to your knowledge, that——

A. I can answer that like lawyers do, either way. I don't know, because the practice is this. Mr. Demuth, of the University of Colorado, and Mr. Sullivan, from the University of Illinois, inspect the schools, and they come back and report to the House of Delegates of the American Bar Association, "We have inspected Lincoln University Law School. It has an adequate available library." Nobody has ever said there is one in the building across the street, in all of the years that I have acted as one of those that have passed on it. In the eight schools that I have in- [fol. 26] spected, they all had libraries either in the building, or in adjacent buildings.

Q. That is the purpose of having libraries in the law schools?

A. In the school?

Q. Yes.

A. To make books available so that the student can study and learn the principles of law.

Q. Don't your requirements also require that you have a trained, competent librarian?

A. Someone should be familiar with the books. He doesn't need to be a full time librarian.

Q. Do you require that you have a full time dean?

A. The interpretation that has been made by the Committee before they are recommended to the House of Delegates, the school should have at least one full time professor or dean for each one hundred or fraction thereof, of pupils. We don't require a full time dean, as you quite well know, Mr. Marshall.

Q. I don't know anything about what the American Bar Association requires, because I am not a member of it for one reason.

A. May I go ahead?

Q. You may proceed.

The Court: Until somebody stops you, you can proceed.

A. This is quite interesting to me. Are you a member of the Lawyers' Guild?

By Mr. Marshall:

Q. One of the founders of it, and a member of the Board [fol. 27] of Directors.

A. Are you a member of the National Bar Association of Colored Lawyers?

Q. I am a former Secretary for four years of it.

A. That is a national association of colored lawyers?

Q. No, sir; it is an association of American lawyers that has no bars as to race, creed, or color.

A. Is there a single white lawyer in it?

Q. Yes, sir; Martin Popper, and two or three others that I can name.

A. Of course, we have colored lawyers in the American Bar Association.

Q. You had one up until two years ago?

A. Bill Lewis. That is purely aside. We can go on with the questions. I helped organize The Texas State Bar. We have colored lawyers in that. We have colored lawyers in the American Judicature Society, if that has any place in the record.

Q. Getting back to the law library, and the American Bar Association. They do require that we have at least one full time dean or full time professor for each one hundred students?

A. There must be one full time man.

Q. I will ask you a hypothetical question. If there is a law school established here in Texas for Negroes that has [fol. 28] not a single full time professor or dean, would you say that that gives the type of education that would meet the approval of the American Bar Association?

A. Well, I am going to have to assume that this law school has some students and there are——

Q. Assume not less than one hundred.

A. Lincoln, say, with thirty-one. I would say if, as, and when this school has enough students to require through the business facilities, the efforts of a full time man, they should certainly have one.

Q. Could that school be approved by the American Bar Association without any full time teacher or dean?

A. Yes, sir, it could.

Q. It could be?

A. Yes, sir; the requirement of one full time professor for each one hundred students isn't in the standards. It is an interpretation made by the Committee as a recommendation to the House of Delegates.

Q. So, it would vary?

A. If the Committee found it was adequate. What is the purpose of having one instructor for each one hundred, or less? The purpose is stated in the standards to be so that the professor will be acquainted with the needs and the studying of the student body. I would assume, and would so state, that if this school has less than 25 students, that [fol. 29] three or four professors who are full time professors, not part time, would certainly seem to be adequate.

Q. What would be—and maybe you can't answer this—what would be the minimum number of full time teachers, deans, that you would need?

A. At this time?

Q. Yes, sir.

A. With how many students?

Q. Well, assume we have one.

A. Well, I wouldn't see the slightest need for a full time professor to give his full time to this one student.

Q. And—then could that one student get the same type of education that other students get by having only the viewpoint of one professor?

A. I didn't understand that was to be the case. I understood they were to assign four.

Q. And you wouldn't need any full time, then?

A. I wouldn't think so. I would think; if he had the same capacity, he could get a better grasp of the principles of law than if he were one of eight hundred students with ten professors.

Q. Don't you require, in accrediting schools, that you have a full time professor, or professors, for the purpose of being available to the students during the regular day, throughout the day, for consultation? Isn't that true?

[fol. 30] A. No, the purpose, as I stated before, is so that there will be a sufficient number of instructors so that they will personally know each student and be available to encourage and teach him how to study law. Some of them don't know how to study law.

Q. I think we are talking about class room work. I am talking about after class. Isn't that the reason for a full time professor, so that he will be available in the afternoon for consultation?

A. No; so that they will have some chance to individually and personally know the students.

Q. And another question; do you know the difference between a law library and a teaching law library?

A. I don't know what you have in mind, if that is what the answer is.

Q. I will explain it. For example, under the requirements, the types of books that you have to have in a law school library aren't the books that are required, for example, in a Supreme Court Library?

A. Well, I don't think so. They lay more stress on the law reviews and things of that kind than the practicing lawyer does; or, I might say, used to, but the Supreme Court Library here has about everything a general practitioner would need.

Q. Does it have what a law school needs?

[fol. 31] A. I would say that depends on the course of study. I have known some law schools to give,—I think there is one that gives a course in patent law. I question whether that one would have facilities for teaching much patent law.

Q. A few others, too. The point I am trying to get at is that the law library is an important feature of a law school, a very important feature?

A. That is right.

Q. And the University of Texas Law Library has one of the best; isn't that true?

A. It has a very good library.

Q. And isn't it fully accredited by every association?

A. As far as I have heard.

Q. And does it not have a librarian and an assistant librarian?

A. Well, they had a librarian when I was there.

Q. And isn't it the only library in this section of the country that has microfilm reports of the records of the Supreme Court?

A. You had better ask the dean.

Q. If you are going to compare the two; aren't you forced to compare the two libraries?

A. I said, in my opinion, the Supreme Court Library, which is one hundred yards from your school, has more than any one, or twenty-five students, would possibly absorb in three years; and if he absorbed that, he would be competent [fol. 32] to start practicing.

Q. The answer is that the important thing is that it is not the number of books necessarily, but the right books that you will need?

A. Yes.

Q. And obviously, there are books at the University of Texas that are not in the library of the Supreme Court?

A. I can't answer that.

Q. There is a larger percent——

A. I will say that all I have read that qualifies me, if I am qualified to practice law, are in the Supreme Court Library.

Q. Do I understand you to say that the basis of your testimony is that the individual student can get as much in an inferior school as he can get in a superior school, if he is smart enough?

A. The inferior and superior are your words. I said, with the same instructors in the two schools, and the law books available in the Supreme Court Law Library, a hundred yards across the street, he can get an adequate legal education; at least as good as that of the student, one of seven or eight hundred, getting the similar courses out at the University of Texas Law School.

Q. But you don't think it is a mistake to put all of those books at the University of Texas Law School, do you?

A. That is not up to me to judge that. I haven't read all [fol. 33] of them.

Q. I don't imagine the librarian has. If the standards of the Association of American Law Schools are higher or more stringent than those of the American Bar Association, as you stated, as a member of the board, how could a student be said to be offered equal educational facilities in the basement across the street as he would at the University of Texas, assuming that the Association of American Law Schools requires a minimum of four full time teachers, irrespective of the number of students?

Mr. Daniel: We object to that question as argument; presuming the requirement of the American Association of Law Schools there, and for the same reason they objected to the requirements of the American Bar Association, we object to that question.

The Court: I think he can answer it.

A. It is a little involved. Break it down, if you can.

By Mr. Marshall:

Q. You stated before the requirements of the Association of American Law Schools were obviously more stringent?

A. I said they were slightly different. They require ten thousand, and the American Bar, seventy-five hundred. In the average case that has no meaning. The student won't study over 200 books in his courses.

Q. Have you ever taught school?

[fol. 34] A. I have lectured a few times.

Q. But you have never been a full time professor?

A. No, that is correct. I have been a practicing attorney.

Q. You have been a practicing lawyer?

A. Twenty-seven years.

Q. Are you familiar with the teaching curriculum now used in law schools?

A. Somewhat.

Q. Are you familiar with the teaching methods now, for instance, the case book, and the old outline method?

A. Yes, sir. The case book gives more stress to the work done by the student himself in reading, instead of the

professor reading and the student making notes, like he used to do twenty-five years ago.

Q. And he takes the case book——

A. And studies it himself.

Q. And he goes up in the library and reads the footnotes?

A. Yes, sir; and the law reviews.

Q. Incidentally, how many law reviews did you see in this library over here?

A. In the——

Q. At the Capitol?

A. I couldn't say. I have gone through a good many of them when I was in the Attorney General's Office.

Q. I am talking about today.

[fol. 35] A. I didn't see them. I am sure they are there.

Q. You don't know how many are there now?

A. No.

Q. Assuming the requirements of the Association of American Law Schools are more strict than those of the American Bar Association, and the University of Texas is a member of both, I think we can assume that is a fact. The Association of American Law Schools requires a minimum of four full time professors, irrespective of the number of students. Would you say a student at that school would get equal educational opportunity with the University of Texas?

A. I didn't qualify as an expert on law schools, and I, perhaps, as a practicing lawyer, do not lay as much stress on having as many full time law professors as most people. I think an occasional practicing lawyer mixed up in the faculty is a fine thing. The fact that the American Association of Law Schools wants more full time professors than the American Bar Association doesn't change my view. What we are talking about, affording the opportunity to a student, assisted by a preceptor who knows some law, can learn the principles of law and certainly one student, or ten, or twenty-five, assisted by four preceptors in law would have a better opportunity, if he has it within himself to develop, than one who was asked an occasional question every thirty days or so.

Q. The important thing is that if this proposed school used [fol. 36] in the first hypothetical question did not, and could not under those facts, meet the requirements of the Association of American Law Schools, and the University of Texas

does meet them; would you say that that is giving equal facilities?

A. It wouldn't have the slightest effect on the student, whether he was a trained lawyer when he left the school or not.

Q. Would that be equal?

A. Equal facilities for what? For him to acquire a legal education?

Q. No, sir.

A. Whether they were a member of the Association would be utterly immaterial.

Q. The question would be whether that would be facilities equal to the facilities at the University of Texas.

A. If you are talking about physical facilities——

Q. I am talking about the whole law school—both. Would you say that that law school that you saw today, even with the opportunity to use the Capitol library, afforded facilities equal to that that you have seen repeatedly at the University of Texas?

A. To one student?

Q. No, not limited to one student for this question. You may go back to one student next time.

A. Someone once said that Mark Hopkins, long-time pro- [fol. 37] fessor at Williams College, sat on the end of a log and taught a student on the other end of the log. It depends on the student and instructor, and what they are talking about. Whether they belong to an association or have complied with the standards, in my opinion, for this purpose, is utterly immaterial. If you have competent instructors with adequate books to teach that student, he can get his legal education.

Q. Mr. Simmons, let's start with——

A. I couldn't see how he could fail to get that if there were one or ten, where he couldn't get a better education than any ten you would get in the other school, because half of them, I regret to say, look out the window. It gets humid, as it is here in the court room, and he would get a little sleepy, and he looks out the window, and he couldn't do that if there were one or ten.

Q. Are you opposed to large law schools?

A. I am not advocating them. I am not impressed much by numbers, Mr. Marshall.

Q. Since you say we get equal facilities, in your opinion——

A. I didn't say that. I said he had an equal opportunity to get a legal education, is what I said.

Q. Could he get an equal opportunity to get a legal education in a law office?

A. I think so. The finest lawyers I have ever known, that picture of that one over there, for instance (referring to [fol. 38] photograph hanging in court room.)

Q. Mr. Simmons, if we can stay on the facilities——

A. All right.

Q. The best way to get on it is to take the concrete ones. In your mind, is there any comparison in value of the building where the University of Texas Law School is with the building across the street where the Negro school is supposed to be?

A. I think both of them could well be improved. The Texas Bar Association has been trying for years to get them to tear down the one at the University and build an adequate one.

Q. What do you mean by "adequate?"

A. For the number of students. It was built in 1907.

Q. Is the one across the street equal in monetary value?

A. Certainly not.

Q. Certainly not. Approximately how many professors do they have at the University of Texas Law School?

A. I don't know. The school has changed from fifty year before last to eight hundred and something now. I couldn't tell you.

Q. Is the library at the University of Texas Law School larger than the library at the Capitol, and the one in the Negro law school together?

A. Each one of them have, in my judgment, fifty thousand volumes, approximately. I don't know how many more. [fol. 39] Q. Fifty thousand in that law school over there?

A. At the Supreme Court approximately, I say.

Q. Approximately how many in the basement of that building?

A. I couldn't say. The Texas University Law School——

Q. No, the Negro law school?

A. They had about 200 books, I would say.

Q. What kind of books?

A. They seemed to have some books on torts and contracts and legal bibliography and Texas Law Review, and a few miscellaneous books of that character. They didn't

have any books that I saw, on equity, or on courses that you would give to post-graduates or seniors. These seemed to be, as far as these books were concerned, they seemed to be limited strictly to beginners.

Q. Did you see the American Digest there?

A. In this ground floor of the Colored Law School Building?

Q. Yes.

A. No, they were not there.

Q. The United States Supreme Court Reports?

A. They were not there.

Q. Any state reports?

A. They were not there.

Q. There were no reports there?

A. No.

Q. There were some case books and text books?

[fol. 40] A. Yes, and the Law Review. It was The Texas Law Review. I suppose they are partial to that one.

Q. Is that the only one?

A. That is all I saw. I wouldn't say the only one.

Q. Do you know the type of books required in an approved law school to be used in the first year courses?

A. These same books on torts, contracts and legal bibliography are the same ones used at the University of Texas.

Q. Don't they teach legal bibliography in the library, and use all of the books in the library?

A. That is where you learn it.

Q. Do you not teach legal bibliography in the library?

A. I couldn't answer that. Not when I went to school. They taught it in the class rooms.

Q. We are comparing these facilities as of today.

A. I have outlined at some length what I saw, and in my opinion, if a man wants to become a lawyer, so far as the books, the curriculum, and the professors are concerned, he can become a lawyer with what is offered him here. Some people want a big law library and a big school. I happen to have studied in night school and a law office, and this school. Perhaps I am not as impressed with a big school as some other people.

Q. I understand, but as one point in this case, the State makes an allegation that they are affording equal educational facilities, not equal opportunity to learn, necessarily.

[fol. 41] A. All I understood was that the State was re-

quired to furnish substantially equal facilities and opportunity to acquire a legal education. I am not arguing the law. I am not a lawyer in this case. I was just passing through the city. By reason of having been president of the lawyers from Houston to the United States, they asked me to talk about the standards. If you want me to argue about whether these facilities are worth as much as something else, you had better get somebody else.

Q. Hasn't the American Bar Association taken a specific stand urging the abolishment of all law schools not set up as parts of universities?

A. Well, they have taken a stand that they do not in general approve what they call the commercial law schools. I recall no resolution saying that they must be part of a university.

Q. You set all of the standards or ultimate goals?

A. They are recommendations.

Q. Didn't the American Bar Association cooperate with the Dallas Bar Association in taking all of the small law schools in Dallas and centering them at Southern Methodist University, the American Bar Association?

A. Some of our men, I am sure, helped with that. The schools there were commercial schools, the night schools, as I recall. I might add there is some movement on foot to do the same thing in Houston.

[fol. 42] Q. Go right ahead.

A. I have been asked by the President of the University of Houston if I won't discuss with them means by which they could take over one or two night schools in Houston, and those are commercial schools. The Houston Law School is a night school which I attended back thirty years ago. I would be very happy to see them a part of a university, personally.

Q. Do you know what hours the Capitol Library is open?

A. Not right now. I studied there many times, day and night.

Q. Do you know the hours?

A. I do not know.

Q. That is all.

Redirect examination.

Questions by Mr. Daniel:

Q. Mr. Simmons, the two smaller law schools that you mentioned which are recognized by the American Bar Association and the American Association of Law Schools, Howard University and Lincoln University, are they separate Negro law schools?

A. That is my understanding.

Q. As to the facilities, in your opinion, are the three class rooms that you have inspected, for the Negro law school, based on from one to ten students, equal as far as the opportunities for study and class room work are concerned, with three class rooms at the University of Texas for 850 students?

A. Well, we have seats, and the professor could do very [fol. 43] nicely here teaching ten or fifteen students. He certainly, I think, could get more into their heads than sitting with 300, and in the back row.

Q. Referring back to the question asked on cross examination as to whether you knew of any accredited law school that had its law library in a separate building, are you acquainted with the University of Michigan Law School?

A. I have been there many times.

Q. Are you acquainted with the location of the library building?

A. It is in the same quadrangle. It is in the W. W. Cook Library Building, across the quadrangle from the Law School. As a matter of fact, I at one time had an office in Hutchens Hall, a part of that building. Hutchens is President of the American Judicature Society.

Q. That is all.

Recross examination.

Questions by Mr. Marshall:

Q. Isn't there a connecting alcove between the Law Library and the Law School at the University of Michigan?

A. It is a large school, and it is a beautiful quadrangle of buildings. Hutchens Hall and W. W. Cook Library are very close.

Q. The same is true at Yale?

A. I am not so familiar there.

[fol. 44] Q. When you say Howard University is a Negro university or school, do you know that of your own knowledge?

A. All I say is that it was accredited as a colored law school.

Q. Do you know whether or not there are any other students prevented from attending there?

A. I don't know anything about it. All I know is that in the accredited law schools, Lincoln and Howard are listed as colored law schools.

Q. That is in the American Bar Association listing?

A. That is what I was being asked about. Would you like to see that?

Q. No. I was there when it was accredited. How long will it be, assuming your hypothetical school here,—I mean, involved in the hypothetical question——

A. Don't say my hypothetical school.

Q. I withdraw that. That school that you went in today over here across the street?

A. I don't think anything is a school until it has got some students. The building where I was today?

Q. That the building, if it should be opened as a school, how long would it have to operate before the American Bar Association would be in a position to accredit it?

A. I think preferably it ought to wait and operate long enough to see if the student body was seriously interested in studying law, or if they had some other purpose, and then if [fol. 45] it complied with the standards, it would be given a provisional approval.

Q. Can we stop there and see about how long that would be?

A. I can't say. I have known of instances where, for instance, I believe St. John's University in New York, Brooklyn, was kept on provisional approval for two years; and I believe the University of Georgia Law School was put on provisional approval when it had some difficulty with a gentleman named Talbot.

Q. How long after the provisional approval until you get it on the entire approval?

A. I would say two years.

Q. That is all.

Mr. Daniel: That is all.

(Witness excused.)

Mr. Daniel: I would like to make a statement as to the order of our evidence, now that we have Mr. Simmons excused. You will excuse him?

Mr. Marshall: Certainly.

Mr. Daniel: We first wish to offer the—call the attention of the Court to Senate Bill 228, which authorized A. & M. College to set up a law school at Prairie View, and then to offer the resolution on that college, authorizing the establishment of it, and a deposition showing what was done [fol. 46] under the bill, in order that the record might be complete, since the filing of this suit, as to how the State has attempted to meet its obligation; and then we will go into the new school here in Austin.

At this time we offer the resolution of the Board of Directors of A. & M. College, dated November 27, 1946.

Mr. Durham: That is the same resolution that was introduced on the trial before.

Said instrument was admitted in evidence as Respondents' Exhibit No. 2.

Mr. Daniel: We next wish to offer from the deposition of E. L. Angell the agreement of counsel as to waiver of formalities in the taking of this deposition, and I will ask Mr. Littleton if he will read the direct answers. I will propound the questions that were submitted by the State, by the Respondents, to Mr. Angell.

The following agreement of counsel ordered copied into the record at this point.

IN THE 126TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS

No. 74,945

HEMAN MARION SWEATT

VS.

THEOPHILUS SHICKEL PAINTER, CHARLES TILFORD McCORMICK, Edward Jackson Mathews: Board of Regents, Dudley K. [fol. 47] Woodward, Jr., E. E. Kirkpatrick, W. Scott Schreiner, C. O. Terrell, Edward B. Tucker, David M. Warren, William E. Darden, Mrs. Margaret Batts Tobin, and James W. Rockwell

The parties to the above entitled and numbered cause, through their attorneys of record, agree that the deposition

of Respondents' witness, E. L. Angell, who resides at Bryan, Brazos County, Texas, may be taken without the filing with the clerk of said court of notice of intention to apply for commission to take the answers of such witness to interrogatories attached to such notice, or service of copy thereof, and of the attached interrogatories, or five days' time before issuance of commission, as otherwise required by law, and further agree that a commission to take such deposition shall be issued by such clerk immediately, and that such deposition shall be taken as provided by law in accordance with such commission and the attached direct and cross interrogatories by any officer authorized thereto by law at any place where the witness may be found and returned in the statutory manner for use as evidence in the trial of such cause, and further agree that when such deposition is returned it may be so used, subject to all other legal objections, at the trial of such cause.

Price Daniel, Attorney General of Texas, by (s.) [fol. 48] Jackson Littleton, Assistant Attorney General, Attorneys for Respondents. By (s.) W. J. Durham, Attorney for Relator.

The following was read into the record, Mr. Daniel reading the Direct Interrogatories, and Mr. Littleton reading the answers, from Deposition of E. L. Angell.

E. L. ANGELL, (Deposition.)

Direct Interrogatories to be propounded to E. L. Angell, Secretary of the Board of Directors of the Agricultural and Mechanical College, a witness for Respondents in the above entitled and numbered cause, for the taking of his deposition:

Q. 1. What is your name?
A. 1. E. L. Angell.
Q. 2. Where do you live?
A. 2. College Station, Texas.
Q. 3. What is your position or employment?
A. 3. Assistant to the President of the A. & M. College and Secretary to the Board of Directors.
[fol. 49] Q. 4. How long have you held such position?
A. 4. Assistant to the President since June of 1941, with the exception of about two years in the Army. Secretary to the Board since January of 1946.

Q. 5. State whether you are the same E. L. Angell who testified in a hearing of the case, Sweatt v. Painter, on December 17, 1946.

A. 5. I am.

Q. 6. State whether you are familiar with the provisions of a resolution adopted by the Board of Directors of the Agricultural and Mechanical College on the 27th day of November, 1946, being Minute Order No. 203-46, and entitled The Establishment of Law Course for Negro Students.

A. 6. I am.

Q. 7. State if you are the same E. L. Angell who certified to said resolution by testimony in the hearing of the case of Sweatt v. Painter on December 17, 1946.

A. 7. I am.

Q. 8. State who, if anyone, was assigned the responsibility of carrying out the purpose of the resolution.

Mr. Durham: Just a minute. We object to that answer for the reason that the resolution would be the best evidence of its contents. The resolution is in evidence before this Court.

The Court: I think that is true.

[fol. 50] Q. 9. State what, within your knowledge, was done to carry out the provisions of said resolution.

Mr. Durham: Your Honor, we want to ask that, until I make my objection, Mr. Littleton be asked to stop at the word "renovated."

Mr. Littleton: Do you mean as to all of the other paragraphs?

Mr. Durham: We have no objection to any portion of it down to there.

Counsel and the Court conferred off the record regarding said answer.

Mr. Daniel: Just read it to the Reporter, and let him get exactly what you say.

A. 9. A suite of rooms in an office building at 409½ Milam Street, Houston, Texas, was secured. These rooms were completely renovated. This suite of rooms was furnished with new furnishings purchased for that purpose.

The services of Attorney William C. Dickson were secured as a teacher for the law courses.

Immediately available were some 400 basic law reference books. A list of books required for first year law students

was furnished by the Dean of Law at the University of Texas. It was ascertained from a law book firm that these books could be delivered to Houston on 24 hours' notice. [fol. 51] The immediate supervision was under the direction of the Principal of Prairie View University, Dr. E. B. Evans.

Q. 10. State whether any building or housing facilities were acquired.

A. 10. Yes; suite of offices at 409½ Milam Street, Houston, Texas.

Q. 11. If you have stated that building and housing facilities were acquired, state the location of such facilities, and describe them fully.

A. 11. Suite of three rooms at 409½ Milam Street, Houston, Texas, which was an office building.

Q. 12. State whether anything was done to secure professors for the instruction of the law courses mentioned in the resolution.

A. 12. William C. Dickson was employed.

Q. 13. If you have stated that anything was done, then state what arrangements were made, and the names of individuals with whom they were made.

A. 13. William C. Dickson was employed, to teach the law courses, the supervision of the establishment was under the direction of Dr. E. B. Evans, Principal of the Prairie View University.

Q. 14. If you have stated that any instructors and professors for the law courses mentioned were secured, then [fol. 52] state the names of those secured and the qualifications of each.

A. 14. William C. Dickson was employed to teach the law courses. He is a practicing attorney in Houston. His training includes Bachelor of Arts degree from Pomona College of California, the Bachelor of Law degree from Harvard University, and the Master of Law from Boston University. In case of need of an additional teacher Dickson's partner, H. S. Davis, Jr., was available. He holds an A. B. degree from Morehouse College, Atlanta, Georgia, and a *J. D.* degree from Northwestern University.

Q. 15. State whether any library facilities were obtained.

A. 15. Yes, as stated in answer to Interrogatory No. 9.

Q. 16. If you have stated that library facilities were obtained, then describe fully the kind of facilities secured.

A. 16. Yes, as stated in answer to Interrogatory No. 9.

Q. 17. If you have stated that a law school or law courses were provided pursuant to the resolution of November 27, 1946, then state when they were provided.

Mr. Durham: Your Honor, we object to that as not being responsive to the question asked. He asked him when it was established, and he said available. He doesn't answer that question.

[fol. 53] The Court: Yes, I think that is right.

Mr. Daniel: All right, sir. We withdraw that Question 17.

Q. 18. If you have stated that a law school or law courses were provided, then state whether such school or courses were open for registration to qualified applicants.

Mr. Durham: Your Honor, we object to that answer for the reason the answer is "the law course was available." He gives no dates or time, and it is not responsive to that question. It isn't even intelligible.

The Court: It doesn't seem to be responsive, or even helpful.

Mr. Daniel: Your Honor, it says whether or not it was open for registration of qualified applicants. I don't know if the fact that it was available——

The Court: He could have said yes or no.

Mr. Daniel: Yes, he could.

Q. 19. If you have stated that such school or courses were open for registration to qualified applicants, then state the dates that such registration was opened and closed.

A. 19. It was opened on the 1st of February, 1947, and closed on the 14th day of February, 1947,——

Mr. Durham: Follow it on out; "* * * which was four [fol. 54] days longer * * *——"

The Court: That portion of it isn't responsive.

Q. 20. If you have stated that registration for a law school or law courses was opened and have given the dates, then state whether during such period any applications for registration were made.

A. 20. No qualified applicants applied.

Mr. Daniel: That is all we wish to offer until we see what you are going to offer on cross.

The Court: You spoke about some stipulations you will work out. Perhaps you will be able to work out something on that.

Mr. Durham: We don't intend to offer the crosses at this time.

Mr. Daniel: We wish to offer some of them, then. From the deposition of Mr. Angell we wish to offer the following questions and answers from Cross Interrogatories propounded by Relator.

Mr. Daniel read Cross Interrogatories, and Mr. Littleton read answers, from Deposition of E. L. Angell, as follows:

Q. 1. By what authority was a Law School for Negroes in Houston set up?

Mr. Durham: When he gets down to the word "and" I want to object to it. The resolution is the best evidence.
[fol. 55] The Court: That is right.

Mr. Daniel: You are asking him for it at this time.

The Court: I believe he can state the law, and the resolution. The resolution is in.

A. 1. The law course for Negroes was established under authority of Senate Bill No. 228 of the 49th Legislature, and a Resolution of the Board of Directors of the A. & M. College of November 27, 1946.

Q. 2. What action, if any, did Prairie View University take in accordance with said resolutions in setting up a Law School for Negroes in Houston?

A. 2. The Principal of Prairie View University, Dr. E. B. Evans, was charged with details of setting up the law course.

Q. 3. How much money was expended in setting up this Law School for Negroes in Houston?

A. 3. I do not know.

Q. 4. Were books, equipment and supplies for this Law School for Negroes in Houston purchased for cash or by State requisition or vouchers?

A. 4. They were purchased by Prairie View University, using their funds.

Q. 26. What salary agreement was made with each teacher? If the agreement was written, attach a copy of the [fol. 56] same to this deposition.

A. 26. Dickson was to be paid at the rate of $5,000.00 per year. The agreement was made by Dr. E. B. Evans of

Prairie View University and I do not have a copy of the agreement.

Q. 27. What salary was paid each of these teachers?

A. 27. He was paid at the rate of $5,000.00 per year.

Q. 29. How much time was each teacher required to give to the work of the Law School, that is, state whether the teachers were to give part time or full time and if part time, exactly how many hours per day, per week.

A. 29. Full time if necessary.

Q. 41. When was this library purchased and what was its purchase price?

Mr. Durham: We want to object to that word "available". He asked him what he purchased, and it is not responsive.

The Court: Let me read it.

Mr. Durham: We object to the entire part of it after we leave the word "made", —"Some 400 basic reference law books were made * * *"——

The Court: Let him put the question again.

(Mr. Daniel read Question 41 as set out above.)

The Court: I don't believe that is responsive.

Q. 42. How many library stacks or book cases were ac-
[fol. 57] quired, and what kind?

Mr. Durham: We object to that as not being responsive.

The Court: It is not responsive.

Q. 45. Give the name and qualifications and salary of each of these officers of the Law School for Negroes in Houston:

(a) Dean
(b) Registrar
(c) Librarian.

Mr. Durham: We object to that for the reason the answer is not responsive.

The Court: He doesn't appear to answer it at all. I will give you your bill on it.

Mr. Durham: Is that No. 45, Your Honor?

The Court: Yes, I am giving you your point on that.

Mr. Durham: We object to that for the reason it is not responsive. He doesn't name anybody.

The Court: I think perhaps if you will break it up a little, it might be responsive. He might say the dean and registrar

were officials of Prairie View University. It is going to be difficult to understand. I will give your point on it.

A. 45. The Dean and Registrar were officials of Prairie View University and Prairie View University was to furnish [fol. 58] librarian services at the Houston establishment.

Q. 49. State what courses of instruction were offered in the Law School for Negroes in Houston in detail, as follows:

(a) Name of course.

(b) Case book and text book used.

(c) Hours per week classes scheduled to meet.

(d) Time of day each class scheduled to meet and the number of the room in which it was to meet.

(e) The number of semester or quarter hours credit to be given for each course.

Mr. Durham: We object to that as being a conclusion of the witness.

The Court: And it isn't responsive either.

Mr. Durham: And it isn't responsive.

Q. 53. Did the faculty of the School of Law for Negroes in Houston prepare the curriculum, schedule the classes and otherwise conduct the general educational work of the law school?

Mr. Durham: We object to that. It isn't responsive.

The Court: I think it isn't responsive.

Q. 58. Is this Law School for Negroes still in existence in Houston?

Mr. Durham: We object to that. That isn't responsive.

The Court: The first sentence ends it; yes.

[fol. 59] Mr. Durham: The first sentence.

A. 58. The facilities were rented until the 1st of March.

Mr. Daniel: All right, that is all. We wish to call the attention of the Court to Senate Bill No. 140 of the 50th Legislature, and briefly to review that before we put on the evidence that follows that.

The Court: I think we will take that up in the morning.

(Court was recessed at 4:30 p. m., May 12, 1947, until 9:00 a. m., May 13, 1947.)

Morning Session

May 13, 1947

9:00 A. M.

Mr. Daniel: May it please the Court, I would like to call attention of the Court to Senate Bill No. 140 of the 50th Legislature, which became effective March 3, 1947. Rather than read the sections that have to do with the establishment of the State University for Negroes in Houston, Texas, I will go over those paragraphs and summarize them, if that is all right with the Court.

(Counsel at this point summarized portions of said bill.)

[fol. 60] I would like to call Mr. D. K. Woodward.

D. K. Woodward, Jr., a witness produced by the Respondents, having been by the Court first duly sworn as a witness, testified as follows:

Direct examination.

Questions by Mr. Daniel:

Q. State your name, please, sir.
A. D. K. Woodward, Jr.
Q. Where do you live, Mr. Woodward?
A. Dallas, Texas.
Q. And what is your business?
A. I am a lawyer.
Q. What, if any, official capacity do you have with the University of Texas?
A. I am a member of the Board of Regents, and Chairman of that Board.
Q. How long have you been Chairman of the Board of Regents of the University of Texas?
A. Since the end of November, 1944.
Q. Have you, since becoming Chairman of the Board of Regents of the University of Texas, acquainted yourself with the matter of education for Negroes in Texas?

A. To the best of my ability, yes, sir.

Q. Are you acquainted with Senate Bill No. 140, which [fol. 61] I have just outlined to the Court?

A. Yes, sir, I am.

Q. I will ask you if you had anything to do with the preparation of the bill, and especially the part that the University of Texas—as relates to the University of Texas?

Mr. Durham: We object to it unless he shows he is a member of the Legislature.

The Court: I think that would be correct.

By Mr. Daniel:

Q. Were you acquainted with the terms embodied in that bill before they were actually enacted by the Legislature?

A. I was.

Q. Have you studied the terms of this bill, when the bill was pending in the Legislature, and before final passage of it?

Mr. Durham: We object to that as being immaterial.

The Court: I think it is immaterial what he did about it.

Mr. Daniel: Your Honor, we are simply leading up to show the University Board met in anticipation of the final passage of this law, and began their actions a few days before the law became effective.

The Court: He can tell what his Board did.

Mr. Durham: We don't think that anything that a citizen did would be construed, or the Court could presume it would influence the Legislature. I think that would be a [fol. 62] reflection upon the Legislature.

The Court: I sustain the objection.

By Mr. Daniel:

Q. Did that Board have a meeting prior to the time that this bill was finally passed by the Legislature?

A. Yes, the Board met the 28th of February.

Q. 1947?

A. Yes.

Q. Had the Senate Bill 140 already passed one branch of the Legislature?

A. Two branches, both.

Q. Both branches?

A. It had passed in the Senate on the 24th, the House on the 27th, with certain amendments, and it was in that state that the bill was laid before the Board at its meeting on the 28th of February.

Q. Did you as Chairman lay the bill before the Board?

A. I did.

Q. Did the Board of Regents of the University of Texas on the 28th of February study the requirements made of you by the bill?

A. Yes.

Q. What, if anything,—did you pass any resolutions at that time?

A. We did.

Q. Do you have a copy of the resolutions?

[fol. 63] A. I have.

Q. Is this a true and correct copy of the resolution passed by the Board of Regents on the 28th of February?

A. It is.

Q. We wish to offer it.

(Said instrument was admitted in evidence as Respondents' Exhibit No. 3.)

Q. Now, Mr. Woodward, in accordance with that resolution, I will ask you whether or not you proceeded to establish the separate law school therein called for?

A. We did.

Q. Where was it established?

A. On East 13th Street, in the City of Austin, immediately adjoining the Capitol grounds on the north. I think the number is 104 East 13th.

Q. What kind of building do you have there, as far as classrooms are concerned? How many classrooms do you have in the building where the law school is located?

A. Presently available we have four buildings—four rooms, three of moderate size, and a fourth small room for a reception room, and the small toilet facilities.

Q. Did you, in accordance with that resolution, give certain instructions to Dean McCormick, Dean of the University School of Law?

A. I did.

[fol. 64] Q. Will you state to the Court what instructions you gave him as to his part in this school?

A. I requested through the Dean of the entire personnel of the Law School an expression as to their willingness

or not to teach in the proposed new law school. It was reported to me that they were unanimous——

Mr. Durham: We object to that.

The Court: Yes. That would be hearsay. We will sustain the objection to whatever was reported to him. He can testify to what he knows.

A. All right. I had a conference—a number of conferences—with Dean McCormick concerning the establishment of the law school and requested him to give us the, provide the curriculum and the instructors called for in carrying out the resolution.

Q. As to the location of the law school of the State University for Negroes, the building that you have spoken of, how far is that from the Capitol grounds?

A. It is about a hundred yards from the north door of the Capitol.

Q. You are talking now about the Capitol Building?

A. Yes,—from the Capitol grounds?

Q. Yes.

A. I would say 20 feet. It is a very narrow street there, East 13th Street.

[fol. 65] Q. Between the location of the law school and the Capitol grounds?

A. Yes.

Q. You mentioned something about another distance, as between the door of the separate law school and the State Capitol Building. If you know, how far is that?

A. I would estimate it to be a hundred yards, 300 feet.

Q. Where is the law school located with reference to the University of Texas?

A. Well, the University of Texas lies north of 21st Street in the City of Austin, covers a considerable area out there. That would be eight blocks north of the new law school on 13th Street.

Q. Then your new law school is located between the State Capitol Building and the University of Texas Campus?

A. That would be right.

Q. Where is—state how the new law school is located with reference to the business district of Austin; is it nearer the business district than the University of Texas Law School or not?

A. Yes, sir; eight blocks nearer.

Q. Is your new law school nearer the banks of Austin and other business facilities than the University of Texas?

A. It is eight blocks nearer.

Q. Are you acquainted with the State Library called for in this bill, in the Capitol Building?

[fol. 66] A. I am.

Q. Are you acquainted with the location of that library?

A. I am, the second floor of the Capitol Building, north wing.

Q. Are you acquainted with the space therein, and desks, as to availability of the space and working room in that library for students?

A. I am, and have been for many, many years. I have frequented it myself.

Q. That is on the second floor of the Capitol Building?

A. Yes.

Q. Are you acquainted with the Texas University Library and the facilities thereof?

A. No, I am not, not as closely as I should be. I know in a general way what it is.

Q. Are you acquainted with the working room at the University of Texas Law School Library, not the books?

A. I couldn't say that I am with any degree of accuracy. I know they are sorely pressed for space.

Mr. Durham: We object to that as not being responsive.

The Court: Yes.

By Mr. Daniel:

Q. This resolution calls for the establishment of the same courses, a curriculum consisting of the same courses in law as those offered at the University of Texas?

A. It does.

Q. Did you or not give instructions to the Dean of the [fol. 67] University of Texas Law School to establish such a curriculum?

A. I did.

Q. The resolution also calls for the use of the same faculty members. I will ask you if you gave instructions in accordance with the resolution to the Dean of the University of Texas Law School with reference to the use of the University of Texas Law School faculty members?

A. I did.

Q. Was the new law school placed in readiness for operations on March 10, as called for in the resolution?

Mr. Durham: We object to that as a conclusion and opinion.

The Court: He can say what was done.

By Mr. Daniel:

Q. Will you just state to the Court what was done with reference to having the school ready for registration, as far as you know?

A. By March 10th?

Q. Yes.

A. The premises were put in order for it, cleaned up, painted, and the desks and chairs and certain law books placed in there, and an attendant placed in charge, and notices were sent as directed in the resolution to all persons interested, and there was considerable newspaper publicity given so that we did everything that——

Mr. Durham: When he said he did everything——

[fol. 68] The Court: Yes. He can say what he did.

A. Yes. All of the actions called for in that resolution, to the best of our ability——

By Mr. Daniel:

Q. They were accomplished by March 10th, were they?

A. That is correct.

Q. The resolution authorizes you to purchase a permanent law library for the school which will meet the standards set by the American Association of Law Schools?

A. Yes, sir.

Q. I will ask you what you did in accordance with that provision of the resolution?

A. I made requisition on the Board of Control of the State of Texas on March 1st, I think it was, either February 28th, or March 1st. The document itself would show the exact date, calling for bids at the earliest practicable date for a list of books purporting to be a complete list as called for by the American Association of Law Schools.

Q. Who did you have prepare that list to meet the standards of the American Association of Law Schools?

A. The Dean of the Law School of the University of Texas, Dean McCormick.

Q. The list that was prepared by him, or under his direction, then, was turned over to you?

A. It was presented to me in the regular course for the [fol. 69] execution and delivery of a requisition on the State Board of Control, as required by law, for the purchase of public property.

Q. Did you execute that requisition?

A. I did, immediately on either the 28th of February or the 1st of March; executed that and filed it with the Board of Control.

Q. I believe that is all.

Cross-examination.

Questions by Mr. Marshall:

Q. Judge Woodward, as long as you have been a member of the Board of Regents of the University of Texas, has it or has it not been the policy and custom of the University of Texas not to admit Negroes to any branch thereof?

A. There has been no custom of that kind, within my knowledge. The application of the relator in the spring of 1945 is the first application that I can recall, and I have been connected with the University one way or another for fifty years this coming fall.

Mr. Daniel: 1946, wasn't it?

A. 1946, the fall or spring of the year, whenever it was that he made his application, 1946, I believe it was.

By Mr. Marshall:

Q. Do you know anything about the application of one George Allen to take accounting, between the years 1938 to 1940?

A. I do not.

[fol. 70] Q. Well, why was the application of Heman Marion Sweatt to attend the Law School of the University of Texas refused?

A. Under the provisions of Section 7, Article 7 of the Constitution of Texas, pursuant to the advice of the Attorney General of Texas.

Q. And on that basis his application was refused; is that correct?

A. Correct.

Q. Is it or is it not the policy of the regents of the University of Texas to follow that section of the Constitution?

A. It certainly is, as long as it remains in the Constitution.

Q. Have you been over to this new law school?

A. I have.

Q. How much—how was the building obtained, by lease?

A. Under lease from the—through the Board of Regents of the University.

Q. And when was it leased?

A. It was leased around the end of February or the first of March of this year.

Q. For how long was it leased?

A. For the period ending August 31, 1947, August 31st of this year. I may say, if you are interested, that we are negotiating now and have the refusal of the building for the year ending August 31, 1948.

Q. When you say the building, as a matter of fact, you [fol. 71] don't have the whole building leased, do you?

A. We do not at the present time. We have a refusal of the remainder of the building when need for it arises. We have the first floor leased.

Q. The first floor is the ground floor, isn't it?

A. That is right.

Q. And there are comparatively, for classroom purposes, they are small rooms, are they not?

A. It depends on the size of the class.

Q. If you use the whole building that you do not now have, but if you obtained the whole building, could you put the library of the Law School of the University of Texas in that whole building?

A. Certainly not.

Q. So, that brings us to the next question. Where are you going to put your library?

A. When the library is acquired, it will consist of ten thousand volumes. The library of the Law School of the University of Texas consists of approximately 65,000 volumes, of which about half of them are duplicates. Nobody in his right mind would undertake to assemble 65,000 volumes in a law library in a building or law school just started. There is ample space in the building on which we have the refusal in which to store and provide the use of ten thousand volumes we have under order. We can put them there.

[fol. 72] Q. Then I understand you can put the 10,000 volumes in the present building?

A. That would be my judgment, yes.

Q. Well, now, as to these standards of the Association of American Law Schools, do you have enough space to give the amount of space required for library use of students?

A. As to that, I wouldn't be qualified to say because I don't know what the requirements are. We have with the —under the provisions of the statute, with the law library we have under order and with the accessibility to the Supreme Court Library of the State of Texas, we have abundantly sufficient library facilities and working space for the relator's pursuit of his course of law.

Q. Now, have you taught law?

A. Yes.

Q. When?

A. I would say it was about, must have been 20 or 25 years ago. I was for a short time a member of the law faculty of the University of Texas.

Q. And since that time have you done any teaching?

A. No.

Q. Are you familiar with the modern methods of teaching in law schools?

A. I believe I am, with what you term the modern methods. I happen to be a graduate of the University of [fol. 73] Chicago Law School in the class of 1907. I went there at the time it was being organized. Joseph Henry Beal, a great educator from Harvard, came out and established the case system, and it was because of the establishment of that system, in part, that I took my three years of law work there.

Q. What I am getting at, Judge Woodward, is that when you make the statement that he can get an adequate legal education on the facilities that have been provided, I want to know whether or not you are talking as an expert in the field of education.

A. I am talking as a man familiar with what it takes to provide a thorough training in law in the State of Texas, and I stated the facts within my own personal knowledge, that the facilities which the Board of Regents of the University set up in accordance with Senate Bill 140 are such as to provide for the relator in this case the opportunity for the study of law unsurpassed any time elsewhere in the

State of Texas, and fully equal to the opportunity and instruction we are offering at the University any day.

Q. Are the facilities in that school equal to those in the Law School of the University of Texas?

A. Do you mean the physical facilities?

Q. First, the physical facilities?

A. They are not identical.

Q. Are they equal?

[fol. 74] A. For the purpose they are, yes, sir.

Q. What is the value of the Law Building at the University of Texas?

A. It is an old building. I would say it was constructed 40 years ago. I don't know whether you are talking about the replacement value or original cost, but, of course, the leasehold there has no relation to the physical value of the University of Texas Law School proper.

Q. What I wanted to know was in dollars and cents, using whichever method you want to use, original purchase price, or price to reproduce. Is it not true that you can not even compare the value of those two buildings?

A. Well, they don't bear any relationship to each other. One is a leasehold adequate for the purpose for which it was obtained, and the other is a property in fee. You are correct in this, that there is no fair comparison in monetary value.

Q. Next, as to the library that you have on requisition, does that compare in value with the library facilities at the University of Texas Law School?

A. The library on order, and the library made available by law to the relator, had he entered the school, compare very favorably with the library at the University of Texas. You will understand that there may be a few more volumes at the University of Texas, but an examination would reflect that there are many, many duplicates, as there would have [fol. 75] to be with a student body of eight hundred or so.

Q. Do you not also know that several of the sets of books required under the rules of the American Association of Law Schools are now out of print?

A. I wouldn't know.

Q. You don't know anything about those standards?

A. I don't claim to be an expert on that. I don't admit complete ignorance about them.

Q. Didn't you testify, or rather, I will ask you the question; will this law school set up over here for Negroes meet

the requirements of the American Association of Law Schools?

A. Well, it will do that, in my judgment, in the process of its development. The facilities and instruction presently provided in contemplation of the registration of the relator were made in accordance with the requirements of the American Association of Law Schools, as I understood it. You will understand, of course, that I rely upon Dean McCormick, who is a very well known and eminent legal educator, as to matters of that kind. I depended on him for that. I have no reason to question his ability as an advisor in that regard.

Q. These 10,000 volumes; do you have a copy of that requisition with you?

A. No, I don't have it. It is available. It is at the Board of Control, or may be in the court room. I filed the original with the Board of Control.

[fol. 76] Q. What has happened to that requisition?

A. The notices were sent out in the regular way. I am speaking now from recollection as to dates, and the bids were to have been opened on some date in April, and for some reason they were—of course, you understand, I have got to tell you now what was reported to me about it. If you object, I won't tell you.

Q. That is all right, sir.

A. It was reported to me that for some reason, in the machinery of the purchase, they had to be delayed. You will understand further that once the authorities of an educational institution file a requisition as required by law, that its execution then rests with another department, the Board of Control. That is part of our Texas administrative system. I have every reason to believe that those books have been, or will be purchased in the immediate future. It is quite possible that the Board of Control has already purchased them.

Q. Are they in the law school now?

A. No.

Q. They are not there as of today?

A. No, sir, neither is the relator.

Q. They were not there on March 10th, were they?

A. No.

Q. As a matter of fact, how many books were there on March 10th?

A. Oh, I would judge in that——

[fol. 77] Q. First of all, did you see the place March 10th?

A. Either that, or a day or two before.

Q. All right, sir. How many books were there?

A. I would estimate 150 or 200.

Q. And what volumes were they, generally?

A. I don't know. I have a great many things to do, you will understand, counsel; that we had taken the precaution of making the entire library of the Law School of the University of Texas, eight blocks away, available on a loan basis, so that if the relator had come, as we hoped he would, he could have had access through loan immediately to any books in the Law Library of the University of Texas; the Library of the Supreme Court of Texas, for any course he wanted to pursue.

Q. Isn't it true that the students of the University of Texas Law School also have access to the Capitol Law Library?

A. I think that they, in common with every citizen in Texas, have a right to go in there.

Q. So that there is nothing special about that, is there?

A. Yes, there is; for this reason——

Q. What is the special thing?

A. The Legislature of Texas, which is the policy making body of the State of Texas, saw fit in setting up this general plan for Negro education, to provide specifically that the students there should have the use of that library for the purpose of attending classes at the law school. Now, I, and [fol. 78] every other citizen in the State have to have the use of that library for general purposes, but I do not have it for use as a student in that law school. So as to relieve any question about it, that provision was put in the bill.

Q. But as the situation now stands, the right granted by that bill is the same right which every other citizen has?

A. Well, if you think that as a lawyer, that is all right. It is not the case. If that is your judgment as a lawyer, that may be good New York law, but it is not good Texas law.

Q. For the record, may it be stated that I am not a member of the New York Bar.

A. Whatever bar you are a member of, that is not true in Texas.

Q. Let's get this straight. In Texas, Sweatt can go over

and use the library now, and he isn't a student in any school; isn't that correct?

A. Yes, sir.

Q. Can't anybody in this court room go over and use that library, regardless of what school he is in; isn't that correct?

A. He can go over and use it for the purposes as an ordinary citizen of the State.

Q. What peculiar purpose does a student use a law library for that any other person does not?

A. Withdrawing books to study.

Q. Is there anything in the statute which gives him the [fol. 79] right to withdraw books?

A. I think the Legislature wouldn't have considered that necessary when they gave them the right to use it as students.

Q. Is there any provision in the statute which specifically gives the students of that school the right to withdraw books?

A. I think there is not.

Q. And the students of the University of Texas can use that library?

A. Oh, yes, just as any other citizen can.

Q. And as I understand, the plan is proposed that if any other books are wanted, they can be brought over from the University of Texas Law Library on a loan basis?

A. At any time they are needed.

Q. How are they going to bring them over there?

A. Well, the University of Texas has facilities to do what it is required by law to do. We brought the other books down there. There is nothing difficult about that. We transact a very large amount of practical business, and that would be a very insignificant task.

Q. You brought down the 150 books when the school was opened?

A. I think so.

Q. As a matter of fact, wasn't it just five book shelves?

A. I think it was two of those racks of cases. I am not sure about it.

[fol. 80] Q. Is there any office space in there for professors in the present building?

A. You mean private offices?

Q. Yes, sir.

A. I wouldn't say there is any private office.

Q. Is there any private office for the Dean?

A. No.

Q. Are there any working rooms where students can work and confer with library books?

A. You mean work with the library? There will be plenty of room for that when the library is installed there, because we will have the remainder of the building.

Q. You say there were four rooms, three moderate size, and one small one?

A. As I recall, yes. I have a plan of it. I can tell you in a minute how many there were, and what size, if you are interested.

Q. I am quite interested.

A. All right. The building faces south. The entrance hall with the administrative desk in it is immediately to the west of a reading room and office, which is 15 feet, 7 inches, by 19 feet, 10 inches. To the north of the entrance hall there is a class room 11 feet, 6 inches, by 16 feet, 6 inches, and on the northwest corner of the building is a class room 12 feet by 12 feet, 8 inches. There is, in addition, a toilet [fol. 81] facility in the building. Those are the four rooms currently under lease.

Q. Do you have any objection to us putting that in evidence?

A. None whatever.

Q. May we see it?

A. I didn't make it myself. It was made under the—if you are willing to accept it as accurate. It is accurate.

Q. May we look at it a minute?

Mr. Daniel: Yes.

By Mr. Marshall:

Q. You don't propose to get 10,000 volumes in that space, do you?

A. Certainly not.

Q. And whether or not you will have space for the 10,000 volumes depends on whether or not you renew your lease, and whether or not you get the balance of the building; isn't that true?

A. Yes, we would have—the provision for that has already been arranged. I have arranged to renew the lease, the lease on the present quarters for the coming year ending August 31, 1948, and to secure the remaining portion

of the building when needed, for the period ending August 31, 1948.

Q. When did you say the Law School at the University of Texas was built, about?

A. I think about 1906 or 1907.

Q. Approximately how many students were going to the [fol. 82] law school the first year?

A. I could not tell you to save my life.

Q. It was a very small number, wasn't it?

A. It was a relative number. You had better get somebody who knows. The Registrar can tell you, because I could not tell you at all what the registration in the law school there was at that time. Of course, the records show it for each year.

Q. Do I understand correctly that the law school as it appeared on March 10th obviously did not meet the requirements of the Association of American Law Schools?

A. Well, that would call for a conclusion, depending on a great many things; the number of students, the work that they undertook, and a good many other considerations. You will see, after all, the regulations of the American Association of Law Schools and the American Bar Association have to be construed with some degree of regard for the facts. What we set up there was a plant fully adequate to give the very best of legal instruction for the only man of the Negro race who had ever applied for instruction in law at the University in about 63 years of the life of the school. We are practical people. We made that provision fully adequate for that purpose.

Q. What do you mean by "practical"? You mean within the money you had available?

A. No, here is what we were trying to do, Counsel. We [fol. 83] were trying very hard to, and are still trying to set up for Negro population of the State of Texas a University really of the first class, which down through the years will develop and grow to what we hope to be the greatest University for Negroes in the world. We have the assets with which to do it, and the determination to do it, and that was a part of the plan to provide here at the threshold of this undertaking opportunity identical with that which was afforded at the University, eight blocks away.

Q. Well, you didn't get the idea and that plan until after this lawsuit was filed, did you?

A. It happens you are mistaken about that.

Q. I would like to know.

A. On the 13th of January, 1946, the Board of Directors of the University of Texas, and the Board of Trustees,—Board of Regents of the University of Texas, and A. & M. College met in joint session at Ft. Worth, Texas. They are the governing boards of the two principal State supported schools. One of the questions on that agenda of that meeting was the consideration of the responsibility of those two schools for providing a comprehensive plan of higher education for members of the Negro race in Texas.

Q. Did that Board meeting discuss the very wide publicity, including the paper in your home town, the Dallas Morning News, concerning a meeting of Negroes who were [fol. 84] insisting on their equal right to an education?

A. When was that? What meeting do you have reference to?

Q. The meting held in Dallas at the Y. M. C. A.

A. What date? Do you mean, held on the 8th of March of this year?

Q. No, prior to January of 1946.

A. I do not—that meeting was not considered at all, and it was not in any way the occasion for our holding the joint session, or discussing that program. We knew, of course,—what we knew was this, that we have approximately 1,200,000 members of the Negro race in Texas. There has been a very great change in the economic situation, and in the educational opportunities or ambitions in the last 15 or 20 years of the Negro race. Members of those two boards felt as officers and directors of the State's leading educational institutions that they owed it as a public duty to devise some means of providing for what they thought was a real need for members of the Negro race, and they implemented that by appointing a committee of six, three from each school, to make a study of that. That committee worked diligently for about six months, made its report to the Governor of Texas, the Hon. Coke R. Stevenson, who in turn appointed the Bi-racial Committee, with which I am sure you are familiar. It filed its report, and that report was the basis of Senate Bill 140. So that the undertaking of [fol. 85] those two boards ante-dated the filing of the suit by the relator here, and was not actuated by any extent by

the meeting, whatever meeting it was, one that I never heard of, in Dallas, though I live there.

Q. Judge, how old is the University of Texas?

A. We think of it as having started in 1883.

Q. Is it not true it is one of the finest schools in the country?

A. It continues to try to be.

Q. About how long do you think it would take to build for Negroes a university equal to that?

A. It would depend to a greater extent on the response of the members of the Negro race than anything else.

Q. Isn't it true that when you set up new departments at the University of Texas, you start off with a few students and end up with a lot when they find out it is running?

A. It depends on the course you set up.

Q. And it depends on the value of the course you have to the students?

A. Will you repeat that, please?

Q. When you first offer or open up a new course in the University of Texas, you usually have a small number of students, and year by year the course usually gets more students?

A. Normally that would be true. It varies with reference to the course and the public interest in the course. It can happen, and sometimes does happen, that what might be [fol. 86] called a flash interest in some subject, and there may be a very great registration, and they will find it wasn't what they wanted and it decreases, but ordinarily this is true in the University and every other educational institution, that it grows as the worth of the instruction is demonstrated. I think you may conclude that is true.

Q. Judge Woodward, the other point I wanted to ask is that you are familiar, are you not, with the supposed law school in Houston, Texas, for Negroes?

A. What do you have reference to, the Texas State University?

Q. No, sir, the one that was, according to the minute entry, was established in February?

A. You mean the one that was provided for by the Act of the 49th, Senate Bill 228, they referred to?

Q. Isn't it true that they did set up facilities for Negro training in law in Houston?

A. I couldn't say because I had nothing whatever to do with it.

Q. Isn't it true that this law school you are about to set up can't possibly run more than a year?

A. No, sir.

Q. What happens to it at the end of the year?

A. Well, at the end of the year from now, on the 13th of next March, if the relator or any other good faith student comes along, it will be operated.

Q. Isn't it true that under the statute and resolution, it is [fol. 87] supposed to be turned over within a year——

A. No, it can run through August 31, 1948, and if you will permit me to tell you, I will say that the Board of Directors of Texas State University for Negroes at its first meeting passed a resolution——

Q. I will have to object to that. The resolution is the best evidence.

A. We will get it, if you want it. Under the provisions of the statute which permits us to operate until August 31, 1948, and by arrangement with the Texas State University for Negroes, the Law School will be in operation a year from now if there are any students, if the relator or anybody else offers to use those facilities. You have reference to the clause in there, I am sure, if I remember it correctly, directing that at the end of any term we be required to turn it over, if they are ready for it.

Q. At the end of the first term?

A. What clause do you have reference to?

Q. I think it is this one, at the end of the first term.

A. May I read it? (Reading) "At the end of the first term or semester of any law course offered in said school after the organization and establishment of the Texas State University for Negroes at Houston, and the equivalent organization and establishment of a law course by such University for Negroes, the direction, conduct, operation, loca- [fol. 88] tion, the unexpended balance of this appropriation, and all property purchased for the separate school out of the appropriation hereunder, shall be transferred to the Texas State University for Negroes at Houston, and its Board of Directors shall thenceforth continue such law courses as a part of the curriculum of such university, and discharge all responsibility therefor." Was that the clause you had it mind?

Q. Yes. Do you intend to keep the law school here or move it to Houston?

A. At the present time we intend to keep it here until August 31, 1948.

Q. Does it go then?

A. It is assumed that by that time the Texas State University for Negroes at Houston will have established the equivalent work, and the establishment of a law course by such University for Negroes at Houston. In other words, it is contemplated that by the expiration of, roughly, an 18 months period from this date the University at Houston will have had an opportunity to fully equip itself as a law school, meeting all of the requirements of a first class law school, and our duties will be over.

Q. What assurance would Sweatt have that the law school would be here until he finished it three years from now?

A. Until he finishes three years from now? There is no assurance that it would be here three years, nor has he or [fol. 89] any other citizen of the State of Texas the right to require the State of Texas to provide education at any particular place. The State has to provide for him or any other citizen education in law fully equal to that provided at the University of Texas. That, it is prepared to do.

Q. Do you consider it a good educational policy for students to have to shift from town to town in going through a law course?

A. I think my opinion on that wouldn't be very enlightening to the Court. I don't think it is contemplated at all by the facts in the case.

Q. Do the students of the University of Texas have to go from city to city, or isn't it true that since 1907 the school has been situated in the same spot?

A. The Law School has been in Austin for a great deal longer than that. However, we maintain a Medical College at Galveston, a part of the University of Texas. Pre-medical training is given here, and the medical training is given at the University branch in Galveston.

Q. How long has it been there?

A. Oh, it ante-dates the opening of the University here. It is many, many years old.

Q. It has been in the one spot a long time?

A. Yes.

Q. What I am trying to get at is whether or not it is not [fol. 90] true that it is poor educational policy for a student

not to know where he is going to get his education the next year?

A. I would say as to that, that would depend on the circumstances of each individual case. I can not think that it would be the least hardship to a citizen of Houston, as the relator styles himself to be, to have to return to Houston in August of 1948 and complete the final year of his course there.

Q. You don't think so?

A. You asked my opinion. I certainly do not.

Q. The question I am trying to get at is, and I want to ask it one more time, if you will permit it. Isn't it a poor educational policy, speaking from educational policy, you have been on the Board of Regents for quite some time, and you are familiar with good educational policies. Isn't it poor educational policy to have a student going to a school when he doesn't know where the school will be the next year?

A. Well, if he hasn't the acumen to find out where it is going to be the next year, he hasn't any business in the school. It couldn't possibly be any matter of inconvenience or uncertainty to a man of ordinary intelligence, where the school will be conducted the following year. He knows now it would be here until August 31, 1948. He knows that.

Q. Judge Woodward, can I ask you one question.

A. Any number.

[fol. 91] Q. Do you know where it will be in 1948?

A. With reasonable certainty, I do, based on the obligations of the State officials to carry out their duties, and upon the presumption that they will carry them out, it will be in Houston, in Harris County, Texas, an integral part of the State University for Negroes, on August 31, 1948.

Q. Depending on the establishment of that University prior to that time?

A. The University is now established.

Q. Where is it established?

A. In Houston, Texas.

Q. And who is the dean of it?

A. You mean the Dean of the Law School?

Q. No, the dean of a university that has been established?

A. I can tell you the members of its governing board. They were appointed last week. If they have selected the officers of the University I haven't been advised of it.

Q. Wasn't that their first meeting last week?

A. It was. They were appointed and confirmed and met the same day.

Q. But the school hasn't been established yet, has it?

A. That is a conclusion. My conclusion is, as a matter of law that the Texas State University for Negroes has now been established.

A. Are there any buildings?

[fol. 92] A. There is another statute which I think has been finally passed which provides for the Texas State University for Negroes acquiring 53 acres of land and the buildings on it as a site for the Texas State University for Negroes. That land is located within the City of Houston, about mid-way between Rice Institute and the Houston University, which is a very large university.

Q. What I am trying to get at——

Mr. Daniel: Let him finish.

By Mr. Marshall:

Q. All right.

A. I have every reason to believe that that building, which is the equivalent of any building on our campus at the University of Texas, modern construction and very adaptable for university purposes, will come into control of the Board of the Texas State University for Negroes within the next few days.

Q. What I am trying to get is,—you said a minute ago that the school was in existence?

A. I said it was established. That is my judgment as a lawyer.

Q. Was established?

A. Yes.

Q. As I understand your testimony, all of this you have testified will happen; is that correct?

A. That is right. That is my best judgment. I am not a prophet. I am informed as to the facts, and that is my de-

[fol. 93] liberate judgment.

Q. Is that your judgment, that the Law School will be in Houston in August, 1948, and that is based on your assumption that this University will be in existence at that time?

A. Based on my knowledge of the whole situation and my knowledge of the laws that provide for that, and my knowledge of the laws which require public officials to do their duty.

Q. How many schools are there set up in this Negro University.

Q. You mean separate schools of instruction?

Q. Like up at the University of Texas? As I understand, it is to be equal.

A. Are you talking about its prospective curriculum?

Q. What is there now?

A. The Texas State University for Negroes, you want to know how many schools have been set up there now?

Q. Yes, sir.

A. I would say that I think it improbable that any one has been set up.

Q. So that it is at the present time still on paper, is it?

A. Well, if you wish to put it that way. Every step in its organization thus far contemplated by law has been taken, and $2,350,000.00 in money is in the bank to pay for its operation during the next two fiscal years. That is substantial paper.

Q. And, of course, the statute says two million, or what-
[fol. 94] ever it is, or as much thereof as might be needed?

A. That is the customary language in our appropriation bills.

Q. That is the custom. As the Chairman of the Board of Regents of the University of Texas, have you deemed it your responsibility during the whole time you have been on the Board of Regents to give equal educational facilities to all citizens of the State of Texas?

A. My—as far as it is within my power, yes. It happens to be that I actually believe in education, and I think one of the very most forward-looking things the State of Texas could do would be to provide a comprehensive plan of higher education for members of the Negro race.

Q. But prior to this year the University of Texas has done what to provide education for Negroes?

A. Well, you will understand that the University of Texas is governed by the Constitution of the State, and that we have done exactly what the Constitution authorizes us to do in the conduct of the University of Texas, which is the school set up for the education of children of the white race, but we are, rightly or wrongly, the University is regarded as the head of the educational system of Texas, and as Chairman of the Board, I have conceived it to be my duty to do what I could to promote within the provisions of the

law the best of educational facilities for all of the citizens of Texas.

Q. What provision have you made for Negroes prior to 1946?

[fol. 95] A. Prior to 1946. I came on the Board at the end of 1944. The Legislature, the 49th Legislature, met in January following and there was no opportunity under conditions then existing at the University and elsewhere in the State for me to take any part in the deliberations of the 49th Legislature, other than as related immediately to the University of Texas. I attended to that. No member of the University of Texas, so far as I know, and no member of the governing board of officers of A. & M. College was consulted about the passage of Senate Bill 228, as far as I know. That is the Act that undertook to make Prairie View a university.

Q. A university?

A. When I got squared away, when the picture as a whole began to take shape, it was rather obvious to me that Senate Bill 228 had to be materially supplemented, if there was to be created in Texas a comprehensive program of higher education for members of the Negro race, which I thought was highly desirable.

Q. Isn't it true that prior to that time, as a matter of fact, the University of Texas had no facilities of any kind where Negroes were in attendance.

A. It is true today, and it has been true every day since the University of Texas was organized, that it could not lawfully extend the use of its facilities to members of the Negro race. That is a matter of constitutional limitation. [fol. 96] We had nothing to do with bringing it about at this time. It was passed in 1876. That is the reason, if you want a reason, why we haven't done anything of that kind; it is because we are prohibited by law, and naturally we can not conduct a public institution otherwise than in compliance with public law.

Q. You had no hesitancy in having the—first, are the professors of law at the University of Texas white?

A. Yes, sir.

Q. There was no hesitancy in arranging for them to teach Negro students, was there?

A. None at all, as a branch of the Texas State University for Negroes. We had a legal right to do that, and I was extremely proud of their cooperation in doing it.

Q. But although the teachers had no objection to teaching Negroes, the Board of Regents couldn't admit the Negroes to the Law School?

A. You understand it perfectly, I am sure. You understand why we can't. We are bound—as good a lawyer as you are, you are bound to know that we operate under the Constitution of the State of Texas. Your associate here knows it.

Q. Is it not true, since we want to get straight what the two of us know about it, that the Constitution of Texas is, of course, dependent as to its validity on the interpretation of the Constitution of the United States? We agree on that, [fol. 97] don't we?

A. Absolutely, yes.

Q. All right. When compared with the advantages offered the students of law at Texas University, is there any measure of equality in a set-up which forces a Negro to begin a law course which will be shifted to another institution, the professorship has not been selected, the quality and quantity of instruction, of which is not at the present time known?

A. What is your question? Is there any measure of equality?

Q. Yes, sir.

A. Well, if the relator was in school it would be a little easier to answer that. I will say this, that where the policy of the State of Texas has been established by the adoption of a statute by more than two-thirds of the vote of both branches of the Legislature, with liberal appropriation made for its support, that there is no discrimination whatever, and no uncertainty, against a student who undertakes to avail himself of instruction in the law under the provisions of that statute. I don't think he is discriminated against in the least. I know as a practical matter that the opportunities which would have been afforded the relator, had he seen fit to enter the Law School, the opportunities for instruction in law in the school we set up on East 13th Street [fol. 98] would have been fully equal to that had he been permitted to enter the University of Texas. That may or may not answer your question.

Q. That doesn't answer the question.

A. I would be glad to make another try at it.

Q. The question in sum and substance is, working on this theory of equal facilities, separate but equal, do you consider

it equal for a Negro student to go to a school, knowing full-well that on next year he doesn't know where his school will be, who the professors will be, or anything about the school? Is that equal to the Law School that was established at the beginning of the century.

A. Under the conditions existing, it affords him fully equal opportunity. You have not stated the question correctly, so that I will have to qualify it by "under the conditions existing." You have failed to state in your question that the Law School is established by the University of Texas, now established on 13th Street for the period ending August 31, 1948. You have forgotten to state that Senate Bill 140 provides for the establishment of this university, not at any uncertain place, but at Houston in Harris County, Texas, and directs that it be conducted as a University of the first class in Houston. Those are the qualifications; my knowledge of the facts which may control my judgment in the case, my knowledge of the class of instructors he would [fol. 99] have here, and the opportunity he would have if he would avail himself of it, leads me to say that he is under no discrimination, if he availed himself of the training the State of Texas had made available for his legal education.

Q. He spends two or three hours a day in class?

A. I wouldn't know.

Q. What do you use as a basis for your statement?

A. I went to the University of Chicago Law School when it was small, and had the benefit of association with men like Mr. Meachem, and Mr. Hall and Mr. Bigelow, and relations with them which a man going there today as a member of a class of five or six hundred would not have. That is the reason that I know that the relator or any other members of his race, if they came to that school which we have established on 13th Street and in good faith undertook to complete their legal education, they would receive instruction and conferences and experiences which they would not have anywhere else today. I know that, because I know the men who would be teaching. Those men are men who have devoted their lives to teaching. They are all full time professors in the Law School.

Q. Which ones are you talking about now?

A. Because they would come down there,—I am talking about all of the members of the faculty of the University of Texas.

Q. All of them?

[fol. 100] A. We haven't, as far as I know, unless it be an emergency matter, have none other than full time instructors.

Q. Do you consider it necessary to have full time instructors?

A. Well, I think it is desirable to have them, where you have an institution that can employ them all of the time. There are certain fields in which part time instructors are desirable, just as in my University of Chicago days we had Julian W. Mack, whom you will remember was the Professor of Federal Procedure, Horace Kent Penney, who was a great lawyer and Professor of Pleading and Practice.

Q. Isn't it generally accepted that law schools should have full time professors?

A. I believe that is the current view, and I think it is a sound one. That is the reason that we provide here that the full time professors from the University of Texas should be made available here.

Q. They can't be full time at both places, can they?

A. We feel we can't be prejudiced by having them full time on 13th Street, and give them up at the University of Texas.

Q. They are all part time at the 13th Street law school?

A. It isn't a question of part time, in the sense that they are people engaged in the practice. They are, every one of them, State employees, engaged for their full time in the instruction in the science of law. The fact that they spend part of their time in one institution and part in another [fol. 101] doesn't make them part time, in the sense that a practicing lawyer would be. At the time I foolishly undertook to part time lecture in the law school it didn't work out for me or the law school, because I was a part time man, and that wasn't good, but if I had been able to be a professor in the Law School at the University, and spent part of my time on 13th Street, I would be none the less a full time employee.

Q. I am talking about part time law professors within the meaning of the standards of the American Association of Law Schools.

A. How do you define it?

Q. A teacher that isn't in the school full time.

A. In that specific school. I wouldn't say that made

any material difference, if he was in fact a trained professor and was in a school as much as the—as was required for the number of students who were there.

Q. Isn't it true that the reason for full time professors is to have someone available at all times of the day, whenever the students want to see them?

A. I really wouldn't know whether that is the reason for it.

Q. And the Dean of the school, Dean McCormick of the University of Texas, who will be at this school part time?

A. Whenever he was needed he would be there.

Q. Where would his office be?

A. At the University of Texas, except when he came down [fol. 102] there. There would be space there when he had occasion to confer with anybody down there.

Q. Could these students go to see him at the University of Texas?

A. Without doubt. If they had occasion to, I imagine Dean McCormick would not object to conferring with a student anywhere.

Q. I am reading to you from Senate Bill 140, sir, the section of the statute which says:

> "The entire school shall be operated separately and apart from the campus of the University of Texas."

A. That is right.

Q. You say that despite that provision?

A. Yes, sir, certainly. With the school operating there, the fact that a student may see Dean McCormick in this court room or on the street or in his office at the University of Texas wouldn't militate against the operation of the school apart from the campus of the University of Texas.

Q. So that if a student at the University of Texas wants to see him at the University he walks across the hall and there he is?

A. Yes, sir, in accordance with the hours of appointments.

Q. And the 13th Street student would have to go eight blocks?

A. Yes. It looks like to me you are magnifying things [fol. 103] that any student in good faith in attempting to get an education would not consider a hardship at all.

Q. I am basing mine on, not on what I think students

do. I am basing mine on the rules of the Association of American Law Schools.

A. It looks like you are magnifying things of little moment compared to the scheme as a whole.

Q. I am not obliged to argue with you at this time. The final thing I want to get is that you are not familiar with the standards of the American Association of Law Schools.

A. Not other than in a casual way.

Q. Can you name any of them?

A. Not without reference to them, I wouldn't undertake it.

Q. You are not familiar with the standards of accreditation of the American Bar Association, are you?

A. Only in a general way.

Q. So that all of your testimony is based on your own personal observations and your own personal beliefs, is that correct?

A. It is based on my personal knowledge of the relevant facts over many, many years, over my experience—on my experience as a student in the University in its academic department and in the Law School of the University of Chicago, and upon the general information that I naturally have to acquire in the discharge of my duties.

Q. Your primary livelihood is practicing law?

[fol. 104] A. That happens not to be the fact.

Q. It isn't legal education, is it? That isn't your field?

A. The position I occupy, of course, carries with it no compensation whatever. It is—I serve as a matter of public service without compensation at all, and naturally what information I acquire about educational matters comes merely from the discharge of my public duties, and not at all as a paid agent, or function of the State.

Q. Do you consider a school that is unapproved by either the Association of American Law Schools or the A. B. A. as equal to a school that is approved by both of them?

A. That, again, would depend on the circumstances under which the school was operated. You apparently are trying to draw a comparison between the provisions which the State of Texas has made upon the occasion of the first application ever made to it by a member of the Negro race for education in law. Now, we have laws on our books that have been here for a great many years, within the terms of which we must operate, and do operate. The advisors

of the State of Texas have set up a plan here, which, when carried out according to the provisions of the statute, which it must be presumed will be complied with, will entitle this law school to accreditation anywhere.

Q. Judge Woodward——

A. So that there is in my mind not the least discrimina- [fol. 105] tion involved in providing the type of education which we have provided, as compared to that which is provided at the University of Texas, no discrimination. I don't think that a student studying law here and graduating from this school that we have set up would be prejudiced at all by reason of the fact that the school in its initial stages had not been accredited by these organizations.

Q. Are you familiar with the fact that in some states you can not take the bar unless you came from an accredited school?

A. No.

Q. Would you consider that a handicap?

A. The only handicap——

Mr. Daniel: We object to that question as to other states. He has alleged only that he wishes to prepare himself to practice here.

The Court: I think he has answered the question, anyway.

By Mr. Marshall:

Q. The last question I asked, I am limiting him to the present time, not the future, as of March 10, or as of today.

A. Which time, now?

Q. Take March 10th.

A. All right.

Q. With the facilities in the 13th Street school available there, and without considering the books that are on order [fol. 106] that are not there, do you say that that furnishes facilities equal to the facilities offered all other students at the University of Texas Law School?

A. An answer to that question would be wholly without value, because it would not take into consideration the facts as they existed at that time.

Q. I am talking about everything that was in that school at that time?

A. I will say this. I will answer your question this way, that the provisions which you relate, plus those definitely

and certainly available, provided for the relator, if he had applied, facilities fully equal to those then provided at the University of Texas Law School.

Mr. Marshall: If Your Honor pleases, I hate to insist on this, but I think the question is material and we are entitled to an answer to the question alone.

The Court: Wasn't the last part an answer to it?

Mr. Marshall: No, he said taking that into consideration.

The Court: That may be the best he can answer it. I don't know.

Mr. Marshall: He has testified all along, if Your Honor please, that this set-up furnishes equal facilities. I think I have a right to test him as to what he means by it.

The Court: You can ask him.

[fol. 107] Mr. Marshall: And I want to find out what is in this law school they are talking about. I am not interested in what is outside. We have gone into that. I am talking about what is in existence.

The Court: Perhaps you can limit it to the first of March.

Mr. Marshall: The 10th, sir.

Q. Judge Woodward, the question is that on March 10th, as to that date, which is the date the school was to open, considering all of the facilities that are available, in existence in the law school building at 13th Street, do you say that that furnishes educational facilities equal to the facilities offered at the University of Texas to all other students?

A. Beyond any question, it does. I will call your attention to that——

Mr. Marshall: If Your Honor please——

The Court: He has answered it.

Mr. Daniel: I believe he has a right to explain his answer.

The Court: He can. He has answered it, however.

A. My answer is, beyond any question, it does.

By Mr. Marshall:

Q. Go ahead.

A. I wanted to tell you why I am so firmly of that opinion. The third from the last paragraph of the resolution of the Board of Regents of the University, then in effect, reads as [fol. 108] follows:

> "Be it further resolved that pending receipt and installation of such library the Dean of the Law School

of the University of Texas be, and he is hereby authorized to supply on a loan basis books from the law library of the University of Texas which may be needed in the efficient conduct of the School of Law of the Texas State University for Negroes."

That provision, together with the library of the State of Texas within 100 yards of that school would meet the most exacting of requirements of any good faith student in the University.

Q. My question was, was it equal?

A. Yes, sir, fully equal.

Q. Do you mean equal, or do you mean if you use both of them you can get the same thing? Isn't that what you really mean?

A. I mean this, that the educational opportunity offered relator by those facilities at that date was fully equal to those offered on the same day in the Law School of the University of Texas eight blocks away. That is exactly what I mean, because that is a fact.

Q. Do you know the curriculum of the law school of the University of Texas?

[fol. 109] A. In a general way. It is identical in both schools.

Q. Do they have the Law Club set up in this school?

A. A Law Club is set up by the students. Perhaps if the relator came and other representatives of his race came, you could form one.

Q. You can't form it with one student, and you can't have moot court with one student, can you?

A. No, you couldn't do it.

Q. And you couldn't have any of the interchange common in law schools with one student?

A. I presume if there is a good faith desire on the part of the Negro youth of the State of Texas to attend law school, all of those facilities will be developed in a short time, just as I presume they are at Lincoln and Howard. You have to start somewhere.

Q. While this is going on it is true, is it not, that the students are not getting the same things they are getting at the University of Texas? Isn't that true?

A. Are you talking about social contacts, or educational?

Q. Sweatt isn't interested in social contact. He is interested in getting the best legal education he can get.

A. Why didn't he come on the 10th of March?

Q. Your lawyers will have the opportunity to ask Sweatt about that.

A. If that is his only interest he is sitting there within [fol. 110] one hundred yards of the Supreme Court of Texas, the Court of Civil Appeals, and the Attorney General's Office, and the Legislature, where the public legal business of the State of Texas is centered. He has an opportunity unsurpassed to acquaint himself with those facts.

Q. He is in the middle of everything but the Law School of the University of Texas?

A. He is in the middle of the Law School provided by law for him.

Q. That is right, but I mean the University of Texas. The other question is as of today. Is there any material change in the existing facilities in being in the 13th Street school of law from what it was on March 10th?

A. Compared to March 10th?

Q. Yes, sir.

A. None that I observe.

Q. Practically the same, is it not?

A. As far as I know. That is the way it appeared to me when I was over there the other day, practically the same.

Q. That is all.

(Court was recessed at 10:45 a. m., May 13, 1947, until 11:00 a. m., May 13, 1947, at which time proceedings were resumed as follows:)

Redirect examination.

Questions by Mr. Daniel:

Q. Counsel for relator has gone into the establishment or [fol. 111] future establishment of the Texas State University for negroes in Houston, and you stated that 53 acres of land were available there between Rice Institute and the University of Houston, in the City of Houston, for this University. I will ask you, have you inspected that 53 acres of land?

A. I have.

Q. Is that the tract of land on which the buildings are located that you have testified the State University for Negroes has available?

A. Yes, that is the tract on the west end of which this new modern building has been completed.

Q. Are there any other buildings on that tract of land already?

A. Not of a permanent nature. There is one planned, and there was some preliminary work going on when I was there 60 days ago.

Q. Is a college or university being operated there now?

A. I don't know whether they are occupying the new building or not. It was just being completed. It was almost ready for occupancy when I was there, a beautiful building.

Q. What is the name of the school that has that 53 acres of land at this time?

A. It is called Houston College. It is a branch of the University of Houston, which, in turn, is a body corporate and politic created by the Legislature and operating within the Houston Independent School District.

[fol. 112] Q. Is it operated as a branch of the University of Houston?

A. The Houston College?

Q. Yes.

A. Such is my information, yes, sir.

Q. What is the approximate enrollment?

A. 1,800, as I now recall.

Q. Now, is that the school, the campus and so forth, that you have testified about that has been made available for transfer to the Texas State University for Negroes?

A. That is my interpretation of the statute which has been passed.

Q. The statute that you refer to is House Bill 780, is it not?

A. I couldn't recall the number, General.

Q. I will ask you to look over House Bill 780 and see if that is the act of the Legislature to which you refer.

A. The caption indicates that it is the statute. I can examine the whole bill if you like, but I am quite certain from examining the caption that it is the bill to which I have referred.

Q. I just simply call attention of the Court to House Bill No. 780 which has been enacted, which provides for transfer of such facilities as have been testified about to the Texas State University for Negroes by any school district within

which said facilities are set up. Now, I will ask you, do you of your own knowledge know whether or not the University [fol. 113] of Houston Board has proposed to donate this property and the entire school to the Texas State University for Negroes?

Mr. Marshall: We object to it. In the first place, the minutes would be the best evidence, and second, there is no duty for him to have received that at all.

The Court: Of course, the resolution would be the best evidence.

Mr. Marshall: Yes, sir.

Mr. Daniel: By agreement we will offer this plat as the next exhibit.

(Said instrument was admitted in evidence as Respondents' Exhibit No. 4.)

Q. Referring to that plat which has been introduced in evidence as respondents Exhibit No. 4, showing the floor space in that first floor of the building which you now have leased, I will ask you now to state to the Court how the second floor of that building which you say you have arranged for, for the State, will compare with the amount of space on the first floor?

A. It will be equal to it.

Q. The arrangement of the rooms and number of rooms?

A. Substantially the same.

Q. Now, will you answer the same question with reference to the third floor of the building; how much space, and the arrangement, as compared with the first floor?

[fol. 114] A. Substantially the same on each floor.

Q. How many rooms on the fourth floor?

A. My recollection is that that is a large room there. I don't recall the partitions in it, but substantially the same floor space.

Q. Substantially the same floor space?

A. Yes, sir.

Q. Now, counsel for relator has asked you the question of whether or not this school as it now stands will meet the American Association of Law School standards and requirements. I will ask you whether or not you have plans if sufficient students enroll, to operate that school in such a way that it will meet those standards and requirements at the very earliest possible date?

A. We have.

Q. Do you have—have you considered whether or not your appropriation of a hundred thousand dollars is sufficient to meet those standards, or as many of them as can be met with students between now and September 1, 1948?

A. We have.

Q. Have you itemized the necessary expenses to meet those standards between now and September 1, 1948, provided you had students?

A. We have, as far as we could predict the use of the facilities.

Q. Do you have your estimated cost of operating such a school?

[fol. 115] A. I have.

Q. Does your estimated cost for the operation of such a school provide for full time professors?

A. Yes, sir.

Mr. Marshall: If Your Honor please, may we find out what the witness is reading from?

A. I will hand it to you, if you like; a proposed budget which I requested my associates to help me prepare for the operation of the school through August 31, 1948, assuming that the relator and other qualified students apply for admission.

Mr. Marshall: May we ask a preliminary question for an objection?

The Court: Yes.

Mr. Marshall: Did you prepare it?

A. I helped prepare it.

Mr. Marshall: Are these your figures or somebody else's?

A. Part mine, and somebody else's also.

Mr. Marshall: Partly somebody else's?

A. You understand that in an organization such as I represent it is rare that one man does all of the thing. That budget has been prepared by Dean McCormick and myself, as we prepared many other budgets of a similar nature in the operation of the University. You understand the academic matters are provided by the men skilled in that, and [fol. 116] the administrative matters by those skilled in that, and the cooperation results.

Mr. Marshall: It is part yours and part somebody else's.

A. Part both. I am familiar with the matters outlined here.

Mr. Durham: I want to ask a preliminary question. You prepared those figures, in part, in what capacity?

A. In what capacity?

Mr. Durham: Yes, in what capacity?

A. In my capacity as Chairman of the Board of Regents of the University, and carrying out the duties imposed by that resolution.

Mr. Durham: Have those figures been approved by the Board as a whole?

A. The Board of Regents?

Mr. Durham: Yes.

A. No.

Mr. Durham: We object to it as not being official.

The Court: I think he has not offered them. He is simply using it to question him from.

Mr. Durham: If they are not admissible in evidence I don't think they are admissible to use them as a memoranda.

Mr. Daniel: You haven't given me a chance to prove them up yet.

Mr. Durham: We object, until you do prove them up.

[fol. 117] By Mr. Daniel:

Q. As I understand, what you have is an estimated budget through August 31, 1948 of what amounts it would take to meet the requirements of the American Association of Law Schools, as far as they can be met within that period of time?

A. That is right.

Q. And you have prepared that for the purpose of determining whether or not you have sufficient money to meet such requirements?

A. Yes.

Q. How much do you take into consideration for rent that will be required for rent on the building until August 31, 1948?

Mr. Durham: Your Honor, we want to make this objection; that that isn't an official act of the Board of Regents. It is an individual opinion of two members of the Board

of Regents, and would not be binding on the Board of Regents. It is wholly inadmissible and speculative.

The Court: If he knows what the rental is, I think he could testify.

Mr. Durham: I think so, too, but not what the Board of Regents estimate.

Mr. Daniel: I would like to call the Court's attention to the fact that the Board gave, in this resolution, the Chairman, all of the powers to go ahead with this plan.

Q. How much have you allowed in this estimate for rent on the building?

A. On the portion of it now occupied $1,875.00. That [fol. 118] is the contract rental of $125.00 a month. We have estimated it would require $3,000.00 to acquire the additional floors, in the event they are needed, and negotiations that I have made under authority of the Board are carried out. You understand this is just an estimate.

Q. I understand.

A. Made in the usual course of the discharge of my duties.

Q. Have you allowed anything in your estimate for repairs and improvements?

A. We thought $2,000.00 would be reasonably needed to make provision for rearranging the space to take care of the library, and we hope for students who might come.

Q. Do you know how much of that has been spent?

A. I don't know. Some considerable sum, but the Comptroller could tell you that.

Q. How much have you allowed for the books you have testified about having ordered?

A. $32,000.00 was estimated to be the cost of those volumes.

Q. Do you have any allowance in your estimate there for library upkeep?

A. $2,000.00, we thought would cover that.

Q. What estimate have you made as to salaries?

A. We have in there four professors at $6,000.00 per annum, which is the base pay for professors of law in the University, and figuring the time they would be employed, [fol. 119] that is on a nine months basis, we estimated it would take $30,000.00 to employ them, if we are fortunate enough to secure students.

Q. Have you made any allowance for summer school this year?

A. Yes, four full time professors at $2,000.00 for the summer term each, which is the amount we would pay the same men at the University.

Q. When does the summer semester begin at the University?

A. Right around the first of June; I would have to look at the calendar to see. I would say around June 3d, I think.

Q. Will the new law school be ready to open another semester around the first of June?

A. Yes.

Q. Have you allowed anything for a full time librarian?

A. Yes, sir, $4,500.00. That is at the rate of $3,600.00 per annum.

Q. Have you allowed anything for other employees?

A. Well, custodian and janitor, $100.00 a month, $1,600.00. Secretary, at $1,800.00 a year, $2,250.00; stationery and supplies, $500.00; contingent and miscellaneous expense, $1,000.00. Those figures total $88,725.00, and leave an unexpended balance of $11,275.00, from the appropriation of $100,000.00 which is today available.

Q. The attorney for relator asked you about the time that would be given by University of Texas professors in the [fol. 120] new law school before you have full time professors employed there for the new law school. I will ask you, what is your opinion if—the same kind of question he asked you—as to the amount of time that could be given to the students in the new school individually as compared with the amount of time the same professors could give to the same students if allowed to attend the University of Texas Law School.

Mr. Durham: We object to that for the reason this is one of the officials. We are not to assume that he knows his duty. I think he is entitled to testify what time was required. This is not a witness who is presumed to state what his duties are upon presumption. He knows his duties.

The Court: If he knows that,—what time they could give to it, it would be all right. I just don't know.

A. I am not entirely certain that I understood the question. If you are asking me to approximate it as a matter of hours per student per instructor, is that what you have in mind?

By Mr. Daniel:

Q. No, what I had in mind; following up the point that counsel made as to the fact that your professors from the University of Texas would be in the new law school part time, I am asking you whether or not, if you know, they would be able to give the students in the new law school as much of their total time as they would give if the students were out at the University of Texas taking law under them in those classes out there.

[fol. 121] A. They would be required to give——

Mr. Durham: We object to that as being a presumption. We have no objection to what the professors were hired to do, but his opinion as to what they could do would be a presumption and conclusion. If they hired the professors the contract of employment is the best evidence of the terms of it, whether it is verbal or written.

The Court: I think perhaps, counsel, he is asking the opinions. You can have your bill.

Mr. Durham: Note our exception.

A. They are required, whenever the relator or any other student offers himself, to give to him all of the time and attention necessary to carry the provisions of that resolution into effect.

The Court: I believe that isn't an answer to your question.

Mr. Daniel: I withdraw the question for the time being.

Mr. Durham: We ask that that answer be stricken.

The Court: Yes, sir.

By Mr. Daniel:

Q. Do you know how many applicants, or inquiries you had about the school prior to March 8, 1947?

A. Only by report. I didn't receive them personally. I know from the records, and the reports at the University.

Q. Do you know that there were some inquiries for registration?

[fol. 122] A. There were.

Q. Do you know of any meetings held by an organization of the Negro race and attended by any persons on this court room on March 8, 1947, in Dallas?

A. Through public reports.

Mr. Durham: If Your Honor please, may we have that stricken?

The Court: Only of his knowledge.

By Mr. Daniel:

Q. Do you know of your own knowledge?

A. Only through public reports and conversation.

Mr. Durham: We object to that as not being responsive and hearsay.

Mr. Daniel: That is all.

Recross-examination.

Questions by Mr. Marshall:

Q. Judge Woodward, 53 acres, you say, are available in Houston. Is that not at the present time the property of this, the Houston Junior College, a Negro school now in existence?

A. It is known as the Houston College Branch of the University of Houston; and it is the identical property contemplated by this statute that was read here.

Q. Is it not true that that property is property that was purchased for the most part from private donations, including donations of Negroes?

A. There were substantial donations, I know, according [fol. 123] to the press reports, by members of both races, in part. I don't know whether that was so wholly. The title to it is vested in the body corporate, politic—it is known as the University of Houston.

Q. What arrangement in salaries was made with the professors at the 13th Street law school?

A. They would draw the same salary as they draw at the University of Texas.

Q. Was that part of their salary to be paid out of this $100,000.00?

A. Yes, for the services rendered at the law school, they would be paid.

Q. I understood you, when you were going through this proposed budget, they were going to pay them the same they were paid at the University of Texas Law School?

A. Yes.

Q. But they didn't get two salaries; the proposal wasn't to give them two salaries?

A. No, what we are hoping, in making up the budget, hoping very much that—these are outside figures based on the hope that the relator and other students of the Negro race qualify, and in sufficient numbers to permit us to conduct a law school, come in, and happily give us the opportunity to employ four full time professors.

Q. Do you mean you need a certain number before you can [fol. 124] run a law school?

A. Naturally, you would one kind of arrangement for one kind of student body, and another arrangement for another student body.

Q. Wouldn't the library be the same, with the exception of duplicate volumes, whether you had one or one hundred students?

A. The library has already been provided, adequate for any number of students who might reasonably be expected to apply, and it will be completely available.

Q. You testified under examination by the Attorney General that that budget was prepared in order to meet the standards of the American Association of Law Schools?

A. I testified it was prepared to enable the school of law of this State University—the Texas State University for negroes—to comply with those standards under any reasonable set of circumstances that might arise. These are outside figures, or expenditures which the State of Texas has provided for. We can spend only so much of that as the circumstances, as they arise, may require.

Q. Who was the full time librarian?

A. We will appoint a full time librarian when the relator or some other qualified students apply for instruction there.

Q. Did you have a full time librarian when the school opened March 10th?

[fol. 125] A. No, we didn't have any students, either.

Q. Did you have any at that time at the University of Texas Law School?

A. Yes.

Q. You do, do you not?

A. Certainly.

Q. And you have assistant librarians, too, don't you?

A. Where we need them, yes.

Q. That is all.

Redirect examination.

Questions by Mr. Daniel:

Q. Mr. Woodward, from your experience as Chairman of the Board, and on the law faculty, I will ask you your opinion, that if there were as many as 14 inquiries for this law school before March 8, 1947, would you, in your opinion, expect in the normal course of school operations that there would be at least some students report for admission on March 10th, if something had not happened to keep them from doing so?

Mr. Durham: Your Honor, we object to that.
The Court: I think it is rather speculative.
Mr. Daniel: That is all.

(Witness excused.)

[fol. 126] CHARLES T. MCCORMICK, a witness produced by the Respondents, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Daniel:

Q. State your name, please, sir.
A. Charles T. McCormick.
Q. Where do you live, Dean McCormick?
A. I live in Austin.
Q. What position do you hold with the University of Texas Law School?
A. I am the Dean of the school.
Q. How long have you been Dean of the Texas University Law School?
A. Seven years.
Q. Prior to that time what experience had you had in law school work?
A. Well, I became a professor of law at the University of Texas in 1922. From there, in 1925, after serving during the intervening period, I went to the University of North Carolina Law School as Dean of the Law School; and in 1930 I went to Northwestern University Law School as professor of law, and served there until 1940, when I returned to the University of Texas Law School as Dean.

[fol. 127] Q. What degrees do you hold, Dean McCormick?

A. The A. B. Degree from the University of Texas, and L.L.B. Degree from Harvard Law School.

Q. Are you one of the authors of McCormick and Ray on Evidence?

A. Yes, sir.

Q. Would you state to the Court what, if any positions, you have held in the American Association of Law Schools?

A. I have served as a member of the Executive Committee, and as President of the Association.

Q. When were you President of the Association of American Law Schools?

A. In 1942.

Q. On what groups within the Association have you served?

A. Well, I have served on the Executive Committee, as I mentioned, and upon various committees, such as the Committee on Cooperation of the Bench and Bar, and several other committees, the entire list of which I do not remember.

Q. Are you familiar with the terms of Senate Bill 140 that has been reviewed here to the Court this morning?

A. Reasonably so.

Q. Are you familiar with the terms of the resolution of the University of Texas Board of Regents, dated February 28, which was read in evidence this morning?

A. Yes, sir.

Q. I will ask you if under that resolution you assumed the [fol. 128] position of Dean of the Law School for the State University for Negroes?

A. Yes, sir.

Q. Did you under the provisions of that resolution and the instructions of the Chairman of the Board of Regents establish, or help establish, such new law school?

A. Yes, sir.

Q. Are you acquainted with the physical facilities of the Law School for the State University for Negroes?

A. Yes, I am.

Q. How many class rooms do you have at the University of Texas?

A. We have three class rooms.

Q. How many students do you have at the University of Texas Law School? Of course, I am talking about——

A. Approximately 850 at this time.

Q. How many class rooms do you have in the law school for Negroes?

A. Well, there are two class rooms.

Q. How do the physical facilities of the new law school compare with the University of Texas Law School, as far as lighting, ventilation and other such matters are concerned?

A. Well, I would say they were approximately the same, or similar.

Q. About how many inquiries or applications did you receive for admittance in the new Negro law school?

[fol. 129] A. Personally, I believe by letter or in person, I received five inquiries, but the inquiries would normally come either to me or to the Dean of Admissions, and the Registrar, Dean Matthews, of the University, and he received some of the inquiries.

Q. He received others, did he?

A. Yes, he so informs me.

Q. About what maximum load did you figure for students for the first year in the new law school, based upon the maximum load,—based on inquiries received?

A. Well, I hoped and expected there would be at least five or six at the beginning of the school, and that as the years went on and subsequent terms were opened, that perhaps ten or twelve would register. I say that in the light of the Negro population of the State, and my observation of some similar schools that have been established for Negroes in other states.

Q. Based upon the maximum load that you could reasonably expect for the first year of the school there, and compared with the maximum load of students at the University of Texas Law School, I will ask you to compare the physical facilities offered by the Negro Law School with those offered at the University of Texas Law School.

A. Well, with respect to the adaptability for use, for the expected number, the ones who would attend the Negro Law [fol. 130] School, as compared with the actual conditions of attendance at the University of Texas Law School, why, I would say that the physical facilities were roomier and more convenient than those at the University of Texas Law School.

Q. You mean the facilities——

A. Floor space per student would be substantially greater if an estimate of 10 students were made.

Q. Do you have the figures on floor space per student at the University of Texas Law School at the present time?

A. Yes, I do. These figures were furnished me by the Comptroller, and from my observation of the situation, I would say they were correct.

Q. Approximately how many square feet of floor space do you have at the University of Texas Law School?

A. We have 46,518 square feet.

Q. How many students do you have at the University of Texas Law School?

A. Well, there were 886 at the beginning of the year.

Q. Have you figured the approximate number of square feet of floor space there at the University of Texas?

A. Well, the figures as made by the Comptroller are 53 square feet per student. I haven't actually divided that number into the other. I assume that is correct.

Q. Approximately 53 square feet. Have you examined this floor plan of present space available in the new law school?

[fol. 131] A. Yes, I have.

Q. Approximately how many square feet of floor space are available there, total?

A. That, again, is a measurement by someone else, but it accords with my general observation; and it is reported to me as 1,060 square feet.

Q. Have you examined the space?

A. Yes.

Q. Does that appear approximately correct to you?

A. It does.

Q. Based on a maximum load of ten students, then, that would give you how many square feet per student in the new law school?

A. 106.

Q. 106 square feet?

A. Yes.

Q. Does that take into consideration any of the library space available in the State Capitol Building, the figures that you have given?

A. No, it does not.

Q. Now, on that basis of comparison, I will ask you to state whether or not in your opinion the physical facilities offered by the Negro Law School are substantially equal to those offered at the University of Texas Law School?

A. Yes, having in mind, as I said before, the respective [fol. 132] use by the respective number of students in each of the two institutions.

Q. Do you know about how many students were contemplated, or how many were figured in the needs for the University of Texas Law School Building, how many students it was built for, whether or not you are crowded or not?

A. Well, it was planned for four hundred students. It now has, as I said before, about 850.

Q. It now has about twice as many as the building was actually built for?

A. Yes, sir.

Q. Now, as to library facilities in the new school, are you acquainted with the Texas State Library over at the Supreme Court Library on the second floor of the Capitol Building?

A. Only in the most general way. I have visited it and looked at it.

Q. Are you acquainted with the space and the desks and the places available for study?

A. I have such acquaintance as you would get from casual observation.

Q. Would such facilities there in the library offer as much room as the Texas University Library offers for its students?

A. Well, I couldn't give an exact comparison as to that. I would be disposed to say, at a guess, that the University of [fol. 133] Texas Library area was perhaps larger than the State Library——

Q. Based, again, on the number of students that we have been talking about, which of the two libraries would offer more space and convenience for study?

A. Well, assuming that the State Library is not otherwise crowded by public users, and I think it is not, I would think that the facilities of the State Library would be more spacious for the use of a student body of, say 10 students in the near by school, than would be the facilities at the State University Law Library, which are now exceedingly crowded.

Q. That is, the University of Texas Law Library is now exceedingly crowded?

A. That is correct.

Q. Are you acquainted with the approximate distance

from the Negro Law School over to the State Law Library?

A. Yes, I am.

Q. Approximately how far?

A. Well, I would say it was 100 yards to the door of the Capitol, and then perhaps 25 yards the rest of the distance.

Q. If the evidence in this case should show that the books in the Texas State Library, the number of books, type of books, are substantially equal to those in the University of Texas Law Library, I will ask you if, in your opinion, the [fol. 134] library facilities for the Negro Law School are substantially equivalent to those at the University of Texas.

Mr. Durham: That is a hypothetical question, and we object on this ground; that if it isn't shown, we can renew our motion to strike this testimony.

The Court: Yes.

Mr. Daniel: Yes, that is all right.

Q. Based upon a showing, or substantial showing of the equality in the two libraries, in your opinion, will the library facilities offered the Negro Law School be substantially equivalent to those offered by the University to the University of Texas Law School students?

A. If you would add to that hypothesis that a selected group of books for immediate reference in connection with the class work is available in the quarters of the Negro Law School, and that other books that might be referred to and called for would be available for immediate loan, from the Law Library of the University of Texas, I would answer yes.

Mr. Durham: Your Honor, we ask that that answer be stricken for the reason that the witness asked himself, and he predicated it upon facts not stated by counsel.

The Court: Well, he probably would just turn around and ask him the identical hypothesis.

Mr. Durham: We object again, unless he puts it in there. [fol. 135] Mr. Daniel: I will not bring it up until I compare the books.

Q. Do you have a librarian on the staff at the University of Texas Law School?

A. Yes, we do.

Q. State her name.

A. Miss Helen Hargrave.

Q. Have you asked her to check the books in the State Law Library and make a comparison with the University of Texas Law Library for you?

A. Yes, I have.

Q. Now, I will ask you if you did anything in accordance with this resolution about arranging a list, or having one arranged, of 10,000 books to meet the standards set by the American Association of Law Schools, to be placed in the building that now houses the Negro Law School?

A. Yes, sir, I requested Miss Hargrave to prepare a list of 10,000 volumes meeting the standards of the American Association of Law Schools. She did prepare such a list, and on the basis of that list, as I understand it, an order was made for the purchase of a certain number of the books on that list.

Q. Now then, in accordance with the resolution passed by the Board of Regents, and your instructions from the Chairman of the Board, I will ask you if you did adopt a curriculum for this new law school?

[fol. 136] A. Yes, we did.

Q. Is it, or is it not, the same as the curriculum and courses offered at the University of Texas Law School?

A. That is correct.

Q. Did you adopt the University of Texas courses as stated in your Bulletin of the University of Texas Law School?

A. We did.

Q. Do you have a copy of the bulletin?

A. Yes.

Q. Will you state to the Court on what pages you will find the courses of instruction that were adopted for the new school?

A. Pages 23 to 29.

Q. And you are referring now to the University of Texas Law School Bulletin?

A. Dated August 1, 1945.

Q. Dated August 1, 1945?

A. Yes, sir, that is the last printed bulletin that we have issued.

Q. So your curriculum——

A. I may say that that is the same curriculum which we adopted. We likewise made special provisions for an interim class to enter in March, 1947, in the Negro Law School.

Q. Your general curriculum as compared with that of the University of Texas Law School is the same, is that correct?

A. Yes, sir.

[fol. 137] Q. What about your faculty for the Negro Law School? Compare that with the faculty for the University of Texas Law School. Is that the same faculty?

A. Yes. Mr. Woodward, the Chairman of the Board of Regents of the University of Texas, requested me to consult the law faculty and ascertain their willingness to cooperate in the steps contemplated by the resolution in the founding and carrying forward of the Negro Law School, and the faculty assured me of their willingness to cooperate, and that contemplated, of course, the offering of all necessary courses in our curriculum as the school should develop.

Q. Will you state how the entrance requirements for the Negro Law School as set up by you compared with the entrance requirements for the University of Texas Law School?

A. Well, we adopted and announced that the entrance requirements and the other requirements for admission in the Negro Law School would be the same as in the University of Texas Law School.

Q. What about class room requirements, grades and examination requirements for the new school? Are they the same as for the University of Texas Law School?

A. All of the catalogue regulations for the University of Texas Law School were adopted, and were to govern the Law School of the State University for Negroes.

Q. All of the regulations here in the catalogue for the [fol. 138] University of Texas were adopted by the Texas State University for Negroes; is that correct?

A. Yes.

Mr. Durham: I didn't want to disturb the Attorney General. I want to ask a question for the purpose of an objection. You say the curriculum was adopted. How was it adopted?

A. As I understand, the resolution gave to the Chairman of the Board of Regents of the University of Texas the power to make all necessary arrangements for the establishment of the Negro Law School, and he, consulting with me, directed that the Negro Law School should adopt——

Mr. Durham: You had a resolution adopting the curriculum?

A. No, an announcement was made in writing by myself and the Dean of Admissions of the University, under the instructions of the Chairman of the Board of Regents of the University of Texas.

Mr. Durham: Your Honor, I don't think I made myself clear. Did I understand you to say——

A. Which announces the adoption——

Mr. Durham: Is that in writing?

A. Yes, sir.

Mr. Daniel: We will prove it up. I would like to offer the catalogue referred to.

[fol. 139] (Said instrument was admitted in evidence as Respondents' Exhibit No. 5.)

Q. Now, Dean McCormick, do you have the list of law professors on the faculty of the University of Texas who were made available to teach courses in this law school, this new law school?

A. Do you mean the particular ones who were assigned to teach classes?

Q. First, I would like to have your complete list of the faculty.

A. Yes, sir.

Q. Do you have the qualifications there of those faculty members?

A. Well, simply briefly summarized, not stated in full, giving their degrees and teaching experience.

Q. To save time, I would like to offer that. We just offer it in evidence without reading it. We offer the list of faculty members with the brief statement as to qualifications.

(Said instrument was admitted in evidence as Respondents' Exhibit No. 6.)

Q. Now, Dean McCormick, we have talked about the general curriculum and the faculty members available. I will ask you what particular courses you had already application for at the time you set up the new law school?

A. Well, we had not had application by any student for [fol. 140] admission, if that is what you mean. We contemplated and made ready for an entering class in March.

Q. First year class?

A. An entering class. We have during the war and post-

war emergency period provided for students, in order to accelerate their course, to enter in the middle of the school year, in March; in previous years, and in February of this year, and that was the class that we contemplated and provided for this spring by the immediate assignment of courses and professors for the teaching of such beginning classes.

Q. Then, you specifically provided before the opening of the school on March 10th for instruction in what courses?

A. Contracts, torts and legal bibliography.

Q. Are they the same courses that you offer first year law students at the University of Texas Law School?

A. They are the same courses.

Q. What instructors did you assign to teach those three courses?

A. Associate Professor Leo W. Leary, Assistant Professor S. T. Morris, and Assistant Professor Chalmers M. Hudspeth.

Q. Are those the same instructors that teach those same identical courses in the University of Texas to first year law students?

A. That is right.

Q. Now, you mentioned a minute ago having prepared a written announcement of courses and the opening of this [fol. 141] law school. Do you have a copy of that announcement?

A. Yes, sir, I do.

The Court: We, then, will recess at this period and will take that up at two o'clock.

(Thereupon Court was recessed at 12 o'clock noon May 13, 1947, until 2 o'clock p.m., May 13, 1947.)

Afternoon Session

May 13, 1947, 2 P.M.

Charles T. McCormick, having resumed the witness stand, testified further as follows:

Direct examination (Continued).

Questions by Mr. Daniel:

Q. Dean McCormick, is this the copy of your announcement of courses for the Negro Law School?
A. Yes, it is.
Q. We wish to introduce the announcement.

(Said instrument was admitted in evidence as Respondents' Exhibit No. 7.)

Mr. Daniel: May it please the Court, I will read a few paragraphs of this announcement, and review some of ——

[fol. 142] (Mr. Daniel read to the Court certain portions of said announcement, and summarized other portions of same.)

Q. I will ask you if your announcement contains, the facts stated therein are correctly—are correct representations as to what you were offering there on March 10th?
A. They are.
Q. Now, Dean McCormick, I would like to ask, if in your opinion, the facilities set up at the new law school for Negroes furnishes to Negro citizens the equal opportunity for study in law and procedure as that offered in the University of Texas Law School?
A. Yes, I believe they do.
Q. In your opinion, do you believe that the facilities set up in the Negro Law School furnished to the relator in this case, and would give to him, if he entered, equal opportunities to study law and procedure as he would have if he was admitted to the University of Texas Law School?
A. Yes, they would do so.
Q. Was the school opening—was it opened on March 10th, as announced in your written bulletin?
A. Yes, it was.
Q. Were you down there?
A. Well, I was down there from time to time.

Q. During that day?

A. I don't believe I was there on the first day. There [fol. 143] was no necessity for me being there.

Q. Were you there during the week of March 10th?

A. Yes.

Q. Do you know——

A. I was there previous to that time also.

Q. And previous to that time?

A. Yes.

Q. Do you know the relator, Heman Marion Sweatt, by sight?

A. Yes.

Q. Did he register there at the school?

A. No, he did not.

Q. Is the school still being maintained, ready for instruction of the relator in this case, if he should see fit to enter?

A. Yes, sir, the facilities are held available.

Q. When will your next semester begin?

A. That depends on whether we have any applications.

Q. What about your semester at the University of Texas?

A. It begins on the 3d of June, the summer session.

Q. The summer session begins on the 3d of June?

A. Yes.

Q. Are you equipped to begin a summer session, a similar session for the Negro Law School on June 3d also?

A. Yes.

Q. I believe that is all.

[fol. 144] Cross examination.

Questions by Mr. Nabrit:

Q. Dean McCormick, have you at any time examined the qualifications of Heman Marion Sweatt, the relator in this case, for admission to a law school?

A. No, I have not.

Q. Do you know whether he is qualified to enter the law school at the University of Texas?

A. I am so informed by the admissions office, Mr. Mathews.

Q. Did the Registrar so notify him?

A. That is my understanding. Of course, I have no first hand knowledge.

Q. Now, Dean McCormick, in speaking of the faculty of

this supposed Negro Law School, I believe you stated that three professors or teachers at the University of Texas School of Law had been assigned to teach interim courses; is that correct?

A. That is correct. That is, for the first semester.

Q. Leo W. Leroy, is that one of them?

A. Leary.

Q. Oh, Leary. Would you tell us what Mr. Leary taught at the University School of Law the first semester of the current school year?

A. Well, one of the courses that he taught was a course in Federal Regulations, substantive Federal Regulations.

[fol. 145] Q. That is clear. What else did he teach?

A. I don't remember what else he taught. You see, we have seventeen members of the faculty, and I don't remember offhand each of the subjects they teach each semester. I can readily look it up, however, and let you know.

Q. Would it take you—do you have the material here available that you could look it up?

A. No, I don't have it here, but I can get it by telephone.

Q. All right; just before you get it by telephone, and I think we want it, Mr. Chalmers Hudspeth; that is another teacher assigned to that school?

A. That is correct.

Q. What did he teach the first semester at the University of Texas Law School this current school year?

A. During the course of the year he has taught the course in domestic relations, and the course in legal bibliography, but there, again, I don't have at my finger tips what each of these teachers has taught because we have many sections of the courses.

Q. That is all right.

The Court: Would you like to take a minute and find out what you want and let him phone and get it?

Mr. Nabrit: Yes, sir; I think it would be very good.

The Court: Tell him what you want, then.

Mr. Nabrit: I want to know what each of these teachers [fol. 146] taught at the first semester at the University of Texas during the current school year, how many hours each taught, and the second semester, this current semester, I want to know what each of these teachers is now doing, the course by name, hours and what classes. By classes, I mean, first, second or third year classes; those classes normally as-

signed by you for the faculty of the School of Law of the University of Texas.

Mr. Daniel: May I suggest that he get that this afternoon and bring it in the morning?

Mr. Nabrit: I would like to get it now, if he can get it over the phone.

The Court: We can recess a few minutes, and he can go into the Reporter's room.

Further discussion was had off the record, and the witness requested Mr. Mathews to obtain the information outlined above.

By Mr. Nabrit:

Q. Dean McCormick, moving from the faculty for the moment to the building for this proposed law school which is located, as I understand it, on 13th Street, approximately a hundred yards from the State Capitol, in which there is a law library that is available, according to your statement, to the students in this school of law, how many stories are there to this—first, I will ask you, have you visited this building?

A. I have.

[fol. 147] Q. How many stories are there?

A. Three.

Q. The floor on which the proposed law school is located, is that the basement floor?

A. Well, I would call it the ground floor. It is perhaps two or three depressed feet under the ground, but there are ample windows and lights. It is not an artificially lighted space.

Q. So that actually it is a basement floor in that building?

A. It isn't what I understand by a typical basement, which is what is underground.

Q. But it is at least half underground, isn't it?

A. Well, I wouldn't be sure. I wouldn't have thought so, no.

Q. It is a considerable distance depressed from the level of the sidewalk, so that it is necessary to go down several steps?

A. Yes, sir; four or five steps.

Q. In your judgment, does it have adequate windows for a law building, that is, enough daylight, irrespective of

internal illumination? In your opinion, is that a satisfactory arrangement, purely from the standpoint of windows?

A. Yes, it impressed me so. Of course, most law buildings, so far as I know, need in many of the rooms artificial light in the daytime. I know ours does at the University of Texas.

[fol. 148] Q. Probably if you were securing one today, you would look at that as one of the things that you would insist upon in the building, would you not?

A. No, I wouldn't insist on a building that didn't need artificial light in the daytime in all of its rooms.

Q. I mean, in looking for a law building for the University of Texas, that would be one of the things you would take into account?

A. The adequacy of light, yes.

Q. All right. In the second place, in respect to that building, is it in your opinion adequate in size, this basement floor, which is, as I understand it, the only part of that building now under your control. Is there in the basement adequate space to place library stacks sufficient to hold these 10,000 books which are supposed to have been ordered?

A. No, there is not.

Q. Do you, of your own knowledge have at this moment information as to where those books will come, if they should arrive, where would they be placed?

A. Well, my information comes from Mr. Woorward, who is the Chairman of the Board and has the responsibility for the providing of physical facilities, and I understand from him that he has arrangements perfected whereby the University has an option on the remainder of the building, and when the entire building is put into use it would [fol. 149] be, of course, considered as a whole as to how the space would be utilized, and just which room or rooms it would be decided to put the library in, I couldn't say.

Q. Who would decide that? Not the Board of Regents, you don't mean that?

A. Yes, they would decide upon——

Q. They would decide in what room you would have your classes and what rooms you would have your offices and your library?

A. Well, they would ultimately. The advice of the Dean

would, no doubt, be taken, and that of the business agents of the University.

Q. And no doubt the Dean's advice would be decisive in regard to arrangements in the building?

A. Probably so. That is if it didn't cost more than the University could command in the way of money.

Q. That is, if it didn't exceed that $100,000.00 which we are supposed to have?

A. That is right—I wouldn't say "supposed to have". I believe it has been appropriated.

Q. I don't know how much of it has been expended, therefore, I supply that phrase. You may be able to tell me later how much we have left. This question, Dean McCormick, in considering the announcement for the opening of school on March 10th, I take it from your testimony [fol. 150] that no library was available in the school at that date, nor at that date did the school possess any place in which it could have placed these 10,000 books; is that true?

A. Well, there was a small selection of reference books immediately accessible for these three courses in the building.

Q. That is right, but I am speaking of the 10,000.

A. No, there was no adequate space immediately provided, for the simple reason that getting the books is a matter of some time, and——

Q. Your Honor, I wish you would just strike—have the last part of that stricken.

The Court: That is right. It is by way of explanation, but probably wasn't responsive.

By Mr. Nabrit:

Q. Dean McCormick, you are former President of the Association of American Law Schools?

A. Yes.

Q. And as I understand it from articles which you have written, one of the proponents of increased standards for law schools, is that true?

A. Yes, sir; I believe in raising the standards of legal education generally.

Q. The University of Texas is a member of that Association, is it not?

A. That is right.

[fol. 151] Q. Are you familiar with the handbook of that association?

A. Well, it is a large volume.

Q. I mean by that you know that——

A. Generally, yes.

Q. Do you know John P. Dawson, who is Secretary of the Association?

A. Yes, I do.

Q. I would like to show you a copy of that. Do you have any objection to this?

Mr. Daniel: No.

Mr. Nabrit: No objection. I would like to enter this. Now, I would like to call the attention——

A. Would you tell me what year?

Q. I am going to call your attention to this——

A. Will you tell me what year that was?

Q. I want you to read the published letter of the Secretary-Treasurer certifying it.

A. 1945 Handbook?

Q. Yes. Are these the rules now in force in the association, to your knowledge?

A. Yes, they are.

Mr. Daniel: No objection.

Mr. Nabrit: We would like to introduce, Your Honor, pages 259 to page 269, inclusive, which carry the articles of the association, and the names of the members of the [fol. 152] Association of American Schools of Law.

A. I believe you want to confine that to Article 6. I believe that is the one that contains the standards.

Mr. Nabrit: Article 6 on page 260, 261, all of it from Article 6 on.

(Said instrument was admitted in evidence as Relator's Exhibit No. 1.)

By Mr. Nabrit:

Q. Now, Dean McCormick, are you familiar with the rule of the Association of American Law Schools which states in substance that in order to be accredited by this Association a law school must have a minimum of four full time professors or teachers of law?

A. I am familiar with that.

Q. In your opinion, is the arrangement which you have made for the faculty at this Negro Law School, which was to be effective March 10, in keeping with that requirement?

A. No, I don't believe that it complies with that requirement, but I believe that the faculty, the facilities which we have furnished to the Negro Law School, is equal to those that——

Mr. Nabrit: Your Honor, I would like to ask that all of the witness' answer from "but" be stricken.

The Court: I don't think it was by way of explanation either, so I believe he could have stopped there. It may be pertinent on cross examination.

Mr. Nabrit: Yes, we will stop it right there, please.

[fol. 153] Q. Dean McCormick, in assigning that faculty to the law school, or the Negro School of Law, were they to teach courses at the University of Texas at the same time? I don't mean the same hour, but I mean during the same semester that they were to each in the Negro Law School?

A. That is true as to Mr. Leary and Mr. Morris, but not as to Mr. Hudspeth, I believe. He had taught the course in legal bibliography the previous semester, but my recollection is that he is not teaching it this semester. I am not quite certain about that, but that information will be verified.

Q. Do you recall what the usual number of hours a teacher at the University of Texas School of Law is required to teach?

A. Well, it varies from time to time with the necessities of the curriculum, and it runs usually from five to eight hours of teaching per week in a given semester, and I would say on an average of about six.

Q. It seems that information is here. If it is I would like to ask him those questions right here.

The Court: Yes.

(Thereupon Mr. Daniel delivered an instrument to the witness.)

A. Do you want me to give this information to you now?

Mr. Nabrit:

Q. I would like for you to tell me what the three teachers assigned to the Negro Law School taught at the University

of Texas the first semester of this year, and what those [fol. 154] teachers are teaching at the University of Texas Law School the second semester.

A. Mr. Leary during the first semester was teaching Equity I, a three semester hour course, and the seminar in Federal Regulations, a two semester hour course, and he is teaching now in the second semester Contracts, which is a six semester hour course. Mr. Hudspeth during the first semester was teaching Procedure I, a four semester hour course, Legal Bibliography, two sections, each of one semester hour. During the second semester he is teaching Agency in two sections, of two semester hours each, and Domestic Relations, three semester hours. Starling P. Morris during the first term was teaching Personal Property, a three semester hour course, and Legal Writing and Argument, a two semester hour course. During the present semester he is teaching Torts, a six semester hour course.

Q. Now, Dean McCormick, how long has Mr. Leary been teaching at *at* the University of Texas School of Law?

A. He began his teaching last fall.

Q. This year is his first year?

A. That is correct.

Q. How long has Mr. Hudspeth been teaching at the University of Texas?

A. The same length of time.

Q. He began last fall?

[fol. 155] A. Well, now, I may be mistaken. He may have begun last summer.

Q. Let's say last summer, but this is his first year, and, Dean McCormick, how long has Mr. Morris been teaching at the University of Texas?

A. I think he probably began last summer, and has been teaching since that time.

Q. Do you recall, Dean McCormick, whether or not the teachers of the first year law students at the University of Texas, and I am not asking you to try to remember which sections they have or anything of that sort; just whether out of the total number of teachers at the University of Texas Law School who are engaged in teaching first year law students, whether there is a single teacher who has been teaching law longer than one year?

A. Well, I would have to go over the list.

Q. Here you are.

(Mr. Nabrit handed the instrument to the witness.)

A. Yes, there are some.

Q. Do you know by looking at the list of the faculty which ones they are, and how long they have been teaching at the University of Texas, or teaching law at other universities?

A. Yes.

Q. Could you state those, please?

A. Mr. Davis has taught since 1940 in the University of [fol. 156] Texas, and from 1935 to 1940 at the University of West Virginia. Mr. Huey has taught, except for war service, at the University of Texas since 1936. Mr. Morris, Clarence Morris, taught at the University of Wyoming, 1926 to 1940, and the University of Texas since 1940, and Mr. Jerry S. Williams came to the University in 1946, and I believe he had had two years of previous teaching.

Q. Thank you.

A. I think I should explain that by qualification, however, to this effect; that the first year class which entered in February, beginning class, which corresponds most nearly to the beginning class in the Negro Law School, was taught only by teachers of this same experience, that they entered law teaching last fall, or last summer, with the exception of the one of the course in Legal Bibliography, which was taught by Miss Hargrave, to that group, and she has had several years of teaching experience in the field of Legal Bibliography.

Q. Let me ask you this, Dean McCormick. In the assignment of this faculty to the School of Law, to the Negro School of Law, how was that assignment made, by lot, by designation, or by volunteering, just what method produced these three individuals as the faculty?

A. Well, it was done by myself, after consult--tion with other members of the faculty.

[fol. 157] Q. Were these teachers——

A. Including the teachers themselves.

Q. Yes. Were these teachers to receive under the arrangements which you had in mind at that date, March 10th, were they to receive their salary from the Negro Law School or from the Law School of the University of Texas?

A. Why, I would assume from the Negro Law School. As I understand the legal element, the Board of Regents of the University of Texas were to administer the financial

affairs of the Negro Law School until the time of the permanent organization of the University for Negroes.

Q. Maybe we can get it another way and bring it within your knowledge. Had you made plans for adding three other members to your faculty in place of these three who were going on the pay roll of the Negro Law School on March 10th?

A. No, these men were to continue their teaching at the University of Texas School of Law.

Q. Were you to continue them on the pay roll?

A. That is correct. They would get their same salaries, but—I mean they would get the same salaries they had previously gotten at the University of Texas Law School and would be paid extra compensation for the work in the Negro Law School.

Q. Under that arrangement that existed in the University of Texas Law School for these three persons for the second semester, each of them had a load of from five to six hours. [fol. 158] If they taught in the Negro Law School first year subject, Torts and Contracts, four and six hour courses, would that not have been in excess of the hours which you use as your standard at the University of Texas? You said it varied from five to seven or eight?

A. It would have been an addition to their usual load, rather larger than usual, but I may explain this, that in the case of the two larger courses, Contracts and Torts, they would simply be teaching additional sections of the same subject with the same books, and the custom in law schools is to count that as only one-half of the corresponding number of hours of non-repeated course; so it would amount, under the custom of law schools, to a nine hour weekly load, which is heavy, but not excessive.

Q. But it is heavier than what you have as your usual load at the University of Texas?

A. Yes.

Q. Because the American Association thinks when you pass eight, you are watering down your instruction?

Mr. Daniel: Well, we object.

Mr. Nabrit: I withdraw the question.

A. I don't believe that is a fact.

Q. Yes. Is it your opinion, Dean McCormick, that law school students get the full use of a law library, assuming it is an adequate one for books, from that standpoint for the

[fol. 159] moment, is it your opinion that they get the best use out of this library without a librarian who is there to serve students and teachers, people who are engaged in study and research?

A. I think a librarian is, of course, necessary for the operation of a library for the benefit of students or anyone else.

Q. Who was the librarian for the Negro Law School on March 10th of this year?

A. Well, we had not formally appointed a librarian, but Miss Hargrave, for a considerable period of time gave a great deal of service to the planning and provision of the library arrangement.

Q. Under the standards of the American Association of Law Schools, it is stated that in order for a school to qualify it shall have been in operation for a period, usually, for approximately two years, and then upon inspection by the Association, if it meets their standards, it will be accredited?

A. Two years is the minimum time, as I understand it.

Q. Yes, that is what I say. Now, is it your opinion that a law school that is not accredited is for the purposes of accreditment equal to the law school of the—to the University of Texas Law School?

A. I don't understand that question.

[fol. 160] Q. Well, let's put it another way. The Association of American Law Schools accredits certain law schools based upon those schools having reached certain accepted standards which are known to all people in the field of law in rating law schools on that basis. If I look in this book and see the University is listed as a member, I know it meets these minimum standards. Now, for the purpose of accreditment, that is, for that purpose, is a law school which is not accredited as a member of this Association equal to the University of Texas School of Law?

A. For the purposes of accreditment, why, obviously, a law school that is not accredited does not equal one that is accredited, but I still don't catch the significance of the question.

Q. It will follow. Is this Negro Law School which was open on March 10th a member of the Association of American Law Schools?

A. No, it is not.

Q. Is it accredited?

A. Not in that sense, no.

Q. In what sense is it accredited?

A. Well, you mean by accredited, the opinion of people familiar with the situation and with the law school, their opinion as to the value of the facilities and instruction, why, then, it is accredited in that sense, by those who hold the favorable estimate of it. If you mean accredited by the Association of American Law Schools, why, it is *is* not.

[fol. 161] Q. I mean, is it accredited in the sense in which educators in the field of law speak of accreditment of law schools?

A. Well, they usually speak of it in the sense of being a member of the Association of American Law Schools, and of being an approved school on that list of the American Bar Association.

Q. Is a student at the University of Texas School of Law permitted under the regulations of the University of Texas and the School of Law at the time he is engaged in the study of law at the Law School, to also take courses in the University of Texas, for example, Political Science, Economic Theory, or some other course, Philosophy?

A. Yes, he is, provided the total amount of hours does not exceed fourteen.

Q. Now, where were—are these students of this Negro Law School to study courses like those, Economics and Political Science, under the set-up which you have stated has been adopted under your faculty?

Mr. Daniel: Your Honor, we object to that question because it is going into a field wholly irrelevant and immaterial to any issue in this case. Relator has sued for entrance into the Law School, says he has been denied the right to study law and procedure, and hasn't alleged that he cares to study anything else, and going into these other fields would certainly be beyond the issues of this case.

[fol. 162] Mr. Nabrit: If Your Honor please, one of the things alleged by the relator is that in not being admitted to the University of Texas he is being denied equal opportunity with the students who do enter it. One of these opportunities is this opportunity to study, and the Dean has testified that the students in the law school do have that right, and I think it is quite——

The Court: I will let him answer it, if he can.
A. You say where is he to study?

By Mr. Nabrit:

Q. Yes, sir. Where is he to get these courses in Economic Theory and Philosophy and other courses offered by the University of Texas which are available to the students in the University of Texas School of Law?
A. I could not answer that question. There are—in so far as it assumes any common practice or any encouragement by us of that practice in the University of Texas School of Law, it is unfounded.

Mr. Daniel: I would like to preserve our bill of exception on this testimony as to other courses not mentioned in relator's petition.
The Court: Yes, sir.

A. If I might add to the question, I would say that it is customary that law students do come prepared in the fields of economics and government and similar courses, and [fol. 163] that we do not encourage them to take courses outside the School of Law when they are in the School of Law, because it tends to disrupt the regular progress of their law studies.

By Mr. Nabrit:

Q. I agree with that, but you also do not forbid it?
A. No, we do not.
Q. And, as a matter of fact, you do have students at the Law School who not only take these courses, but take graduate courses, is that not true?
A. Well, if there are, they are very few. I don't keep close enough check on the actual registration to know whether there are actually in the law school now students who are taking academic courses, but it is a very nominal element, if any.
Q. So far as you know, the students at the Negro School of Law have no place where they could take those courses under your plans and arrangements?
A. I have no information about that.
Q. As a former President of the American Association of Law Schools, and as the Dean of several law schools, and as an outstanding authority in several fields of law,

Dean McCormick, do you—are you of the opinion that one of the basic elements in a great law school is the history and traditions which have been built up over years of time, including the graduates who have become famous in the [fol. 164] State of Texas? Is that your opinion—that is an element in a great law school?

A. Yes, that is a source of pride to a law school that has that background.

Q. One other question on that along that same line. Is it, in your opinion, a good thing for a law school to be unstable as to its location, and to its faculty, sort of a roving school of law? Is that, in your opinion, an unsatisfactory condition in which to operate a law school?

A. I would think that a roving law school would certainly not be an ideal school.

Q. Now, taking this hypothetical question, and assuming that the evidence will bear out the assumptions, if they have not already been proved, if a law school such as this Negro Law School, in its proposed location, with a faculty carrying a heavier schedule than the usual number of hours carried by the faculty of the University of Texas School of Law, without access to any University facilities other than the School of Law, with no accreditment, with an uncertainty as to its permanence in its present location, with library—with no library whatsoever in the building—and with inadequate space for housing a library, if the books were available, and with a faculty of instructors who are beginners in teaching law, a law school equal to the [fol. 165] Law School of the University of Texas?

A. Well, wouldn't you have to add some other elements in your description? That doesn't describe a law school. It doesn't tell the expected numbers of students or the actual numbers of students in attendance, and the facilities for small, as compared with large classes.

Q. Suppose, Dean McCormick, you answer mine that way, and then we will take the other. Take my hypothetical question. Is that law school which I have described equal to the Law School of the University of Texas?

A. I will say that I can't answer the question because your description is not complete, and you would have to give the expected number of students, and you would have to suppose a certain ratio of students to faculty, and a certain size of the classes.

Q. If we are going to assume that, I would have to assume a certain number of graduates and a certain number of authorities on the faculty in the field of damages and other fields, and I would have to assume a certain number of judges. You see what I am trying to get from you, as one of the outstanding men in the field of legal education, is an answer on that type of school. It might not have some other elements that some other school might have, or that some other hypothetical question might give it, but I would like that opinion on that type of law school.

[fol. 166] A. You are contrasting what to me seems to be an incompletely described school with a school I know all about, and I can't take a fragmentary school and compare it with a school that I know about.

Q. Let's put it that way. Would that "fragmentary" described school in my hypothetical question equal the Law School at the University of Texas?

Mr. Daniel: We object to that question because the fragmentary school in the question leaves out matters which have been proved so far without any dispute in this case; leaving out elements that make the hypothetical question absolutely irrelevant and immaterial, and inadmissible in this case for any purpose.

The Court: I think he would have a right to make up his hypothetical case anyway he wanted to. It is purely imaginary.

A. If he is going to imagine; I can't make a comparison unless he imagines the numbers of students.

The Court: A hypothetical question presupposes a lot of things that may or may not be true.

By Mr. Nabrit:

Q. Is that school, Dean McCormick, equal to the law school of the University of Texas?

A. Well, I would say that if you presuppose a class, a small class, of not to exceed 10 entering students there, [fol. 167] that then the facilities there and the law school in that situation, as it is now, would compare favorably.

Q. That isn't the hypothetical question.

A. With the University of Texas as it is now.

Q. That isn't the hypothetical question, Dean McCormick.

What this question is, is the school which I described equal to the Law School of the University of Texas?

A. Well, I would say yes, if you will presuppose a small number of students to which those facilities are adapted. If you are presupposing a larger number of students, to which those facilities are not adapted, I would say no; but I can't compare a law school with no student population presupposed with a law school where I know the student population, and I know the ratio of faculty to students, which is a very material factor in comparing law schools.

Q. My law school doesn't have all of those factors in it. My law school is the one in this hypothetical question. If it doesn't have something you think a law school should have you just answer it, because mine doesn't have that. Is my hypothetical question, the law school in that, equal to the Law School of the University of Texas without anything——

A. Without any students?

Q. Without anything other than my hypothetically stated question.

A. Which would presuppose that there were no students. [fol. 168] Q. Is that equal to the Law School of the University of Texas?

A. Without any students, it is not.

Q. My question—I have stated all of the factors in my question that I want. Is that school equal to the Law School of the University of Texas?

A. As I said before, I am unable to make the comparison in my mind between the school having only the elements that you describe, without any description of the student body. I am unable to make that comparison.

Q. In other words, you want to fix my school. You see, I want to fix it. That is the best answer I can get. I will ask you another question, Dean McCormick. You stated in your direct testimony that as a result of studies made by you or some member of your staff on the University of Texas, that they had ascertained that there were 53 square feet of floor space per student at the University of Texas School of Law?

A. That is correct.

Q. And then on some basis you arrived at this figure, if I am quoting you correctly, that there are 106 square feet per student at the Negro School of Law?

A. I said that was on the assumption of 10 students.

Q. Where did you get those ten students from?

A. We haven't gotten them.

[fol. 169] Q. Why did you pick ten?

A. Well, I picked ten as just an arbitrary figure of what I thought would be about the maximum of the student body of the beginning Negro Law School in Texas under normal conditions where no, where there was no influence that discouraged them from coming.

Q. What about where there was an influence to encourage them to come? Could we take 150 students and assume the influence is discouraging them? Divide that by that. We will only get 10 square feet per student.

A. It is a matter of which is the more reasonable assumption.

Q. Let's take the hypothetical question, and let's compare 150 students, and then ask you is it equal to the University of Texas School of Law?

A. Presupposing those other factors included, including the present quarters assigned to the law school, they are inadequate for 150 students. Consequently, my answer would have to be accordingly.

Q. Thank you. Dean McCormick, did I understand you to state that the Negro Law School had adopted these announcements and courses and other things as a part of that law school for Negroes?

A. That is correct.

Q. Now, where is the moot court in this Negro Law School? I see here the moot court. That is where—what [fol. 170] arrangements under the faculty for the Negro Law School are there for this law group competition and the moot court?

A. Well, that, of course, has not been instituted. It can't be instituted until you get some students.

Q. But when you have got the place and—a place for it?

A. There would be no trouble about the place for it.

Q. Where is the place in this building across from the Capitol?

A. Well, any one of the class rooms could be used for that purpose.

Q. So one of those class rooms is for moot court?

A. It is certainly susceptible to that use. Of course, we don't have that in the beginning semester of the first year.

Q. Where does the first year student—I will ask you this first—I withdraw that. In the University of Texas School of Law is the first year law student permitted to visit the moot court?

A. Well, the moot course is now given in the course in Legal Argument, and it consists of competition in cases between groups of students. As I say, that isn't given in the first year.

Q. Your answer wasn't responsive to the question. The question was, are the first year students of the University of Texas permitted to visit the moot court, sit in and hear the cases?

A. I presume so.

[fol. 171] Q. I mean, do you know?

A. Well, the preliminary arguments, nobody visits them, they are not worth visiting. The last argument, it is customary for some visitors to attend, including, of course, the first year students.

Q. Do the students of this proposed Negro Law School in the first year class, or did they on March 10th, 1947, have access to such a final competition?

A. No, they did not.

Q. What scholarships are available to the students at the Negro Law School? Are these that I find in here that have been adopted? This has been adopted. Are these available to the students, on page 10, law scholarships and loan funds, of Respondents' Exhibit No. 5; are these law scholarships and loan funds available to students, were they available to students in the Negro Law School on March 10, 1947?

A. No, they were not. I may say that those are mostly, in fact, all of them are contributed from private sources, and not contributed by the public funds.

Q. They are available to the students in the law school of the University of Texas?

A. Yes.

Q. And they are not available to students in the Negro Law School? On page 8 of this same exhibit under "Honors and Aids", I notice the Order of the Coif. That is, as I [fol. 172] think you will agree is one of, if not the highest, legal honorary societies, and honor students in the upper tenth or upper number of the graduating classes at the University of Texas School of Law are eligible for that, is that not so?

A. That is correct.

Q. And their grades are taken from their first year right on up to the time that they are chosen, together with character and other qualifications?

A. Yes, that is right.

Q. Were those honors, or that particular honor available to a student at the Negro Law School on March 10th? Could his grades then begin to accumulate so as to give him an opportunity for the Order of the Coif?

A. Not unless that Order of the Coif should later authorize that school to confer that award. The Order of the Coif, again, is a privately constituted, rather than a public organization.

Q. Yes, but it is operated by the faculty in the Law School in the University of Texas?

A. That is right.

Q. So that to all intents and purposes it is a faculty, locally guided and directed organization?

A. That is right.

Q. Now then, it is obvious—I won't say it is obvious. We will strike that out. The Order of the Coif is only found [fol. 173] at accredited law schools; is that not true?

A. I believe that is right.

Q. The minimum period in which this law school could be accredited would be two years, a minimum of two years after it had been in operation?

A. That is right.

Q. So that we would know thereafter the applications would go to the Order of the Coif for a Chapter, so that any student who entered on March 10th would have finished school before an application for the Order of the Coif would have been proper and in a position to have been acted on? That is just a mere matter of time, and assuming everything else went exactly as it should go, and we had a fine school, and it was accredited, the time wouldn't permit the establishment of an Order of the Coif so that you could get the student elected prior to his graduation?

A. I think it would be unlikely.

Q. On page 12 of this same exhibit, Dean McCormick, there is a paragraph, two paragraphs under the heading "Legal Aid Clinic." How does that clinic operate?

A. Well, it is operated by a part time director, Mr. Woodrow Patterson, an Austin lawyer, who in conjunction

with students in the University of Texas Law School, carries on legal aid for persons unable to pay a lawyer, and the cases come to the Legal Aid Bureau, and they are handled [fol. 174] by the students under the direction of Mr. Patterson.

Q. Are the students who assist in this work at any time first year law students?

A. They are not.

Q. They are second and third year students?

A. Practically all third year students.

Q. Third year students. Now, on page 9 of Respondents' Exhibit No. 5 there is a paragraph headed "The Texas Law Review". Would you describe the classification of students who are eligible to work on The Texas Law Review?

A. The second year students, or rather students beginning in the second year, if they have a grade of approximately 80 or above, are invited to compete for the Texas Law Review, and at the middle or the end of their second year they may be elected to the Board of Editors.

Q. Now, in connection with these scholarships, keeping those in mind, the Order of the Coif and The Texas Law Review, all of which in a school of law go to the better students, or the students with the better records, better ability or more ability; in your opinion, Dean McCormick, are these, the scholarships, The Texas Law Review, and the Order of the Coif, incentives for a higher scholastic activity on the part of the students of the Law School of the University of Texas?

A. Yes, I think they are.

[fol. 175] Q. So, that any student who enters the University of Texas School of Law as a freshman and who reads this or who hears it discussed or finds out who won these honors, if he has it in him, he wants to qualify at some time, and that has a bearing on his work?

A. Yes, it does.

Q. What, on March 10th, was there over at the Negro Law School to stimulate this scholastic activity of a nature similar to these three?

A. You mean what was there?

Q. Comparable. What did you offer? What was offered a first year law student on March 10th at the Negro Law School which was of the same incentive value as a scholarship?

A. Why, the influence which was comparable, and which I think would have served as an equal if not greater stimulus, was the increased contact with the faculty, due to the probable smallness of the student body.

Q. And you think that that would take the place of the value and effect of competition?

A. Well, there is always competition in every class, as you know, for grades, and that is a much more important competition than these extraneous matters of Coif and Law Review, the natural instinct of every able student to cope with his fellows, and it is fine in the training for his profession. That is the most important influence, that natural [fol. 176] intellectual impassion, which is stimulated by contact with good teachers.

Q. So that you consider the University of Texas Law Review an extraneous matter?

A. Yes; it was founded by the lawyers of Texas, not by the State of Texas, and is financed by their contributions.

Q. And you consider honors at the University of Texas School of Law as extraneous?

A. Well, you mean the honors, the Order of the Coif and Texas Law Review?

Q. Yes.

A. Yes, they are minor and extraneous.

Q. How about these cash scholarship awards; are they extraneous?

A. They are in the sense that I have been speaking about. They are very microscopic influences. They are not large elements in the picture at all.

Q. So that so far as the University of Texas is concerned, it might as well get rid of all of those?

A. No, certainly not.

Q. Then they are of sufficient importance for us to ask again why, what was offered on March 10th to the law school student at the Negro Law School comparable to these? You say they are adopted. I want to know if——

A. Do you mean, do we have any system of awards beyond the natural competition in the classes themselves?

[fol. 177] Q. No.

A. And the incentive of grades, or success in the courses? None are provided for, if you mean were there any scholarships or prizes or Law Review.

Q. Then, you don't mean that this was adopted?

A. I don't mean that, because none were provided for in the first semester, that that would not follow as a course of the natural evolution of a well-conducted school.

Q. Then, Dean McCormick, you don't mean that this was adopted for the Negro Law School?

A. Well, so far as applicable to a school just starting with an anticipation of one entering a beginning class.

Q. The first year student at the University of Texas Law School, everything in here is applicable to him unless it is specifically stated that it is not applicable; is that true?

A. Well, that is a large order. I am not prepared to say offhand without scrutinizing all of the regulations.

Q. As you stated a moment ago, one of the important elements in the School of Law is competition, in your opinion, one of the most important. A law student who entered the University of Texas on March 10th, 1947, would have the competition of several hundred law students from all over the State of Texas, including the opportunity for hearing legal discussions by upper classmen, and engaging in [fol. 178] them with them. What about the law school for Negroes on March 10, 1947, did that law school offer to relator in this case that type of competition?

A. Well, I really think if you have a small class that the—where everyone knows each other, and his capacities, that the competition is, if the level of the class is fairly high, is apt, perhaps to be more intense than in an eight or nine hundred student group, where a given student knows only a small number of the total student body.

Q. Of course, that isn't responsive for the reason that you injected the question of the level of attainment of the class being high, which you, of course, agree is an assumption that we would not be able to validate, in the absence of the presence of students and a review of their I. Q. and their preparation; is that not true?

A. Well, our entrance requirements are at least three years of college for non-veterans, and at least two years of college for veterans, with a grade requirement of C or better, and I believe that that makes fairly sure the attainment of high level of intellectual quality. Of course, it is all relative.

Q. You assume that—you have no way of demonstrating that if your numbers become smaller?

A. No, it is a matter of observation and experience. I

have taught small classes and large ones, and I am inclined [fol. 179] to think that the competition in a small class may well be at as high a level as it is in a class of 150.

Q. Now, Dean McCormick, are the facilities which have been set up for this law school for Negroes, are the facilities equal to the facil*d*ities at the Law School of the University of Texas, and I will explain then so that you will know what I mean. I mean the library, I mean the building. In the building I mean the offices, class rooms, lavatories, locker rooms, lounge room, librarian's office, the professors' offices, the recreation room. I mean all of those facilities in the building; are they, in your opinion, equal to those at the University of Texas School of Law?

A. Well, facilities are things that are to be used. Their quality is relative to how many and what kind of people are going to use them. Now, if you ask me, for the purposes of the relator, or of a small group of applying students, as compared with the adaptability of the University of Texas Law School facilities for its present student body of 850, I would say yes, they are equal.

Q. What I would like to know, just two points; (a) and (b), one a Negro boy and one a white boy, and one going to the University of Texas and one going to this Negro Law School, isolated from other students. Will the facilities which the white boy finds at the University of Texas, or [fol. 180] are the facilities which the Negro boy finds at the Negro Law School equal to the facilities the white boy finds at the University of Texas Law School?

A. I would say yes, with this explanation; that if that young Negro student goes to the Texas State University for Negroes School of Law, either alone or with a small group of fellow students, and enters the class there with the three faculty members assigned, compared with the University of Texas Law Schools entering on February 1st with a group of 175 other students in a law school already overcrowded twice its capacity, why, I would say, yes; the Negro student has at least equal and probably superior facilities for the study of law.

Q. So that you think that the Law School for Negroes has superior facilities to those at the University of Texas?

A. I said at least equal, and probably superior.

Q. Now, irrespective of numbers, point out the superiorities in this, in the facilities in this Negro Law School?

A. I can not answer irrespective of numbers, because you are talking about facilities for human beings to be taught law by other human beings. To say irrespective of numbers, are your facilities equal or superior, or what not, is meaningless to me. I can't attach any meaning to that.

Q. I can agree with that. The only thing, you wish to take ten, and I would like for you to take 150, so that we [fol. 181] would have one-sixth of the population of it. We have about 850 at the University. Take about 150. Based on the population, at least, we have a basic reason for taking that number.

A. We have this basic reason for taking 10, that the University had received inquiries, I am informed by the Registrar, of approximately, did receive about 14, and so with that number of inquiries it is reasonable to assume that something less than that would be the practical number to anticipate as entering the law school, if there were no influences preventing them from entering.

Q. Do you think that as valid a basis for that conclusion which you came to might just as well be that the law school had moved from two cities inside of a month, and that that, in itself, would create that type of thing, without determining the number of persons who wanted to study law? Wouldn't that be valid?

A. I didn't undertake to say what the influences were that kept them from coming. I undertook to say what the indication of the maximum apparent immediate demand under the circumstances was.

Q. Let me ask you this, Dean McCormick. What, in your judgment is the maximum capacity of the proposed Negro Law School in its present location, based upon the same sort of overcrowded condition which exists at the University of [fol. 182] Texas School of Law?

A. Well, are you assuming the acquisition of the entire building, or assuming the present lease upon the ground floor?

Q. I am taking only what they have, that is the ground floor.

A. Well, I would say that it could accommodate 12 to 15.

Q. I would then ask you if the present facilities for the Negro Law School, which in your opinion would accommodate a maximum of 12 to 15 students, are equal to the facilities at the University of Texas Law School which—from

those figures we take 886 as the maximum—accomodate 886 students as a maximum?

A. They are not equal in size, no.

Q. Are they equal in quality?

A. Yes, for that number of students, I believe that they are.

Q. Well, we have the maximum of each, you see. We have the maximum student body. Are they equal in quality to the maximum student body in each?

A. I am afraid I was—I thought you asked me the maximum appropriate student body for that size quarters, and you are—I think I misunderstood your question. You intended to presuppose an overcrowded condition commensurate with that at the University of Texas. Well, I think you would have, in that case, you would have to double the estimate that I have made of from 12 to 15, to 24 to 30.

Q. All right. Let's double it. Then, at the maximum ca- [fol. 183] pacity, are those facilities equal to the facilities in the law school in the University of Texas to their maximum capacity?

A. To their present overcrowded condition, you mean?

Q. Yes.

A. Yes, I think so.

Q. You see, we are assuming both overcrowded?

A. Yes.

Q. And you say they are equal in quality?

A. They provide for 25 or 30 students about like the University of Texas premises provide for 850 students.

Q. Dean McCormick, are you familiar with some of the early history of the Law School of the University of Texas?

A. Generally so.

Q. Do you recall the early enrollment at the Law School of the University of Texas, about the time that building was erected that is now there, roughly; not any exact figure?

A. No, I do not, but I would say it was somewhere between two and three hundred, but it is just a guess.

Q. Do you know how many students, or do you recall how many students there were at the University of Texas Law School the last year before the war?

A. Approximately 750.

Q. Approximately 750; and roughly,——

A. At least that was true in 1939, before the draft went into effect.

[fol. 184] Q. At least, you consider that your last normal year?

A. Yes, I believe I do.

Q. In your opinion, was the present law school building for the University of Texas erected for a small number of students?

A. Yes, that is my understanding, is that it was contemplated that the maximum would be about 400.

Q. About 400?

A. Yes.

Q. Now, then, in your judgment, is the contemplation and the plan for this Law School for Negroes equal to that type of planning?

A. Would it be likely to have a similar development?

Q. Yes.

A. That is corresponding to a growth from 250 to 750 in the course of 30 years?

Q. Several years, or whatever number——

A. That would be about 30 years.

Q. Yes.

A. Well, I would suppose that it would be something of a similar growth.

Q. That is all.

The Court: We will take a few minutes.

Court was recessed at 3:30 p. m., until 3:50 p. m., May 13, 1947, at which time proceedings were resumed as follows:

[fol. 185] Redirect examination.

Questions by Mr. Daniel:

Q. Now Dean McCormick, I believe you have already testified that the basis of 10 students and your planning on that basis was arrived at by reason of the number of inquiries made. I will ask you if you had ever before establishing this school received more than the one application for attendance at the Law School at the University of Texas from a Negro?

A. No, I have not.

Q. Going back to the matter of legal aid, is that a private set-up that is run there at the school to give legal aid to outsiders?

A. No, that is part of the Law School.

Q. Are any first year students entitled to participate in that legal aid program?

A. No, they are not.

Q. The Order of the Coif, is that a private organization operated there at the University Law School, Texas University?

A. Yes.

Q. Are first year students entitled to admission?

A. No, that is awarded only at the time of graduation.

Q. Are first year students entitled or required to participate in moot court?

A. No, they are not.

[fol. 186] Q. Are first year students entitled to places on The Texas Law Review?

A. No, sir.

Q. Is The Texas Law Review a private organization?

A. Yes, it is.

Q. I believe you said that the scholarships and loan funds were private set-ups, not furnished by the State?

A. The money came from private donors.

Q. Are all other things provided at the University of Texas Law School by State funds such things provided for first year law students by State funds, provided for Negro law students in the Negro Law School from State funds?

A. That is right.

Q. Now, it was mentioned several times on cross examination that you could not be accredited by the Association of American Law Schools without some students, and that you could not organize these various honor societies without students. Have you done anything whatever toward discouraging students from enrolling in the Negro Law School?

A. Quite the contrary. We hoped very much for an enrollment of a reasonable number of students after we had made the provision for training them.

Q. In view of these inquiries and applications received prior to March 10, 1947 did you anticipate having at least some students on the morning of March 10, 1947?

[fol. 187] A. Yes, I felt very confident that we would have at least five or six students. You said in view of applications. We didn't have applications, but inquiries.

Q. Inquiries. Now, if the relator had been admitted to

the University of Texas Law School for the spring semester, who would have instructed him in Contracts?

A. Mr. Leary.

Q. Mr. Leary?

A. That is right.

Q. The same professor that you provided to instruct him in Contracts in the Negro Law School?

A. That is right.

Q. Who would have instructed him in the University of Texas Law School in Legal Bibliography?

A. Why, I believe that Miss Hargrave had charge of the sections of Legal Bibliography of the group entering in February.

Q. If he had entered the previous semester, who would have taught him Legal Bibliography?

Mr. Durham: We object to that. There is no claim of any negro school in existence at that time.

By Mr. Daniel:

Q. I say, at the University of Texas, had he been admitted to the University of Texas the previous semester, last fall, who would have taught him Legal Bibliography?

A. He might have been taught by Mr. Hudspeth, or by one or two others who were teaching various sections of [fol. 188] Legal Bibliography.

Q. If he had entered the Negro Law School on March 10th who would have taught him Legal Bibliography?

A. Mr. Hudspeth.

Q. If he had entered the University of Texas Law School for the spring semester who would have taught him Torts?

A. Mr. S. T. Morris.

Q. The same Mr. Morris who would have taught him Torts if he had entered the Negro Law School?

A. That is correct.

Q. Had you assigned these professors to teach first year law students in the University of Texas prior to the establishment of the Negro Law School?

A. Yes.

Q. Had you assigned the professors to teach first year law students at the University of Texas prior to the resolution of the Board of Regents of the University of Texas authorizing you to give courses to the Negro Law School?

A. Yes, sir.

Q. The classes were already in session, were they not?

A. Yes.

Q. What I am getting at; did you assign these professors to teach first year law in the University of Texas Law School, having anything in mind that they might also teach in the Negro Law School, at the time they were assigned.

[fol. 189] A. No, not at the time they were assigned.

Q. Now, on page 260 of Association of American Law Schools Handbook, in addition to the two year requirement for admission to the Association, I would like to take up with you each of the requirements, for the purpose of your opinion as to whether the separate Negro Law School financed in accordance with the plans already made and indicated by Senate Bill 140 could ever meet those requirements, after a two year period.

Let's take up the first one there, listed on page 260: (Reading)

> "It shall be a school not operated as a commercial enterprise, and the compensation of any officer or member of its teaching staff shall not depend on the number of students, nor on the fees received."

Does your Negro Law School meet that requirement?

A. Yes, sir, it does.

Q. At this time?

A. Yes.

Q. Number two, the second requirement. I will ask you to state it briefly, rather than me read the whole requirement. It has to do with entrance requirements, the entire requirements, is that correct?

A. That is right.

[fol. 190] Q. Do you have the same entrance requirements for the Negro Law School that you have for the University of Texas Law School?

A. Yes, that was so provided in our amendment.

Q. Then your entrance requirements meet the standards of the American Association now?

A. They do.

Q. Number three. It must be a school which occupies substantially the full working time of the students, required for work in the school, "shall be considered a full-time school." Does the Negro Law School meet that requirement?

A. Yes, sir, it does. That standard differentiates between full-time and part-time schools, and sets up requirements for each, and the Negro Law School, under the provisions made therefor, met the standard here in regard to full-time schools.

Q. Number four. (Reading)

> "The conferring of its degree shall be conditioned upon the attainment of a grade of scholarship ascertained by examination."

Do you have that same requirement for your Negro Law School at this time?

A. We do.

Q. Number five. That has to do with special students, that no such shall be admitted except under certain condi-
[fol. 191] tions listed there. I will ask you if you have that same requirement for the Negro Law School?

A. Well, our requirements at the University of Texas Law School are more stringent, in that they do not admit special students, and they would not be admitted to the Negro Law School.

Q. They would not be admitted to the Negro Law School?

A. That is correct.

Q. They meet that standard; is that correct?

A. That is correct.

Q. In the Negro Law School?

A. That is correct.

Q. Now, the sixth requirement, own a law library of not less than 10,000 volumes with certain specifications as to those volumes. I will ask you if you have ordered 10,000 volumes for a permanent library for the Negro Law School, to meet those requirements?

A. We have ordered a sufficient number and kind of books to meet those requirements.

Q. In addition to that, at this time do you have a library available for this law school in the State Capitol Building within excess of 40,000 volumes of law books?

A. We do.

Q. Number eight provides that a complete individual record of each student must be kept. Do you have the
[fol. 192] same requirement as far as the Negro Law School is concerned on the individual record of students?

A. Yes. Did you mean to pass over number seven?

Q. I didn't mean to, but let's pass number seven for the time being, to number eight, individual record of students.

A. Yes, that would be satisfied by the regulations now in effect in the University of Texas Law School and which are adopted by the Negro Law School.

Q. Are those—number nine. (Reading)

> "It shall be a school which possesses reasonably adequate facilities and which is conducted in accordance with those standards and practices generally recognized by member schools as essential to the maintenance of a sound educational policy."

I will ask you if, in your opinion, the Negro Law School meets the requirement laid down here by the American Association for reasonably adequate facilities?

A. Yes.

Q. Now, those are all of the requirements, as I understand them, except number seven, which we have passed. Is that correct, sir?

A. That is correct.

Q. Then, we at this time in the Negro Law School meet the requirements of the American Association of Law Schools except as to two years' running, and number seven, which I will read, as (Reading)

> [fol. 193] "Commencing September 1, 1932, its faculty shall consist of at least four instructors who devote substantially all of their time to the work of the school; and in no case shall the number of full-time instructors be fewer than one for each one hundred students or major fraction thereof."

I will ask you to state whether or not the present Negro Law School, as planned for your first semester, meets those requirements?

A. Well, I believe that technically it does not.

Q. Technically, it does not, because your professors assigned are giving part of their time to another school, the University of Texas, it that right?

A. That is correct.

Q. Does it meet that part of the requirement which is intended to have only full-time professors teaching the students, instead of having lawyers who are practicing part time?

A. I think it certainly does, in substance, and I may add that it is quite frequent in law schools in the east which are near together, for instructors to be instructing at the same time in two schools. That is, instructors from Harvard, Yale or Columbia occasionally spend part of their time in instructing in one of the other schools, and, of course, technically, they would as to any particular school [fol. 194] be part-time, but in substance, of course, they are devoting all of their time to law teaching.

Q. Technically, you do not meet the requirements of four full-time professors, but as a practical matter for the first semester students that attended, as a practical matter, do you furnish them that which the full-time professors would have furnished them?

A. Yes, I believe we do.

Q. As a matter of fact, if the relator had been in the University of Texas Law School classes with a hundred or more in your first class for that spring semester——

A. There were nearly two hundred.

Q. Out at the University of Texas—and these same three instructors at the University teaching them, with the 200 students, in your opinion, or within your knowledge, would the relator have had as much personal attention from the professors and as much time from them as he would from those same three professors teaching in the Negro Law School?

A. Assuming a school of no more than a small number of students?

Q. Yes, sir.

A. In the Negro Law School he would have gotten a great deal more personal attention from the faculty than he would have had he been in the large entering classes in the University of Texas.

[fol. 195] Q. Isn't it a fact that the requirements of full-time professors, at least one to every 100 students, isn't the idea behind that to have the professors available to give care and attention to the individual students?

A. Yes.

Q. And more care and time and attention could have been given to the Negro students, based on not more than 10 students, than in the University of Texas Law School?

A. Yes, that is right. They would have had not only their classes, but office hours in the Negro Law School, and

would have been available much more conveniently than to the students at the University of Texas Law School.

Q. Can you think of any reason why, if a student enters out there, and this school grows, as you testified on cross examination that it might be possible to grow, and with the Legislature furnishing the money Mr. Woodward itemized here today, can you think of any reason why that Negro Law School can not within a period of two years, before anyone can graduate from it, why, that school can not meet all of the requirements of the Association of American Law Schools?

A. No, I see no reason why it should not comply with those requirements very rapidly, since the Legislature has announced that it was providing for a University of the first class, and a law school equivalent to that of the University of Texas, as exactly the same expectation and reliance on [fol. 196] the Legislative assurances are the only things we have to rely on for the continue development and stability of the University of Texas Law School.

Q. Are you acquainted with Lincoln University, and the separate law school operated for Negroes in Lincoln University, in Missouri?

A. I am somewhat acquainted with it. I haven't been there, but when I was on the Executive Committee of the Association of American Law Schools, the Committee had a conference, I believe, with one of the faculty of that school there.

Mr. Durham: We object to that as hearsay.

The Court: He shouldn't testify to hearsay.

A. I am just stating the extent of my acquaintance with it.

The Court: Don't recite anything he said.

By Mr. Daniel:

Q. Lincoln University Law School has met the requirements of the Association, has it not?

A. Yes, sir.

Q. And is it a member of the Association?

A. That is correct.

Q. That is all.

Recross-examination.

Questions by Mr. Nabrit:

Q. Dean McCormick, at the University of Texas School of Law, do you use the case method of teaching and study?

A. Yes.

[fol. 197] Q. Will you state briefly just what that is?

A. Well, it is the method most widely prevailing in American law schools today, where the books used as the basis for study in most courses is a collection of cases designed to illustrate and develop the principles of law in the particular subject.

Q. Now, you testified that the,—in your opinion, the library—Section 6 of Respondents' Exhibit No. 5—that the library at the Negro Law School met those requirements. I would like to read it to you.

A. Did I testify that the library met those requirements?

Q. No, the question was asked you by the Attorney General, does this law school meet the requirements and standards of Section 6, and you answered yes.

A. My recollection of our colloquy is that he asked me if we had ordered the books necessary to meet the requirements.

Q. Yes, but your answer was yes. I am going to read Section 6, and let you answer this way. (Reading)

> "Commencing September 1, 1932, it shall own a law library of not less than 10,000 volumes, which shall be so housed and administered as to be readily available for use by students and faculty. Commencing September 1, 1940, it shall have, in addition to the four instructors specified in Section 7 of this article, a qualified [fol. 198] librarian, whose principal activities are devoted to the development and maintenance of an effective library service."

I would like to ask you, Dean McCormick, did the Negro Law School meet the requirements of Section 6 as read to you on March 10, 1947?

A. Did it then meet the requirements? No, clearly not, and I didn't say it did.

Q. Does it meet the requirements today?

A. No, it does not.

Q. Assuming that in all other respects this Negro Law

School is the equal of the Law School of the University of Texas, for the sake of this question only, would the Negro Law School lose that equality by reason of the fact that it did not have a library as set forth in Section 6.

A. No, I think by no means would it lose the equality. In other words, you might have library facilities equal to that of the University of Texas, but not meeting that standard of ownership. This standard requires that the books be owned and the library of the Negro Law School is not owned by the Negro Law School, but I think that in respect to substantial equality, that matter of ownership is immaterial. The library facilities which are furnished to and are owned as the law school is owned, by the State of Texas, and if they are available to the students, and are equal in [fol. 199] range and quality to the library facilities of the University of Texas Law School, they would be equal, but would not meet this standard.

Q. Then, in your judgment, and as a former President of the Association of American Law Schools, you do not consider that Section 6 of the Association are necessary or are valid?

A. No, I wouldn't say that.

Q. All right, then. Assuming that all of these other factors are equal, is this requirement with respect to a library, if it isn't met, does that not make the Negro Law School less—unequal to that of the University of Texas Law School?

A. No, sir. I think that the compliance with the standards is merely evidence of a qualification, evidence of quality, I would say, but I think you can have substantial equality of facilities quite regardless of the complete compliance with the Association of American Law School regulations, if the substance of the educational facilities are provided. That form of ownership, I think, is not a prerequisite to the equality.

Q. As a former President of the American Association of Law Schools, on what basis did you require law schools being considered by your Association, and as a former member of the Executive Committee and passing on it, what was your reason for requiring the law schools that applied dur- [fol. 200] ing that time for admission to the association, and for accreditment by the Association of American Law Schools to comply with this as a minimum standard, if, in

your opinion, it is not necessary in order to have equality with the University of Texas Law School?

A. Normally, in order to have the books available, you would need to own them, but you may well have a special situation, as I think you do here, where they are fully and completely available, though ownership is not in the school.

Q. Departing from that for just a moment, I understood you to say with respect to Section 7 of Respondents' Exhibit No. 5, where it stated that the faculty shall consist of at least four instructors who devote substantially all of their time, that technically it did not meet it, but it met it, you thought, substantially, by reason of the fact that these men taught at the University of Texas and taught in this law school, and, therefore, were giving all of their time to instruction, and you illustrated it by stating that in the East that goes on frequently.

A. I would say occasionally.

Q. Do you know of any institution in the East where that goes on, and where, outside of the men who do visit from school to school, there are not in each of those schools four other full-time law school teachers?

A. No, there isn't any such.

[fol. 201] Q. Also, the Negro Law School where they have three, I think we probably forgot to point out to you that only three teachers have been assigned. There are not four, if they could be denominated full-time.

A. Of course, the three teachers is limited to the first semester, and the instructions from the Chairman of the Board of Regents were to plan to use all of our faculty, so far as necessary, to maintain a full curriculum for the students who did come during this interim period until four or more full-time professors could be employed for the Negro Law School.

Q. One other question, Dean McCormick. As a Dean of a law school, is it your opinion that three teachers who are teaching a full schedule at the University of Texas, where they are resident instructors, and who are visiting professors, or who teach over at the Negro Law School—I won't use the word "visiting"—who teach those same courses over at the Negro Law School, is it your opinion that they are as available for consultation and for working with the students in the school where they are not residents, as they are at the University of Texas?

A. Well, I think under the plan that we had adopted they

would be more available for a group of the size indicated of Negro students than they would be available to the large sections of 150 or 175 students at the University of Texas. [fol. 202] Q. Where were their offices to be, as you had arranged them?

A. Well, we had planned for them to spend a reasonable time in meeting office hours at the Negro Law School in this reading room and office room, and then they would also have offices at the University of Texas.

Q. Are the offices for the teachers at the University of Texas in the reading room?

A. Well, my office is in part of the library, and I am subject to constant interruptions by people coming in and getting books in my office.

Q. I understand your office, but the teachers; are their offices in the reading room?

A. Well, there is a tier of offices on the first floor that opens up into the reading room on the lower level. Some of them open up—one of them is in part of the library, and the others are divorced from the reading room.

Q. And you have in this law school for Negroes offices equal to those?

A. Well, we don't have separate offices for the three instructors, but there are ample facilities for them to meet office hours in the room called the reading room where the desks are.

Q. But the offices are not equal?

A. No, I would not say they were.

Q. I think you stated, Dean McCormick, that these 10,000 [fol. 203] books have been ordered; is that correct?

A. Well, there are a certain number of that 10,000 that is on hand now, and the balance have been ordered.

Q. How many are on hand?

A. Well, Miss Hargrave can give you the details of that. She is the librarian who compiled the list. I think there are some 1,300 or 1,400 on hand, and about 8,700 for which she has placed an order through the Comptroller to the Board of Control.

Q. Which Comptroller is that, of the University of Texas, or the State?

A. The University of Texas.

Q. That is all—Dean McCormick, what is the name of the Comptroller to whom you refer?

A. Mr. Simmons.

Q. Mr. Simmons?

A. Yes.

Q. Do you know his initials?

A. C. D. Simmons, I believe.

Q. Mr. C. D. Simmons?

A. Yes.

Q. On page 261 of Respondents' Exhibit No. 5, there is this paragraph which I will read, Dean McCormick.

A. I have it before me.

Q. You have it before you?

[fol. 204] A. Yes.

Q. Does this school meet the requirement of that provision, that is, the Negro Law School?

A. Which one, which provision?

Q. The last paragraph on page 261, beginning "No school shall be or remain * * *."

A. Well, that is my understanding, yes.

Q. Here is why I asked you that, Dean McCormick, so that you will know before you answer. If a student enters the Negro Law School which has been set up here, it isn't accredited under the rules of the Association of American Law Schools, if after one year or a semester, or two years, or any period short of graduation, if for any reason he desires to transfer to another school—maybe this one goes out of existence, or maybe he prefers another one, or he may get a scholarship—or if for any reason he wishes to transfer to another school, no school that is a member of the Association of American Law Schools can admit him and give him credit for the work done here. Is that equality with the students of the University of Texas Law School? As a former President of the Association, in your opinion, is that equality?

A. Certainly that privilege of transferring credit would not be available to the students of the Negro Law School until that school had become accredited.

[fol. 205] Q. Don't you consider that a lack of equality, in that he has to remain there or lose all that he has done?

A. No, not in the larger outlines of substantial equality. The transferrence of credits from one school to another is a matter of not very frequent concern to students. I don't suppose we have five percent of our students that have transferred any credits, not to my knowledge.

Q. You would say that the fact that of that five percent, in that five percent, any student in the University of Texas

who wanted to transfer, had the privilege and that right, and under those regulations, since the University of Texas is a member of the Association, could transfer those credits to any other school; whereas, a Negro in this Negro Law School would lose all of the work that he has done.

A. Yes, I would call that a minor and temporary inequality or deviation.

Q. At least, you call it an inequality?

A. One which would disappear as soon as the school had carried out for two years the plan that the Legislature has made for its development.

Mr. Nabrit: Your Honor, I would ask that you strike out the last, about what the Legislature intends to do.

The Court: I think that probably was not germane to the answer.

[fol. 206] A. He asked me about equality and how that bore upon equality, and I thought that was an explanation of what bearing I thought it had upon equality.

By Mr. Nabrit:

Q. Dean McCormick, I wish to show you some pictures purporting to be pictures of the law school for Negroes, of which you are the Dean. I wish you would look at them and see if these are pictures of the building of that law school.

A. I am the Dean of both of them.

Q. Yes. I just want you to now be Dean of this one. (Counsel for relator handed the witness two photographs.) Dean McCormick, do you recognize these as being pictures of the law school for Negroes?

A. I recognize one of them, the small picture of part of the entrance, I wouldn't recognize.

Q. But you do recognize this one?

A. Yes, sir.

Mr. Nabrit: We would like to offer this in evidence.

Said instrument was admitted in evidence as Relator's Exhibit No. 2.

Q. Now, Dean McCormick, would you state so that the Court might see it, and point out where the law school is in that area? (Referring to Relator's Exhibit No. 2.)

A. This doesn't picture any of the interior of the law

school. Just from this view, I don't know where the en-
[fol. 207] trance to the——

Q. It is right here.

A. Where is the step-down?

Q. (Indicating on photograph to the witness).

A. Well, the law school occupies the entire ground floor of which a part of the outer wall is shown here.

Q. And this is a sign of some occupant of some other part?

A. Of the second floor, yes.

Q. The consulting petroleum gas engineer that occupies the second floor or some part of it, is that correct?

A. That is correct, as far as I know.

The Court: I believe, if you will permit, I will ask you to indulge me, and we will resume in the morning. We will resume at 9 o'clock in the morning.

Court was recessed at 4:35 p. m., May 13, 1947, until 9 o'clock a. m., May 14, 1947.

[fol. 208] Morning Session. May 14, 1947. 9:00 A. M.

Charles T. McCormick, having resumed the witness stand, testified further as follows:

Recross-examination. (Continued).

Questions by Mr. Nabrit:

Q. Dean McCormick, I wish to show you two pictures, purporting to be scenes of the building housing the Law School of the University of Texas. I wish you would look at them and see if you can identify them as that building, as the building housing the school?

A. Yes, these are different views of the same building, the law school building on the campus of the University of Texas.

Q. Thank you. We wish to offer those in evidence.

Said instruments were admitted in evidence as Relator's Exhibits Nos. 3 and 4, respectively.

Mr. Nabrit: That is all.

Redirect examination.

Questions by Mr. Daniel:

Q. Dean McCormick, do you at this time have any picture available of the Negro Law School that shows as much of the housing facilities, as broad a view of the building as the picture that has just been introduced here showing the [fol. 209] University of Texas Law School?

A. No, I do not.

Q. The picture that was introduced yesterday, would you state to the Court whether or not that shows the entire building from the outside, of the Negro Law School, like these pictures do of the University of Texas Law School Building?

A. No, the view of the building in which the law school is situated is incomplete.

Q. Now, Dean McCormick, yesterday counsel for relator asked about the credits that would be earned by the relator in the Negro Law School, and whether or not they would be recognized upon a transfer to some other school. I will ask you to—I believe you started to explain your answer there. I will ask you to explain whether or not the credits earned in the Negro Law School in the two years preceding recognition by the American Bar Association, if they would then be subject to transfer to a school recognized by the Association of American Law Schools?

A. Yes, that is provided in the last clause of the rule which appears in the last two lines on page 261, and the top of page 262.

Q. Will you read that for the information of the Court? It has been introduced in evidence here.

A. (Reading)

> "Provided, however, that credit may be given for work taken in another American law school within the [fol. 210] two year period immediately preceding its admission to this Association."

Q. Now, yesterday in showing wherein the Negro Law School had already met all of the requirements except the full-time professors and the two years' time, on the library requirement, I believe you testified that you had ordered the necessary number of books to meet the library re-

quirement of the Association of American Law Schools, is that correct?

A. Well, I had given directions for their ordering. I didn't myself order them.

Q. What about the feature of a full-time librarian. Do you have any arrangements or any plan for the appointment of a full-time librarian at any date in the future?

A. Well——

Mr. Durham: We object to that, Your Honor. It is too speculative, about any date in the future. It wouldn't have any probative force on any issues.

The Court: I believe I will let him answer it, Counselor, for the present. It may not be material. I will let him answer at this time.

Mr. Durham: Note our exception, if Your Honor please.

A. We have the funds available, and have been instructed to secure a full-time librarian, and the necessary additional full-time faculty at such time as the student demand makes [fol. 211] the need for their services apparent, and at such time as the librarian and faculty of the highest caliber, which is what we need, can be secured. That is always a matter of search and negotiation.

Q. I will ask you, have you examined the second and third floors of the building, the Negro Law School Building?

A. Well, I went over yesterday evening after court and tried to get in, but I was unable to do so because the building, the tenants of the two upper floors had left, and those floors were locked.

Q. I will ask you if those floors contain the same floor space, at least as much floor space, as the first floor that you now have rented? I am talking now about the remainder of the building, the second and third floors that Mr. Woodward, the Chairman of the Board, testified he had made arrangements, or had refusal on, for the Negro Law School. I will ask you if those floors each contain at least the same amount of space, if they would furnish suitable space for your permanent library of ten thousand volumes.

Mr. Nabrit: We object your Honor.

Mr. Durham: We object to that because the witness has testified he hasn't seen it.

The Court: I hardly see how he could testify to the space, not having examined it.

Mr. Daniel: I based it on if it had the same floor space, [fol. 212] the same space as the first floor.

The Court: That is an assumption that I expect we had better have verified.

By Mr. Daniel:

Q. I will ask you, Dean McCormick, if you will look it over during the noon hour so that we can talk with you about it.

A. Yes.

Q. That is all.

Recross-examination.

Questions by Mr. Nabrit:

Q. Dean McCormick, you stated, I believe, that the law school was open on March 10th?

A. That is correct.

Q. And I presume that according to your annoucement the facilities and personnel necessary were available; is that correct?

A. That is correct.

Q. You stated just a moment ago that you would get a librarian when a demand was made?

A. No.

Q. I would like to ask you——

A. I didn't—I don't believe that I said that.

Q. You didn't say that?

A. I said that we had instructions to get one as soon as the student demand became apparent and we were able to [fol. 213] secure one of the high quality that we would insist on.

Q. Now, Dean McCormick, on March 10th did you have a librarian for the Negro Law School?

A. Well, we didn't have a separate librarian, but Miss Hargrave, the Librarian of the University of Texas Law School, under my instructions, did the work that was needed to be done by a librarian for a beginning school, in preparing the list of books to be secured, and in preparing the orders for books, and all of the other work that would be necessary to be done by a law librarian at that juncture.

Q. Had you on March 10th secured a full-time librarian for the Negro Law School?

A. No, we had not.

Q. Have you today secured, as of this date, secured a full-time librarian for the Negro Law School?

A. No, we have not.

Q. The section of the standards Association of American Law Schools to which you referred, and from — you read a moment ago about transfer of credits, the acceptance of those credits depends itself upon a prior accreditation by the American Bar Association, does it not?

A. I am not quite certain about that. It—I would think it may well be that if a school makes its compliance so apparent that it is, that the officers of the Association would predict that it would be admitted, I would be inclined to [fol. 214] suppose that this rule would permit the credit to be given before the actual admission into the Association, but I don't know of any ruling on that.

Q. No, and you don't——

A. There is nothing in the wording of the rule to rebut that conclusion.

Q. Thank you. That is all.

Mr. Daniel: That is all, Dean McCormick.

The Court: All right. You may have your seat.

(Witness excused.)

Miss Helen Hargrave, a witness produced by the Respondents, having been by the Court first duly sworn as a witness, testified as follows:

Direct examination.

Questions by Mr. Littleton:

Q. You are Miss Helen Hargrave?

A. Yes.

Q. You are the Librarian at the Law School of the University of Texas?

A. Yes, I am.

Q. How long have you been connected with the library at the Law School?

A. Since 1929.

Q. Do you have any other library connections other than [fol. 215] that at the University proper?

A. I am a member of the Association, American Association of Law Schools—of Law Librarians, and as a member of that association I am a member of the joint committee on cooperation between the Association of American Law Schools and the American Association of Law Librarians.

Q. The—what is the function of that committee?

A. That committee has as part of its duties the obligation to make out the requirements for law school libraries and then to recommend those requirements to the executive board of the Association of American Law Schools.

Q. What degrees, what college degrees do you have?

A. I have an L. L. B. degree, and I have had a course in Law Library Administration at the University of Columbia.

Q. I will ask you if you have had any duties assigned, or any connection with the Negro Law School?

A. Dean McCormick asked me to make out a list of 10,000 volumes that would make an adequate library for that law school.

Q. And you—did you prepare that list?

A. Yes, I prepared the list.

Q. Was your list prepared upon the basis of the requirements of the Association of American Law Schools?

A. Yes, it was.

Q. Do you have a copy of that list with you?

A. Yes, I do.

[fol. 216] Mr. Littleton: We would like to introduce this.

Mr. Durham: We object to the introduction of it as self serving. It serves no purpose. Your Honor, we go right back to our exception. We haven't been apprised of it.

Mr. Littleton: She has been qualified as an expert, Your Honor, has prepared the list on the basis of the requirements, and is a member of the committee that sets those requirements.

The Court: I believe I will give you your bill.

Mr. Durham: Note our exception.

(Said instrument was admitted in evidence as Respondents' Exhibit No. 8.)

By Mr. Littleton:

Q. Have you ever had any other duties assigned to you in connection with this school, or any other instructions?

A. Yes, I made out the list from the original list that was

set, containing the books to be ordered, and that list was sent to Mr. Simmons, the Comptroller of the University.

Q. You prepared another list in addition to this one?

A. Yes.

Q. What was the difference between the two lists?

A. We eliminated all gifts and any duplicates that had gotten into the first list.

Q. And you say that list was sent to Mr. Simmons, the Comptroller of the University?

[fol. 217] A. Yes.

Q. Do you have a copy of that list with you?

A. Yes.

Mr. Littleton: I would like to introduce that as the list that she prepared.

The Court: What is the difference between them?

Mr. Durham: We want to make this additional objection. We object to this as a copy. It isn't the original. Second, it is self-serving.

Mr. Littleton: She has testified, Your Honor, that this is the list prepared for the purpose of requisitioning the books.

The Court: Of course, the very requisition itself, or the one attached to it would be the best evidence.

Mr. Littleton: The requisition will be introduced later.

The Court: I believe we had better wait until that is done.

Mr. Durham: We object to the duplication.

Mr. Littleton: We can introduce it later. That will be all right.

Q. Miss Hargrave, have you had any other duties in connection with the Negro Law School assigned to you?

A. I selected some books that are customarily used by the first—the students in the first year class, and some other [fol. 218] books that I thought might be of some use, and sent them to the Negro Law School.

Q. Have you made any comparison, or have you investigated the make-up of the State, or Supreme Court Library?

A. Yes, I have. The Supreme Court Library has, in accordance with the requirements laid down by the Association of American Law Schools, with few exceptions, all books that meet those requirements.

Q. What exceptions did you find? What difference did you find in comparison of the two libraries?

A. The State Library is not as—doesn't have as many law text books as the law library at the University. It does

not have as many legal periodicals, and the English Law Reports go only to 1932. In those respects it is not as strong —it does not—of course, you can't say it doesn't comply, but in text it is not as strong, and in the latter two it does not entirely comply with the requirements.

Q. Is that the only phase in which the Supreme Court Library of the State Library fails to meet the standards of the Association of American Law Schools?

A. As for as I know, those are the only things that——

Q. You have said that it was short on periodicals. Did you find periodicals in the Supreme Court Library or in the State Library?

A. Yes, there are legal periodicals in that library, but the [fol. 219] requirements of the Association of American Law Schools is for ten sets of legal periodicals with current numbers. I found only half of that many that were kept with current numbers.

Q. You found five sets?

A. Yes.

Q. Do you recall what periodicals those were?

A. Yes, the American Bar Association Journal, the Harvard Law Review, Columbia Law Review, the Texas Law Review, and a long run from Volume 21 on of Yale Law Review, and in the—that is accepted by the Association as a long run in current numbers, and the early numbers are impossible to secure. That is considered a complete law review.

Q. Did you find anything in the Supreme Court or the State Library which you do not have in the Texas University Law Library?

A. Yes, sir; there are some things in that library that we do not have. That is, things in which they are very much stronger than the Law School library.

Q. Can you give us some example of what you found there that they have?

A. Well, the State Law Library is a depository, Government Depository, and, therefore, they automatically receive the reports of all of the administrative bodies of the United States Government, and also, all—and also receive the other [fol. 220] publications that are sent to the superintendents of documents, to the depository library. It is the strongest library in the south on State Session Laws. It has a great many books in other fields that we have very, very few of, and that is the reports of administrative bodies of the State

of Texas. As, for instance, the Attorney General's opinions, and Tax Board opinions of other states, and some of the states have Workmen's Compensation Boards, or their equivalent, and they have those reports, and others of that type.

Q. Now, in the list that you made up pursuant to Dean McCormick's instructions as to the requirements for a requisition of the books needed for the new Negro Law School, did you include the text books and periodicals that are needed to meet the requirements of the Association of American Law Schools?

Mr. Durham: We object to that, Your Honor. The report itself would be the best evidence of what is included.

The Court: I think that would be true.

Mr. Littleton: All right. We will fix it later then.

Q. How many—I will put it this way, Miss Hargrave. Excluding the duplicate sets of books in the Library of the Law School of the University of Texas, how many volumes, approximately, do you have in that library?

A. Approximately between thirty and thirty-five thousand volumes.

Q. All told, you have 65,000?

[fol. 221] A. Approximately 65,000.

Q. How many volumes did you find in the State and Supreme Court Library?

A. With my inspection and the information that I received, there was approximately 42,000.

Q. In making your comparison of the Library of the Law School of the University of Texas, and the State Library down at the Supreme Court, did you make any observations as to the space, between the two libraries, the floor space?

A. The library at the Law School at the University of Texas has a larger floor space, I believe. Yes, a larger floor space than the one at the capitol.

Q. Are the facilities at the State Library equal to the facilities offered at the Library at the University of Texas, that is, from the standpoint of desks and room to study?

A. We have more tables and chairs at the Law Library at the University. We have a great many more people using them.

Q. You have a great many more people using them at the University then from the standpoint——

A. From what I have observed at the State Library, the times I have been there.

Q. Now, as a member of the Library Committee of the American Association of Law Schools, that makes up the requirements, in your opinion, would you say that the library, the State and Supreme Court Library is substan-
[fol. 222] tially equivalent to the Law Library at the University of Texas?

A. Speaking of the two in just that way, they are substantially equivalent. Now, if it is spoken of the two as meeting the requirements of the Association of American Law Schools for the students, the State Law Library is, as I pointed out earlier, it does not have as many texts and it does not have as many legal periodicals, and the English Reports end in 1932.

Q. You have pointed out certain things that the State and Supreme Court Library did have that the Law Library at the University did not have; is that right?

A. Yes.

Q. And on a substantial basis, with these differences that we have mentioned, the library as a whole is substantially equal to that at the University of Texas?

Mr. Durham: We object to that as leading and suggestive.

The Court: It is quite leading.

By Mr. Littleton:

Q. In your opinion, Miss Hargrave, for law school purposes, leaving out—having in mind the differences that we have mentioned, are the two libraries substantially equal?

A. In my opinion, they are substantially equal, with the differences that I have twice pointed out.

Q. Miss Hargrave, in ordering the books for the perma-
[fol. 223] nent library for the Negro Law School, did you order enough of the periodicals, legal periodicals, to meet the requirements of the Association of American Law Schools?

Mr. Durham: We object to that, first, as an opinion and conclusion of the witness as to whether or not it was enough. We submit the further objection that there was a list filed in writing with the Comptroller.

The Court: The list would be the best evidence.

By Mr. Littleton:

Q. Miss Hargrave, I will ask you to refer to the list you made up of the books——

Mr. Durham: Your Honor, I want to ask one question for the purpose of an objection.

The Court: All right.

Mr. Durham: Miss Hargrave, is that the original you filed with the Comptroller, the one that Mr. Littleton has?

A. The reports that were filed with the Comptroller were all mimeographed.

Mr. Durham: Thank you. We object to it.

The Court: That would, of course, be the list that we should have.

A. The mimeographed list?

The Court: Yes.

A. That is the one that was——

Mr. Littleton: Your Honor, we were putting in the two lists. You ruled out the list that she filed with the Comp-
[fol. 224] troller.

The Court: I simply said the one you actually filed was the one that was admissible. We ruled on a copy of something.

Mr. Littleton: This list that she has prepared showing the requirements of the Association of American Law Schools is the one that she showed the overall picture of the library, and we have accounted for the difference in the two lists by the fact that she has some gifts available.

The Court: The only objection is that you are not offering the one she submitted. I think that is correct, the one that the Comptroller has.

By Mr. Littleton:

Q. Is this list that you handed me here, Miss Hargrave, the list that you presented to the Comptroller of the University of Texas for the purchase of the books being ordered for the Negro Law School?

A. This list was sent to the Comptroller, and a list without the price was sent to the Comptroller—a duplicate list run off on the same stencils, but with the price off, was also sent to the Comptroller.

Q. But this list was the one that you prepared for the purpose of making the order?

A. That was originally sent to Mr. Simmons to make the order.

Q. And the difference between the third list you mentioned is the fact that it doesn't have the price or the estimated [fol. 225] price as listed there?

A. The estimated price.

Mr. Durham: Your Honor, we are entitled to our objection. They say they bought ten thousand dollars worth. Now they say they have got three different lists.

The Court: I think the list actually submitted to the Comptroller is the one we should go on.

Mr. Durham: That is our contention.

By Mr. Littleton:

Q. Did you say that list was actually submitted to the Comptroller?

A. Yes.

Mr. Littleton: I might state, Your Honor, that later on it will be shown that this is the list that went with the requisition all the way through.

The Court: I think we had better wait and get that. We had better offer the one that is admissible.

Mr. Littleton: She testified this is the one that was prepared for the purpose of the requisition.

The Court: With certain changes.

By Mr. Littleton:

Q. Miss Hargrave, why was the third list prepared that you mentioned?

A. The third list was prepared to send to dealers, without the price being put on, the estimated prices.

Q. Is the only difference—what is the difference between this list and the third list you mentioned?

[fol. 226] Mr. Durham: We object to that. It is immaterial what the difference was.

The Court: I think that the list that was actually ordered was the one we should inquire about.

Mr. Littleton: I am afraid I don't——

The Court: A list was sent to the Comptroller.

Mr. Littleton: This is it.

The Court: Apparently it *is* isn't, because you have it. That, at best, is a copy of it, is it not?

Mr. Littleton: No, sir; this is not a copy.

The Court: That is the one?

By Mr. Littleton:

Q. Miss Hargrave, did you testify a while ago that all of the lists that you made up for the purpose of making a requisition were mimeographed lists?

A. They were.

Q. And you sent a mimeographed copy to the Comptroller?

A. Yes.

Q. And this is a mimeographed copy?

The Court: Is that the one you sent to the Comptroller?

By Mr. Littleton:

Q. Is this the list that you sent to the Comptroller?

A. Yes, I sent about 30 of them, and that is one of the ones that I sent.

Q. Miss Hargrave, this morning when you were in the court room, where did you get this list?

[fol. 227] A. I had it.

Q. You had this list——

A. No, you gave it to me. After you gave it to me, I had it.

Mr. Littleton: Later on, Your Honor, I will bring out the fact that I secured this from the Comptroller, and we will qualify it right on from there. It is a minor difference? Do you still object?

Mr. Durham: We still object.

By Mr. Littleton:

Q. One more question, Miss Hargrave. On the two lists that—on the second list that you prepared for the purpose of making the requisition, how many books——

Mr. Durham: Just a minute, Mr. Littleton, please. Your Honor, we object. The Court has sustained that.

The Court: Yes. I think we should offer the list.

Mr. Durham: The list itself is the best evidence of what it contains.

The Court: I think that is right.
Mr. Littleton: All right. Pass the witness.

Cross-examination.

Questions by Mr. Marshall:

Q. Miss Hargrave, will you give to the Court the essential difference between a teaching law school library and the type of library that we usually find in State Capitols and court buildings?

A. In a teaching law school library, I think the principal [fol. 228] difference, and I think, probably in addition to what is found in the court library is a larger selection of text books and more legal periodicals.

Q. Is it not also true that in a teaching law school library emphasis is made on the exclusive use of that library by students and faculty as contrasted to a public library?

A. Well, we do not.

Q. Is your—are the majority of the users of your library law school students and faculty, or other people?

A. The majority are law school students.

Q. And faculty?

A. Yes.

Q. And people from other—doing graduate work in the University, do they use it at times?

A. Yes.

Q. Aren't the other people that use it the exception rather than the rule?

A. We have lawyers, as what I might term, fairly frequent visitors. I don't think that we would have more than one or two a day, sometimes not that.

Q. They are usually graduates, aren't they, of the law school?

A. Not always.

Q. Not always?

A. No, sir.

Q. They are people who come to you from Austin? The [fol. 229] University Law School is in Austin?

A. Yes.

Q. It is the same city where the Capitol Library is, is it not?

A. Yes.

Q. Now and then you have visitors who come in for the purpose of looking up law books?

A. Yes.

Q. Do you have sight-seers walking around?

A. Occasionally people come in to look at the class pictures.

Q. Occasionally?

A. Yes, but it isn't a regular thing.

Q. And you do insist that order is kept in that library; it is your duty, is it not?

A. Yes, we have order in the library.

Q. And that it is quiet, is that not correct?

A. Well, as far as we can.

Q. I am trying to get at what you try to do. You try to make it as conducive to study and concentration as possible, do you not?

A. As far as possible, considering the great number of students that we have.

Q. But you do try to do that?

A. Yes.

Q. The American Association of Law Librarians is restricted, is it not, to law librarians in accredited law schools; is that ———'

[fol. 230] A. Oh, no.

Q. Do you have any law librarians who are not in accredited schools?

A. Well, I take that back. I am not sure about that. I know we have librarians other than in law schools who are members, and there are non-librarians who are members.

Q. And it is the job of your Association to raise the standard of law librarians, or the law libraries?

A. The Association has done some work in both lines.

Q. And Miss Hargrave, you have assistants at the University of Texas?

A. Yes, I do.

Q. Are they qualified law librarians?

A. One of them is, and the other one, yes, I think would meet the standards.

Q. You have two, and what are the duties of your two assistants? What are the duties of yourself and your assistants in connection with the Law Library at the University of Texas? What duties do you perform? Specifically, I will ask it this way; is a part of your duty the duty of helping the students while they are in the library?

A. Yes, part of the duty is to help the students. We order the books. We see that the work is done to get the books on the shelves, and we see that, as far as possible, the students get the material that they need.

[fol. 231] Q. And when students are in difficulty as to where to find a particular point they need for their class room work, is it not true that either you or your assistants will give them aid in that task?

A. Yes, we try to locate what they need.

Q. And the three of you are trained in just that job, are you not?

A. No, I wouldn't say that. One of the assistants is a graduate of the law school, and so she knows the work. The other assistant is not a law—did not graduate from law school, but she has been working in the library for a few years, and can do that work to some extent.

Q. I guess you know more about yourself. As a matter of fact, you teach Legal Bibliography, don't you?

A. Yes, I do.

Q. So you are in a perfect position to assist any student in how to find the law in books?

A. I can help them to find the law.

Q. And you do that, do you not?

A. Yes.

Q. Now, as a librarian of the school over here on 13th Street, you made provision to be there to help the students to find cases when they wanted to find them?

A. My instructions about that school were to gather together and send out the materials.

[fol. 232] Q. Were you instructed to do anything else concerning that school?

A. No.

Q. As to this State Library here in the State Capitol, is it not true that that library is available to the students at the University of Texas Law School?

A. I believe it is.

Q. For example, have you had any occasion to send them there to find these administrative reports of the U. S. Government that you do not have? Have you ever had occasion to do that, if you remember?

A. I can not recall at this time.

Q. Is it not true that many of the books necessary to comply with the standards of the Association of American Law Schools are now out of print?

A. Oh, I wouldn't say many, no.

Q. Aren't there—aren't most of the top-flight—the law review early numbers now out of print?

A. The early number- of the Yale are out of print.

Q. Aren't the early numbers of Harvard also out of print?

A. No, because complete sets of Harvard can be bought from the very beginning.

Q. From the plates. They have the plates still?

A. You can buy them from Harvard University Law Library Association, I believe it is called.

[fol. 233] Q. And aren't some of the English Reports unavailable?

A. I don't know about unavailable. Some of them are out of print, as you call it, but I don't think they are unavailable.

Q. As a matter of fact, Miss Hargrave,——

A. Let me explain that.

Q. Go right ahead.

A. Merely to say that a book is out of print in no wise means it is unavailable.

Q. I was ready to get to that. Is it not true that within your Association of Law Librarians that you are—even the finest library in the country—they are constantly writing to each other trying to get books that they don't have, and they are unavailable any place else; isn't that a constant procedure?

A. If the libraries can locate duplicate volumes in some other library for which they can make an adequate exchange, that is sometimes done.

Q. Sometimes done. Now, taking the Law Library at the University of Texas as it now exists, with all of its books, can it be duplicated today?

A. As far as I can recall now, we have nothing in that library that can't be duplicated today.

Q. Nothing at all?

A. So far as I can recall now.

[fol. 234] Q. For example, bearing in mind the recent difficulties we have had with the war and so forth, about how

long would it take you to get your English Reports, as of today?

A. I don't know. It would take a little while until a set came on the market.

Q. Quite a while, could be quite a while?

A. It is unlikely that it would be quite a while, I think, because there are a good many sets in this country, I am sure. So,—even a large set of books like that comes on the market with more or less reasonable frequency.

Q. Well, about how long would it take you to set up a library to equal the one you have at the University of Texas?

A. You mean, if I had enough money?

Q. If you had enough money?

A. Uh——

Q. Just a minute. That is all we are asking.

A. I think I could do it in less than a year.

Q. Less than a year. Now, we get to the other point which you anticipated, approximately how much?

A. How much——

Q. Approximately how much money?

A. Oh, I don't know.

Q. Could you do it for a hundred thousand dollars?

A. It would take me a little while to figure on that. I wouldn't like to give an estimate.

[fol. 235] Q. With 65,000 law books of any description, it would cost more than a hundred thousand dollars, wouldn't it?

A. If you didn't—many of those books in that library we have had as gifts.

Q. We are assuming that we are going to get no gifts, without the gifts, to purchase the library that you have at the University of Texas, of 65,000 volumes of law books, I will ask you this; offhand, there are a few law books that are two and a half, but most of them are around five and six, just in range?

A. That is right.

Q. So that 65,000 books would cost more than——

A. I was mistaken about that. They don't average five dollars.

Q. About what do they average?

A. They average, I would say, about four dollars.

Q. About four. So that if we use that round figure,

65,000 at four, we would go way over a hundred thousand, wouldn't we? Isn't that true, isn't that true, Miss Hargrave?

A. If all of those books were acquired brand new, which would make the newly acquired library—we don't have all of those books new. We never did have all of them new.

Q. I understand that. Where else in this section of the country do we find microfilm reports of the records and briefs in the United States Supreme Court other than at the University of Texas Law School?

[fol. 236] A. I don't know what other law libraries in this section of the country have those.

Q. There are none in the State Capitol Library, are there?

A. Not that I know of.

Q. Now, as to these administrative reports of the United States Government and other publications of the United States Government and the State of Texas, the Session Laws of the several states, is it not true that all State Capitol Libraries usually have those?

A. I would think so. I don't know. That is only an opinion.

Q. Do you need those to teach law?

A. We have a good many of them that make up our library.

Q. You have some, too?

A. Yes.

Q. Those that you don't have, do you need?

A. If we can buy them, we will add them to our present number.

Q. And in the meantime, if you need them, they are available in the State Capitol Library, is that correct?

A. Yes, they are down here in this library.

Q. And are they not just as available to the students at the University of Texas Law School as they would be to the students at the proposed Negro Law School on 13th Street.

A. So far as I know, but I am not——

Q. That is all you can testify. So, that in comparing the two, as a matter of fact, isn't it true that it isn't fair to use [fol. 237] those books that are available to both groups, isn't that true?

Mr. Daniel: Your Honor, that calls for a conclusion of the witness on what is fair.

The Court: I think so.

Mr. Marshall: I withdraw it, sir.

Q. In your estimate of 42,000 volumes at the State Library, it is based on the estimate of the librarian there; you said you obtained it on information?

A. Yes.

Q. Do you know whether or not that 42,000 volumes included these Government reports and administrative board reports and session laws?

A. No, those were not included, I believe. I think they are in addition.

Q. But you are not sure, are you?

A. No, but that is my belief, that they are in addition.

Q. Now, with your testimony that in your library you have between thirty and thirty-five thousand volumes, without duplicates, is it not true that in order to have a library to equal that, you would have to have at least 30,000 volumes of the same caliber?

A. It seems to me that in judging the substantial equality of any library, that you can have a considerable difference—I know you can have a considerable difference in the [fol. 238] various types of books, so long as they comply with the standards of the Association of American Law Schools.

Q. Well, Miss Hargrave, first; may I ask you—those standards are minimum standards, are they not?

A. That is true.

Q. If we forget the standards, then what is used as the basis of comparing equality of law libraries, if we remove the standards of the Association of American Law Schools?

A. I think that it is having available the books that are generally used by anyone connected with the law.

Q. And do you mean by that both faculty and students?

A. Yes.

Q. Do you know the poundage, weight, that is required for the floor of a law school library?

A. No, I do not.

Q. Have you seen this building over here on 13th Street where the law school is to be?

A. I have not been in it, but I have seen the building.

Q. Would you venture to say that second floor could hold 10,000 volumes of law books?

A. I don't know anything about that.

Q. The last two questions, if I understand you—understood your direct examination, there is no question that as to legal periodicals and English Law Reports——

A. From 1932 on——

[fol. 239] Q. I was getting your conclusion. Did you not say as to those two items the State Library did not meet the requirements of the Association of American Law Schools? No question about those two?

A. That is true.

Q. And as to textbooks, to your mind, they needed a few, but you wouldn't pass on that, as such?

A. No, I would have to compare——

Q. So, now, I ask you as of March 10th of this year, and as of the present time, with all of the law books available for the 13th Street school for Negroes in that building, and in the State Capitol Building, all of those books, is it not true that with all of that we do not comply with the minimum standards of the Association of American Law Schools; is that correct?

A. If you assume that that is all the books that there are available,——

Q. I am not—I am merely assuming everything,——

A. — for that school.

Q. Miss Hargrave, I am only assuming what is in the question. I will get to the next one. My question is, limiting your testimony, and limiting your answer to this question as of March 10th and as of today, is it not true that if you use all of the books in the 13th Street school for Negroes, plus all of the books in the State Library in the [fol. 240] State Capitol, that those two groups of books, taken all together, do not meet the standards of the Association of American Law Schools, is that correct?

A. That is true.

Q. Now, I understand that under the resolution books in your library are to be made available to these students' use, is that correct?

A. Yes, sir, that is correct.

Q. Now, what I want to know is this. Have you done any accrediting for your Association of Law Librarians?

A. No, I have not.

Q. Do you know of any accrediting agency, recognized in the legal field, that uses as the basis for accrediting one school, the law library of another school? Have you ever heard of that?

A. As far as I can remember, that has never come to my attention.

Q. Well, isn't it true that in evaluating law libraries and law schools, you evaluate the law library that is in that school; isn't that correct?

A. Some law school libraries—I would think in general that that is the method that is used.

Q. That is all. Thank you, Miss Hargrave.

Redirect examination.

Questions by Mr. Littleton:

Q. Miss Hargrave, the books that you sent to the Negro [fol. 241] Law School, what kind of books were they?

A. They were, in the main, books that customarily are used by students in the taking of the first year courses in law.

Q. Did they include the textbooks?

A. Yes.

Q. Did they supply the deficiency in textbooks that you have stated existed in the State or Supreme Court Library?

A. Yes, they did.

Q. Do the practicing lawyers of Austin frequently use the library of the University of Texas?

A. Yes, quite a number.

Q. On your trips, on your visits to the State or Supreme Court Library, what conditions have you observed there as to there being a suitable condition for study, the quiet in the place, and the order of its operation?

A. The times that I have been down there, it has seemed to me that there was no more confusion and, in most instances, less confusion, than in the Law Library at the University of Texas, because of the large number of persons using it.

Q. Do you understand that a librarian for a law library is required by the standards of the Association of American Law Schools to have a law degree?

A. That is not necessary.

Q. In your helping the students at the library, does that help and assistance include help and assistance in briefing [fol. 242] the law, or just finding the books?

A. We just find the books and get them for them. If a student has difficulty in determining what book it might be well to use, we occasionally lend a helping hand.

Q. Are you, yourself, constantly present in the library, and available to the students?

A. Not all of the time. I have my teaching duties, and so there are times when I am not available.

Q. Do you have administrative duties?

A. Yes, I do.

Q. Do you understand that the books included in the list which you prepared, those books included on that list which are out of print—I will withdraw it. Do you understand that the books required to meet the standards of the Association of American Law Schools which are out of print are available from dealers and publishers?

A. That is right, yes, they are.

Q. We have mentioned that the Supreme Court Library did not include the English Reports since 1932. Do the law students or do first year law students make any use of those reports?

A. No, they do not, as far as I know.

Q. Have you had any instructions as to supplying any other books for the Negro Law School?

A. Yes, I have. The Law Library at the University of Texas has more than 500, between 500 and 600 surplus [fol. 243] books in good condition that meet the requirements of the Association of American Law Schools that are available for transfer to the new law library, and there have been offered to this school through me, three gifts of between 900 and 950 books.

Q. Are the English Reports since 1932 available to the Negro Law School from the University Law School Library?

A. At any time.

Q. In your library approximately how many students does your library of 65,000 books accom-odate?

A. At the present about 850 students.

Q. How many books would you estimate would be required to accom-odate 15 students, excluding the duplications?

A. I don't see why, excluding duplications, if the books are well selected for the purpose, that it should take many

more than the minimum requirements set down by the Association of American Law Schools.

Q. You have testified that of this 65,000 law books that approximately 30,000 of them are duplications?

A. Yes.

Q. In regard to the microfilm reports you say you have in your library, do you have a "reader" or projector for the use of those reports there?

A. No, I do not.

Q. Do you know whether the State Library has a microfilm projector?

[fol. 244] A. I have been told that it has.

Mr. Durham: We object to that, Your Honor, and ask that it be excluded.

The Court: Only what she knows of her own knowledge.

Mr. Littleton. I think that is all.

Recross-examination.

Questions by Mr. Marshall:

Q. But is it not true, in the bulletin put out by the Law School you mention the fact that the microfilms are available?

A. Yes, they are available to anyone, but we do not have a reader.

Q. Now, Miss Hargrave, you testified that you—first of all, let me ask you this. Why do you have duplicate volumes? Is it not because of the large number of students; isn't that the reason?

A. Yes, we use duplicates to take care of the students.

Q. Now, you testified that with the exception of duplicates, you would need only approximately 10,000 books to teach 15 students; is that correct?

A. I said well selected books for the purpose.

Q. Then may I ask, you as Librarian of the University of Texas, why is it, with your duty to economize under Texas laws, that with the exception of and excluding the duplicates you have between thirty and thirty-five thousand volumes at the University of Texas Law School?

[fol. 245] A. We have 850 students.

Q. As I understood you to say that the duplicates were for the purpose of taking care of additional students; isn't that correct?

A. We have some duplicates, many duplicates to take care of our additional students.

Q. As a matter of fact, Miss Hargrave, isn't it true that—excuse me, did you want to say something else?

A. No.

Q. Isn't it true that excluding the question of duplicates that it would take as many law books in a law library to service one student as it would to service one hundred; isn't that true, excluding duplicates?

A. I do not think so. That is my opinion. Your range of interest might——

Q. For example, you testified that you do not use the English Reports in the first year?

A. No.

Q. Didn't you testify——

A. That wasn't the answer.

Q. What was it, Miss Hargrave?

A. I said that it was very infrequent that first year law students had any use of the English Law Reports from 1932 to date.

Q. Oh, from 1932 to date?

[fol. 246] A. Yes.

Q. Aren't they included in the Legal Bibliography course, for example?

A. As I remember the questions, on that Legal Bibliography course, I don't think that any books in the English Law Reports from 1932 to date were necessary to answer those questions. That is a little time back that I am thinking over, but as I remember——

Q. I will ask you this question. In the course on Contracts, and the course on Torts, aren't there frequent references in footnotes to British Reports and Canadian Reports, frequent?

A. As I remember, those footnotes,—there are references to English Reports.

Q. Isn't it true that they also have references to legal periodicals?

A. Yes, they have references to legal periodicals.

Q. So that in the first year you need both English Reports and Legal periodicals, don't you?

A. I think it might be well to explain——

Q. Go ahead.

A. — that at our law school it is a very rare case when a first year student is ever—is allowed to read an assigned

article in a bound volume of the legal periodicals. We don't have a sufficient number of those legal periodicals [fol. 247] and if an article is assigned the professor notifies me, permission is gotten from the publisher of the law review, and the article is mimeographed in anywhere from 25 to 50 copies in order to make them readily available to the students.

The same process is followed in almost every course in the second year. We don't have quite as many students in that year, and at times we buy the unbound issues of the periodical containing the article so that we will have copies, but we don't think that 350 or 400 students could use one bound periodical.

Q. One more question, Miss Hargrave. In your association with other law school librarians and experience in your organization, the American Association of Law Librarians, do you ever in comparing law libraries of one school with another, as to its worth as a law library, take into consideration the number of students the school has?

A. Have I ever done so.

Q. Have you ever heard that discussed, the number, in comparing it?

A. I have been at a good many, and done work in a good many of these law libraries around the country, and I think that libraries of recognized law schools, that there are certain groups that have—there are a good many who have books that will well take care of the student bodies [fol. 248] that they have in those schools.

Q. I mean, isn't it a fact that in considering the value of a law school library as such in comparison, isn't it true that you consider the books that are in the library as to caliber, time, and being up to date, rather than that we have forty thousand volumes for four people? What I mean is this; isn't it true that the number of students is no measuring rod as to the efficiency of a law school library, isn't that true?

A. Well, I think that that is in connection with my earlier statement that a well selected library is the best criterion.

Q. In other words, the type of books that you have in it; isn't that correct, and not the number of students?

A. I don't see——

Q. Can I get specific? For example, in comparing Harvard's library with the library at the Library of Congress, or Association of the Bar of the City of New York, which

are constantly compared as to which one is the best, isn't the discussion as to what is in those libraries, and not the number of people that use them? Isn't that the criterion that is used?

A. Yes, as far as I know.

Q. So, that on that basis, if we were to compare the library at the University of Texas Law School with the [fol. 249] library to be established, including 10,000 volumes, and forget about the students, isn't it true that the library at the University of Texas is a better library than the one to be established in this law school, isn't that true?

A. At the present time, considering only the books and not considering the use to be made of the books in the two libraries, yes, I think that is true.

Q. Thank you, Miss Hargrave.

Redirect examination.

Questions by Mr. Littleton:

Q. Miss Hargrave, I want to read to you a paragraph from the resolution of the Board of Regents. (Reading)

> "Be it further resolved: That pending receipt and installation of such library, the Dean of the Law School of the University of Texas be, and he is hereby, authorized to supply on a loan basis books from the Law Library of the University of Texas which may be needed in the efficient conduct of the School of Law of the Texas State University for Negroes."

Do you understand that to include the loan of the microfilm reports to the Negro school?

A. Yes, sir, certainly.

Q. Do you understand it to include all other books that may be necessary?

A. I understand it to include all books that may be neces- [fol. 250] sary, or are in any way needed at that school.

Q. You mentioned a moment ago that articles of legal periodicals which were assigned to the first and second year students were mimeographed. Have you sent any of those mimeographed copies to the Negro Law School?

A. Copies of those articles were included in the group of books that were sent to the Negro Law School.

Q. Now, you have said that the Library of Texas includes 65,000 volumes overall, but that excluding duplicates, it

is comprised of approximately thirty to thirty-five thousand. What is the reason for the additional 30,000 of the duplicates? Will you explain that fully, and how it operates?

A. We have two reasons for duplicates. In the textbook field we have to have duplicates so that we figure if 20—from 15 to 25 students will have the use of one copy. In the reports we have duplicate copies so that the reports will be more available for the large number of persons using them. We have acquired a considerable number of duplicates by gift.

Q. Thank you.

The Court: All right. We will recess for a few minutes, please.

(Witness excused.)

(Court was recessed at 10:45 a. m., May 14, 1947, until 11:05 a. m., May 14, 1947, at which time proceedings were resumed as follows:)

[fol. 251] HALL LOGAN, a witness produced by the Respondents, having been by the Court first duly sworn as a witness, testified as follows:

Direct examination.

Questions by Mr. Littleton:

Q. You are Mr. Hall Logan?

A. That is correct.

Q. You are Chairman of the Board of Control of the State of Texas?

A. Yes, sir.

Q. How long have you been with the Board of Control?

A. Since the first of January, 1946.

Q. Have you received any request to purchase any law books, request from the University of Texas to purchase any law books for the Negro Law School?

A. Yes, we have. The request No. U N 1, dated March 3, 1947.

Q. Do you have a copy of that requisition with you?

A. Yes, sir.

Q. Is there a list of law books attached? Does it describe the law books that are to be purchased?

A. Yes, sir.

Q. Itemize them?

A. Yes, sir, there is a 54—I believe it is 54—page description, yes.

Q. Mr. Logan, is that the list that you loaned to me—did [fol. 252] you loan that list to me this morning?

A. Yes, sir.

Q. That is the list that was attached to the requisition when you received it?

A. Yes, sir.

Q. Will you refer to the list and state whether it includes a requisition to purchase legal periodicals?

A. Yes, there are periodicals here on page 11.

Q. Will you read from the list the names of the periodicals?

A. American Bar Association Journal.
California Law Review.
Columbia Law Review.
Cornell Law Review.
Harvard Law Review.
Illinois Law Review.
Iowa Law Review.
Journal of Criminal Law and Criminology, Northwestern University.
Law and Contemporary Problems, Duke University.
Law Library Journal.
Law Library, Indiana University.
Law Quarterly Review, The Carswell Company.
Michigan Law Review.
Minnesota Law Review.
National Bar Journal.
University of Pennsylvania Law Review.
[fol. 253] Texas Bar Journal.
Texas Law Review.
Virginia Law Review.
Yale Law Journal.
Index to Legal Periodicals.
Jones and Chipman, Index to Legal Periodicals.
Digest of Legal Periodicals.
Commerce Clearing House.

I believe that covers the periodicals, at least the way they are headed here.

Q. Now, for the purpose of help to the Reporter, will you state what pages of that list those periodicals are on?

A. They are covered on pages 11, 12, 13, inclusive, of the requisition.

Q. Will you refer again to the list and state whether it includes requisition to purchase English Reports?

A. Yes, it does. Probably I can find the actual purchase order quicker.

Q. Let's stay with the list right now, Mr. Logan.

A. All right, sir. Yes, on page 15, English Legal Material, from the Carswell Company.

Q. How many total volumes of English material are requisitioned?

A. 854.

Q. Now, will you refer again to the list and state whether it shows a total for the number of—a summary and a total [fol. 254] for the number of the books on the list?

A. Yes, the total volumes, 8,727, and the price on that——

Q. No, will you refer to the requisition and state what date you received that at the Board of Control?

A. The requisition was received on March 3, 1947.

Q. Will you state who signed the requisition?

A. It is signed by D. K. Woodward, Jr., Chairman, Board of Regents, the University of Texas.

Q. I believe—will you identify the requisition as to the number?

A. It is UN-1. That is the coding of the Negro University.

Q. Give me the requisition and the list that was attached to it.

A. All right, sir.

Q. I would like to introduce this.

(Said instruments were admitted in evidence as Respondents' Exhibits Nos. 9 and 10, respectively.)

Q. Mr. Logan, have you done anything to comply with the requisition made? What have you done to comply with the requisition, or to purchase the law books requested?

A. Well, upon receiving the requisition, we interviewed a number of representatives of the law book publishers and dealers, clarifying the specifications, and talking to them about the availability of them, and with the University of Texas. A good many of these are out of print, and after going through those discussions, on April 7th we issued the

[fol. 255] bid forms, as we call them, and asked for bids on April 7th, 1947, including the specifications essentially as set out in the duplicate of that.

Q. Do you have a copy of the request for bids and the specifications that you mentioned?

A. Yes, I have. Here is the specifications in detail, comprising the 54 pages, and here is the three page rider of explanation of instructions on the bid, as we issued them to some 35 prospective bidders.

Q. Will you refer to that request for bids and state what date it bears?

A. It bears the date of April 7th, for opening, two weeks, the customary opening period.

Q. What number does it bear?

A. It bears requisition UN-1.

Q. Will you refer to the list which you attached to that request for bids, and state how it compares to the list that you received with the requisition?

A. It is an exact duplicate of the other. The only exception is that when the University gave them to them for the purpose of their encumbering of funds, they put estimated prices on there. When we send it to the bidders, we leave the price off. We don't want to tell them what to charge.

Q. Will you refer to the list and state how many books are included on the list which you attached to your request [fol. 256] for bids?

A. I don't believe it is totaled, but we could examine it and compare it to those for items.

Q. It is your understanding that it includes the same number of books as the list attached to the requisition?

A. That is right.

Q. Will you give me a copy of the request for bids, the specifications, and the list attached to it?

A. Yes.

Mr. Littleton: I would like to introduce this.

(Said instruments were admitted in evidence as Respondents' Exhibits Nos. 11 and 12, respectively.)

Mr. Daniel: To save the record, may I ask counsel if they will agree that it is the same, except for the prices, and not put it in the record.

Mr. Marshall: I think, if Your Honor please, they are identical, and at some future time we can withdraw one of them.

The Court: All right.

By Mr. Littleton:

Q. Mr. Logan, to whom did you send your request for bids on these law books?

A. There is a list of 35 bidders.

Q. I don't think it is necessary to——

A. All of our recognized list that we carry who pay their fee as standard bidders on all types of books, legal books, plus some others that we felt could bid, everybody we could [fol. 257] think of.

Q. Have you received bids on these law books pursuant to the requests made?

A. Yes, we have received 23 bids from 22 separate bidders, one making two bids.

Q. Have you made any awards or placed any purchase orders on the basis of the bids received?

A. Yes, we have placed the purchase orders on all of the new books, plus the English volumes. We have not placed any on second hand to date.

Q. How many volumes, all told, have you placed orders on?

A. 5,702 volumes have been placed to date.

Q. Will you describe the English volumes that you mentioned that you have ordered?

A. These were purchased from the Carswell Company, English Reports, reprint, volumes 1 to 176, good, second hand, 176 volumes.

English Table of Cases, 2 volumes, new cloth—wait, that second item isn't a part of it. The other part of it is English and Empire Digests, subject to prior sale, isn't second hand; 49 volumes. The two total $1,085.00.

Q. On the books that you have ordered, what dates of delivery were generally specified?

A. Shall I just run through them?

Q. I think—do you have some standard date? You can [fol. 258] give it to me approximately.

A. 30 to 60 days, another 30 to 60; 30 to 60; 60; 10 days after receipt of order; 60; 30 to 60; 30 to 60, 30 to 60, 15 days; 30 to 60; 30 to 60; 10 days; 30 to 60; immediate delivery; immediate delivery.

Q. What are the—do your orders show delivery instructions?

A. The delivery instructions, books to be shipped to the Un-versity of Texas Library, Room 11, Main Building, Austin 12, Texas. They all read the same way.

Q. Mr. Logan, you have stated that you have placed that order—orders for 5,700 of the books requisitioned. You have also stated that there were 8,700 books requisitioned. Can you state why the orders on the remainder of the books of which you—the remainder of the books on which you have received bids have not been purchased?

A. The balance of the books, we understand, will all be second hand, not available as new, because we specified wherever possible to buy new books, and these other three thousand, whatever they are, are going to require a considerable amount of study in order to determine which is the best buy from the State's standpoint. They are—we anticipate, without any question, they will be released within two weeks. We cleared these new ones first. The second hand books are classified as to excellent, whether they are shelf worn, or whether they are good, with further bindings, [fol. 259] and we have to analyze each of those conditions with the price to determine which is the best buy.

Q. You have received bids, however, on all of the books requisitioned?

A. We have.

Q. Pass the witness.

Mr. Marshall: No questions.

The Court: All right, Mr. Logan. You will be excused.

(Witness excused.)

Miss Helen Hargrave, having been recalled as a witness, testified further as follows:

Redirect examination.

Questions by Mr. Littleton:

Q. Miss Hargrave, I show you this purchase requisition, UN-1, dated March 3, 1947, and I show you the list of books attached to that requisition and ask you to look over that list and state whether or not you prepared it?

A. This is the list that I prepared.

Q. Will you refer to the list, Miss Hargrave, and state the total number of volumes included on the list?

A. 8,227.

Q. Miss Hargrave, I show you again the list which you prepared, which meets the requirements of the Association [fol. 260] of American Law Schools, and ask you to refer to the list and state how many volumes are included on that list?

A. There are 10,008 volumes on that list.

Q. So that between the list that you prepared to meet the standards of the Association of American Law Schools and the list that you prepared for the requisition there is a difference of 1,281 books is that correct?

A. That is right.

Q. Will you state why you did not include the 1,281 books on the list which you prepared for requisition?

A. The reason that I did not include them was because that number of books had been offered as gifts to the new law library, or are available for transfer to it, as I qualified them in earlier testimony, to the new library.

Q. Pass the witness.

Mr. Marshall: No questions.

(Witness excused.)

E. J. Mathews, a witness called by the Respondents, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Littleton:

Q. You are Mr. E. J. Mathews?

A. Yes, sir.

[fol. 261] Q. You are the Registrar at the University of Texas?

A. Yes.

Q. How long have you been Registrar?

A. 35 years.

Q. Were you appointed the Registrar of the Negro Law School?

A. Yes, sir.

Q. State the dates that you assigned for registration in that law school?

A. March 10, 1947. That was the first day, but registration was not to be restricted to that one day.

Q. How long did you keep the law school open for registration, Mr. Mathews?

A. Well, we announced a week, but in correspondence we didn't fix any final day.

Q. Did you in your capacity as Registrar notify the relator, Heman Mation Sweatt, of the opening of that law school and the dates of registration?

A. Yes, sir.

Q. How did you notify him?

A. By letter, registered mail.

Q. Do you know the date of that letter?

A. I think it was March 2 or 3; it was a week before.

Mr. Littleton: If Your Honor please, we have served the formal notice for them to produce the original of the letter in Court.

[fol. 262] The Court: All right.

Mr. Durham: That is it.

By Mr. Littleton:

Q. Mr. Mathews, I show you this letter and ask you whether it is the letter that you sent, that you wrote to Heman Marion Sweatt?

A. Yes.

Q. Is that your signature?

A. It is.

Mr. Littleton: I want to introduce the letter.

(Said instrument was admitted in evidence as Respondents' Exhibit No. 13.)

(Mr. Littleton read to the Court Respondents' Exhibit No. 13.)

By Mr. Littleton:

Q. Mr. Mathews have you received any reply from the relator to that letter?

A. No, sir, none at all.

Q. Has the relator presented himself for registration since the mailing of that letter?

A. No, sir.

Q. How many inquiries—have you received any inquiries regarding this school since its establishment?

A. Yes; all told, fourteen. Two of the—twelve of the fourteen came during the first half of March. Two of them came during April, and so I take it they applied more particularly to start next fall, some future time, but there were twelve, rather, eleven letters, and one inquiry in per-

[fol. 263] son that were made during the first half of March.

Q. Did all of these inquiries come from prospective students for the school?

A. Well, I assume they were.

Q. In other words, did the nature of their inquiry indicate to you that they were prospective students?

A. The reading of the letters indicated——

Mr. Durham: Wait, Your Honor.

The Court: Of course, the letters——

Mr. Durham: The letters would be the best evidence.

By Mr. Littleton:

Q. Do you you know whether Henry Doyle inquired concerning the opening of the law school, and registration?

A. He presented himself on March 10th at the Negro Law School. He, with a friend, asked some questions, but he wasn't ready to enroll.

Q. Had he talked with you before that time about his registration?

A. I suppose that would be hearsay testimony. He didn't talk to me, but he talked to——

Mr. Durham: Your Honor, we object to it.

The Court: That is right.

A. — the Assistant Registrar.

Cross-examination.

Questions by Mr. Durham:

Q. Mr. Mathews, I believe you have stated that the re-

[fol. 264] quirements for admission to the University of Texas are identical with the requirements for the admission of a student to the Negro Law School?

A. Yes, sir.

Q. In your letter you referred to the relator's application. When did you first see and examine the relator's

application for admission to the University of Texas School of Law?

A. It was during a period of a conference between some half dozen negro leaders in Texas, held in the President's Office. I believe that was last summer.

Q. The application of the relator was presented to you at that time as Registrar of the University of Texas for admission to the first year law class of the University of Texas School of Law. I believe you examined the application and determined his qualifications for admission?

A. Yes, sir.

Q. Is that the same application that you referred to in paragraph 2 of the letter addressed to the relator on March 3, 1947?

A. Yes.

Q. That was the only application that you had had from the relator, and he possessed the qualifications necessary for admission to the law class, first year law class, in the University of Texas School of Law?

A. The academic qualifications.

[fol. 265] Q. The academic qualifications. Now, I believe the application on the part of the relator for admission to the University of Texas School of Law, first year class, was refused?

A. Yes, sir.

Q. Why was it refused, Mr. Mathews?

A. Because the Constitution of the State of Texas forbids us to accept as students members of the Negro race.

Q. He possessed all other qualifications, except he wasn't a white student?

A. So far as I know, yes; academic qualifications.

Q. And you refused his application for admission to the first year law class of the University of Texas Law School solely on account of race and color?

A. The Constitution of Texas.

Q. I observe, Dr. Mathews, from the letter there that you have got mimeographed,—typewritten form of letterhead. Did you have any printed form of letterhead for the Negro University?

A. Mimeographed.

Q. That is all you had; likewise, for your envelope?

A. Yes, sir.

Mr. Durham: We want to offer the envelope.

(Said instrument was admitted in evidence as Relator's Exhibit No. 5.)

Mr. Durham: That is all, Your Honor.

[fol. 266] Redirect examination.

Questions by Mr. Littleton:

Q. Mr. Mathews, you stated you received some 14 inquiries during the first half of March, and April. Did any of those persons making an inquiry, of those 14 persons, register in the school?

A. No, sir.

(Witness excused.)

(The Court: I suppose, then, we will recess until two o'clock.)

(Court was recessed at 12 o'clock noon, May 14, 1947, until 2 o'clock p. m., May 14, 1947.)

Afternoon Session

May 14, 1947, 2 P. M.

Miss Helen Hargrave, having been recalled as a witness, testified further as follows:

Redirect examination.

Questions by Mr. Littleton:

Q. Miss Hargrave, I want to add one question to the testimony that you gave before lunch. You testified that you had 1,281 books available by gift, and from the Texas University Library. You also testified that the list which you [fol. 267] had made up for requisition from the Board of Control showed 8,727 books. I ask you whether or not the 8,727 books, plus the 1,281 books, as has been shown by you, and listed, is sufficient to satisfy the requirements of the Association of American Law Schools?

A. Yes.

Q. During the lunch recess have you made—did you make an inspection of the building at the law school, the Negro Law School?

A. Yes, I did.

Q. Did you make that inspection—what was the object of that inspection?

A. I wanted to look over the arrangements of the rooms, and to find out about the space so that I could figure how many books could be accom-odated there, law books could be accom-odated there.

Q. From your inspection, will you state whether you found that there was—the building was ample to house a library of more than 10,000 books?

A. Yes, it is.

Q. Pass the witness.

Recross-examination.

Questions by Mr. Marshall:

Q. Miss Hargrave, it is true, is it not, that you couldn't put them in that basement part that is now open for the law school, could you?

[fol. 268] A. No.

Q. Did you see the ground floor that you go down five steps to get to there, that floor?

A. Yes.

Q. You couldn't put that on that floor, could you?

A. With the other things moved out, there could be put, as I figure, in those rooms, approximately 7,000 books. That leaves the stacks with adequate aisle space between.

Q. Would there be any other space left down there after that?

A. No, that would take the space on the ground floor for the books.

Q. Is it possible on the ground floor to have a library and law school at the same time?

A. Not of the size library that has been ordered and acquired for the law school.

Q. What I should have included, Miss Hargrave; is it possible to have a library sufficient in size to meet the standards of the Association of American Law Schools and class rooms and library space and office space; is it possible to have all of that on that first floor?

A. No, it is not.
Q. No way it could be done?
A. No, it would not be possible on the first floor.
Q. That is all.

Redirect examination.

Questions by Mr. Littleton:

Q. When you made your inspection at lunch, Miss Har-
[fol. 269] grave, you inspected the whole building?

Mr. Durham: We object to that. The evidence shows the State didn't have the whole building at that time, and doesn't have it now, and that certainly is going outside of the pleadings, and outside of this case on a speculative proposition.

Mr. Littleton: The evidence shows that arrangements have been made for the acquisition of the entire building.

The Court: But as I understand, you allege that you have sufficient space to——

Mr. Littleton: Your Honor, I am showing how much housing facilities it would take to house the library.

Mr. Durham: We don't object to him showing how much it would take to accom-odate this school.

The Court: Yes.

By Mr. Littleton:

Q. When you made your inspection at noon, Miss Hargrave, did you compute—did you examine the entire three floors of the building?
A. Yes, I did.

Mr. Durham: Your Honor, we object to it. It is immaterial. It isn't in issue in this case.

The Court: I am going to hear it, but I am bearing in mind it is just what it might take to put that many books in.

Mr. Durham: If that is the purpose, it is different, Your
[fol. 270] Honor.

By Mr. Littleton:

Q. Did you find the three floors of this building substantially of the same area?
A. Yes, I did.

Q. Would you say that a library of 10,000 volumes sufficient to meet the requirements of the Association of American Law Schools could be housed in an area of that size?

A. Yes, it could be.

Q. Would that leave an area of that size, and housing a library of that size, would that leave sufficient space for class rooms?

A. Yes, it would.

The Court: I am considering it for the purpose stated only.

By Mr. Littleton:

Q. Did you make any observations as to the structure of that building?

A. I noticed that it was a brick building.

Q. That is all.

Recross-examination.

Questions by Mr. Marshall:

Q. Did you make any test as to whether or not the second and third floors would hold stacks of law books?

A. I made no tests.

Q. So, you are not in a position to testify, as to whether or not you could put a library on the second and third [fol. 271] floors, are you?

A. I presume in a brick building the walls, solid brick, that the balance of the books could be so arranged around the walls that with the knowledge that I have about that, it would take care of those books.

Q. Do I understand your testimony to be that you would put the books around the walls, and you wouldn't have stacks in the middle of the floor?

A. On the ground floor, no. On the ground floor, it would take the space of the ground floor for stacks, as we usually find them in libraries, in order to handle the approximately 7,000 books that I figured on.

Q. And where would the reading room be—downstairs?

A. No, you couldn't have the reading room downstairs. It would have to be on another floor because the ground floor would be filled with stacks of books.

Q. Miss Hargrave, as a matter of fact, are you familiar with the amount of space in a law school that is needed for

class room instruction, Dean's office, faculty offices? Are you familiar with that, or just in a general way?

A. Just in a general way. I don't know much about that.

Q. So that when you testify that that building is adequate to house all of this, you are testifying just in a general way, are you not?

A. I don't see how it could be much otherwise.

[fol. 272] Q. That is all.

Mr. Littleton: That is all.

The Court: All right.

(Witness Excused.)

CHARLES T. MCCORMICK, having been recalled as a witness, testified further as follows:

Redirect examination.

Questions by Mr. Daniel:

Q. Dean McCormick, during the noon hour, did you inspect the three floors of the building in which the Negro Law School is now housed?

A. Yes, I did.

Q. I will ask you to state whether or not in your opinion the entire building furnishes sufficient space within which to house the number of class rooms, reading room that you now have, and a law library of 10,000 volumes?

Mr. Durham: Your Honor, we make the same objection.

The Court: It will be given the same consideration as I stated before.

A. Assuming a small student body for which those facilities were furnished——

Mr. Durham: Your Honor, we ask that that answer be stricken as not responsive.

The Court: Yes, it really isn't.

[fol. 273] By Mr. Daniel:

Q. Limit it strictly to the question of whether or not it would furnish sufficient room for the same number of class rooms and reading room you now have, plus space for 10,000 volumes of books; I will ask you whether or not

in your opinion that building would furnish such suitable space?

A. By class rooms we now have, you mean on the first floor?

Q. Yes, the same size class rooms?

A. Yes, it would contain all of those facilities.

Q. I will ask you to look at this picture, please. Will you state to the Court what building that pictures?

A. That appears to be a representation of the building at 104 East 13th Street.

Q. Is that a picture of the building which we have referred to as the building which now houses the Negro Law School?

A. Yes, it is.

Mr. Daniel: We would like to offer that.

(Said instrument was admitted in evidence as Respondents' Exhibit No. 14.)

Q. Dean McCormick, I will ask you to look at the picture again, and state, if you know, from what place the picture was taken, looking at the foreground between the place where the camera was and the building?

A. Evidently taken from the Capitol grounds.

Q. From within the Capitol grounds?

A. Yes.

[fol. 274] Q. That is all.

Recross-examination.

Questions by Mr. Nabrit:

Q. Dean McCormick, when you were inspecting the law school at noon hour, did you go through this entrance as indicated by the picture?

A. I don't believe I did. I entered on the second floor and came down through the stairs.

Q. Do you recognize that as the entrance to the law school?

A. Well, there seems to be a corner near by. I assume it is correct. I don't know that I would recognize it if you didn't tell me it was, however.

Q. Can you recognize your sign on the door telling the prospective students to come to your office?

A. The sign is there. I certainly can't recognize it in this picture.

Q. But this appears to you to be a part of the law school?

A. Yes, sir, I judge so.

Mr. Nabrit: We would like to offer this in evidence.

Mr. Daniel: You had better identify what is upside down and otherwise in that picture.

Mr. Nabrit: That is a problem.

(Said instrument was admitted in evidence as Relator's Exhibit No. 6.)

[fol. 275] Q. Dean McCormick, did I understand you to state in reply to the question of the Attorney General that in your opinion, from your inspection of the building, and using all three floors, it would adequately house a law school with the same number of class rooms which you now indicate you have on the first floor, and with library facilities adequate to contain a library with a minimum number of 10,000 volumes?

A. That is right.

Q. Are you an expert on library arrangement?

A. No, I am not.

Q. How did you compute the number of feet of floor space necessary to house the stacks, and on what basis of computation did you determine the number of stacks necessary to house 10,000 volumes, in making your estimation?

A. I really didn't carry it out that far. I just was making a general inspection, and it seemed to me that the building was large enough for that purpose. Miss Hargrave, however, did make the detailed estimates of the number of stacks, and of the space needed, and where the space could be found to put them.

Q. Are you testifying on the basis of Miss Hargrave's estimates, or on the basis of your estimation?

A. Well, I suppose it is really partially both.

Mr. Nabrit: Your Honor, I should like to make a motion to strike out all of the testimony which Dean McCormick has made with reference to the adequacy of this building [fol. 276] to house the law library, in that he says it is not based on his information, and evidently upon that of Miss Hargrave.

The Court: I believe he said partly, didn't he?

Mr. Nabrit: What part is that?
The Court: I wouldn't know.

By Mr. Nabrit:

Q. Dean McCormick, what part of your estimation is yours?

A. Well, I have had some contacts with law school buildings, so that I have a general notion of the size of building appropriate for the small law school, and from that background, and from my inspection, and in the course of that inspection Miss Hargrave and I discussed the particular parts of the building where books could be so stored, and she pointed out to me features, and the availability of space for the books, so that those things are always somewhat of a composite of fact and background and experience and inspection, and what people point out to you and tell you.

Q. Suppose we ask you this, Dean McCormick; taking an average size library stack such as Miss Hargrave indicated to you would be used there, how many volumes of law books would it hold, the average size law library stack?

A. Well, if there is any uniform size for them, I am not aware of it.

Q. Let's take any size that you know of, the size that you [fol. 277] discussed.

A. We didn't discuss any particular size.

Q. From your background and experience with law schools, what size, how many volumes do you know will get on any one stack? Take any stack that you know about from your experience. How many volumes would get on it?

A. I think of a stack as a tier of say, from two to perhaps eight or nine shelves, and I don't know how many books would go in a stack. I don't know of any uniformity as to number.

Q. Take a stack that extends across the width of that room, 8 tiers, steel stacks, purchased by the Dean and the Board of Regents for this Negro Law School, to house these books. How many volumes would one of those stacks hold?

A. You say, a steel stack?

Q. I assume you are going to use steel. I will just say stacks. Maybe you are going to use some other kind.

A. Are you assuming a certain length of it? I don't know the uniform practice as to length of the shelves.

Q. Looking at the space on the ground floor, you estimate that it, together with the other space, would hold 10,000 vol-

umes. I am asking you these questions to find out if you had any part in this estimation, or if it is based on your experience, or of, so far as you- statement is made, it is based simply upon Miss Hargrave's testimony, or her experience, or her information, or is there any knowledge which you [fol. 278] possess, for example, as to the number of feet of space required for a student in a library reading room, or if you know how much floor space is required for an average table in a law school, how much aisle space is required by a standard law school librarian, or is your statement, as a matter of fact, merely a guess?

A. No, I would say it was a general fact from my experience and observation of law schools in general, and my inspection of this one. Now, Miss Hargrave makes that report, and it seems to me that by going over there and looking at the building and seeing whether that report accords in a general way with my knowledge and experience, that I would be able to state that I believe the building would furnish those facilities.

Q. What type of building is that, Dean McCormick, construction?

A. Well, it is a three story building, with brick construction on the outside.

Q. Is it solid brick, semi-brick, brick facing?

A. I could not tell you as to that.

Q. Does it have steel beams and girders?

A. I don't know. I haven't made that close an examination of it, and I don't know very much about construction, any how.

Q. So that you don't know whether it will house the library or not, because you don't know whether the walls and framework will sustain the weight of it? Do you know of [fol. 279] your own knowledge that it will?

A. No, I don't.

Q. That is all.

Redirect examination.

Questions by Mr. Daniel:

Q. Have you, as Dean of the school, discussed with Miss Hargrave if you had the whole building where the majority of the books should be located in the building?

Mr. Durham: Your Honor, we object to their going into anything Miss Hargrave told him, as hearsay.

The Court: Of course, he shouldn't testify from what she told him. I think he might, with consultation relate what conclusion he arrived at.

By Mr. Daniel:

Q. I didn't mean to ask you what she told you. Did you have a consultation with her as to where in that building would be the proper place to put the bulk of the library books?

A. Yes.

Q. And from that consultation, what conclusion did you arrive at as to the floor on which the majority of the books should be placed?

A. Well, I thought probably the ground floor would be the most appropriate place.

Q. There isn't any question about the supports to the ground floor, is there, Dean McCormick?

[fol. 280] A. Well, I would suppose not.

Q. That is all.

Mr. Nabrit: No questions.

The Court: All right.

(Witness excused.)

Mr. Daniel: We would like to call the relator, Heman Marion Sweatt.

Heman Marion Sweatt, Relator, having been called as a witness, and having been by the Court first duly sworn, testified as follows:

Cross-examination.

Questions by Mr. Daniel:

Q. Will you state your name, please?
A. Heman Marion Sweatt.
Q. Are you the relator in this case?
A. I am.
Q. Where do you reside?
A. Houston, Texas.
Q. What business are you in?
A. United States mail service, mail carrier.
Q. How long have you been a mail carrier?

A. Eight years.

Mr. Durham: Your Honor, would you ask the witness to [fol. 281] speak out just a little louder?

The Court: Speak out louder.

A. Eight years.

By Mr. Daniel:

Q. You applied for entrance into the University of Texas on February 26, 1946, is that correct?

A. That is right.

Q. I will ask you if it isn't true that on or about March 20, 1946, you were furnished a copy of an opinion by the Attorney General of Texas stating that if you desired and made demand on Prairie View University, that that school was under mandatory duty to furnish you an equal law training with the University of Texas Law School?

A. Yes.

Q. You read that opinion, did you?

A. I did.

Q. Did you make demand or give any notice to Prairie View University, or any of its officers, that you wanted to attend a law course there?

A. I did not.

Q. Did you ever apply to Prairie View University or to any official of that school, or of A. & M. College for a law course?

A. No.

Q. You didn't, then, follow the Attorney General's opinion as to what was the legal procedure by which you were [fol. 282] entitled to an equal law course?

A. No.

Q. You were in this court room on December 17, 1946, at the last hearing of this case, were you not?

A. Yes.

Q. Did you hear the resolution read at that time whereby the Board of Directors of A. & M. College authorized the officials of Prairie View to set up a separate law school in Houston for Negroes?

A. I did.

Q. Then, at that time you knew that such separate law school was proposed for establishment in Houston, Texas, didn't you?

A. I did.

Q. Did you read in the newspapers anything about that law school being set up in Houston?

A. I did.

Q. You did.

A. I did.

Q. You knew, then, that that law school was set up by Prairie View University in Houston, Texas on February 10, 1946, didn't you?

A. I knew some rooms were there.

Q. You knew they were where?

A. In Houston.

Q. In Houston?

[fol. 283] A. That is right.

Q. You knew that they called that the Law School of Prairie View University, didn't you?

A. I knew that they called it that, yes, sir.

Q. Did you go up there for the purpose of registering?

A. I went up there to see it. I didn't go to register.

Q. But you knew where the location was, didn't you?

A. Yes.

Q. Before the date of registration, February 10th?

A. Yes, sir.

Q. And you knew the date of registration was February 10, 1946, didn't you?

A. Yes.

Q. Did you talk with any of the men who were employed to operate the law school?

A. No, I didn't.

Q. Did you check into the qualifications of the lawyer who had been employed to teach law in that school?

A. Yes.

Q. You checked into his qualifications?

A. Yes.

Q. Were you doing that for the purpose of determining whether or not you would attend the school?

A. No.

Q. When did you make up your mind that you wouldn't [fol. 284] go to that school?

A. After talking with my attorney.

Q. Which of your attorneys?

A. Mr. W. J. Durham.

Q. Did you talk with any other of your attorneys?

A. No, I did not.

Q. Did you have Mr. Marshall, attorney for the National Association for Advancement of Colored People, as one of your attorneys at that time?

A. December 17th?

Q. Right.

A. I didn't have—I never have had Mr. Marshall as my attorney. I have not.

Q. You have not?

A. That is right.

Q. You know Mr. Marshall, sitting right here, do you not?

A. Yes.

Q. You know, of course, having sat through the case, he is participating here in the case and cross examining witnesses?

A. Yes, sir.

Q. He is signing the papers as one of your attorneys of record?

A. Yes.

Q. Didn't you authorize him to do it?

A. I authorized Mr. W. J. Durham to represent me, and in a conference with him, I left it with him to secure what [fol. 285] aid he found it necessary to.

Q. You found it agreeable for him to accept the aid of the attorney for the National Association for the Advancement of Colored People?

A. It is agreeable for him to employ Mr. Marshall.

Q. After talking with your attorney, and before making an inspection of the facilities, you decided you wouldn't go to the school?

A. I decided before talking to them.

Q. After inspecting the school?

A. No, before that.

Q. Did you do that before finding out what kind of facilities there were, and faculty was going to teach in that school?

A. Yes.

Q. Did you check into the courses that were going to be offered in that school?

A. No, I did not.

Q. Did you register in that Prarie View Law School at Houston?

A. No, I did not.

Q. About how far is the school from your home in Houston?

A. I would estimate it as being two and a half or three miles.

Q. Now, in February of 1947, did you know about a new law school about to be established here in Austin for Negroes?

A. Yes.

Q. You read the newspaper accounts of it, didn't you?

A. Yes.

[fol. 286] Q. You knew Senator Lacy Stewart, who is now deceased, did you ?

A. I didn't know him. I knew he was a Senator.

Q. You were acquainted with his Senate Bill 140 pending in the Legislature during the month of February, or read of it in the newspapers?

A. I was familiar with the newspaper reports of it.

Q. You knew the bill proposed to set up a State University for Negroes, and a separate Law School for that University, to be conducted in Austin by the University of Texas Board of Directors, didn't you?

A. Yes.

Q. Did you receive this letter from the Registrar of the Negro Law School that was introduced here this morning?

A. The letter that was shown me, yes, sir; I received it.

Q. That is Respondents' Exhibit No. 13?

A. Yes.

Q. What date did you receive the letter? It is dated March 3d?

A. I think I received it on the 4th or 5th, one.

Q. Upon receipt of that letter did you make any reply to Mr. Mathews, the Registrar?

A. I did not.

Q. Did you go to see Mr. Mathews and talk to him about what he said in the letter about absolutely equal courses being offered here in the law school?

[fol. 287] A. I did not.

Q. Did you go and talk to Dean McCormick to see about what kind of courses would be offered?

A. I did not.

Q. Did you talk to any University of Texas officials to see if you would actually get equivalent instruction in law in this separate law school, the same as if you went to the University of Texas?

A. I did not.

Q. Did you make any investigation of this separate Negro Law School?

A. Yes, I did.

Q. Did you make an investigation before you made up your mind you wouldn't attend it?

A. I made an investigation immediately after receiving the letter.

Q. Didn't you send the letter to Mr. Marshall, the letter that you saw him take out of his brief case, before we introduced it? Didn't you send that to Mr. Marshall?

A. No, I did not.

Q. Who did you send it to?

A. I took it on the train to Mr. W. J. Durham.

Q. When did you make up your mind not to go to the school?

A. When Mr. W. J. Durham told me it wouldn't give me equal law training as the University.

[fol. 288] Q. Is that the same day you took him the letter?

A. Yes.

Q. How soon did you get on the train after you received the letter?

A. The next day.

Q. And you went to Dallas to see your attorney, Mr. Durham?

A. That is right.

Q. After how much consideration of the matter was it before your attorney told you, advised you not to attend the school?

A. I stayed in Dallas for a week.

Q. How long had you been there before your attorney told you that?

A. During the time that I was there, we discussed it at length, while we were there.

Q. The first day you got there you showed him the letter, is that right?

A. That is right.

Q. And that was about what date?

A. I don't remember it by dates. I received the letter either the 4th or the 5th, and I got the train on the 6th.

Q. Then, you were there in Dallas by the 6th or 7th?

A. That is right.

Q. Right?

A. Yes.

Q. And you showed him the letter the first thing, didn't you?

[fol. 289] A. That is right.

Q. And there in that conference of yours he made his decision about what you ought to do?

A. It was several days before he made his decision. He told me definitely after the conference that it would not afford me equal education as could be obtained in the University of Texas.

Q. And you made no personal investigation of the matter yourself, did you?

A. I am not qualified to pass upon the quality of a law school, no.

Q. Did you talk to anybody else about the quality of the law school other than Mr. Durham?

A. I did not.

Q. And how long did you remain in Dallas after the 6th or 7th of March?

A. I was there on—I am telling you I went there around the 6th or 7th, and I remained there probably a week before I came back to Houston.

Q. Then you were there on March 8th when the National Association for the Advancement of Colored People and other organization representatives met to decide whether or not to support or not to support this separate Negro Law School, weren't you?

Mr. Durham: We object to it; first, upon the assumption [fol. 290] that the National Association for Advancement of Colored People met. That is the first assumption. The question assumes that he was there at the meeting. Both assumptions are without any evidence on the matter in the record.

The Court: I think you had better ask him if he was there.

By Mr. Daniel:

Q. Were you in Dallas on March 8th, 1947?

A. I was there.

Q. Are you acquainted with a meeting—do you know anything about a meeting held in Dallas on that date at which this lawsuit was discussed?

A. I know nothing of the meeting.

Q. Did you while you were in Dallas read a report in the Dallas News about what took place in that meeting?
A. I did not.

Mr. Durham: We object to it as being hearsay.
The Court: He says he didn't.

By Mr. Daniel:

Q. You did not. Isn't it true that you knew before the date of registration down here, March 10th, at the new Negro Law School, that certain leaders who were helping you in this case opposed you in this separate law school?

Mr. Durham: We object to that about "certain leaders." There is no evidence in the record. It is purely an assumption.
The Court: He can ask him if he did.

[fol. 291] A. I don't know anything about—I don't know what leaders—I don't know anything about the leaders.

By Mr. Daniel:

Q. Do you know Joseph J. Rhodes, President of the Texas Council of Negro Organizations?
A. Yes, I do.
Q. Did you discuss this law school with him while you were in Dallas?
A. No, I didn't.
Q. Did you hear about the action his organization took against the school while you were in Dallas?
A. No.

Mr. Durham: We object to it as hearsay.
The Court: He says he never heard it.

By Mr. Daniel:

Q. Now, your deposition was taken in this case on June 15, 1946, wasn't it?
A. There was a deposition taken in Houston a little before the first hearing.
Q. Did you state in your deposition at that time, and as you have stated here, your attorney was Mr. Durham, is that right?
A. Yes.

Q. At the time you filed this suit Mr. Marshall wasn't in the case at all representing you, was he?

A. No.

Q. At the time we took your deposition on June 15, 1946, [fol. 292] he was not in the case, was he?

A. No.

Q. You had not known him, and he had not been brought into the case at the time your deposition was taken, had he?

A. Not from me, no.

Q. From anybody else, your attorney or anybody else?

A. Not that I know of.

Q. Isn't it a fact that in your deposition taken on June 15, 1946 that this question was asked to you, and you gave the following answer; this is the question?

> "Q. Isn't it a fact that you would not attend the Prairie View University if legal training were provided for you there?"

And didn't you give this answer?

> "A. That is not true. I will attend Prairie View University on a first class law school equal to the University of Texas."

Isn't that true?

A. I gave that answer.

Q. At that time, on June 15, 1946, you said that you would have attended a law school at Prairie View University if it was equivalent to that at the University of Texas?

A. If it was equivalent.

Q. In other words, you have no objection to a separate law school for Negroes if it is equivalent?

[fol. 293] A. I will have to answer that question in this way. I don't believe in segregation. I don't believe equality can be given on the basis of segregation. I answered that question, in that it stated that it would be—if it would be given at Prairie View, I still do not believe that segregation will give equal training.

Q. That is exactly the point I am getting at. On June 15, 1946 you were willing to accept segregation and a separate law school at Prairie View if it was on an equal basis, weren't you?

A. Assuming that it would be equal.

Q. That is what I say. Is this your signature to the deposition that was taken on June 15th?

A. That is mine.

Q. Now then, after June 15th, 1946, and after you had sworn in your deposition that you would go to a separate law school if it furnished equal facilities; after that time, Mr. Herbert Marshall—I mean Mr. Thurgood Marshall, Attorney for the National Association for the Advancement of Colored People, came into this case, and has been helping on it since then?

A. After what date?

Q. After your deposition, June 15th, 1946?

A. A good time afterwards, yes, sir.

Q. A good while afterwards?

[fol. 294] A. A good while afterwards.

Q. And after June 15th, 1946, after you swore to that in this deposition, is when you made up your mind you were not for segregation at all?

Mr. Durham: We object to it because it does not represent the facts in that question. The question doesn't ask him about a separate school. The question asked about a school at Prairie View

By Mr. Daniel:

Q. Are you acquainted with Prairie View University?

Mr. Durham: We renew our objection. Nothing has been done about that question and answer. He asked if he didn't take the position on that date that he was for segregation. That isn't represented in that question.

Mr. Daniel: I withdraw the question.

By Mr. Daniel:

Q. You are acquainted with Prairie View University?

A. Yes, sir.

Q. You know that is a separate Negro school, don't you?

A. Yes, it is a separate Negro school.

Q. White people do not go to that school?

A. As far as I know.

Q. You knew at the time you swore to this in your deposition that that was a separate school for Negroes, didn't you?

A. I did.

[fol. 295] Q. And when you said in that deposition that:

> "I will attend Prairie View University on a first class law school equal to the University of Texas,"

on June 15th, you knew that was a separate Negro school, didn't you?

A. I did not. A first class law school, in my opinion, a first class law school is where an individual has general contact with people with whom he will work after graduation.

Q. You didn't answer my question. Let's go back to my question. At the time you said you would attend Prairie View University on a first class law school, you knew Prairie View was a separate school for Negroes at that time, didn't you?

A. At that time, but I answered the question on the basis of the establishment of the school.

Q. That is right?

A. That is right.

Q. But at Prairie View?

A. In Prairie View.

Q. You didn't think they were going to establish a school for both whites and Negroes at Prairie View?

A. I didn't know what they were going to do.

Q. Let's see if you didn't know one thing. Didn't you know at that time it would be a separate Negro Law School, if it was at Prairie View?

[fol. 296] A. I did not.

Q. You did not. Anyway, you were willing to go to a law school at Prairie View, if it was equal to that at the University of Texas, weren't you?

A. If it was equal.

Q. And that was June 15, 1946. Now, since that time, June 15, 1946, I will ask you if you have changed your mind about going to a separate law school at Prairie View University, if it was equal to the University of Texas.

Mr. Durham: We object to the portion of it, if he has changed his mind since June 15th, for the reason that the deposition, they haven't offered it, and it isn't the proper assumption.

The Court: He can ask him if he is willing to go now.

By Mr. Daniel:

Q. Will you answer that?
A. Am I willing to go to a separate school at Prairie View?
Q. If it is equal to the University of Texas?

Mr. Marshall: The record shows there is no law school at Prairie View. The evidence shows it.
The Court: It would be hypothetical. Let's see what the last question was.

(The Reporter read to the Court the last question set out above.)

The Court: I sustain the objection to the last one. You can reframe your question.
[fol. 297] Mr. Daniel: Yes, sir.

By Mr. Daniel:

Q. Since June 15, 1946 you have changed your mind about being willing to go to a law school at Prairie View University, even if it was equal to that at the University of Texas, haven't you?

Mr. Marshall: We renew our same objection.
The Court: Ask him if he has changed his mind, first.

By Mr. Daniel:

Q. Have you changed your mind?
A. Yes.
Q. And you changed it after June 15, 1946?
A. No, I changed it after studying the situation after filing the suit, after learning more facts about education.
Q. After you swore that you would attend one on June 15, 1946; isn't that right?
A. That is the date of the deposition?
Q. That is the date of the deposition.
A. After that.
Q. After that date?
A. Yes.
Q. And it was after that date that Mr. Thurgood Marshall of the N. A. A. C. P. came into this case?

Mr. Marshall: I didn't object in the beginning, but I object at this stage to cluttering up the record, and I wish,

if the Court would permit me to take up a case, that is [fol. 298] on all-fours. It is State, ex rel. Bluford vs. Canada, 153 S. W. (2d), page 12.

That is in regard to the Journalism School at the University of Missouri, and that case ruled against the same things we are urging in this case; however, in that case the Attorney General of Missouri put up the same type of smoke screen to the effect that the case wasn't the plaintiff's case, but belonged to a public organization, and to put the case further on all-fours, the organization is the National Association for the Advancement of Colored People, and the Supreme Court, although ruling against us, had this to say.

> "In our view, if appellant has the legal right and actually expects to attend the University, her motives for doing so are immaterial."

On that basis, we object to the continuation of this line of testimony.

The Court: I think he has answered it, as far as we need on it.

Mr. Daniel: If the Court please, I would like to say to the Court that our purpose here is not to show his motive for wanting to attend a law school. Our purpose is to lead up to a connected chain of events motivating him not to attend the separate school that has been offered to him, and, therefore, showing bad faith on the part of the relator.

Mr. Durham: He had a right to change it one minute before ten o'clock on the 10th. That is an individual right, [fol. 299] and the fact that he did change can't be questioned.

The Court: I think he had a right to change his mind.

Mr. Daniel: Yes, sir.

Q. Do you know of any other Negro boys who want to attend the law school?

Mr. Durham: We object to that as being immaterial, irrelevant, and of no probative force.

The Court: I believe I will let him pursue it.

By Mr. Daniel:

Q. Do you know of anyone else of the Negro race wanting to go to a law school?

A. I know some who say they want to go to a law school.

Q. Would you give me the names of those whom you know personally who wanted to attend law school?

A. I read in the paper where there was a Mr. Doyle said he wanted to attend a law school.

Q. Who else do you know, of your own knowledge?

A. That is all.

Q. You know of only yourself and Doyle?

A. That is right.

Q. Has the National Association for the Advancement of Colored People contributed to you, toward the expenses of this lawsuit?

A. Contributed to me?

[fol. 300] A. No.

Q. Have they contributed toward the attorneys here, or any other expenses of this lawsuit?

A. I don't know that they have. They offered, after I had filed the suit, to assist me in it.

Q. Were you in Austin on March 26, 1947, about the time of the last hearing in the Court of Civil Appeals in this case?

A. I was here at the last hearing in the Court of Civil Appeals.

Q. Isn't it true that you attended a meeting here in Austin the night of March 25th, at which Thurgood Marshall, the attorney here, spoke to a group of Negro citizens.

Mr. Durham: We object to that as completely immaterial and not germane to any issue.

The Court: I don't see how it could assist us, Mr. Attorney General.

Mr. Daniel: I want to prove as to what was said and done about that matter about finances for this case, for the purpose of showing that the National Association for the Advancement of Colored People had as much control and management of this case, and what happened in this situation about this law school as he does himself, and that they have the further purpose of following that up with a concerted program to boycott this law school and keep other students out.

Your Honor, we were careful not to bring up the point about no students over there. Only Marion Sweatt, did we, [fol. 301] on direct examination show, as not in that school. The relator on every possible occasion has pointed to the fact that there were no students there, and we feel like we

can show that chain of events, and it is his fault and the people supporting the lawsuit that they don't have students, and that is a material issue in this case.

The Court: Anything he would testify to would be hearsay, wouldn't it? It would be what somebody said, wouldn't it?

Mr. Daniel: No, sir; I believe, Your Honor, that through that I can refresh his memory as to knowledge of money which has been spent in this case by N. A. A. C. P. I am trying to refresh his memory. I am also trying to—I will also try to impeach him in the fact that he said he doesn't know anything about the expenses paid by N. A. A. C. P., and show that he does know about it, and knew about it at this meeting where $20,000.00 was asked for.

Mr. Durham: We don't think he can show it through the newspapers.

Mr. Daniel: I am not asking that.

The Court: He can testify to anything he knows of his own knowledge about this.

By Mr. Daniel:

Q. Isn't it true that at that meeting you attended, isn't it true that at that meeting you attended you heard Mr. Marshall say that this case had already cost $6,000.00, and [fol. 302] that the N. A. A. C. P. was helping finance it.

A. I don't remember.

Mr. Durham: That is immaterial.

The Court: He said he didn't hear it.

By Mr. Daniel:

Q. Did you hear Mr. Marshall tell the crowd you needed to raise $20,000.00 for this lawsuit.

Mr. Durham: That would be hearsay, what the attorney said.

Mr. Durham: It is purely hearsay.

By Mr. Daniel:

Q. Are you paying Mr. Marshall a salary or fee for assisting you in this case?

A. I am not.

Q. The National Association for the Advancement of Colored People is furnishing his services?

A. I don't know.

Q. You don't know how he came into the case?

A. He came into the case—in a conference with Mr. Durham, he said he would get assistance in the case, and how he got it and who is paying him, I don't know.

Q. Do you know whether or not the National Association for the Advancement of Colored People have encouraged this lawsuit, and encouraged people to support it?

Mr. Durham: We object to it.

Mr. Daniel: I asked if he knew.

[fol. 303] Mr. Durham: We object to that as irrelevant and immaterial.

The Court: If it was communicated directly to him, I expect it would be helpful.

A. I don't know.

By Mr. Daniel:

Q. Now, you took a year's study at the University of Michigan, didn't you?

A. That is right.

Q. What year was that?

A. That was the school year of 1937-38.

Q. Did the State of Texas pay anything on that at all?

A. No, they did not.

Q. That was at the University of Michigan?

A. That was at the University of Michigan.

Q. Now, did you on March 10th, 1947, present yourself over here for registration in the new Negro Law School?

A. I did not.

Q. Did you at any time from your trip to—the receipt of your original notice and your trip to Dallas to talk it over with your lawyer, did you personally make any—come to Austin and look over this school?

A. No, I did not.

Q. Did you talk with any of the law professors who were going to teach in the school before making up your mind not to go to it?

A. I did not.

[fol. 304] Q. You actually didn't make up your own mind about whether to go to it or not?

A. Sure, I made up my mind. I made up my mind after talking with somebody who could judge a law school. I couldn't do that.

Q. And that was only Mr. Durham?

A. That was only Mr. Durham.

Q. And you took his word that you shouldn't came because it was not equal?

A. I took his word it wouldn't give me the type of law education that I could obtain in the University of Texas.

Q. You want to go to law school at the University of Texas?

A. Yes.

Q. You know for several years there have been appropriations made by the Texas Legislature to send Negro students outside the State of Texas to schools when they wanted to take certain training that is not provided inside Texas?

A. I know that is possible.

Q. You didn't apply for that money?

A. I did not.

Q. You want to go to school in Texas?

A. Yes.

Q. You are not interested in transferring from some law school you are admitted to, to some law school outside of Texas?

A. I want to complete my course in Texas.

[fol. 305] Q. Not interested in transferring outside the State later on, are you?

A. No.

Q. You have finished your A.B. Degree?

A. Yes.

Q. What other degrees?

A. That is the only degree I have finished.

Q. You don't care to take any other courses than law courses?

A. I don't know. I might, after I get in.

Q. At the time you filed the suit, all you wanted was law courses?

A. I don't know what it will take for me to take law. When I went to the University of Michigan, taking Bacteriology, I had to go back and get other courses. I don't know what I will take when I get in the University of Texas.

Q. That is all you have applied for up to this good day, is law, is it not?

A. Yes.

Q. And that is all you want at this time?

A. Yes, that is right.

Q. If this Court should hold that this New Negro Law School gives you substantially equal opportunity to obtain a- education in law, you wouldn't attend it, would you?

Mr. Durham: We object to that.

The Court: It doesn't make any difference to me if he [fol. 306] attends it or not. This Court is concerned only with the facilities. We don't care whether he goes or not.

By Mr. Daniel:

Q. If it is thought that the separate Negro Law School in Austin offers you absolutely equal facilities, you wouldn't attend it, would you?

Mr. Durham: We object. It is a supposition.

The Court: I believe in that case he would have a right to answer if, in his opinion, this school was absolutely equal.

A. It depends upon an assumption that I can not agree with.

Q. If you could agree with it; let's say that, let's say we leave it to other judges, and some judges, somebody who knows about it, found it to be so, and we assume it is so, that the new Negro Law School is absolutely equivalent to the University of Texas Law School, but it is a separate school for Negroes, you wouldn't attend it, would you?

A. I would not.

Q. That is all.

Mr. Durham: We reserve the right to examine him later, Your Honor. No questions.

The Court: All right.

(Witness excused.)

Mr. Daniel: Your Honor, I believe that—I was just thinking, they have some witnesses they are in a hurry to [fol. 307] put on, so I suppose it would be all right for us to stop our testimony, and come back to it later. We won't close.

The Court: That will be all right. We will take a few minutes while you are getting your witnesses lined up.

(Court was recessed at 3:05 p.m., until 3:15 p.m., at which time proceedings were resumed as follows:

DR. ROBERT REDFIELD, a witness produced by the relator, having been by the Court first duly sworn as a witness, testified as follows:

Direct examination.

Questions by Mr. Marshall:

Q. Give the Court your full name, sir.

A. Robert Redfield.

Q. And your present occupation?

A. I am now Professor of Anthropology and Chairman of the Department of that name at the University of Chicago.

Q. Will you review briefly your past qualifications, and your training, and the positions you have held, and the general work you have been doing?

A. After taking a Bachelor's Degree, I went to the University of Chicago Law School and took a degree of J. D. I was admitted to the Bar of the State of Illinois, and two years thereafter returned to academic life, where I re- [fol. 308] ceived training in Anthropology and Sociology, and special work in the problems between the racial and color groups. I received a Doctor's Degree in 1928.

Except for periods when I have been giving instruction at other universities in the United States, I have been employed at the University of Chicago as a teacher, and doing research work, and as an educational administrator.

I have also been in charge of the research program for Carnegie Institute at Washington, and at the present I am in that capacity. Last October I gave up the position of Dean of Social Sciences at Chicago University, a position I held for 12 years.

Q. How long have you been studying in the field of racial differences?

A. About 20 years.

Q. And in that period of time have you considered the question of alleged racial differences in school students?

A. I have considered many aspects of the problem of differences between national groups, including school students.

Q. And have those studies included the comparison of students of both races, studying under the same circumstances?

A. I have followed the literature in that field, as well as,

of course, making my common-sense observations as a teacher and administrator.

Q. Well, Dr. Redfield, as a result of your studies, are you [fol. 308½] in a position to give your opinions on the general subject? I will give you more specific ones later, but I wish on the general subject of, one; the inappropriateness of segregation to the purposes of education, the inappropriateness of segregation in education to the interests of public security end of it, and to the general welfare of the community.

Mr. Daniel: Your Honor, we object because this lawsuit involves only education in law and procedure. We object to any questions or opinion evidence that may be offered as to general surveys, not limited to law schools, which are composed of those who have completed certain preliminary work in other fields, and we object to the testimony that has been called for by this question, to the question, and to any other questions along that line.

Mr. Marshall: May it please the Court, this case has narrowed down to one issue. I think the pleadings did considerable toward the end of narrowing it down. In the first place, in our original petition we claimed that the refusal to admit the relator was in violation of the 14th Amendment, and in all of the pleadings filed by the State of Texas, no question has ever been raised as to the qualifications of relator other than his race or color, so that is out of consideration.

The defense of respondents is summed up in their first supplemental answer, large paragraph 2, small (1) in parenthesis, in this statement.

[fol. 309] I am quoting.

> "The Constitution and laws of the State of Texas require equal protection of law and equal educational opportunities for all qualified persons, but provide for separate educational institutions for white and negro students."

And then follows the allegation that the refusal to admit the relator in this case was not arbitrary at all, and was not in violation of the 14th Amendment, but was in keeping with the segregation statutes of the State of Texas, and in that

way joined issue; and in the second supplemental petition we alleged:

> "In so far as respondents claim to be acting under authority of the Constitution and laws of the State of Texas their continued refusal to admit the relator to the Law School of the University of Texas is nonetheless in direct violation of the 14th Amendment to the Constitution of the United States."

If there can be any doubt as to our position in the case, in the fourth paragraph in the same pleading in the supplemental petition, we state:

> "In so far as the Constitution and laws of Texas relied on by respondents prohibit relator from attending Law School of University of Texas because of his [fol. 310] race and color such constitutional and statutory provisions of the State of Texas as apply to relator are in direct violation of the 14th Amendment to the Constitution of the United States."

So, I think that the lines are drawn in this case, and the direct attack has been made that the statutes requiring segregation, the general statutes which prohibit this relator from attending the University of Texas, we claim are unconstitutional, and we have the right to show their unconstitutionality.

How do we propose to do so? Several ways. Before that, I would like to bring this out. As to whether there is any question as to the validity of segregation in this case, the Attorney General brought it out with the last witness. He deliberately brought it out, according to which, as I understand from his cross examination, the Attorney General believes the relator has changed his position from conforming to the statute to now insisting that segregation was invalid, and it was the Attorney General who asked the last question which puts the validity of the segregation statutes flat in issue in this case.

There are several ways of going about proving the unconstitutionality of statutes. They haven't shown any line of reasoning for the statutes. I imagine they are relying [fol. 311] on the presumption that the statutes are constitutional. If they are relying on that we have a right to put in evidence to show that segregation statutes in the State of

Texas and in any other state, actually when examined, and they have never been examined in any lawsuit that I know of yet, have no line of reasonableness. There is no understandable factual basis for classification by race, and under a long line of decisions by the Supreme Court, not on the question of Negroes, but on the 14th Amendment, all courts agree that if there is no rational basis for the classification, it is flat in the teeth of the 14th Amendment.

The Court: I will let you offer your testimony. I will give you your bill, and I will allow it, at any rate.

Mr. Daniel: Do I understand they will be limited to surveys on law students, or education in general?

The Court: Of course, it is like throwing a rose into a group of flowers. The odor is there. We are presumed to act only upon what is admissible testimony, in the last analysis, anyhow, so I am going to hear it, and if in my opinion it is material and admissible testimony, I will consider it. If it isn't, I will not.

Mr. Marshall: Thank you, sir.

The Court: It will be in the record.

Mr. Daniel: We may have our full bill on it, without re-
[fol. 312] peating our objection?

The Court: That is right, it will follow right through.

Mr. Daniel: Unless there is something else.

The Court: Yes.

By Mr. Marshall:

Q. Dr. Redfield, as to the question of the relationship of segregation to the purposes of education, will you first give us what are the overall acceptable purposes of education as construed by educators in the field? What is the main purpose of public education?

A. No two men, of course, will state this the same way, but I should say that the main purposes of education are to develop in every citizen in accordance with the natural capacities of those citizens, the fullest intellectual and moral qualities, and his most effective participation in the duties of the citizens.

Q. Dr. Redfield, are there any recognizable differences as between Negro and white students on the question of their intellectual capacity?

Mr. Daniel: Your Honor, we object to that. That would be a conclusion on the part of the witness. It covers all

negro students and all white students. It isn't limited to any particular study or subject or even show what it is based on.

The Court: I suppose his qualifications he has testified to [fol. 313] would qualify him to draw his conclusion.

Mr. Marshall: We will follow with what he bases it on.

A. If Your Honor will allow me I will present the answer in that form.

The Court: Yes.

A. We got something of a lesson there. We who have been working in the field in which we began with a rather general presumption among our common educators that inherent differences in intellectual ability of capacity to learn existed between negroes and whites, and have slowly, but I think very convincingly, been compelled to come to the opposite conclusion, in the course of long history, special research in the field.

The general sort of situation, Your Honor, which brings about this opposite conclusion, the conclusion that I may state now, significant differences as to intellectual ability, or as to ability to learn, if any, are probably not present between the two groups. We have been brought to that conclusion, Your Honor, by a series of studies which have this general character.

Samples from the two groups, negroes and whites, are placed in as nearly identical situations as possible, and given the limited tasks to perform, tasks which are understood to be relevant to the intellectual faculties, or the capacity to learn. Then these samples are measured against each other as to the degree and kind of success in performing [fol. 314] these limited tasks. That is a general description of the material which leads to the conclusion I have stated. Perhaps at this point it is sufficient to say that the general conclusion to which I come, and which I think is shared by a very large majority of specialists——

Mr. Daniel: We object to that as hearsay, Your Honor.

The Court: I think so.

A. The conclusion, then, to which I come, is differences in intellectual capacity or inability to learn have not been shown to exist as between negroes and whites, and further, that the results make it very probable that if such differ-

ences are later shown to exist, they will not prove to be significant for any educational policy or practice.

By Mr. Marshall:

Q. As a result of your studies that you have made, the training that you have had in your specialized field over some 20 years, given a similar learning situation, what, if any differences, is there between the accomplishment of a white and a negro student, given a similar learning situation?

A. I understand, if I may say so, a similar learning situation to include a similar degree of preparation?

Q. Yes.

A. Then, I would say that my conclusion is that the one does as well as the other on the average.

Q. Well, in your experience, your studies in this particu- [fol. 315] lar field, what is your opinion as to the effect of segregated education; one, on the student—I will give them all to you, and then you can take them separately—two, on the school, and three, on the community in general. Will you give your opinion?

A. My opinion is that segregation has effects on the student which are unfavorable to the full realization of the objectives of education. First,—for a number of reasons, perhaps. I will try to distinguish.

Speaking first with regard to the student I would say that in the first place it prevents the student from the full, effective and economical coming to understand the nature and capacity of the group from which he is segregated. My comment, therefore, applies to both whites and negroes, and as one of the objectives of education is the full and sympathetic understanding of the principal groups in the system in which the individual is to function as a citizen, this result which I have just stated is unfortunate.

In the second place, I would say that the segregation has an unfortunate effect on the student, which I might now anticipate, since, to my opinion, has an unfortunate effect on the general community, in that it intensifies suspicion and distrust between negroes and the whites, and suspicion and distrust are not favorable conditions either for the acquisition and conduct of an education, or for the discharge of [fol. 316] the duties of a citizen. You asked me, did you not, as to the class, and the community?

Q. The school was the second, and the community was the third.

A. I think I have perhaps indicated the difficulties with reference to the school. The school room situation is, provides less than the complete and natural representation of the full community. That is the general view of educators, or it is my view, I should say. It is my view that education goes forward more favorably if the community of student, scholar and teacher is fairly representative of the total community. Rather, the highly specialized and the development of the suspicion and distrust which the segregated situation brings about is correspondingly unfavorable in the school.

With respect to the general community, I suppose there isn't a great deal to add, but if I am still answering your question, I might say this. In my opinion, segregation acts generally on the total community in an unfavorable way for the general welfare, in that it accentuates imagined differences between negroes and whites. These false assumptions with respect to the existence of those differences are given an appearance of reality by the formal act of physical separation. Furthermore, as the segregation, in my experience, is against the will of the segregated, it produces a very favorable situation for the increase of bad feeling, and even conflict, rather than the reverse.

[fol. 317] Q. Dr. Redfield, what has been your personal experience concerning the admission of minority groups to educational facilities to which they had previously been denied admission?

A. Well, as I have indicated, my principal experience has been in connection, in the University of Chicago, and in its related educational institutions. The situation there generally is that no segregation is practiced in any of the educational facilities of the University, neither in the class room nor in the dormitory, or in eating facilities or anywhere else in the educational facilities. While the same city or community in which the University lies is one in which segregation or exclusion is practiced as a matter of custom, but not as a matter of law, in a very wide variety of situations, and facilities open to the general public.

In giving that background, I come to the question of what my experience has been with negroes theretofore denied some educational facilities, and I have had experience with

one or two such situations in the University of Chicago and its affiliated institutions, and that in each of the cases that I can recall the result has been, in my opinion, highly beneficial to education and to the University community.

Q. Were there any ill effects at all?

A. I don't know of any.

Q. Do you know of any good effects?

A. Yes. Perhaps I should mention a case. The students [fol. 318] were denied admission, negro students were discouraged from admittance is perhaps a more accurate statement, to the laboratory school of the University.

They were discouraged admission for a great many years. Then it was made apparent that they would be welcome, and they began to come, and there was an opposition from a minority of the academic community to the step. Many evil consequences were told. None of those consequences took place, but, on the other hand, there was an improvement in the community in that there was a representation of the national community which is favorable to education, and the relations between the white and the negro groups were improved in parent-teacher and endeavor.

Q. Thank you, Doctor.

Mr. Daniel: I want to be sure that my exceptions and objections have gone to the entire testimony.

The Court: Oh, yes.

Cross-examination.

Questions by Mr. Daniel:

Q. Dr. Redfield, how many of those surveys of the reaction of students have been limited to law school students?

A. Are you speaking of surveys which I made personally, or of which I have known?

Q. Which you made personally?

A. I have never made a survey of law school students.

[fol. 319] Q. Is this testimony you have been giving based on surveys you have made, or you have read about?

A. In larger measure, the latter. I have participated.

Q. You have participated in some?

A. Yes.

Q. But the majority of the studies you have been testifying about and upon which your testimony is based, are studies made by other people, and which you have read?

A. That is the nature of science, sir.

Q. Yes. I just want to be sure that is in the record. Somebody may not know that is the nature of the science. Have you yourself made any study of the effect of separate education in law schools?

A. No, sir.

Q. As I understand it, it is your opinion that it is discrimination against the white students to require them to go to a white University here in Texas; is that right?

A. If I understand the meaning of what I said, that isn't what I was attempting to say. I was attempting to describe the consensus in regard to educational objectives in the policy of segregation.

Q. And you applied that to separate white schools, with only white students. You said several times, I believe, in your testimony, I believe you said several times that the same applied to segregation of white students, making them [fol. 320] go to the separate school.

A. I think it is to the advantage of any student to be in a community that is largely representative of the national community.

Q. To that extent, you believe that any state that requires the white students to go into a separate school from the negro students is to that extent a discrimination against the white students?

A. I am not sure the other description was used, but I think it worked both ways.

Q. It worked both ways. You have talked about a gradual change that you have observed. All of your testimony, I believe, indicated a gradual change in the situation you have talked about, and in the conclusion you have reached.

A. With reference to admission of negroes to facilities that had theretofore been denied them?

Q. Yes.

A. The case I had in mind was where there was a period when they were not admitted, and then a period when they were admitted. I don't know how you use the word "gradual."

Q. As I understood, you thought there was some difference between ability to learn——

A. I beg your pardon. You are now asking me with respect to *to* the quality of students, as to this matter of racial difference?

[fol. 321] Q. Yes.

A. I said opinion on the subject has gradually changed.

Q. Isn't that generally due to the fact that the subject matter has gradually changed over a period of years?

A. We are wiser than we were, yes, sir.

Q. Don't you believe that in a community where segregation has been enforced as long as it has in some of our southern localities, that the only way that the ultimate goal that you think is the best can be properly obtained is by a gradual change, instead of forcing it upon the community?

A. If I can answer the question at all, Your Honor, I would like——

The Court: You can explain.

A. I think that all change should not come on any more rapidly than it is consistent with the general welfare.

By Mr. Daniel:

Q. Yes, sir. In other words, you will agree with the other eminent educators in your field, the fields in which you are acquainted, that it is impossible to force the abolition of segregation upon a community that has had it for a long number of years, in successfully obtaining the results that are best?

A. No, I don't agree to that.

Q. Do you think the laws should be changed tomorrow?

A. I think that segregation is a matter of legal regulation. Such a law can be changed quickly.

[fol. 322] Q. Do you think it has anything to do with the social standing in the community?

A. Segregation in itself is a matter of law, and that law can be changed at once, but if you mean the attitude of the people with respect to keeping away from people of another race, then perhaps I have another answer.

Q. I am speaking about desired results for the individual and the community, and for the state.

A. Will you ask your question over again?

Q. With respect to the individual, the state, the community and the schools, do you, in your opinion, believe that an immediate change in segregation will accomplish the results that you have testified as being best in a community where segregation has been enforced and recognized for many years?

A. I think in every community there is some segregation that can be changed at once, and the area of higher education is the most favorable for making the change.

Q. You admit there are areas in which the change can not be made at once?

A. You mean in 24 hours, with more harm than good resulting?

Q. Yes.

A. Certainly.

Q. Or within a year?

A. May I state my opinion again?

Q. Instead of 24 hours, we will say within a year or two. [fol. 323] A. I will put it this way. I think this will satisfy you on that as covering my opinion. I think the steps by which, and the rapidity with which segregation in education can be removed with the benefits to the public welfare will vary with the circumstances.

Q. In other words, the circumstances of the community and how long there has been segregation will have a bearing on it?

A. Yes, sir.

Q. In other words, do you recognize or agree with the school of thought that, regardless of the ultimate objective concerning segregation, that if it is to be changed in southern communities where it has been in effect for many years, if it is to be changed successfully, it must be done over a long period of time, as the people in that community change their ideas on the matter?

A. That contention, I do not think, will be my opinion on the matter scientifically.

Q. Does that represent, scientifically, a school of thought on that, in your science, in the matter?

A. There are some that feel that way.

Q. Yes, sir. You are acquainted with the history of the carpet bagger days in the Civil War?

A. I feel better acquainted with it today, sir, than anybody.

Q. Dr. Redfield, let me get you clearly on that. You are not talking about your own trip down here, are you, to [fol. 324] Texas? You say you are acquainted with it today?

A. It just drifted into my mind.

Q. You recall the carpet baggers, where they packed up and came down here from out of the state. You didn't mean to be talking about your trip down here, did you? You are

the only witness from out of the state that we have had on, so far. You didn't mean to be talking about the trip down here?

A. I am afraid the idea has come into my mind now.

Q. That wasn't what you referred to?

A. It is in my mind now.

Q. Are you acquainted with the history of the carpet bagger days in the south?

A. In a very general way.

Q. You know, do you know, from that history, that the attempt to force the abolition of segregation in the south just didn't work?

A. Yes, of course.

Q. Do you feel like the social attitudes and beliefs of the people in that day had some bearing on whether or not it would work?

A. Oh, yes.

Q. Of both races?

A. Oh, yes.

Q. Are you acquainted with Howard University Law School in Washington?

[fol. 325] A. No, sir, only by reputation.

Q. You know it is a negro law school?

A. Yes.

Q. Have you made any check on the separate Negro Law School as to the kind of educational facilities and equality of opportunities that are offered the students of that school?

A. No.

Q. Would you undertake to testify here, Dr. Redfield, that students attending that separate Law School for Negroes at Howard University do not receive equal educational opportunities in law with those attending a similar white school?

A. In my opinion, deprivation of opportunity to exchange professional and intellectual matters with members of the other major groups in their nation is one of the short-comings of the school.

Q. You have never made any check, though, as to students who have come out of that school, and where that has been a handicap on them, have you?

A. No, I never have.

Q. It is just your idea it is a handicap, without having checked to see whether or not it is?

A. That is right.

Q. Are you acquainted with Lincoln University by reputation, a separate law school for Negroes in Missouri?

A. I have heard of it.

[fol. 326] Q. Have you made any survey of the students educated in that school?

A. I think I have indicated I made no survey of legal education.

Q. You are not prepared to say whether or not those students who received their legal education in that separate law school come out of there handicapped in any respect, as far as their knowledge of the law is concerned, are you?

A. I have the opportunity of transforming a conclusion, and as far as there is validity in that, I can draw a conclusion as far as segregated education is concerned.

Q. I am talking about the individuals who have come out of the separate Negro Law School. Have you made any check to see whether they have received equal educational opportunities with white students of Missouri in the white law school?

A. I have had no occasion to.

Q. Then, you don't know whether there are any disadvantages or not, actually, to those individuals, do you?

A. In the particular case of those individuals?

Q. Yes, sir.

A. By virtue of knowledge I might have of them in par-

[fol. 327] ticular, no.

Q. Do you recognize, Dr. Redfield, that there should be some limit to your theory of abolition of segregation?

A. I think I have indicated a limit.

Q. A limit?

A. Yes, a limit.

Q. What limit do you say there should be, and will still give what you think is necessary from the standpoint of public education?

A. The general welfare would be served by extending non-segregation, at the expense of segregation, and that general limit will be defined in my particular conclusion, as the particular circumstances.

Q. Is it necessary that there be social commingling?

A. I understand that by social commingling is meant communication of students and professor, and intellectual endeavor,—yes.

Q. Is that as far as you think it is necessary to have such commingling to obtain the objectives you think are so necessary?

A. I think that whatever commingling is a natural and proper accessory to the educational endeavor will in the [fol. 328] long run develop to the general welfare.

Q. Do you think it is necessary to have social commingling of the races in order to obtain the things you think are necessary to give, to attain the objective that you say is set for public education?

A. The question is repetitious. I have answered it.

Mr. Durham: If Your Honor please——

The Court: I really believe he has answered it. If you are not quite satisfied, General, you may ask another question.

Mr. Daniel: I am not quite satisfied. I don't want to ask an embarrassing question, but yet,—you have testified—I really want to know—you have testified that you believe certain segregation must be done away with in order to accomplish the best for the school and the community?

A. If you are thinking about intermarriage,—if that is in your mind, I would be delighted to answer.

Q. My mind hadn't gotten quite that far on the subject.

[fol. 329] A. I am sorry.

Q. I am simply trying to ask you, since you have testified that a certain amount of doing away with segregation is necessary, I want to know your explanation, or expert opinion, on how far it must be done away with in order to accomplish the best for the individual, the school and the community.

Mr. Marshall: This case is at least limited, and the direct examination is most certainly limited, to education.

The Court: I understood that is what he answered, that only in so far as it was necessary for students to have a mutual exchange of ideas along professional and educational lines.

Mr. Marshall: But this question isn't limited to that.

The Court: I understood he answered as I stated, a good while ago, General.

Mr. Daniel: I have asked how far he thinks that is [fol. 330] necessary.

A. In order to accomplish the educational objective?

Q. Yes.

A. Roughly speaking, in the class rooms and in the natural discussion of educational objectives we have common rooms in our University where the students meet to discuss common educational problems.

Q. What about fraternities? Is it necessary that there be commingling there?

A. In any particular situation, I should think probably not.

Q. You think it is not necessary that they belong to the same social groups?

A. This might not be your case, but I should say probably not.

Q. You feel like a Negro student at a separate school that doesn't have the same fraternities or scholarships as the other school——

A. I was thinking of social fraternities.

Q. Let's limit it to that.

A. That seems relatively unimportant. I could answer it either one way or the other, and I would like to see the particular case to see how I would answer it.

The Court: Are there other questions?

[fol. 331] Mr. Daniel: Yes, sir; just a second, Your Honor.

Q. Doctor, are you acquainted with the Encyclopedia Britannica, the publication by that name?

A. I have a set. I don't look at it very often.

Q. You are from the University of Chicago?

A. Yes.

Q. Is that publication now published under the auspices of that University?

A. Yes, sir; and it badly need- rewriting.

Q. It is published under the auspices of your University?

A. Yes.

Q. Have you read the article therein on education, and segregation of the races in American Schools?

A. If I have, I don't remember it.

Q. You don't remember it. Have you written any articles for the Encyclopedia Britannica?

A. No, we are just beginning a revision of anthropological articles, and it seems there has to be a very drastic change.

Q. Do you know who wrote the articles in the Encyclopedia Britannica on the subject of higher education for Negroes, and segregation?

A. I don't remember such articles.

Q. Do you recognize the Encyclopedia Britannica and the articles on such subjects as an authority in the field?

A. No, I do not.

[fol. 332] Q. You do not?

A. No, sir.

Q. Do you know of some scientists in your field who do recognize those articles?

Mr. Durham: We object to that as being irrelevant and immaterial, what somebody else recognizes.

The Court: That would be his—perhaps not what they recognize, but what they have said about it.

A. I think I could answer that question, and do more justice to the meaning than just with a yes or no answer.

By Mr. Daniel:

Q. Go right aread.

A. All of the articles you have mentioned in that publication are of extremely uneven merit, so that the men with whom I have talked who have studied it—I haven't studied it—tell me that certain articles are extremely good and other articles are extremely bad. That is about the best I can answer.

Q. I understand you are going to leave, and we may want to know something about that, as an authority. Is that Encyclopedia Britannica, could we here in the Court—could the Court, in your opinion, consider that as one of the recognized authorities in the field, if they have an authority on the subject?

A. I don't think you could, for the reason that you might hit on one of the articles that was particularly out of date.

[fol. 333] Q. You haven't read the articles on the subjects we are talking about?

A. If I have, I have forgotten it,—I probably have.

Q. But it is your opinion the Court couldn't accept that as an authority?

A. You might get a bad one. I couldn't say.

Q. Could you give us some of the authorities that you think we would be justified in taking as authorities on the

subject you have testified to us about? Have you written any books on the subject?

A. Not with respect to the American Negro. I have written on the general subject with respect to other racial groups. Franz Boes, Ruth Benedict, Ashely Montague, Otto Kleinberg. Is that enough.

Q. Give us one more.

A. One more. I will make it a good one. Then, Dr. Leslie White.

Q. Do all of these scientists have the same, share your ideas as to segregation?

A. I don't know.

Q. Do you know any scientists who have written books or articles on the American Negro, on segregation, who do not share your ideas?

A. Many of the scientists that study this problem have not written or expressed themselves on the education results of segregation. They are agreed, all that I have men-
[fol. 334] tioned, and a great many more on the conclusions which I gave in direct testimony in the first of my remarks with regard to the probability, or the existence of inherent differences in educational capacity, but the application of the conclusion to the school situation concerns a very much smaller group of people, because the group of people concerned with that are educational administrators and the like and many of those people whose names I have given you are not educational administrators.

Q. But on your conclusion as to education, you told me there were authorities in the field who disagreed with your conclusion?

A. I think not.

Q. Maybe I am speaking about the gradual change.

A. I don't know who I could cite for that.

Q. That is all.

Redirect examination.

Questions by Mr. Marshall:

Q. Dr. Redfield, you testified on cross examination that your opinions were based on your own studies, but mostly on other studies that have been made. I want to ask you as to whether or not the studies you are speaking of made by other people were scientific studies or not?

A. They were.

Q. And I want to ask you as to whether or not they were mostly published scientific studies?

[fol. 335] A. They were.

Q. Generally recognized in your field as authorities?

A. Yes, they were.

Q. Do you know of any recognized scientific study that recognizes any inherent racial difference among the races, as to capacity to learn?

A. A man named Portees in Australia published some papers which I have read, on the Australian aborigines, which reach the conclusion that there are inherent differences between the races. I am sure there are other papers that reach a similar conclusion. They are all specific studies, and the conclusions are drawn on differences in achievement in the races, and the case of Portees is one. John Ferguson is publishing one, but there are very, very few that would draw the opposite conclusion to the one that I have stated concerning the inherent difference.

Q. Isn't it true the Australian aborigine is on the bottom of the heap?

A. The important thing is there are different studies, and it has taken them a long period of time to reach the conclusion I have offered.

Q. Isn't it true the majority of scientists in your field are in agreement there is no inherent racial difference?

A. Yes.

Q. Isn't it true that such studies as the Kleinberg study in 1935, and others, are specific factual studies which show that a given fact situation, there is no difference?

[fol. 336] Mr. Daniel: We object to that because it is leading.

The Court: Of course, it is leading.

Mr. Marshall: Your witness.

Recross-examination.

Questions by Mr. Daniel:

Q. Dr. Redfield, in determining the question of changing the laws and regulations in a community concerning segregation, how far, in your opinion, should the community, should the State consider the community attitudes of both of the races concerning the matter?

A. It would depend upon the circumstances. I can make an observation, which I think is a partial answer. I think the effect of having a regulation—I guess I will have to make a speech to answer that.

Q. I don't believe——

A. I have got quite a long——

Q. I don't believe it calls for that. I will ask you this. Do you think the community attitude of both of the races should be considered when you go to see what is best in the way of the field of education for that community?

A. I think so. You understand that the attitudes of the community are complex. Attitudes in the State of Illinois and the State of Texas, I take it, are, one; some white peoplea don't want to be near negroes under certain conditions, and those same white people want equality of education [fol. 337] and other opportunities in America, and there are both kinds of attitude in making the change.

Q. Would you consider the attitude of some Negroes that would rather have segregation themselves, in determining the educational situation?

A. Yes, and you have to consider that Texas, with other Americans, share the view that equality of opportunity is due every man in this country, and they are struggling, as are all of us, to reconcile those attitudes.

Q. You would take those two into consideration before you would arrive at what is best to be done for the individual and the community?

A. Always understanding both kinds of attitudes.

Q. I will ask you, Dr. Redfield, if you have made any check on the relative number, of where the Negroes of this country who hold college degrees, have obtained those degrees? Have you made any study as to the opportunities offered for the Negroes of this country to obtain college degrees?

A. I have read reports on it.

Q. Isn't it true that the figures of 85% of the Negroes of this country who have college degrees received them from southern, separate colleges?

A. I don't remember.

Q. Does that sound about right?

A. When you say it, sir, it does.

[fol. 338] Q. Thank you. Are you a member of the National Association for the Advancement of Colored People?

A. No.
Q. That is all.

(Witness excused.)

Mr. Durham: That is the only one that we have to put on out of order.
Mr. Daniel: I want to call Mr. Durham.

W. J. DURHAM, having been called as a witness by the Respondents, and having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Daniel:

Q. State your name, please.
A. W. J. Durham.
Q. Where do you live, Mr. Durham?
A. Dallas, Texas.
Q. What business are you in?
A. Engaged in the practice of law.
Q. Are you attorney for Heman Marion Sweatt in this case?
A. I am.
Q. You heard him testify concerning the fact that you were his attorney when the suit was filed?
A. I did.
[fol. 339] Q. Was Thurgood Marshall here in the case at that time?
A. No, I wasn't here when he talked to me about it.
Q. You were not in it either?
A. You said was he here. I was in Dallas when he talked to me about it.
Q. You misunderstood my question. Was the attorney here, Thurgood Marshall, the attorney for the National Association for the Advancement of Colored people, helping you in the case at the time you filed it?
A. No, he wasn't.
Q. Was he in the case at the time the deposition of the relator was taken in Houston, Texas, June 15, 1946?
A. I had possibly had communication with him.
Q. You had?

A. Yes.

Q. Had the relator had any communication with him at that time?

A. Not that I know of.

Q. I would like for you to state to the Court what, in the way of finances or legal services, the National Association for the Advancement of Colored People is furnishing in this case?

A. They have furnished the money to pay for the record on appeal.

Q. How much money has the National Association furnished?

A. $100.00 to me, I think it was. No, whatever the record in this case costs. I don't remember just what it was.

[fol. 340] Q. Are they also furnishing the attorney for the Association, Mr. Marshall?

A. That is right.

Q. Were you here at the meeting held here in Austin the night before the case came up in the Court of Civil Appeals?

A. I was not.

Q. What other finances had the N. A. A. C. P. furnished in this case?

A. None, to me.

Q. Do you know of any to anyone else?

A. I don't know, not of my own knowledge.

Q. Did you attend a meeting on March 8, 1947 in Dallas and address that meeting which was considering the question of this lawsuit and higher education for Negroes?

A. I have attended several meetings in Dallas where they discussed higher education for Negroes. As to what date, I don't know, I don't remember at this time.

Q. Were you in Dallas when the relator came up there and showed you the relator from the registrar saying that he would be admitted to the new Negro Law School?

A. I was there. He stayed at my home.

Q. You have heard him testify here as to the discussion and conclusion that was reached there, to the effect that he should not enroll, have you not?

A. I did.

Q. Prior to advising him whether or not he should enroll in the new Negro Law School, I will ask you if you came to [fol. 341] Austin and made any check on the school?

A. I did not.

Q. Did you send anyone down here to make an inspection of the school?

A. I did not.

Q. Did you talk with Dean McCormick or any of the other faculty members assigned to the new Negro Law School to determine whether or not, in your opinion, this new Negro Law School had the equal facilities to those at the University of Texas?

A. Did I talk to any of them?

Q. Any of the officials of the University?

A. I did.

Q. Did you make any investigation whatever of the courses that were to be offered, and the instruction to be offered in this new school, before advising, before you and the relator came to the conclusion that he should not attend?

A. I only read the courses set out in the catalogue.

Q. And those are the same courses offered at the University of Texas?

A. Those are the courses offered at the University of Texas.

Q. That is all of the knowledge of the matter that you had before you and he reached the conclusion he should not enroll in the separate law school?

A. No.

[fol. 342] Q. You say that isn't all of the information you received concerning the courses?

A. The courses, yes. That is the only information I had concerning the courses.

Q. Did you have any other information concerning the professors?

A. I never knew who the professors were.

Q. I see. And that is all of the investigation that you made at that time concerning the facilities of the school, the courses and the professors, before the decision was reached as to what he should do?

A. Well, no.

Q. What other investigation did you make of the facilities, the courses and the professors?

A. I asked a Mr. Maceo Smith to furnish me a report.

Q. You asked Mr. Maceo Smith to furnish you a report on the new Negro Law School?

A. That is right.

Q. Did he furnish you that report?

A. Yes.

Q. Is he connected with the National Association for the Advancement of Colored People?

A. Yes.

Q. What is his official position with that organization?

A. Secretary of the State Conference of Branches, N. A. A. C. P.

Q. State that again.

[fol. 343] A. Secretary of the Texas Conference of Branches of N. A. A. C. P.

Q. Is he here in the court room today?

A. I haven't seen him.

Q. Where does he live?

A. Dallas.

Q. Did you make any investigation other than the one you asked Maceo Smith to make?

A. No.

Q. Did he give you a written report?

A. He gave me a report by telephone.

Q. How long after you asked him for it?

A. Oh, perhaps four or five days.

Q. Perhaps four or five days—did you make—then, was it strictly on the investigation made by Maceo Smith that you arrived at the conclusion that you and the relator agreed upon him——

Mr. Nabrit: We object to that. The basis upon which the attorney advises his client is——

The Court: It is confidential.

A. And I desire to claim it at this time.

By Mr. Daniel:

Q. All right. I will ask no further questions,—before you go, I will ask you one question. Did you make any other investigation yourself of the matter, regardless of what you advised your client? You, yourself, did you [fol. 344] make any other investigation of the matter other than what Maceo Smith——

The Court: You can ask him whether he did or didn't, but not what he did.

A. I made no other investigation.

Cross-examination.

Questions by Mr. Marshall:

Q. When you say the money that was contributed to the record in this case by the N. A. A. C. P., did you mean the National office of the N. A. A. C. P. or the State Conference of Branches?

A. The State Conference of Branches of the N. A. A. C. P., and not the National.

Q. And that conference is composed solely of people in Texas?

A. Around 40,000 negroes and whites.

Q. Both whites and negroes?

A. I want to make this statement. When I said "for the record" in this case, Mr. Sweatt gave me the first $100 to pay the Court costs when I filed this lawsuit. That came directly from Mr. Sweatt.

Q. That is all.

Redirect examination.

Questions by Mr. Daniel:

Q. To refresh your memory on this matter of the meeting of March 8, 1947, I would like for you to look over this [fol. 345] article and see if you can refresh your memory as to that particular meeting I am asking about.

A. This says March 13th.

Q. If you will read on down it says the meeting was on the 8th.

A. I attended a number of meetings. Whether this meeting or not, I don't know.

Q. Look that over and see if that doesn't refresh your memory about attending that particular meeting?

A. Now, I attended two or three meetings where similar actions were taken as the action taken here. Whether it was at this meeting or not, because they hold many meetings that I don't attend.

Q. This meeting reported here was held just before the Negro Law School was to be opened, the week-end before, wasn't it?

A. I don't know.

Mr. Nabrit: Your Honor——

Mr. Daniel: I will withdraw the question.

Q. Did you attend one of those meetings several days before March 10, 1947, at which you made a report to the meeting yourself about the separate Negro Law School that was set up here, and which Mr. Henry Doyle, of Austin, was present, and Joseph Rhodes was present and presided at the meeting?

A. I have never made a report to any meeting at any time anywhere with reference to the Negro Law School, because I knew nothing about it.

[fol. 346] Q. You knew nothing about it. Did you ever attend any meeting at which any report was made concerning the N. A. A. C. P. intending to picket the Negro Law School on March 10, 1947, the date it was to open, in which that was reported?

Mr. Nabrit: Your Honor, that question is entirely irrelevant and it is immaterial.

The Court: I believe it is. I will let counsel answer it, if it—if he wants to.

A. I have never been in a meeting that I can remember where the N. A. A. C. P. took action with reference to picketing the law school.

By Mr. Daniel:

Q. I didn't ask you if they took any action. I said, was any report there made or anything mentioned concerning the proposed picketing of this school?

A. Not while I was in the meeting.

Q. Not while you were in the meeting. How long did you stay?

A. I came into the meeting—the Bar Association meets from ten until eleven, as well as I remember, the last meeting I attended on Saturday morning, and I attended the Dallas County Bar meeting from ten until eleven. I don't know how long the meeting had been in session. I went back to my office, and the office girl told me they called me to come to the auditorium at the Roseland Hall. They wanted me to make a statement for the benefit of those as-[fol. 347] sembled with reference to the Sweatt case, and I think I got to the meeting around twelve o'clock. The only statement I made in that meeting was with reference to the status of the Sweatt case, and as to other—what other business they transacted before or after I left, shortly

after I made my statement with reference to the Sweatt case——

Q. Picketing wasn't mentioned while you were at the meeting?

A. No, because when I came in I told the girl in the office that I would have only a few minutes, and when I came in, they said, "Come to the front, and we will let you make your statement and go." I made my statement, and I guess I had been in there not more than four or five minutes. As soon as I made my statement I attempted to leave the building, and some two or three fellows I knew stopped me, and I sat and talked to them for maybe five or ten minutes, and I left the meeting, and it occurs to me that the meeting adjourned while I was still there talking to them, but I don't know what discussion took place before I went there.

Q. What was the name of the meeting—the organization?

A. I believe that was the—I am mistaken about the N. A. A. C. P. It was a State Council of Negro Organizations.

Q. Was N. A. A. C. P. a member of that council?

A. As I understand, every organization in Texas, religious, fraternal, social and all other characters, organizations of that nature, are members of that organization. That is my——

[fol. 348] Q. Do you know Henry Doyle, of Austin?

A. Yes.

Q. Did you see him there at the meeting that day?

A. I am not sure whether I knew Henry Doyle on that day. I probably did. My impression is there were some people from Austin.

Q. That was Saturday before May 10, 1947?

A. I can't be exact about the date.

Q. It was before the opening date of the new law school in Austin?

A. My best recollection is that it was, but I wouldn't be positive about it.

Q. I see. Is Maceo Smith a lawyer?

A. No.

Q. He is the man that made you the only report that you received on the law school, is that right?

A. That is right.

Q. He is not a lawyer?

A. That is right.
Q. That is all.

(Witness excused.)

The Court: We will recess until nine o'clock in the morning.

(Court was recessed at 4:30 p. m., May 14, 1947, until 9:00 a. m., May 15, 1947.)

[fol. 349] Morning Session, May 15, 1947. 9:00 A. M.

Earl G. Harrison, a witness produced by the Relator, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Nabrit:

Q. State your name, please.
A. Earl G. Harrison.
Q. And where do you live, Mr. Harrison?
A. Philadelphia, Pennsylvania, 2028 Spruce Street.
Q. What is your occupation?
A. Professor of Law, and Dean at the University of Pennsylvania Law School in Philadelphia.
Q. Dean Harrison, would you please state your educational qualifications?
A. I received my Bachelor of Arts Degree at the University of Pennsylvania in 1920; my Bachelor of Law Degree at the University of Pennsylvania Law School in 1923.
Q. Would you state briefly your professional experience?
A. From 1923 until July 1, 1945, I practiced law in Philadelphia. During a portion of that time I conducted courses at the University of Pennsylvania Law School, principally between 1932 and 1938. I became Dean, full-time Dean, and [fol. 350] Professor of Law on July 1, 1945.
Q. Are you a member of the American Bar Association?
A. Yes, sir, I am; and I am Vice Chairman of the American Bar Association's Committee on Continuing Education of the Bar, a committee which is considering ways and means of post admission education. I might say also that since '39 I have been a Trustee of the University of Penn-

sylvania, and as such, a member of the Board of Trustees of the Law School of the University of Pennsylvania.

Q. Have you ever done any work for the Department of Justice?

A. Yes, I have.

Q. What was the nature of that?

A. Well, in 1940 I directed the first National registration of aliens in the United States; immediately after the outbreak of war I supervised the registration of aliens of enemy nationality. From 1942 to 1944, I served as United States Commissioner of Immigration and Naturalization.

Q. Now, Dean Harrison, I want to ask you a hypothetical question. Based upon the evidence which has been, which has already been offered in this case, and to be offered in this case, and upon the proposition that these facts will be proved that are used in this hypothetical question. Assuming that the proposed Negro Law School in Texas is equal in all other respects to the Law School of the University of Texas, except in respect to the size of the student body, and further [fol. 351] assuming that the proposed Negro Law School has a student body which consists of one student, in your opinion would the Negro Law School offer to that Negro student a legal education equal to that offered to any student at the University of Texas, which has a student body of approximately 800 students, and further in connection with that, would it offer a legal education substantially equivalent to that?

A. In my opinion, it would not.

I have taken into consideration in that answer the facts as have been testified to by Dean McCormick——

Mr. Daniel: Excuse me, sir. We object to anything taken into consideration outside of the hypothetical question.

The Court: Yes, that is right. The answer should be to the question of counsel.

Mr. Durham: Your Honor, he assumed in that question the testimony that had already been introduced.

The Court: I know, but then counsel asked him to assume certain things, and he then in his answer said he was assuming something *something* else. It may have been in the testimony, but it wasn't within the confines of his question.

Mr. Nabrit: All right.

A. I would like to make this additional comment upon the question. In my opinion, it is mistaken, even absurd, to

[fol. 352] speak of any institution that has one student as a law school.

Q. Why?

A. Because the system, the modern system of instruction used in a law school is what is known as the case system, the case method. That is to be contrasted with the former method of the lecture system, in which the professor of law merely sat and lectured to the class, in which case it didn't make much difference how many or how few students there were in the class.

Q. Before you go any further in that, Dean Harrison, I would like for you to include in a discussion of this hypothetical question, in dealing with two propositions, whether this student could get equal education or whether he could get the substantial equivalent to that received by a student of the University of Texas; also, ten students. That is, we want the hypothetical question with one student in the Negro Law School, and we want you to deal with and take ten students at the Negro Law School, both in contrast to the students of the University of Texas, where they have approximately 800 students. Will you tell us something about the case system of study and the reason for your opinion?

A. Before I do that, I want to answer specifically the question supposing a student body of ten students.

Q. Yes.

A. In my opinion, such students still would not get an equal [fol. 353] education, or even one that is substantially equal to that which is received by the students in such an outstanding law school as the University of Texas Law School.

Now, I say that largely for the reason that the system of instruction used today is the case method. I was about to elaborate on that. It is to be contrasted with the lecture system. Also, it is to be contrasted with the so-called textbook system, in which the professors and class would use a textbook, which means the result of study by some other professor or lawyer or judge of the pertinent court decisions in that field. The class would take, therefore, rather predigested material by someone else, and undertake to become familiar with the rules of law that can be taken from court decisions, but a good many years ago a change was effected in the method of legal education, and gave rise to the so-called case system.

That system merely means that the students go to the original sources for their materials, namely, the decisions of the courts, and under that system the professor does very much less talking than he did under the lecture system.

He calls on some member of the class to make a report on a given case which has appeared in the case book, and right at that point, the professor usually calls for comment from the other members of the class, and from there on it is largely a matter of discussion in which the members of the [fol. 354] class participate to a large extent, one commenting on the recital made by the previous; another criticizing his statement, either the facts of the case or the decision arrived at by the Court, and it is first and foremost a class discussion.

Now, I find it very difficult even to contemplate the possibility of legal education under such a system of that being received even slightly adequate, if you have a single student in the class, and more than that, I say the same thing is true where there is a limited group of ten.

The so-called smaller law schools usually average between 50 and 100.

Mr. Daniel: We object to that. He is testifying about something not within his own knowledge, hearsay.

The Court: Yes. I think that isn't within the question. He might know of it, but he was not questioned about it. I will sustain the objection.

By Mr. Nabrit:

Q. So that, Dean Harrison, in your opinion, under the case system of study, it is practically impossible for a single law student to get the best possible training out of a class?

A. That is true. In my opinion, a very important facility of a modern law school consists of one's classmates. In other words, it isn't enough to have a good professor. It is equally essential that there be a well-rounded, a represen- [fol. 355] tative group of students in the class room to participate in the class room discussion which centers around previous decisions of the courts.

Q. Now, Dean Harrison, does the presence of—I will restate that. Is the study of law affected by the presence or absence of upper classmen. By that, I mean this; if a single

law student, studying in a freshman class in a school where there are no other students, in the second and third year classes, is the possibility of that student receiving a sound legal education affected by the absence of these upper classmen?

Mr. Daniel: We object, that calls for a conclusion of the witness, Your Honor. It doesn't even call for opinion testimony.

The Court: I believe he could answer that, Mr. Attorney General.

Mr. Daniel: Note our exception.

A. In my opinion, it would have a very material bearing upon the legal training the student would receive. In other words, work in a law school outside of regular class room hours is exceedingly important, rubbing elbows with the other students in the law school, taking part in small discussion groups, discussion with advanced students, all are very important considerations, equally so, in my opinion, with the actual class room work itself.

By Mr. Nabrit:

Q. Dean Harrison, have you made any studies; are you [fol. 356] acquainted with the results of any scientific studies with respect to the size of law schools?

A. I am.

Q. Would you state your knowledge of these scientific studies or your conclusion which you have reached from your own investigations?

Mr. Daniel: We object to the question, and we would like to know what the studies are.

The Court: He can perhaps relate what the studies are.

A. I am familiar with the studies that have been made by the section on Legal Education of the American Bar Association, with the surveys that have been conducted periodically by the Carnegie Corporation, and by the Russell Sage Foundation.

Q. What has been the result of your studies with respect to the sizes of law classes and their bearing on legal education?

Mr. Daniel: Your Honor——

Mr. Nabrit: If you know?

Mr. Daniel: We object to the testimony concerning these studies. We believe they would be the best evidence here. He is testifying about something he didn't have anything to do with, according to what has been shown so far.

The Court: I think he would have a right to testify, being familiar with the scientific studies.

[fols. 357-367] Mr. Daniel: Note our exception.

A. All of the studies that I have mentioned have considered at one point or another the relative merits of a large, as contrasted with a small student body. Most of these studies have divided the law schools of the country into three groups; the so-called large law schools that have a student body in excess of 1,000. Most of the law schools in the country, it was found in the course of these studies, have a student body ranging from 100 to 500.

There is another substantial body of law schools having a student body less than 100. The studies that have been made have put into the category of so-called smaller law schools those students having a student body of between 50 and 150. Those studies also have indicated that the opportunities for legal education, a thoroughly rounded legal education, are much more limited in the so-called smaller law schools than they are in the larger law schools.

The studies that I have reference to have pointed out in general there are four objectives of law school education. One is, of course, to prepare the practitioner. Second, is to prepare and train law teachers. Third, is to train and prepare men for legal research, and the fourth objective is to train and prepare men and women for public service.

The studies to which I have referred have reached the conclusion that the so-called small law schools are not in a [fol. 368] position to achieve or even to strive for all of those four objectives. They have concluded that the small law schools are not in position really to train men for law teaching or for legal research, and those studies have reached the conclusion that the so-called smaller law schools should, therefore, confine themselves primarily to preparing practitioners, and for preparing men and women for public service.

Q. Dean Harrison, do these studies show the, show whether the smaller law schools have in most cases such things as law reviews, moot court?

A. The studies show that many of the smaller law schools do not have those additional facilities, which, in my opinion, are extremely important. The existence of a law review is not only a great incentive to all students, but if a student is fortunate enough to qualify for a position as editor, it is a tremendous advantage to him, not only then in the course of his legal training, but throughout the rest of his professional life. It is a qualification to which he can always point with pride, and which will be very helpful to him in connection with his professional standing, and with his professional advancement.

The same is true with respect to the system of moot court arguments. That, again, is something that is outside the class room, but all of the leading law schools of the country, certainly including the University of Texas Law School [fol. 369] have a system of moot court arguments. It doesn't make much difference, in my opinion, whether those arguments are participated in by first year men or not. It is something to which they have access, but in the second and third years they are permitted to take part in it.

They learn something which isn't taught in a good many law schools in any other way, brief writing, ability to stand up and present an argument before a court, training in that, legal research, all of those are covered by the so-called moot court argument system which prevails generally in the leading law schools of the country.

Q. Dean Harrison, would you say that scholarships, honors, societies like the Order of the Coif, and law reviews, are extraneous and unimportant factors in a law school?

A. They are by no means extraneous. They are an important part of law school life of law schools. To have such an organization as the Order of the Coif is, again, an incentive to the student body, not only looking forward to practicing, one looking forward to a career of public service, but certainly to one who might look forward to law teaching, work on legal research. The fact that he has had an opportunity to be elected to an organization such as the Order of the Coif is an extremely important one to him. All of the matters to which you refer are, in my opinion, an integral and most important part of the legal training, and [fol. 370] are by no means to the slightest degree extraneous.

Q. Dean Harrison, is it true that with one student there is no necessity for a full-time teacher because one student

with the same capacity as other students could get a better grasp of the principles of law than if he were one of 800 students with many teachers?

A. I thoroughly disagree with that point of view, and in my opinion, it is not true, that merely because there should be a small number of students there would be any the less need or desirability for full time professors. Now, the reason, as clearly shown in all of the studies that have been made, the reason for insisting——

Mr. Daniel: Your Honor, that isn't responsive to the question. I would like for him to ask him the questions.

The Court: Yes.

A. I am about to discuss the full-time professors.

Mr. Daniel: I know, but let him ask you for it, please, Dean Harrison, from now on.

By Mr. Nabrit:

Q. Dean Harrison, it has been stated that the reason for full-time teachers is that the teachers will have some chance to individually and personally know the students. Is that the reason for full-time teachers in law schools?

A. That is one of the reasons.

Q. Do you know the other reasons? If so, state those.

A. Of course, I know them; and other reasons equally [fol. 371] important are that the teacher should be available to the students during the usual business hours. The great objection to the part-time lecturer, the lawyer or the judge downtown who comes out and gives an occasional class room hour, the greatest objection to having the whole faculty consisting of that kind of professors is that he will not be available to the student during the ordinary hours when the student is going over the class room notes, his class room discussion, and endeavoring to make up what he calls a digest, or his own review.

Frequently he gets stuck. Something then becomes unclear to him which he thought previously he understood, and so, it has been thought to be a great advantage that the law professor ought to be in the building, accessible to the law students. That doesn't mean that he is accessible every minute of the time. A professor has other duties. He is often engaged in his own research, which is a fundamental reason for requiring a reasonable number of full-time professors, have them there in the law school so that

they should be available to the student outside of regular class room hours, to help him over troublesome spots.

Q. Dean Harrison, are you familiar with the standards of the Association of American Law Schools?

A. I am.

Q. Under the standards of the American Association of— [fol. 372] Association of American Law Schools, would a student who was enrolled and engaged in the study of law at an unapproved law school during its first year of operation, who wished to transfer from that school to one of the law schools in the Association of American Law Schools, would that student's credits be accepted by the school which was a member of the Association?

A. They certainly would not. If a student attended a first year——

Mr. Daniel: Just a minute.

Mr. Nabrit: Just a minute, Dean Harrison. I think he has answered it, too.

The Court: Yes, he has answered it.

By Mr. Nabrit:

Q. Would the fact that students' credits would not be accepted from this school be of any importance in evaluating the legal education of that student and the opportunity for that student at this unapproved school, in comparison with the legal education of a student at another school which was approved, and whose credits would be accepted?

A. Of course, it would.

Q. What is the reason for that?

A. A great many law students, after they have taken part of their education, desire to launch upon a specific kind of career. Many of them are totally unable to judge at the outset of their legal education what they want to do, [fol. 373] and so, not an inconsiderable number of them do think in terms of transferring from one institution to another, after they get a clearer idea of what it is they want to do, particularly if they want to specialize.

A student who is in an unapproved school can not transfer to an approved institution. Let's say at the end of the first year, for example, if the school which he has been attending up to that point has not been approved by the Association of American Law Schools, therefore, there is a distinct advantage to the student who is attending an

approved institution to have that greater flexibility which arises out of the fact that he may, for one reason or another, wish to transfer to another institution, even though he may not have that intention at all when he enters the law school.

Q. That is all.

Cross-examination.

Questions by Mr. Daniel:

Q. Dean Harrison, one of the main advantages of the case system of study is in order that the students may go to the original sources, prepare for recitations on them, and make those recitations in the class room, isn't that correct?

A. That is correct.

Q. That is one of the advantages?

A. That is right.

[fol. 374] Q. Now, let's take a hypothetical case of a hundred and seventy five students in the class room as compared with ten students in the class room, with the same professors, a one hour class period. I will ask you, in your opinion, whether or not a larger percentage of the students in the class room of ten could recite on the cases assigned for the day than in the class room of 175?

A. Unquestionably, a higher percentage of the smaller class would be called on to recite on the cases, but it is necessary for me to qualify that to this extent.

Q. I will let you qualify it in a minute.

A. I must explain my answer now.

Q. I think you have answered my question.

The Court: I think he can explain his answer.

Mr. Daniel: All right.

A. I do want to say that an equally important part of class room discussion——

Q. I am coming to that next.

A. All right, if you ask me a question.

Q. I am not going to leave anything out in the value of the system.

A. Thank you.

Q. The next important——

Mr. Durham: We object to it. The witness is entitled to answer the question, to qualify his answer. Now he goes [fol. 375] to the next question.

Mr. Daniel: That is going to be just what he is talking about.

Mr. Durham: All right.

By Mr. Daniel:

Q. Now, the next important feature of the case system, as I understood your testimony on direct examination, was the class room discussion, where, after this one student has recited, or as many, as large a percent as possible has recited on the case during the class period, then other students may be given an opportunity to arise and criticize the discussion and make comments; correct?

A. That is right.

Q. Now, I will ask you if it isn't correct that in a class room of ten during an hour's period, with the same professor, if a larger percentage of the students within the class room would not be able to comment and discuss the case than in a class room of 125 during the same period of time?

A. Yes.

Q. That is correct?

A. Yes, but it is here that I want to say that it is equally important what the student hears, as well as the opportunity he has to make his own comment. It isn't alone important that the student have an oppportunity to make comments or suggestions or arguments, but it is equally important, in my opinion, that he should hear the comments and criti- [fol. 376] cisms of other members of the class.

Q. Now, Dean Harrison, you have been teaching that system for several years, haven't you?

A. Yes.

Q. Isn't it an unusual thing for more than nine fellow students to comment on recitations? Isn't that the unusual, rather than the usual thing?

A. No, not in my classes.

Q. I see.

A. There is more likely to be 25 or 30 students in any one hour who will make a comment, not a recitation on a case, but will make a comment or criticism of what has been said by some fellow student or what has been reported upon on the case under discussion.

Q. But in an hour's class where you allow 25 to comment on the recitation given by a fellow student, certainly

you do not get to cover as many cases during that hour as if fewer commented?

A. That is right. You don't cover as many cases.

Q. But in a smaller class of ten where less would be able to comment, not more than nine, ten counting the professor, you would, of course, be able to cover more cases during the hour, wouldn't you?

A. Yes.

Q. Now then, Dean Harrison, I would like to ask you on [fol. 377] the full-time professor proposition if the—a law school has three or four full-time professors for ten students, assigned full time; if they would not be in a position to meets the requirements there of giving as much time as possible to the students, much better than in a school where seventeen professors have 850 students to give time to?

A. Let me be sure that I understand your question.

Q. Yes, sir.

A. Am I to assume that the three or four so-called full-time men spend their time outside of the class in the same building with me, the student?

Q. All right, sir, exactly as—you were here when Chairman Woodward and Dean McCormick testified?

A. Yes.

Q. About the proposed plan for the future of this Negro Law School under discussion?

A. Yes.

Q. If that is adopted, whereby three or four full-time professors are there all of the time, would not they be able to give more of that required time than seventeen would to 850 students at the larger law school?

A. Of course they would, if they are full-time in the so-called new institution, and if they do not go back to the University of Texas after they complete their class room work.

Q. I would like to ask you a hypothetical question. If [fol. 378] you have a separate Negro Law School, let's say in one part of the city with absolutely every facility, physical and otherwise, including soci-ties, fraternities, law reviews, and everything that you have in a white law school in another part of the city, in exactly—with the same number of students, the same faculty and everything else equal except that they are separate schools, one for the whites and one for the colored, I will ask you if, in your opinion,

there would be any chance that a student attending one of those separate schools would not receive substantially equal legal training and procedure from those two schools?

A. In my opinion there is a considerable chance that just that would be the case.

Q. They would receive substantially equal legal education?

A. That they would not, and I say that because whenever you have a student body that is limited to one group, you do not get the kind of representation, cross-section of the community that is so highly desirable in particularly the first year classes of law school.

Q. If I understand your answer to that question, you believe that a law school in one part of the city with 850 white students, the same faculty, everything exactly the same as one in another part of the city with 850 Negro students, everything is exactly the same except they are separate schools, you believe that the student in the white school [fol. 379] would not receive equal or substantially equal legal training with the student over in the Negro School, is that correct?

A. I say that the student in the white school would receive a better legal education, better legal training, because in my opinion, you can not get, under present conditions, a class made up entirely of Negro students that would be as representative of the entire community as would be the case in a class, a school made up entirely of white students.

Q. You don't think there would be any chance of substantially equal educational opportunities then in separate schools?

A. No, the white student would have a decided advantage, in my opinion.

Q. That is all.

Mr. Nabrit: That is all. Thank you.

(Witness excused.)

Mr. Marshall: That is the only one we have.

Court was recessed at 9:45 a. m., until 10:05 a. m., May 15, 1947, following which proceedings were resumed as follows:

Mr. Marshall: May it please the Court, we have one witness whose testimony will be based on some records,

that we will have on the way here, and I think it would be all right, if, with the permission of the Court and the other side, for him to testify to those.

[fol. 380] The Court: Subject to the production of the instruments, I think it would be all right.

Mr. Marshall: They will be here in a few minutes.

Dr. Charles H. Thompson, a witness produced by the Relator, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Marshall:

Q. Will you give your full name?

A. Charles H. Thompson.

Q. And your address?

A. 1230 Fairmont Street Northwest, Washington, D. C.

Q. Your present position?

A. I am Dean of the Graduate School of Howard University.

Q. That is in Washington, D. C.?

A. Yes.

Q. First of all, where were you born?

A. I was born in Jackson, Mississippi.

Q. Will you trace your educational qualifications?

A. Yes. I attended an elementary school, private Baptist school in Kosciusko, Mississippi, and graduated from what I thought was a high school; and I attended Wayland Academy, of Virginia Union University, in Richmond, Vir-

[fol. 381] ginia, starting in 1911, and finishing the academy there in 1914, and subsequently attended college until 1917, and went to Chicago, and spent a year there and got the degree of Bachelor of Philosophy in June, 1918, and then I went overseas in World War I and spent eleven months in France, returned and went back to the University of Chicago, where I took my Master's Degree in 1920.

In 1920-21 I taught at the Virginia Union University in Richmond, Virginia. At the end of that year I went back to the University of Chicago to work toward a doctorate in psychology. In 1922 I went to the State Normal School in

Montgomery, Alabama, and spent two years as instructor in teacher training in that institution.

In 1924 I went back to the University of Chicago and completed the training for the doctorate, and received my Doctor's Degree in 1925. On completion of my doctorate at the University of Chicago I went to the Sumner High School in Kansas City, Kansas, and taught psychology and economics in the Junior College for one year.

Q. Dr. Thompson, on your master's, what was your particular study in your thesis?

A. I made a study of comparative learning abilities of Negro children in the City of Chicago.

Q. Getting back to the positions you have held since you obtained your doctorate, after leaving Sumner High School [fol. 382] in Kansas City, where did you go?

A. To Howard University, as Associate Professor in Education, in 1926. In 1929-1930, I was made Professor of Education. In 1931 and 1932 I was Acting Dean of Education at Howard University.

In 1932 I was made Director of the Bureau of Educational Research and editor of the Journal on Negro Education, and in 1938 I was made Dean of the College of Liberal Arts, which position I held until 1943. Beginning January 1, 1944, I have since been Dean of the Graduate School of Howard University.

Q. Up to the present time?

A. Yes.

Q. Explain to the Court what is the Journal on Negro Education.

A. The Journal on Negro Education is a scholarly magazine in the field of education, which deals primarily with the education of minority groups, and particularly, the Negro group.

Q. And how wide is the circulation of that?

A. It has average circulation of a scholarly journal.

Q. Is it a magazine of general circulation, or a magazine usually circulated among people in the educational field?

A. Primarily the latter.

Q. What then is the Bureau of Educational Research that you are Director of?

A. The Bureau of Educational Research is an organiza- [fol. 383] tion which was set up to make investigations of various types of educational problems, primarily problems

dealing with minority groups, particularly Negroes in America.

Q. Have you published any scientific articles?

A. Yes.

Q. In what publications, as far as you can remember?

A. A number of publications. The Annals of the American Academy on Political and Social Science, Educational Administration and Supervision and several others that I do not recall at the present time, School and Society.

Q. Dr. Thompson, have you done any scientific work, research on the question of the comparative educational facilities for white and Negro students in segregated school systems?

A. Yes, I have.

Q. About how long have you been working on that?

A. Oh, as I indicated a moment ago, I became interested in the problem when I was working for my Master's Degree at the University of Chicago. In 1928, I believe I published the first results of an investigation that I made on the educational achievements of Negro children in separate schools. That was published in the annals to which I referred, in 1928, and since then I have published a lot of things, a list of which I do not have at the present time.

Q. Dr. Thompson, are you familiar with other recognized scientific studies in the field of the comparison of education [fol. 384] of Negro and white students in separate schools?

A. I am.

Q. Have you worked at all with the United States Department of Education in recent years?

A. On several occasions.

Q. Can you briefly give those occasions, and what type of work it was?

A. The first contact with the Bureau was around 1931 or 1932. That wasn't on one of these comparative studies. It happened to be a study of the products of graduate schools of the country. The second contact was a commission called the Wartime Educational Commission. The most recent contact I have had was as advisory member of the National Survey on Higher Education of Negroes, published in 1942.

Q. Was that published by the United States Government Printing Office?

A. Yes, it was.

Q. As an official document?

A. It was.

Q. By the way, while discussing the Government, do you at the present time hold a position on any official commission of the Federal Government?

A. I don't know whether you would call it United States Educational—United Nations Scientific Educational Organization. I am on the National Committee for the United [fol. 385] Nations Scientific and Cultural Organization, which is under the sponsorship of the State Department.

Q. That represents the United States Government?

A. Yes.

Q. In the United Nations organization on education?

A. Yes, commonly known as UNESCO.

Q. Are there any people from Texas serving on that Commission with you?

A. I think Professor Dobie, at the University of Texas, and Dr. Evans, of the Library of Congress, is on that Commission,

Q. Do you have any official connection—what is the National Educational Association?

A. That is an association of teachers in the United States, public and private.

Q. And do you hold any official position in that organization?

A. I am the consultant to the Educational Policies Commission of the UEA.

Q. What is the Educational Policies Committee?

A. That is very much as its name suggests, to study and make recommendations concerning educational policies for development of education in the United States.

Q. Do you know of the Association of American Colleges?

A. Yes.

Q. What is that?

A. That is an association of some five or six hundred [fol. 386] liberal arts colleges in the United States which have come together in an association for their mutual benefit.

Q. Do you hold any official position in that organization?

A. Yes, I happen to be a member of the Committee on Teacher Education of that organization.

Q. Do you know anything about the Nation's Schools, a magazine, and if so, what is it?

A. The Nation's Schools is a magazine in the field of

education that deals largely with administrative and supervisory problems, broad policy problems.

Q. Do you hold any position in that organization?

A. I happen to be consulting editor of that magazine.

Q. Do you hold any position with The World Book Encyclopedia?

A. Yes. I have forgotten my exact title. I suppose it is consulting editor. What I do is edit all of the material concerning Negroes which goes into that encyclopedia.

Q. What is the Southern Association of Colleges and Secondary Schools?

A. The Southern Association of Colleges and Secondary Schools is an organization composed of a number of white secondary schools and colleges in the southern area. It is an accrediting agency for this region, and I presume there are other things that go on in it that I don't know of.

Q. Does that Association accredit white schools in the Austin area?

[fol. 387] A. It does.

Q. Colleges and secondary schools?

A. Yes.

Q. Does it also accredit Negro separate schools in the same area?

A. Yes.

Q. Do you hold any official position in connection with the accreditation of these schools?

A. During the past year and a half I have been an inspector of Negro colleges for the Southern Association Committee which accredits Negro schools.

Q. What were your duties in that position?

A. My duties were to go around with a committee, generally of three, to inspect designated institutions, and to make a report as to whether or not they were living up to standards, in the case of schools already in, and in the case of schools that were trying to get in, to find out whether they met the standards.

Q. How many such schools have you inspected in the last year and a half?

A. Six or seven.

Q. Six or seven?

A. Yes.

Q. Were you requested by the relator in this case to make certain studies concerning higher education for Negroes in Texas?

[fol. 388] A. I was.

Q. Approximately what date?

A. Around the first week in April.

Q. As a result of that request what did you do?

A. Well, the first thing, I had to rearrange my calendar at the University. That was the very first thing.

Q. I mean, in connection with the study?

A. The first thing I did on the study was to exhaust all of the sources that were available to me in the Bureau of Educational Research at Howard University. That was number one. Number two, I exhausted all of the resources in the United States Office of Education, particularly the Statistical Division. By exhaust, I got all of the material and made a study of it, as far as possible, up until about May first, when I got on the train to come to Texas. I have been here since, the last 10 or 12 days; in fact, I got in Austin Tuesday a week ago. I have been attempting since being in Austin to exhaust all possible sources of information relative to the education in Texas.

Q. Where did you go for this information? What I am driving at, what type of information did you examine?

A. First, I went to the Department of Education.

Q. Is that the State Department of Education of Texas?

A. That is the State Department of Education of Texas, to the office of the Executive Secretary of Scholarship [fol. 389] Commission. I have forgotten the gentleman's name, but his secretary was there, and she gave me the information which I desired.

Then I went over to the Capitol Building. That was in the education building here on Congress and something. I went over to the Capitol Building to the State Superintendent's Office, with the intention of talking to the State Superintendent but he was busy and I found I could get the information I wanted from the statistical department in the Superintendent's Office, and I talked to a Mrs. Tanner in that department, and I went to the Division of Higher Education to see if I could get catalogues or audit reports of State supported institutions in Texas, and found I couldn't get them from that office, but I was directed to the State Auditor's Office, where I went and got all of the available latest reports for all of the higher institutions, State supported, in the State of Texas.

Then I went out to the University of Texas for two reasons. First, to get some information, and, second, to see

it and to look over the general plan. I went to the Registrar's Office to get some catalogues, which I did, on various schools. I didn't get all of them that I need, but sufficient. Then I went over the grounds of the University of Texas. I started on foot, and it was very hot, and I got a taxicab and drove all around the place to get an idea of what it looked like. Then I began work on the material. [fol. 390] While I am talking about where I went——

Q. Didn't you also go some place else in Texas?

A. The next place I went was to Prairie View State College, where I spent five or six hours going through that plant, talking with the principal and teachers, looking at the equipment in the various buildings and that sort of thing. I spent a very profitable five or six hours at Prairie View. I hadn't been to Prairie View before, and I was very anxious to get all I could from that institution.

Q. Dr. Thompson, in these studies that you made of the information that you did not have in your own mind, but that you obtained from other documents and records, will you give the Court as many of those documents and records as you can remember, as to whether or not they were official or private documents?

A. Well, the audit reports were official reports.

Q. We will decide whether they were official. Just name them.

A. The State Auditor's Reports, audit reports of the several State supported higher instititutions in Texas. Of course, I had recourse to S. B. 140.

Mr. Daniel: Would you give the dates on those reports, so that we will know how far they go?

A. 1945 and 1946, 1945 for some of them, and 1946. I was told those were the latest available ones. There was one which I did not get which they said was not available, [fol. 391] namely, the report for the Texas Technological College at Lubbock, but I got all of the rest of them.

By Mr. Marshall:

Q. What other documents did you use in your study?

A. Well, I will finish with Texas, if I can.

Q. Fine.

A. I had access to practically all of the catalogues of the institutions, of the State supported higher institutions.

Q. When you say "catalogues" do you mean the published catalogues?

A. The published catalogues of the institutions. There are a few exceptions, of course. I have had access to H. B. 246, which is the current appropriation bill, I think, passed by the House. What else in Texas? State Superintendent's Report, the Regulations of the Board of Trustees of the State Board of Education in Texas. Others will come to me.

Q. What, in Washington, did you use?

A. The reports of the United States Office of Education, the biannual surveys for 1937 and 1938, 1938 to 1940—1940 to 1942; Statistics of Higher Education, Statistics of Higher Education of the United States Bureau of Education for 1943-1944, Statistics on Higher Education for 1945-1946 for some institutions.

Q. As to those Government reports from the Department of Education, what are they based upon, if you know of your own knowledge?

[fol. 392] A. They are based upon reports sent in by the several institutions of the United States Office of Education for compilation and summarizing.

Q. And is that pursuant to the United States Department of Education?

A. Yes.

Q. Is there anything else that you can remember now? If not, we will come to it.

A. The list of accredited schools, United States Office of Education. I have a good memory, but I can't remember all of them.

Q. We will find out. Now, Dr. Thompson, as a result of your experience over twenty-some years in the field of comparing the education in segregated school systems, and as a result of the materials that you have gone into and examined, are you prepared to testify as to the comparative value of the public education in college, graduate and professional levels, in the State of Texas, with statements as to the official documents from which you obtained information that you do not have in your own mind?

A. I do—I am.

Q. As a result of your past experience, your research among recognized scientific sources of information, and your personal observation and examination of official

documents and records while in Texas, have you made a [fol. 393] comparison of the provisions for and the quality and quantity of education offered at Prairie View for Negroes with that offered at the University of Texas and other schools offering college, graduate and professional training for white students in the State of Texas?

A. I have.

Q. First of all, will you name the State supported institutions of Texas above the high school level to which Negroes are admitted?

Mr. Daniel: Your Honor, I would like to interpose our objection to that question. It seems to be the phase where he is about, after having qualified, to testify as to the schools for the purpose of making a comparison in the field of higher education. I would like to make the objection to that question and to the testimony along that line concerning higher education that has been furnished in Texas in the past in other schools other than the two schools that we now have for consideration in this case. The relator's petition asserts an individual right, as held by the Supreme Court in the Gaines case, the right that he has to enter the State supported white school, is an individual right which he has, unless the State furnishes a separate school with substantially equal facilities for the training he desires.

In his petition here, he makes no allegations whatever that would put us on notice that he intends to put into [fol. 394] this case evidence as to all of the other schools, schools he doesn't seek to enter. Whatever the comparative value or the comparative value may have been in the past as to those schools, has no bearing whatever as to his individual right to a legal education, what he is seeking by this suit, and we say that certainly that line of testimony is not admissible. It is irrelevant and immaterial in this case. We will not object to any part of that testimony bearing on the schools that we have directly involved in this case, but as to the other schools, and what has gone on in the past, and not concerned with what we have at the present, we feel is irrelevant and immaterial in this case. It is today, and what we have for the relator today that answers what he has alleged that he is entitled to as an individual right in this case.

The Court: Unless it has a final bearing on this case it would not be considered.

Mr. Marshall: But I can proceed, sir?

The Court: Yes.

By Mr. Marshall:

Q. Will you name the State supported institutions of Texas above the high school level to which Negroes are admitted?

A. Prairie View University.

Q. Would you say—do you know of any others?

A. I don't know of any other school, no.

Q. Any other public supported school?

[fol. 395] A. No.

Q. Will you name the State supported institutions maintained by the State of Texas above the high school level to which white students are admitted?

A. I take it that you mean the four year institutions, rather than——

Q. I do mean four year institutions.

A. Well, there is the University of Texas, and all of its branches; the Texas A. & M., and its several branches, including the Agricultural School at Tarlton, and Prairie View, by the way, is a branch of A. & M., and Texas State College for Women at Denton; Texas Technological College at Lubbock; the Texas College of Arts and Industries, and then there are seven teachers colleges.

Q. There are seven teachers colleges?

A. There are seven teachers colleges, North State Teachers College, and East State Teachers College, West, Southwest Teachers College, the Sul Ross State Teachers College, and Sam Houston State Teachers College.

Q. Making a total of how many?

A. That ought to be twelve, the way I named them.

Q. There are twelve, are there not? And is there another one?

A. It doesn't come to me.

Q. What are the—and I am speaking now, I am asking you to answer this from your experience in his particular [fol. 396] field, and among your associates in that field and the studies that have been made in that field, what are the recognized criteria for comparing education offered in different schools?

A. Well, the adequacy of, at least, the following things which I shall mention: Number one, physical facilities, plant assets, and the general total assets of an institution. The physical facilities, such as buildings, equipment, et cetera. The total assets of the institution would include not only that, but endowments and other items involved. Number two, the amount of current educational funds at the disposal of the institution. Three, the curriculum, courses of study offered, or the course, as the case may be. Four, the faculty. Five, the library. Those are the five generally recognized criteria. I might add, the standing of the educational institution in the educational world and in the community. I don't know whether accreditation would cover it or not, but we will say those five or six.

Q. Now then, in appreciating and comparing one school with another, or one school with a group of schools, do you use any one of these as the most important, or any group of them as the more important, or how are they considered in relative value, the six items you have mentioned?

A. I don't know how you would make any relative value. They are so interdependent it would be difficult to divorce [fol. 397] one from the other. You can't have a curriculum without a building and equipment. At one time we had Mark Hopkins on one end of the log and Garfield on the other, but it is different now. You can't have one of these without the other. They are interdependent.

Q. The first of the criteria mentioned was physical plant. Will you compare the physical plant at Prairie View with that of the University of Texas and other colleges and universities, public supported, that you mentioned above, which are offered to white students?

Mr. Daniel: We wish to renew the objection directly to that question. That has no bearing on any issue in this case.

The Court: I am going to hear it. I am unable yet to relate it to this.

Mr. Daniel: Our bill will go to all of it?

The Court: Yes, sir.

Mr. Daniel: Yes, sir.

A. I have made a study of the plant assets, and the total institutional assets of the eleven institutions that I have mentioned, with the exception of the Texas Technological

College. I have used as sources for my information the audit reports of the State Auditor of these institutions, S. B. 140, and the U. S. education bulletins to which I have just referred. Now, in 1945-46 these institutions, with the ex- [fol. 398] ception of Texas Technological College, had plant assets worth approximately $72,000,000.00. Probably before I go into that, Your Honor, I might state the basis upon which I am determining adequacy and the general criteria of measurement, if you please.

The Court: All right.

A. Beginning with the second Morrill Act——

Q. What is the second Morrill Act?

A. That is the land grant college act in 1867.

Q. Of the United States Congress?

A. Of the United States Congress. There were four Negro schools under the act of 1862 which received some money, some of the land grant money. Then in 1890, when the second Morrill Act was passed, it made provision for all of the Negro schools to receive—all of the Negro land grant schools—to receive a portion of the money, the act reading something like this; that a just and equitable distribution shall be made. That phrase has been in the subsequent amendments, the Nelson amendment in 1922, and Section 2 of the Bankhead-Jones Amendment of 1925. In making out the just and equitable distribution, the administrators of that fund have set up a formula as follows, or substantially as follows: That where you have separate schools and there is to be a division of these funds, that the Negro school or the school separated, or the schools separated, because in some states they have separate schools [fol. 399] for several races, they would receive an amount at least, or a proportion, at least equal to the proportion which they are of the total population.

Q. Is that formula used by the U. S. Department of Education?

A. That is in the case of the distribution of those funds.

Q. As to the U. S. Department of Education and other studies that have been made, and all of the comparisons that you have studied during your years of experience, isn't that the formula that is generally used by the people in your field?

A. Among the majority, I think. I don't know all of them, but I think the majority accept that.

Q. Is that a formula in comparing Negro and white schools where they are separate?

A. Where money is involved.

Q. Where money is involved. Get back to the plants.

A. To explain further the formula; in the State of Texas there are roughly five and a half million white people, and, roughly, one million Negroes. Just for purposes of illustration, suppose that $11,000,000.00 were appropriated to the white schools, that would mean two dollars for each white person in the population. Therefore, I would say it was two dollars per capita total population for the whites. If in the Negro schools one million dollars were appropriated, and there were one million Negroes, that would be one dollar per capita. That is one way I will use the formula [fol. 400] in giving the statistics. The other way is this; the Negroes in the State of Texas constitute 14.4% of the population. Let's assume that ten million dollars were appropriated for the higher institutions in the State of Texas, Negro and white.

On the basis of this formula, it would be expected that the Negroes would receive at least $1,440,000.00, being 14% of ten million dollars. I shall use from time to time that formula in those two ways, if I may.

Q. I want to get back to the plant. I think you testified there were some $72,000,000.00 worth of assets?

A. Yes; I had better be exact about that.

Q. First, let's have that, will you? While the Attorney General is looking at them I want to ask you a few questions.

Mr. Daniel: Those are just his notes?

Mr. Marshall: Yes.

Mr. Daniel: You are not going to introduce them?

Mr. Marshall: No.

Mr. Daniel: He can read them better than I can.

The Court: He can use them to refer to.

By Mr. Marshall:

Q. Using that group of papers you have in your hand to refresh your recollection, and to testify to, to go back to the comparison of the physical plant at Prairie View with these other schools——

A. All right. Now the plant assets of all of the institu- [fol. 401] tions studied, the four year institutions, minus

the Texas Technological Institute, the plant assets of all of those institutions in 1945-1946 amounted to a total of $72,790,097.00.

Q. What was it at Prairie View, according to the same report?

A. Prairie View's plant assets were stated as being $2,170,910.00. Now, recently S. B. 140 has appropriated $2,000,000.00 for plant, so adding that to the Prairie View item, you would get a total appropriation for, or total plant assets for Negro education or higher education as being $4,170,910.00.

Q. May I ask one question there, Dr. Thompson? In arriving at any figure on the physical plant and the assets, is it not proper to include money that has been appropriated and available, even though it hasn't been spent yet?

A. Yes, that is the reason I call it plant assets, rather than physical plant. Under that formula, of $72,790,097.00, which represents the plant assets of the total institutions, if the formula had operated, that is to say, if Negro institutions had gotten 14.4% it would have totaled $10,481,773.00. Instead, however, they got a little over four million dollars. In other words, they got six million—or they didn't get six million, three hundred and ten thousand, seven hundred and sixty-three dollars which they would have gotten under the formula.

[fol. 402] Now, to put it another way, and probably a little clearer, on a total per capita population basis, there were invested in plant assets of white institutions $12.88 for every white person in the State of Texas. There were invested in the Prairie View,—in the plants of Negro institutions—$4.71 for every negro in the population in Texas.

Q. Now, what about the total institutional assets of the two groups, at Prairie View, as compared to the others?

A. In the total institutional assets, they total $162,039,628.00. That is all of the institutions. Prairie View, $2,568,554.00. S. B. 140 appropriated $3,350,000.00, making a total for the Negro assets of $5,918,554.00.

Q. In order that we might have this clear, what is the difference between total institutional assets and the other material you were just giving?

A. The plant assets have to do with buildings, equipment, et cetera. The total institutional assets include not

only that, but also all of the other assets of the institution, endowment funds and all other kinds of funds.

Mr. Daniel: Now, I think he is getting into something on which the records would be the best evidence, if they are admissible at all. We would like to be on notice of what he is counting as endowment for these white schools.

Mr. Marshall: These auditor's reports have all been [fol. 403] subpoenaed, and we told the auditor we didn't want to keep him around, and we had him on call, and he is called. Do you have the reports? He is testifying exactly from the reports, and it is commenting on the basis of evidence that will be in.

The Court: Let's proceed, and you will have your evidence, and we will handle it by motion to strike, or anything else that is proper.

Mr. Daniel: Note our exception.

By Mr. Marshall:

Q. We still don't have clear what you mean by the total institutional assets. What are you reading from now?

A. The Audit Report of the University of Texas.

Q. For what year?

A. For 1945.

Q. And who is it issued by?

A. C. H. Cavness, C. P. A., State Auditor.

Q. Of the State of Texas?

A. Of the State of Texas.

Q. What page are you reading from?

A. Page 4. It includes as assets general operating funds, pledged revenue property funds, and endowment funds.

Q. Now what page are you reading from?

A. Plant funds. Page 6. Plant funds; that is what that includes, generally.

Q. That is what it includes. All right. Now, the last [fol. 404] question before that was that the total appr-iations to the—I mean the total institutional assets for the Negro institution at Prairie View was some five million dollars; is that correct?

A. That is right.

Q. And the total—you gave the total figure for the other institutions as $162,000,000.00?

A. No, that is the total assets of all of the institutions studied, were $162,000,000.00.

Q. That is the institutions of higher learning, including Prairie View?

A. That is right.

Mr. Daniel: Now, Your Honor, I wish to make a further objection to the testimony in this record concerning endowment funds from private sources. In this case, if he is going to make a comparison as to State funds, and I understand that is what he said his ratio was he is testifying about, that we should distinguish between private endowment funds and gifts to this University and other schools, and limit the comparison to State funds.

Mr. Marshall: I don't think we ever took the position we were limiting this to the State funds. I don't care how the University of Texas gets it.

The Court: I don't think it would be material as to the private gifts.

[fol. 405] Mr. Marshall: But it is available.

The Court: I don't think that would work a mitigation to you as to private gifts.

Mr. Marshall: Say we have a university, that both schools get a hundred thousand dollars from the Legislature, and it happens the University of Texas has oil wells that are available and can be used tomorrow morning to build them more buildings.

The Court: Those are state properties.

Mr. Marshall: The endowment is state property.

The Court: But he is speaking of some private person who gave a thousand dollars.

Mr. Marshall: Let's ask this question.

Q. Dr. Thompson, is the figure of endowment included in the auditor's report of the State of Texas as an asset of the University of Texas?

A. Yes.

Q. It is included as an asset in there?

A. Yes.

Mr. Daniel: May it please the Court, may I ask him one question for the objection?

The Court: Yes.

Mr. Daniel: Do you know whether or not that endowment included as assets comes from State funds or private funds?

A. The one I am going to refer to in a moment comes [fol. 406] from State funds.

Mr. Daniel: I am talking about your total you have been testifying about on the University of Texas. Are you in a position to testify whether or not that total endowment and the other assets came from State or private funds?

Mr. Marshall: If Your Honor please——

Mr. Daniel: Have you broken that down to see where the funds come from?

A. It is broken down in the report, but it is included in this figure.

Mr. Daniel: What I am asking you about——

A. Whether I have used these funds——

Mr. Daniel: Your total on the endowment funds is what?

A. $61,000,000.00.

Mr. Daniel: $61,000,000.00?

A. From the State.

Mr. Daniel: Well, that is owned by the State now, you mean?

A. Yes, this came from the State.

Mr. Daniel: Do you know whether or not that endowment came from the State? It is listed under State. Do you know of your own knowledge whether that came from the State or private sources?

A. This report indicates it came from the State. There [fol. 407] are other funds which presumably are the ones which you are referring to, but the $61,000,000.00 came from the State.

Mr. Daniel: I want to preserve my bill on it.

Mr. Marshall: I just remember the testimony that they are relying on, on supposed gifts to our law school to make it equal. They relied on that all day yesterday.

The Court: Yes, I understand.

Mr. Daniel: We testified to it as a gift. Here we want to know what is a gift, and what is State funds, that is all.

Mr. Marshall: That is all right.

A. Shall I proceed?

Q. Yes, Doctor.

A. As I was saying, the total institutional assets of white institutions amounts to $28.66 for each white person in the population. In the Negro schools it equals $6.40 for each Negro in the total Negro population. In other words, the whites have almost four and a half times, to be exact, 4.47 times as much in total assets per capita of the population as the Negroes.

Q. Now, as to the proportion of the population, will you use the figures that are used as to the proportion of the population in the State of Texas?

A. Do I have those figures?

[fol. 408] Q. No, I said, will you give those as to this particular institutional assets, if the formula you mentioned above had been used?

A. If the formula, that is, the 14.4% had been used, Negro higher education would have totaled institutional assets of $23,333,706.00, or $17,445,152.00 more than they actually were. Now, the total assets of the white institutions are proportionately much greater than the plant assets, as you can see, largely because of the large endowment fund which the University of Texas has by reason of money or lands or other material things given by the State. In other words, the University of Texas has an endowment from the State listed as $61,277,162.00 in 1945. Now, if the formula were operative as far as Negro higher education is concerned, Negroes would have had an endowment fund from the State which totaled $8,923,911.00 of the above amount. Now, Prairie View, the only endowment fund that I could find for Prairie View is $26,000.00 in U. S. Government securities listed in the A. & M. audit report for 1945.

Q. Well, now getting to the question of one of the criteria of the current educational, that is, as of the last audit report, limiting it strictly to the current educational funds, will you compare Prairie View with the other schools?

A. In 1943-1944, the latest complete statistics available, in the U. S. Office of Education for all of the schools, in-

[fol. 409] cluding those in Texas, I say, all of the schools because I want to compare those with some of the other schools, there is appropriated——

Mr. Daniel: You say that is 1943—what?

A. 1943-1944.

Mr. Daniel: The fiscal year 1943-44?

A. U. S. Office of Education Bulletin for '43-44, for that year.

Mr. Daniel: I want to make the further objection, if this testimony is considered by the Court, what has gone

heretofore wouldn't have any bearing on the case. Certainly the part back in 1943 wouldn't have any bearing on this case, and the facts as they exist today in this Court. We object to it as wholly irrelevant and immaterial, having no bearing on what is available today.

By Mr. Marshall:

Q. May I ask another question? Are those the latest figures in the U. S. Department of Education?

A. They are.

Q. That is our basis for it, the latest available figures that you can use for the comparison, and the 1943-1944 is the latest thing we can get, and I think it goes to its weight rather than its admissibility.

The Court: I think so.

Mr. Daniel: Note our exception.

A. In 1943-'44 Texas appropriated $11,071,490.00 in [fol. 410] State, County and District funds for higher education in Texas. They appropriated to white institutions $10,858,018.00. In other words, $1.98 for each white person in the white population in Texas. Now, in the case of the Negro institutions, or to the Negro institutions, there were appropriated $213,472.00, or 23¢ to every Negro in the total population, or for every Negro in the total population. In other words, $1.98 for the white, 23¢ for the Negro. The whites in this instance, white institutions got eight times, 8.06 times, to be exact, as much as the Negro.

By Mr. Marshall:

Q. You mean per capita?

A. Per capita.

Q. Dr. Thompson, did you examine the appropriations of the 49th Legislature?

A. I did.

Q. What figures did that show?

A. That showed total appropriation, excluding such things as appropriation for firemen's training, teaching hospitals for the medical branch at Galveston and cooperative extension and the like; the total amount of money appropriated for purely educational purposes in the State of Texas was $11,476,519.00 for 1946, and $11,469,478.00 for 1947. Now, to the white four year State higher institutions

there were appropriated in 1947 $11,066,519.00, and in 1947 $11,059,478.00 to the white schools. Now to the Negro [fol. 411] school, Prairie View, there were appropriated $410,000.00, which included $25,000.00 for the scholarship fund, for each of the years 1946 and 1947.

Q. When you say scholarship fund——

A. The out of state scholarship fund for Negro students. On the basis of the formula which I have described, Negro institutions, higher institutions, State supported institutions, should have gotten in 1946 $1,652,618.00. In 1947 they would have gotten $1,651,684.00. May I correct that last figure? $1,651,604.00 is the correct figure. In other words, in 1947 and 1946 the State supported white institutions got $2.01 per capita on the basis of the total population, and the Negro schools for the same years got 44¢ for each Negro of the total Negro population in Texas.

Q. Now, did that figure include the two appropriations of $500,000.00 in S. B. 140?

A. No, it did not, but assuming that to include it, the two appropriations of $500,000.00, which would make $1,000,000.00, for 1947, for this year, and add it to the $410,000.00 which Prairie View got, which would give you $1,410,000.00 the Negroes got, figured per capita on the basis of the total population, it would be $1.53 as against $2.01 for the whites.

Q. And that assumes that the whole million is spent in one year?

A. That is right.

[fol. 412] Q. Well, now going back to the reports of the United States Office of Education for the years 1945 and 1946, and I ask you if the figures you are about to use are the latest figures available?

A. That is right.

Q. Will you compare them, school by school, as best you can?

A. In 1945-1946, Prairie View had 1,576 students. The State contributed to Prairie View $346,250.00 for current expenses.

Mr. Daniel: Hold it just a minute.

A. I would be glad to make these figures available to the Attorney General.

Mr. Daniel: I am having to get it as you go along.

A. I will make it available to you.

Mr. Daniel: I want to get it right now as we go along.

A. The school year 1945-1946.

The Court: We will take a few minutes' recess.

Court was recessed at 11:05 a. m., until 11:20 a. m., at which time proceedings were resumed as follows:

By Mr. Marshall:

Q. May it please the Court, the documents we are talking about, most of them, have come in, these Federal Reports of the United States Department of Education. They have all been certified by the individual officer in the Department of Education, the Executive Assistant, and the certification is pursuant to Section 1601, Chapter 10, Title 42, [fol. 413] United States Code. The Court will take judicial knowledge of them, but we would like to introduce them, with the right of either side——

Mr. Daniel: Do you mean offer the entire volumes?

Mr. Marshall: Sure, with the right of either side to use any part thereof.

Mr. Daniel: We certainly object.

The Court: It would seem to me that would be too big, to put it all in. Just offer the part which is pertinent to this case.

Mr. Marshall: The idea is that the testimony by Dr. Thompson is being made from these records, and I wanted to leave them in until the close of the hearing so that if there is any question, we can go to the documents.

Mr. Daniel: They will be available here.

The Court: Yes, but not introduced in evidence.

Mr. Marshall: That is perfectly all right, but I wanted you to know that we had them. If Your Honor please, in order to keep the record straight, I think the procedure we should follow is that if Dr. Thompson refers to those documents, that we reserve the right, before the case closes, to put in the particular pages of the documents that he has been referring to, and and we will let him pick the pages out.

The Court: I think that is all right.

Mr. Marshall: And that his testimony is on that basis.

[fol. 414] Q. Do you remember where you left off?

A. I was at Prairie View, and East State Teachers College.

Q. That is right.

A. I was saying that Prairie View, with 1,576 students, got from the State in 1945-1946, $346,250.00. East State Teachers College, which is a white institution with 1,205 students, got from the State for current educational expense $448,749.00. In other words, East State Teachers got 30% more money than Prairie View, which had 29.6% more students.

Q. May I ask one question there? Was Prairie View giving, in addition to its regular liberal arts education, did it also purport to be giving graduate training?

A. Prairie View is the teachers college, A. & M. College and University for Negroes in Texas.

Q. And it purports to give Master's training, too, does it not?

A. It does.

Q. Go right ahead.

A. To put it another way, that the student appropriation for East State Teachers College was $372.40; for Prairie View the per student appropriation was $219.70.

Q. You are sure that figure is $219.00?

A. $219.00. East State Teachers had a per student appropriation from the State which was 69.4% larger than the per student appropriation to Prairie View. East State [fol. 415] Teachers College had a per student appropriation from the State which was 45.8% larger than Prairie View's per student appropriation, from both the State and the Federal Government.

The appropriation from the State per student for five teachers colleges for white was $296.10, 34.5% more per student than for Prairie View, and those teachers colleges were East State Teachers, Sul Ross, Southwest, Sam Houston, and North State Teachers.

Now, the proposed appropriation in H. B. 246 in the 50th Legislature carried for 1948, eliminating the items which I have mentioned previously in my testimony as quasi-education, a total of $23,125,323.00 for 1948. For 1949, $27,389,——

Mr. Daniel: What are you reading from now, for 1948 and 1949?

A. The proposed appropriation for 1948 and 1949, H. B. 246 of the 50th Legislature.

Mr. Daniel: I don't think that has been enacted yet.
Mr. Daniel: That hasn't been enacted.
The Court: I don't think it has been enacted.
Mr. Marshall: I don't think it has been, either, sir; we, therefore, move to strike that portion of it.

A. Now, as a consequence of such differences as I have indicated in financial support, the Negro has been educa-
[fol. 416] tionally disadvantaged over the years in Texas so far as Texas public higher education is concerned.

Mr. Daniel: We object to that as a conclusion of the witness, Your Honor. He testified to comparative funds. Now he is about to draw a conclusion as to whether or not there has been educational disadvantage on account of that.
Mr. Marshall: If Your Honor please, I will be very glad to ask him a question, and then we will get the objection straight.
The Court: All right.

By Mr. Marshall:

Q. Dr. Thompson, from your experience over a period of years of comparing the educational facilities available to white and Negro students in segregated public school systems, and the recognized treatises you have read on that subject, and I mean scientific treatises, as a result of your work in inspecting colleges and the knowledge you have obtained therefrom, what is your opinion as to the equality of educational facilities offered by the State of Texas to its white and negro students, limiting your opinion to college, graduate and professional training?
Mr. Daniel: We object to that, Your Honor. It has no bearing in this case. His question should be limited to the schools involved in this case, if it is to have any material bearing at all on the case.
The Court: I believe I will hear it.

[fol. 417] Mr. Daniel: Note our exception.
A. The objection has removed the question.

The Court: He will read it back to you.

The Reporter read to Dr. Thompson the last question as shown above.

A. The answer is that Negroes are seriously disadvantaged both from the point of opportunities and relative accomplishment. In the first place——

Mr. Daniel: Now——

The Court: That answers it.

Mr. Marshall: That answers it.

Q. Now, is that based—I want to ask whether or not your answer includes the studies you have made in Texas or not, that you have testified about?

A. Yes.

Q. It does include that?

A. Yes.

Q. Now, will you explain to the Court your reasons for your opinion which you have just given?

A. Well, I have three reasons. In the first place, twice as many white students are provided opportunity in the public higher institutions in Texas as Negroes, and I would like to quote, if it is permissible, from a study, "Senior Colleges for Negroes in Texas," which was made at the direction of the Biracial Conference on Education for Negroes in Texas, Professor T. S. Montgomery, of the Sam [fol. 418] Houston Teachers College, Chairman of the Committee for Study, Dean B. F. Pittenger of the School of Education of the University of Texas, Chairman of the Steering Committee. The study was made and printed about—at least printed, in 1944, presumably made between 1942 and 1944.

Mr. Daniel: Made by whom? You so far leave the impression it is Dean Pittenger.

A. It was made at the direction of the Biracial Conference. Dean Pittenger was the Chairman of the Steering Committee, and Professor Montgomery was the Chairman of the Committee for the study, and wrote up the study, the report.

Mr. Daniel: That clears it up.

A. Now, this report states the following, and I quote:

By Mr. Marshall:

Q. What page?

A. Page 24 and part of 25.

"Texas provided through State-supported senior institutions of higher education for 66.8% of white students enrolled in senior colleges, but for only 31.8% of her Negro students in senior colleges. The ratio of the percentage that the Negro students in the State college are of all Negro college students to the percentage that the white students in State-supported senior colleges are of all white senior college students, is 1 to 2.1. In other words, the State is bearing twice [fol. 419] the burden of providing opportunity for higher education for whites than she is providing such opportunities for Negroes. A disproportionate burden is placed on private effort in providing opportunity for higher education for Negroes."

On page 25:

"The ratio of the number of white students to Negro students in State-supported colleges per thousand of youth of each race, age 15 to 20 is 5 to 1. On this basis the State is providing five times as much opportunity for higher education in State-supported colleges for white youth as it is for its Negro youth."

Mr. Daniel: Give us the date of that report.

A. It is dated April, 1944. Now, in the second place, I said that the differences in financial support resulted in differences in educational accomplishment. In the last census, which was the sixteenth census, in 1940, for the first time the U. S. Bureau of Census attempted to find out the educational level of the population; so that they obtained from all persons 25 years old and over certain information concerning how much education you have had, how many years, et cetera. It was found in the State of Texas that 218,225 persons, or 8% of the population 25 [fol. 420] years old and older have from one to three years of college. That is white. In the case of Negroes 11,704, or 2.5%. Over three times, to be exact, 3.2 times as many whites had one to three years of college as Negro.

Those who had had four years or more of college among whites constituted 5%. Among the Negroes, 1.2%, again, about three times as many.

Mr. Daniel: I would like to know where you are getting those figures.

A. The U. S. Census Report for the State of Texas.

Mr. Daniel: Do you have them for the northern states also in that book?

A. That is Texas.

Mr. Daniel: That is all right. I will ask you about it later.

A. I said a moment ago that the Negro was disadvantaged in this respect, particularly from the point of view of college because, as we all know, an individual has to have two or three years of college before he can get in a law school or medical school or dental school, to say nothing about other areas in which college training is necessary. Now, in the third place, a similar situation exists on the professional level.

Take the matter of doctors. In Texas there were 6,076 white doctors, 164 Negro doctors. In other words, there [fol. 421] were of the white doctors 1 to every 903 of the white population in Texas, and one Negro doctor to every 5,637 of the Negro population.

Thus, on the basis of population, there are more than six times, in fact, 6.24 times as many doctors in proportion to the white population as there are Negro doctors in proportion to the Negro population. For the sake of comparison, in Tennessee, where the Meharry Medical School is located, to which Negroes are admitted, there are almost three times, in fact, to be exact, 2.8 times as many Negro doctors in Tennessee as there are in Texas, where Negroes have no medical school to which they can be admitted.

Take the matter of dentists,——

By Mr. Marshall:

Q. First, one question there. State whether Meharry Medical College is a fully accredited medical college or not.

A. It is.

Q. Go right ahead.

A. Take the matter of dentists. The number of male dentists in the State of Texas, white, are 1,901; Negro 81. The ratio of white dentists to white population is 1 dentist to every 2,886 of the white population, one Negro dentist to every 11,412 of the Negro population. There are almost four times, to be exact, 3.9 times as many white dentists in

proportion to the white population as there are Negro den-
[fol. 422] tists in proportion to the Negro population. Again, taking Tennessee for comparison, in Tennessee where the Meharry Dental College is located to which Negroes are admitted, there are twice as many Negro dentists as there are Negro dentists in Texas, where Negroes have no dental school to which they can go.

In the District of Columbia, where the Howard University Dental School is, there are almost four times as many Negro dentists in proportion to the Negro population as there are Negro dentists in proportion to the Negro population in Texas.

Q. What about engineers, Dr. Thompson?

A. In the case of engineers in Texas, there are 8,961 white engineers in Texas. In the case of Negroes, there are 6 Negro engineers in Texas. The ratio of white engineers to the white population is one to every 612 of the white population. The ratio of Negro engineers and Negro population is one Negro engineer to every 154,065 Negroes. In other words, there are over 250 times as many white engineers in the State of Texas in proportion to the white population as there are Negro engineers in proportion to the Negro population.

Now, finally, take the matter of lawyers. In Texas, and all of these figures are from the 1940 Census.

Q. That is the latest census?

A. That is right. In Texas there were 7,701 white lawyers. There were 23 Negro lawyers. The ratio of white lawyers [fol. 423] to the white population was one white lawyer to every 712 of the white population, one Negro lawyer to every 40,191 of the Negro population. In other words, there were 56 times as many white lawyers in proportion to the white population as there were Negro lawyers in proportion to the Negro population.

Q. Dr. Thompson, getting to the next point of comparison between Prairie View and the other schools, will you compare the curriculum at Prairie View, first, with the curriculum at other schools?

A. May I make this introductory statement about the curriculum? The curriculum and faculty and library are the very heart of an institution. However, you must have sufficient financial resources in order to have an adequate curriculum or adequate library or adequate faculty.

Q. When you say you have to have sufficient funds to have an adequate faculty, are you or not speaking from your experience in getting a faculty for the graduate school at Howard?

A. I am.

Q. You have been in that field for quite a while, and know quite a bit about that?

A. About 15 or 20 years.

Q. Let's compare the curriculum.

A. First, let's take the under-graduate curriculum.

[fol. 424] Q. What is this testimony based on?

A. This is based on the National Survey of Higher Education for Negroes, which was a U. S. Office publication, and also upon the catalogue study of Texas A. & M., University of Texas, and Prairie View.

Q. Go right ahead.

A. The National Survey of Higher Education for Negroes, to which I have just referred, in the making of this survey, found out in Texas that there were 106 under graduate fields of specialization in the white State supported institutions, and 49 in the Negro institution, Prairie View. In other words, there were about twice as many fields of under graduate specialization in the white institutions as in Prairie View.

Now, I have made an analysis, or used the sources, the Texas A. & M. Catalogue and the University of Texas Catalogue, the Texas A. & M. Catalogue states, and that is for 1946-1947, page 10, general information; there are 45 departments of under graduate specialization.

Prairie View University has 13 departments of specialization. In other words, A. & M. has more than three times as many. In the case of engineers, engineering is offered in four white technical schools with eight different curricula leading to engineering degrees. No such curricula was offered at Prairie View, except that you might call mechanical arts education, or industrial education, engineering.

[fol. 425] There are, however, a number of sub-collegiate, or high school trade courses given at Prairie View, such as broom making and mattress making; auto mechanics, carpentering, laundering and dry cleaning, plumbing, shoe repairing, tailoring and the like.

Q. Dr. Thompson, in your experience in the field of education, do you know of any other university in the country

that will give credit toward a degree in liberal arts college for broom making and mattress making? I am talking about universities, not colleges or institutes. Do you know of any recognized, accredited university?

A. No, I don't know of any. I am trying to think. There are several institutions which give similar courses. I don't know of any other institution that gives broom making and mattress making.

Q. Isn't it true that those are the subjects that are usually taught in the high schools or lower vocational schools?

A. That is correct.

Q. For example, do they teach any of the subjects you have mentioned at Howard?

A. No.

Q. Do they teach—did you find in the catalogue of either A. & M. or the University of Texas, or any other of the schools you have talked about broom making and mattress making?

[fol. 426] A. No, I did not.

Q. Auto mechanics or carpentering, or any of those?

A. No.

Q. You can go ahead, if you will, Dr. Thompson, to the graduate level of curricula.

A. Yes. I might mention in connection with the under graduate field, if I may, because it connects up with the graduate field——

Q. Go right ahead.

A. The chemistry department, the chemistry department, which is a very important department in a land grand institution; the chemistry department at Prairie View is not accredited by the American Chemical Society. I did find they were approved at Texas A. & M. and the University of Texas.

Q. What effect does that have on a student who wants to do graduate work?

A. It means if he wants to do it in chemistry he has to be conditioned a year or a half year; for example, a student coming to us without physical chemistry, which is a thing not given in one of these departments, would have to take a year of that before he could begin his graduate school in chemistry.

Q. You are speaking of Howard Graduate School?

A. Yes, sir.

Q. Is that true in all of the other schools that you know of?

A. I should imagine so. I know it is true in some. I don't [fol. 427] know about all of them. The graduate school is of recent origin. It began about the date of the Gaines decision, which was around 1938. In the fall of 1946 nine state Negro colleges in eight southern states gave graduate work in at least one field.

In Texas Prairie View and the Houston College were the Negro institutions giving graduate work. They had a combined enrollment at Prairie View for the regular term and summer of 1946 of 229; Houston College, 308, making a total of 537 students. Graduate work is given in all of the white four year State high institutions in Texas.

The regular term enrollment in white State graduate schools in 1945 was 2,358. Thirteen white State institutions gave 2,846 Master's Degrees and 212 doctorates during the period 1940 to 1945. That is from the Director of Colleges, universities offering graduate work relating to Master and Doctor Degrees, 1940 to 1945, U. S. Office of Education.

Prairie View gave during this same period 103 Master's Degrees and 55 Negro students got Master's Degrees on the out of state scholarship fund, and six doctorates on the out of state scholarship fund between 1939 and 1943, making a total of 159 Negroes who got graduate degrees during approximately a five year period, as contrasted with some 3,000 white students who got graduate degrees in the same period. Now, in general, the range of offerings in white [fol. 428] graduate schools, whether in Texas or in other southern states, is wider than in the Negro graduate school. The National Survey of Higher Education for Negroes, to which I have referred, a U. S. Office publication, indicated in 1942 that the Texas state supported higher institutions for whites offered graduate work in 65 fields, and 5 for Negroes.

At the present time Prairie View offers graduate work in 13 fields, and the Texas A. & M. 45 fields. The University of Texas gives 10 different types of graduate degrees in 40 fields. Prairie View gives a Master's Degree in 13 fields.

The Court: I suppose this would be a good point, then, to resume, then, at two o'clock.

(Court was recessed at 12 noon May 15, 1947 until 2 p. m., May 15, 1947.)

[fol. 429] Afternoon Session, May 15, 1947. 2:00 P. M.

DR. CHARLES H. THOMPSON, having resumed the stand, testified further as follows:

Direct examination. (Continued.)

Questions by Mr. Marshall:

Q. Dr. Thompson, when we closed I think you were testifying as to the curriculum of the under graduate schools.

A. No, I was on graduate schools.

Q. Continue on the graduate schools.

A. The University of Texas and A. & M. College of Texas, between the period of 1940 and 1945 gave 212 doctorates. Now, if a Negro wishes to obtain a Doctor's Degree in the State of Texas, the only recourse he has in so doing is through what is admittedly an inadequate scholarship fund.

Mr. Daniel: I want to——

The Court: Well, I think that part "admittedly"—you can withdraw that.

Mr. Marshall: I withdraw that.

Mr. Daniel: The inadequate part, too, unless followed by some proof.

The Court: That is right.

Mr. Daniel: Admittedly inadequate.

[fol. 430] By Mr. Marshall:

Q. Doctor, we will get to that later.

A. All right. Now, in order for a Negro to be eligible for an out of state scholarship to do graduate or professional work, he must be a resident of Texas; he must have resided in the State of Texas for eight years. In order for a white student to do graduate work, all he has to do is be white, and maybe a resident of Texas, because out of state students are admitted in the graduate school at the University of Texas. The out of state scholarship fund provides $100 a semester in all fields except medicine, where it is $150 a semester.

It provides round-trip to the school of the student's choice at three cents a mile, less the following items: the tuition fee paid to the University of Texas, which is stated as $25 a semester, less the round-trip fare from the student's

home to Prairie View. The student may also get ten percent of the total award. In other words, a student may get a maximum of $165.00 for tuition for the regular year, that is, two semesters, and three cents a mile for transportation, less the round-trip from Prairie View.

Now, I have an illustration that was given on the Scholarship Committee Report of a student who wished to attend Columbia University, taking fifteen percent. The tuition was approximately $407.00, the railroad fare was $96.00. That student received from the scholarship fund $165.00 for tuition and $70.00 for railroad fare, making something [fol. 431] like $235.00 out of a total which he would have to pay, merely for railroad fare and tuition to go to Teachers College, Columbia University, of five hundred and eight dollars and some cents, making the student pay $237.00 himself.

Now, the cost per student at the University of Texas in 1945-1946, at the Main University was $511.00. At the Texas A. & M. College, after eliminating the funds for cooperative extension, the cost of instruction per student was $734.00 for the same year. The State spends $200 to $500 more in these institutions to educate a white graduate student than they spend on the Negro student who wishes to do graduate work on a scholarship.

Q. Dr. Thompson, how important is the question of opportunity to do research in a well recognized and well organized university?

A. It is very important indeed.

Q. Have you made any comparison as to the research opportunities available at Prairie View with the other colleges you have mentioned?

A. Yes, I have.

Q. What is the result of your study, please?

A. The results show, taking a sample of five white high institutions of cour years, shows that they expended in 1945, 1946, $2,753,809.00 for separately organized and [fol. 432] budgeted research. Prairie View received for that year, 1945-1946 nothing, as in previous years, for separately budgeted and organized research.

On the basis of the formula which I described this morning, Prairie View or Negro higher education would have received $396,547.00. In 1946 Prairie View was voted $10,000.00 by the Texas A. & M. Board of Directors of the Experiment Station to set up a sub experiment station at

Prairie View to be known as Sub-Experiment Station No. 18. This is all of the money that Prairie View has received, to my knowledge, for research.

The Federal Government in 1945 made an appropriation, or gave Texas A. & M. College $251,288.00 for experiment station research. In taking into account the amount of money that the State puts in, if the formula had operated, Prairie View or Negro higher education would have received $36,185.00.

Q. The question was raised as to how much did they receive, Prairie View?

A. $10,000.00 in 1946 for the special purpose of setting up that Sub-Experiment Station No. 18.

Q. That came from Texas A. & M.?

A. That is right.

Q. Have you compared the professional curriculum of Prairie View with other schools?

A. I have.

[fol. 433] Q. What are the results of your studies on that?

A. Well, in medicine, I might state, as a general background, that there are three Class A medical schools in the State of Texas; two private, Baylor and Southwestern, and one public, the medical branch of the University of Texas. The University of Texas catalogue, 1945-1946, lists 353 students. They receive from the State for current expense, not counting the amount of money that went to the three hospitals which are used for clinical purposes, $694,165.00 for the year ending 1946. In other words, there was a cost per student of around $1,800.00 or $1,900.00. Now, a Negro student who wants to take medicine in the State of Texas, his only recourse is to the scholarship fund, which I have mentioned previously. Even if the student attended McGill University in Montreal, Canada, and I pick that because it is the farthest away and it would cost more for travel, he would get less than $500.00 for mileage. McGill is 2,100 miles. The State spends more to educate a white medical student in the University of Texas than they spend on a Negro student through the scholarship fund, and there are six times as many white doctors in the State of Texas in proportion to white population as there are Negro doctors in proportion to the Negro population.

Now, taking the matter of dentistry, the State pays around $1,500.00 per dental student. A Negro who wishes to study [fol. 434] dentistry can not get more than $400.00 from the

scholarship. Thus, the State spends a thousand to eleven hundred dollars more for the dental education of a white student than for a Negro student through the scholarship fund, which probably explains why there are almost four times as many white dentists in proportion to the white population than there are Negro dentists in proportion to the Negro population.

Q. Without comparing the curricula at all, or other items, how many accredited law schools do the records show there are in Texas?

A. Three—let's see. Yes, three, Baylor and S. M. U. and a public law school, the University of Texas.

Mr. Daniel: Accredited by whom?

A. The American Bar Association.

By Mr. Marshall:

Q. Now, getting to the fourth point of the criteria to compare schools, public education in general, did you compare the faculty at Prairie View with the faculty at these other schools you have testified to?

A. I have.

Q. What do the results of your examination show?

A. I might say that the basis of my examination is two-fold. Number one, salary; number two, training. Obviously, to have a good faculty and to hold it, you have got to pay them attractive salaries and give them satisfactory [fol. 435] working conditions. That is why I took salaries from the point of view of training. I wanted to see whether or not the training at Prairie View seemed to be, or some of the members, at least, seemed to be equal to the training of some of the white teachers in some of the white State teachers colleges and other higher institutions, which got high salaries.

Now, as to salaries, the salaries in general at Prairie View are too low, in general, to attract and hold a sufficiently large number of good teachers, or even to meet the competition from other Negro colleges, as I will point out in a moment.

Q. Do you, as Dean of the Graduate School of Howard University, have any knowledge as to the necessities of this Negro university as to faculty members?

A. Very definitely so.

Q. Is the item of salary an item that is at least a part of the consideration?

A. A very large part.

Q. Go right ahead.

A. Now, I would like to refer again, if I may, to the study that I referred to, Senior Colleges for Negroes in Texas, in which two statements, at least, were made concerning salaries. Page 36, the first statement, and it is as follows, and I quote:

> "With reference to Prairie View, further study was [fol. 436] made to determine the number of faculty members who had accepted offers from institutions outside of Texas. Investigation disclosed that twenty-five 'well prepared and able teachers' were lost to other institutions within the past five years because of the inability of Prairie View 'to match their salary offers.' Of the twenty-five faculty members lost, eleven held the degree of Doctor of Philosophy."

The next quotation, page 39:

> "In no professorial rank is the median salary in Prairie View equal to the lower limits of the range in State supported white colleges. The median salary of a full professor in Prairie View is $2,025.00, while the lowest salary paid a full professor in a State supported white college is $2,700.00. The corresponding figures for associate professor are $1,530.00 and $2,000.00; for assistant professor, $1,520.00 and $1,800.00; and for instructor, $1,170.00 and $1,500.00."

Now, not only was that statement true in 1942 or 1943, when it was gathered for this study; the same is true in 1946 and 1947. Except one white teacher in thirteen white State supported higher institutions, holding comparable positions in comparable departments, the highest salary paid a full [fol. 437] professor in Prairie View is lower than the lowest salary paid a white professor in any one of these thirteen institutions, on a nine months basis.

Again, the principal——

Mr. Daniel: May I interrupt there? May I get this down to date? What is the date of it?

A. 1946 and 1947.

Mr. Daniel: And the data you read a minute ago was——

A. From this book in 1944, which was in 1942 or 1943. The principal of Prairie View in 1946-1947 got a salary that was $1,000.00 less than the lowest paid head of any four year State supported institution in Texas.

By Mr. Marshall:

Q. In going through the records of these several institutions, did you find any other institution in Texas giving college and graduate work that has a principal at the head of it?

A. No, I haven't.

Q. Have you ever heard of any University in the United States giving graduate work that is headed up by a person with the title of principal?

A. No, I haven't.

Q. What is the usual title?

A. President or chancellor, or something of the sort.

Q. Go right ahead.

[fol. 438] A. Now, Prairie View's faculty as a whole obviously—I won't say obviously—Prairie View's faculty as a whole isn't adequately trained. However, there are some adequately trained teachers at Prairie View, and naturally they should be paid accordingly. Let's look at the training for the moment. In 1940-1941, and this is found in the National Survey of Higher Education for Negroes, page 31, —page 14, 8.33% held the Doctor's Degree, 45.5% held the Master's Degree. In 1942-1943,—this is from the Senior colleges, this study here, Senior Colleges for Negroes in Texas, in 1942-1943, 6% had the Doctor's Degree and 52% had the Master's Degree. In 1945-1946, according to the Prairie View catalogue, and the degrees listed therein, 9.3% had a Doctor's Degree 52.3% has the Master's Degree. I said a moment ago that Prairie View would obviously have to raise salaries considerably in order to meet the competition of other Negro colleges. There are some four or five Negro colleges, to my knowledge, that pay as much as $5,000.00 for a full professor.

Q. Isn't it also true that in recent years Negroes have been given opportunities to teach in colleges that are not designated as Negro universities?

A. That is true. There are some fifty or sixty Negroes now teaching in northern institutions.

Q. So that you have additional competition now?

[fol. 439] A. That is right.

Q. You go right ahead.

A. The library, obviously, is very important. It is the life-blood of graduate work. The present library holdings of Prairie View are 25,000 titles, 465 serials.

Q. I think we know what titles are. What are serials?

A. Any sort of thing that runs in serial magazines and proceedings which run in serials. Leaving out of account the library at the University of Texas, which is one of the best university libraries in the south, it certainly has the largest collection of any university in the south, and taking the State Teachers Colleges libraries, the holding of white State Teachers Colleges libraries in Texas are larger than Prairie View. For example, the holdings of twelve white, four year schools, that is, teachers colleges and four schools in 1945, ranged from 28,357 in the Texas College of Arts and Industries, to 750,974 in Texas University.

North State Teachers College had more books, 144,426, than all the Negro public and private colleges in the State of Texas in 1945. The number of books that the negro colleges in Texas was supposed to have in 1945 was one hundred and ten thousand and something.

Now, East State Teachers College, with 1205 students in 1945-1946, had library holdings of 81,974 volumes in 1945, as compared with Prairie View in 1947 with 1619 and [fol. 440] 25,000 volumes.

The Southwest State Teachers College, with a student body of 957 students, had 56,612 volumes in the library in 1945. The Sam Houston Teachers College, with 1401 students in 1945-1946 had 63,100 volumes in the library in 1945.

Q. Dr. Thompson, from your experience as Dean of the Graduate School of Howard University, is it one of your responsibilities to ascertain as to whether or not that library is kept up to standards for accredited graduate schools?

A. That is true.

Q. And in your position as inspector for the Southern Association of Colleges and Secondary Schools, is it one of your jobs to inspect, as to the adequacy of libraries in the colleges?

A. Yes.

Q. On the basis of your experience in those two fields over a period of years, what is your opinion as to the adequacy of the facilities which you saw and inspected at Prairie View last week?

A. Well, frankly, they are inadequate.

Q. Did you see the library at the University of Texas, for example?

A. I didn't go in it.

Q. Are you acquainted with the number of books in it?

A. I am acquainted with the holdings.

Q. How does Prairie View library, regardless of the num- [fol. 441] ber—just the number of books—is there any semblance of equality between the two?

A. There would not appear to be.

Q. And the figures you have given on the books are figures that are used in that opinion of yours; is that correct?

A. That is right.

Q. Do you believe that Prairie View's library is adequate to maintain a graduate school?

A. In fact, Prairie View doesn't have a first class under graduate library. That isn't only my opinion, but the opinion of this survey committee. They quoted the late Dr. Bishop, who was one of the outstanding librarians, who was last at Michigan, if I may quote that, page 64, and this is the quotation:

> "A well selected library of 50,000 volumes will perhaps suffice for the needs of sound teaching in a college of not more than 500 students. This number does not include duplicates."

Q. Does Prairie View have anywhere near that amount?

A. They have 25,000 volumes.

Q. And how many students?

A. 1619, I think I mentioned that a moment ago, 1619 students.

Q. Dr. Thompson, in the earlier part of your testimony, I think your last criteria was the one of—I don't think this is the exact phrase for it—accreditation or standing in the [fol. 442] scholarly world. Did you check on the accreditation of Prairie View with the other public supported schools in this state?

A. I did.

Q. What was the result of that study?

A. Well, the results that I found are as follows: I might explain, in order to explain what the results mean, the highest accreditation which any college can get in this country is to get on the approved list of the Association of American Universities. The highest accreditation that a university can get is to be a member of the Association of American Universities. There are three white State schools on the approved list of the Association of American Universities; Texas A. & M., North Texas State Teachers, and Texas College for Women.

Q. What about the University of Texas?

A. The University of Texas is a member of the Association of American Universities.

Q. Is Prairie View a member?

A. No, Prairie View is not a member.

Q. Is it accredited by that association?

A. No.

Q. Well, did you—about how much accreditation did you find Prairie View to have?

A. Prairie View is accredited by the regional association [fol. 443] in this area, the Southern Association.

Q. Does it carry any other accreditation that is recorded in the legal proceedings, that you know of?

A. Not that I know of, except the State accredits the institution, of course.

Q. Well, now, what about for example, the Medical School of the University of Texas? Is that accredited or not?

A. Yes.

Q. What about the—it is already in about the Law School. What about the School of Engineering?

A. The School of Engineering is accredited by the Engineering Council for Professional—I will give you the name of it—Engineering Council for Professional Development.

Q. Dr. Thompson, as a result of your study that you have made of Prairie View with the other schools and universities in this state that are publicly supported, can you compare favorably—can you compare Prairie View favorably with any one of them?

A. I don't think so, at present. I can't think of any institution that it would compare—would you define "compare favorably" for me, so that I may be sure to know what you are talking about?

Q. Pick the smallest State teachers college in Texas—your mind. Tell the Court whether or not there is any State supported school in the State of Texas that will give a Negro the equivalent of the education that can be obtained by a [fol. 444] white student in the smallest of the teachers colleges in Texas.

A. I doubt if I can answer that.

Q. I will ask you this. In your criteria you used to compare the schools, how do you compare Prairie View with the Univeristy of Texas?

A. There is no comparison there. I can answer that.

Q. What do you mean, there is no comparison?

A. I mean that Texas University is a university. Prairie View is the university—I don't know how else to say it. It is a poor college.

Q. And it isn't—and is it or is it not a university in the field of general educational policies?

A. You mean on paper?

Q. No, as it exists today. Is it or is it not a real university?

A. No, it is not a real university.

Q. Can it give to the Negro student the type of education that is given to the white student at the University of Texas?

A. Not at all.

Q. Can a graduate student attending Prairie View University get the type of education that a graduate student at the University of Texas can get?

A. I doubt it very seriously.

Q. In your experience in your field of education, and as Dean of the Graduate School, is it possible to put graduate [fol. 445] work, adequate graduate work training on to a school that gives inferior under graduate training?

A. If I may turn the question around, I would say it is highly undesirable. It is possible to put it on there and have just as poor graduate work as you have under graduate work.

Q. Would it inevitably follow that the graduate work would be inferior?

A. I think so.

Q. Your witness.

Cross-examination.

Questions by Mr. Daniel:

Q. Dr. Thompson, you are not opposed to good separate schools for Negroes, are you?

A. Would you mind elaborating on that question?

Q. I mean, based on your experience as an educator, for the best interests of all of the people concerned, are you opposed to having the establishment of good separate schools for Negroes?

A. Emphatically, yes.

Q. You are opposed to it?

A. I am.

Q. Do you know Ambrose Caliver?

A. Yes, I know Dr. Caliver.

Q. Is he a Negro or a white man?

A. He is a negro.

[fol. 446] Q. Are you acquainted with his summary made for the National Survey of Higher Education of Negroes for the United States Department of Education? I will hand it to you and see if you are acquainted with it.

A. I am generally acquainted with it.

Q. The book that you have there in your hand, I will ask you to state whether or not that is a similar study to the one you have testified here about on direct examination?

A. It is one of the series of volumes of that study.

Q. The one you have testified about, I believe, is dated 1942, is it not?

A. That is right?

Q. The one I have handed you is dated 1943, is that right?

A. That is right.

Q. That is the latest one out, the one you have in your hand now, isn't it, the latest one you have any knowledge of?

A. May I give a qualified answer to that?

Q. All right.

A. The summary was written after the other volumes were set up, naturally.

Q. Yes.

A. And was printed after that. That is why it bears a later date.

Q. That is the latest thing then arrived at from the work that was printed ahead of it?

A. It is a part of the study summarized by Dr. Caliver. [fol. 447] Q. Your Honor, I would like to make clear that I am cross-examining him, and I still want to retain my bill of exception, and I am cross-examining him just in case the Court desires to consider this evidence.

The Court: All right.

By Mr. Daniel:

Q. Is Dr. Caliver a recognized authority in the same field that you have testified about that you are acquainted with, through experience and training?

A. By some people, yes.

Q. Well, do you recognize him as such?

A. In some areas, yes.

Q. He has made a much more comprehensive study of the subject in preparing this work for the Government than you have in preparing for your testimony here today, hasn't he?

A. I doubt it.

Q. You doubt that?

A. Yes.

Q. I will ask you if you agree with his conclusion contained in this work that the kind and amount of education needed by any individual or group in a democracy at any given time is determined by their capacities, their interests, their abilities, disabilities, and their goals?

A. Certainly.

Q. You agree with that?

A. Yes.

[fol. 448] Q. Do you agree to his conclusion here in this summary that in addition to taking into consideration the amount of money spent and the facilities available, in determining the question as to whether or not equal opportunities are offered for higher education, that in addition to all of that, in determining what should be offered, that you should take into consideration the environment and social order of the particular area in which the schools are established?

A. I don't know that I get that. Would you mind restating it?

Q. Suppose I read you what he says, and then you tell us whether or not you agree to that. This is from page 1 of this summary:

> "National Survey of the Higher Education of Negroes, a Summary,"

printed in 1943 by the United States Office of Education:

> "Formerly in our educational processes, particularly in organized education, this inter-relationship has not always been recognized,"

talking about inter-relationship between social order, that I have been talking to you about, and the fixed facilities.

> "The Survey of the Higher Education of Negroes, however, which this volume summarizes, attempts to view education in its social setting, and consequently, not only are institutional matters studied, such as student personnel, curriculum, faculty, administration, and other facilities, but also the social and economic [fol. 449] factors surrounding the institutions and influencing the lives of the students and their communities."

Now, my question is, do you agree with that statement from the summary that these educational things, in addition to what you have testified about here today, must necessarily be taken into consideration in deciding upon how you can offer equal educational opportunities in a given community?

A. That was a basic assumption underlying all of my study. What Dr. Caliver means there is apparently the thing that I do not agree with. I have argued with him about it.

Q. You don't agree with his conclusion on that?

A. I don't agree with his general educational philosophy of what a university of college is, or what it is supposed to do for an individual.

Q. Do you agree with this portion of the summary?

> "In saying, therefore, that the higher educational needs of Negroes should be considered in light of their backgrounds and special interests, a principal is enunciated which applies equally to any other group in our body politic."

A. I think that perfectly odd.

Q. Do you feel like, for a white student you should establish the kind of school the need or demand calls for?

A. Yes, and if I may explain that, I don't think there are [fol. 450] any needs among the white part of the community that are not among the Negro part, or shouldn't be.

Q. You have been here through this testimony today, haven't you?

A. I certainly have.

Q. I don't mean today. You have been on the talking end of it today, but since the case began Monday morning?

A. Off and on.

Q. You have heard it testified here that the relator in this case is the first applicant for law to the only State Law School that was in existence at the time he applied, haven't you?

A. I believe I heard that, yes.

Q. Yes. You know of no other applicants for law, any other students who wanted to take law in the State today before this time?

A. I didn't even know he wanted to take it before this case came up. I don't mean to the facetious about that.

Q. I understand. I don't mean to be, either. I am trying to lead to the point as to your opinion as an expert as to what should be available before there is a demand for it. In other words, is there is only one Negro student who wants to take law, none before him, do you feel like that the State should have provided a law school prior to that time for Negroes?

A. I think that the State should have provided for Negroes [fol. 451] in 1876 or whenever it was that Prairie View University or the Texas A. & M. was set up. I think it should have been then. The fact that only one Negro student wants law, it seems to me, is immaterial in this state or any other state, from my point of view.

Q. You don't teach broom making and mattress making at Howard University?

A. No, those are not college subjects.

Q. You don't have demand for them?

A. Negroes have demands for them, and we teach them in the trade schools where they ought to be taught.

Q. Until there is a demand for certain subjects at Howard University that you do not now teach, you just don't offer them, do you?

A. That isn't true, no. You see, there is a difference between demand and being able to meet the demand. We put on three departments last year that we didn't have. We didn't know a single student would take those subjects, geology, geography and another that I can't think of at the moment. We put those subjects on, not because of the fact that we had a demand, but because we thought students ought to have the opportunity to get an education in those fields, and I think the same thing about a university. The opportunity ought to be there, because the opportunity itself is stimulating.

Q. Regardless of whether the students want to take the [fol. 452] courses or not?

A. That is right. The only way to determine whether a student wants to take a course is to make it available, in my opinion.

Q. Now, you have studied—you have read the survey and the summary that has been made on this question, you have testified about, by the Federal Government, haven't you, Dr. Thompson?

A. Two or three years ago, I read the summary. I read the other volume because, to be perfectly frank with you, I knew Dr. Caliver, and I didn't agree with him on educational philosophy, and I knew about what he would put in the summary. I was interested in the basic facts so that I might draw my own conclusions rather than have his conclusions.

Q. Let me read another one.

> "Changes in the social structure—of which the educational system is a part—must come slowly if disorganization is not to result."

A. I agree with that.

Q. Then, in order to solve this problem that we have here, as you have testified about, in your opinion, in this State the problem that you have testified about as having existed in past years, don't you believe that the only way to solve it is by a gradual change, a gradual change from failing to furnish equal educational opportunities to a system, setting [fol. 453] up those equal educational opportunities by State supported schools?

A. If I may answer it this way, I would have answered the first part of your question yes, but the latter part forces

me to say no. May I explain? I think I know what the question that you started out—I won't put it that way. I think I know what you are driving at.

Q. You answer what you think I am driving at, and if you don't get it, I will come back.

A. What you are saying in so many words is this, is what I think you were saying, assuming that this thing ought to be done gradually, the change ought to be made gradually.

Q. I am not saying it. I have read from Dr. Caliver here, and I asked you did you agree with him.

A. You gave me a question.

Q. Yes, I did. Go ahead.

A. Do you want me to answer your question, or Dr. Caliver?

Q. Go ahead and answer what you understood I am driving at.

A. What I understand you to be driving at is this; that where we have certain customs in the south, and to change overnight would cause disruption of one sort or another, you are saying gradual change, that is more or less authentic, it seems to me. You have got to start somewhere. This is the first time I have been to Texas. I have been in practically all of the southern states, and was born in the south, but I [fol. 454] have been very much impressed with it since I have been to Texas, by both the white people and the Negroes in Texas. I think you are a very progressive community. It is my opinion that the time is ripe to start with professional and graduate work. I think it could very easily be done in law, and then work gradually. That is what I mean by a gradual change. Of course, if you tried to change the system overnight from the kindergarten through the University, you might have more disruption than otherwise; and yet, I don't know whether the disruption would be so much at that.

I think, to answer your question, to *be* begin with the law school and graduate school, and then the college and high school and so forth, that that would be a gradual change, and I think most people would agree that is gradual.

Q. Whatever the State should do to accomplish the purposes we have both been talking about, whatever should be done, don't you believe should be first taken into consideration the desires of the Negro citizens of this state, if that is what they want, the general desires of the Negroes as to

what they want? Just answer yes or no so that we can speed along.

A. I don't want to speed along and answer it wrong. May I answer and qualify it?

The Court: You may answer and explain it.

A. The thing that has surprised me; I have been pleas- [fol. 455] antly surprised to see that Negroes really want to go to the University of Texas.

By Mr. Daniel:

Q. That isn't responsive to my question at all.

A. I am merely explaining.

Mr. Daniel: I ask that it be stricken.

The Court: I doubt if it is responsive to the questions.

A. Very well, Your Honor.

By Mr. Daniel:

Q. You are acquainted with the facts and figures as to the number of northern Negroes who come to southern separate schools for education, are you not?

A. In a general way, yes.

Q. I will ask you if this statement by Dr. Caliver, in your opinion, from your studies, is substantially true?

> "While southern Negroes often go north for graduate work, there are large numbers of Negroes resident in northern states who go south to attend Negro colleges. Moreover, even in northern colleges and universities there are often, if not usually, special problems which confront Negro students regardless of their places of residence or previous training."

A. I think that is true.

Q. I will ask you to state whether or not you are acquainted with this survey and the conclusion drawn from it [fol. 456] by Dr. Caliver, making the survey of eight northern universities where negroes were admitted. This is from page 13.

> "Whereas very few southern Negroes were attending these eight northern universities in 1939-40; in the year preceding, nearly 4,000 northern negroes attended Negro colleges. Almost three thousand of this number

attended colleges in southern states. The majority of these Negro students were residents of eight northern states which rank high in economic resources. Thus, instead of the northern states carrying an undue burden in the higher education of Negroes, it appears that institutions located in those states which have the least wealth are providing educational facilities for Negro residents from more economically favored regions."

Do you agree with that?

A. I think the facts stated in the first part of the statement are correct. I think the implications may not be.

Q. In other words, the majority of your northern Negroes who have available to them institutions that they can attend, a majority of the northern Negroes attending colleges actually elect to go to separate Negro schools?

A. No, that isn't true. Dean Caliver said they studied eight institutions. The 4,000 students came from all over the [fol. 457] north, is that correct?

Q. Yes. Do you have the figures on how many Negro students are attending college, northern Negro students?

A. We made a survey—Dr. Jenkins, who was a member of the Bureau of Educational Research, made a survey this fall.

Q. Could you get that for us by morning?

A. I might have it here. I don't know. I will look and see. I haven't—let's see, in 1945, there was something like five or six thousand Negroes attending school in the north, and the estimate now is that about twice that many, because of the G. I. Bill and things of that sort.

Q. Suppose you try to get me those figures overnight?

A. All right.

Q. Have you read the conclusion by Dr. Caliver as to what is the best thing to be done for the Negroes who want to have equal educational opportunities in both the north and south, contained in this summary, or survey you have been testifying about here today, under Chapter 6, pages 40 through 50? Have you read that? Are you acquainted with that?

A. I probably read them, but as I said a moment ago, I don't put much weight on the conclusions, because Dr. Caliver and I don't have the same educational philosophy.

Q. You don't find anything in his conclusions which would

indicate that it was necessary to do away with separate schools in order to give equal opportunities?

[fol. 458] A. I don't remember his conclusions, but I doubt seriously if he put that in print, being in the Office of Education.

Q. That is the conclusion that he has on that matter. Is that one you disagree with him on? You know what his conclusion is?

A. His public conclusions and his private conclusions may be different. You are talking about his public conclusions.

Q. You tell us you know his private conclusions, and you disagree with them. Isn't it true his private conclusions are like his public conclusions here, that separate schools, if established on an equal basis, can solve the problem as far as giving equality of educational opportunity to the Negro students?

A. I have come to the conclusion from discussions with him that his private conclusions are not that, but his public conclusions are probably motivated by the fact that we have separate schools, and if a Negro is going to get an education, he has to go to them until we get an integrated situation.

Q. You are not positive about his private conclusions?

A. No.

Q. You wouldn't undertake to tell this Court the man has signed and printed something for the Government other than what he actually believes about it, would you?

A. No, I wouldn't do that.

Q. Now, as I understand, all of your testimony as to what [fol. 459] you have examined in the way of funds available for Negro students as compared with white students, up to the pending bill over here in the Legislature for this session, and Senate Bill 140, which is already enacted, had to do with past years, what had been done for Negroes in past years, as compared with white schools; is that correct?

A. Up to 1947.

Q. Up to 1947?

A. That is right.

Q. The school year 1946-1947?

A. I might correct that. I was talking about H. B. 246, and it was ruled out this morning. I have gone into those proposals, and that was ruled out, and I didn't go into it.

Q. Up to that time, and Senate Bill 140 that has passed, all of your testimony has been what has happened in the past?

A. Yes.

Q. You have read Senate Bill 140, the provisions setting up the new Texas State University for Negroes, have you not?

A. Yes, I have read it. I wouldn't want to have to quote it, or give the substance of it.

Q. You have, I suppose, in making your survey as to what is available down here in Texas for Negroes, you have made a survey of Houston College in Houston for Negroes, have you not?

A. No, I haven't. You mean a personal survey?

[fol. 460] Q. Or the kind of survey which you made from the books of all of the other schools you have testified about?

A. Houston College was included in some of the material which I gave. For example, I gave the number of students who had Master's Degrees and doing graduate work at Houston College.

Q. I heard you mention Houston College once. When you were figuring the funds the State put into State schools for Negroes in Texas, you didn't include any money spent by the State on Houston College, did you?

A. Yes, '43 or '44.

Q. On Houston College. You have not examined those facilities of Houston College, the buildings and the 53 acres of land, have you?

A. No, I have not.

Q. I believe the amount of money that you gave as having been appropriated by Senate Bill 140 to maintain the new university and its various branches as one million dollars?

A. For current expenses, it was five hundred thousand dollars for two years, which would make one million dollars. I believe that is correct.

Q. Did you read the text of the bill where other funds were made available?

A. Yes, I took that into account. As I counted it up, there were $3,350,000.00 made available for various and sundry purposes for Negro higher education.

[fol. 461] Q. Actually, then, it was $1,350,000.00 for maintenance and support, instead of one million, wasn't it?

A. There were some items in there about Prairie View, something about some other institutions. It was scattered so through the bill it was practically impossible to tell exactly where the money was going, or how it was to be used.

Q. You mean impossible for you to tell?

A. Yes, for me to tell.

Q. You could tell the bill provided for two million dollars for the establishment of the University?

A. Yes, and I took that into account.

Q. At the beginning didn't you say Prairie View was the only separate Negro College maintained by State funds in Texas?

A. I think I did that.

Q. And wasn't quite a bit of your testimony based on Prairie View being the only State supported Negro college in Texas?

A. Not throughout.

Q. But quite a bit of it?

A. Here is what I understand, if I may explain. Up until 1945 I understand the Houston College for Negroes was a municipally owned and controlled institution. Around 1946, I understand it changed to some other status, which I couldn't find. I have taken into account the State's appropriation to Houston College for Negroes up until that time.

Q. In giving your total amount of money appropriated [fol. 462] by the State for 1945-1946 school years, that was a figure of $72,790,000.00. You itemized it; look at your figures there. Did you put Houston College in it?

A. No, sir.

Q. You allowed no money in there for Houston College?

A. No, nor did I have any for Texas Tech or the University of Houston.

Q. I asked you about Houston College. You can get that in some other way.

A. Pardon me.

Q. You can make a note of it so that you can ask him. Do you know whether or not these amounts of money appropriated to Negro schools in Texas were sufficient to operate those schools in accordance with the number of students who applied to go to them? Do you know that of your own knowledge or not?

A. Looking at Prairie View—how about Prairie View? The amount of money that Prairie View had, or even if you gave them all of the money appropriated under S. B. 140, it wouldn't be sufficient to operate it on the basis on which it is supposed to operate.

Q. Do you have the total figures on how many white students attended college in Texas during the years you have testified about on Negro students?

A. You mean total students?

[fol. 463] Q. Total number of white students attending Texas colleges during the years you have testified about on Negro students?

A. I think I have Negro students.

Q. I am talking about State supported schools.

A. 19—what is it, 1945-1946, that we are talking about now?

Q. You gave several years. Let's take that one to begin with. You gave the total number of Negro students?

A. At Prairie View there were 1,576 students in 1945-1946.

Q. And how many students were attending all of the other State supported schools for whites?

A. I could not tell you that. I can tell you some of the other institutions.

Q. You have the available books for that, do you not?

A. I suppose you could get it from the catalogue, or some place of that sort. All of them aren't available.

Q. In other words, you have drawn no comparison as to the total number of white students as compared to the total number of Negro students in making your financial comparisons, have you?

A. No.

Q. The ratio you have used is strictly a ratio of State funds appropriated as compared with population of Negroes compared to the total population of the State; right?

A. That is correct, and——

[fol. 464] Q. That is the ratio you testified about here under your point number one on the amount of funds, and the ratio you have used all along here in determining the percentage that the Negro Schools would have been entitled to under said ratio; right?

A. Yes.

Q. You have not applied in this case the ratio of students

attending, white students attending, as compared with Negro students actually attending school in the State, have you?

A. Yes, but not all of the State, if I may explain, Your Honor.

Q. Let me get my question. As I understood it a minute ago, you haven't even drawn the total of the white students attending State supported institutions for any one year you have testified about, have you?

A. That is right.

Q. Then you have not arrived at the ratio of expenditure, a ratio fixed by the number of white students attending school, total number attending State institutions as compared with the total number of Negro students attending, have you?

A. No.

Q. You mentioned a minute ago on direct examination Meharry Medical School in Tennessee, did you not?

A. Yes.

Q. You offered Meharry as an example of a medical school in Tennessee which was operating, and caused the [fol. 465] State of Tennessee to be far ahead of the State of Texas in the number of doctors and dentists per Negro—per so many hundred Negro population; right? Meharry is a separate Negro school, is it not?

A. Yes.

Q. Are you acquainted with the—what is the name of that senior college survey that you have in your pocket?

A. The Senior Colleges for Negroes in Texas.

Q. May I borrow it a minute? Are you acquainted with the Chairman of the Committee of this study, Dr. T. S. Montgomery, professionally?

A. No, I am not.

Q. Are you acquainted professionally with the reputation of Dean Pittenger?

A. I know his reputation.

Q. Is he a recognized authority in the same field in which you work?

A. You mean in racial comparisons?

Q. No, as an educator. You know his standing in the field of education, do you not?

A. He is the Dean of the School of Education at the University of Texas.

Q. You quoted several places from this book, from this study made by that committee, the Biracial Committee which studied senior colleges for Negroes. I will ask you [fol. 466] if, in your opinion that committee was, working over the long period of time that it worked to compile this volume, I will ask you if you do not believe they were in a better position to find out what is best for equality for the Negro students of this State, and in better position than you are from your short study of this particluar State?

A. I doubt if I could answer that. As I said a moment ago, I have given five or six weeks of intensive study to this subject. I don't know how much time they gave to the study which is involved there.

Q. I would like to read you a conclusion from that study, and ask you whether or not you agree with it. On page 83 of the study that you have been reading from:

> "Admission of Negroes to existing State universities for whites is not acceptable as a solution of the problem of providing opportunity for graduate and professional study for Negroes, on two counts: (1) Public opinion would not permit such institutions to be opened to Negroes at the present time; and (2) even if Negroes were admitted they would not be happy in the conditions in which they would find themselves."

I will ask you whether or not, first, you feel like you are in a position to agree or disagree with the conclusion therein drawn after having made only five weeks' study of [fol. 467] the matter in Texas?

A. I should say that I do not have enough facts to evaluate that opinion. I would want to know, have you made a poll of opinion of the people in Texas, number one. I would question the assumption underlying the statement, namely; that even if the poll showed that the opinion might be different, or it might be divided 60 to 40, or something of the sort, I don't think that is sufficient justification in itself in arriving at this conclusion, so I am not in a position to agree with the opinion, because you do not have enough facts stated there.

Q. In other words, that is the point I am going to get to. The men who have made a longer study, and have more facts at hand on which to arrive at the opinion as to what

can best furnish equality in Texas on this subject are certainly in a better position than you to judge the matter.

Mr. Marshall: The question assumes that they had more opportunity, and had more facts.

The Court: I think it is rather sustaining himself, or failing to sustain himself, anyhow. He is probably going to recommend himself, if he testifies. I would.

Mr. Daniel: I doubt that he will.

The Court: An answer to that would either be to say that what you have been saying is well founded or it isn't well founded.

[fol. 468] A. Well, what I have been saying is well founded.

By Mr. Daniel:

Q. In your opinion?

A. In my opinion.

Q. You read from this book here on several occasions, did you not, as to the study made by these men?

A. Yes, sir.

Q. Aren't you willing to admit, Dr. Thompson, that from the long study that they made on this matter over a period of years, if the evidence shows it took them a period of years, won't you admit they are in better position to judge what is best for the equality of opportunities?

A. I don't want to appear immodest, Mr. Attorney General, or facetious, but I doubt it seriously. I have been in this field of race relations for some 25 years. Most of the difficulties involved in the situation are this; that we imagine things will happen. There has been no test to determine whether or not—in fact, there has been a test, I understand, if you will allow me to give a hearsay example.

Mr. Marshall: No.

A. The attorney says no, but there has been no test to determine whether or not the time is ripe or not, as they say. I think so, coming in the State from other states, and that sort of thing, but I wouldn't say at all that I have any more basis for my opinion than they have for theirs.

Q. I will ask you again whether or not you are willing [fol. 469] to admit these gentlemen, after years of study, if the evidence shows they have had years of study, would be

in a better position to arrive at conclusions than you, after your five or six weeks in Texas?

A. I would have to know what they studied.

Q. I thought you had been reading it?

A. Yes, I picked out facts, and not conclusions.

Q. That is all.

Redirect examination.

Questions by Mr. Marshall:

Q. Dr. Thompson, you were questioned about this conclusion in this study of senior colleges for Negroes in Texas that "even if Negroes were admitted they would not be happy in the conditions in which they would find themselves." You have already testified you were born in Mississippi. Is that right?

A. That is right.

Q. Subsequent to that time you went to the University of Chicago, after attending a Negro school in Richmond, Virginia; is that correct?

A. That is correct.

Q. And the University of Chicago has all races; is that correct?

A. Yes, sir.

Q. You were in classes with other students of other races?

A. That is correct.

[fol. 470] Q. What I want to ask you is, did you find that you "would not be happy in the conditions in which you found yourself?"

A. No, I wasn't more unhappy; in fact, I was happier at the University of Chicago than I was at Virginia Institute.

Q. You can testify to that of your own knowledge, can't you?

A. That is correct.

Q. The faculty at Howard University, is it restricted to one race, or is it all races?

A. All races.

Q. Is there any unhappiness among them?

A. Well, I don't suppose any more than the average faculty, in any university.

Q. On these studies showing that Negroes in the north who attend southern universities, is there any showing as to how long those Negroes were in the north before they went back south?

A. I don't know of any—I can't recall any information now.

Q. What is your experience at Howard University as to students who come from most of the separate Negro schools in the south, as to their ability to shape up?

A. They have pretty weak backgrounds, on the whole. I mentioned a case this morning, in the case of chemistry, where one of the chemistry departments of the Negro college doesn't have physical chemistry. They come to Howard University to take graduate work, and they have to take a [fol. 471] year of physical chemistry before they can begin the graduate work. You face deficiencies in any of them.

Q. Isn't it true that many of the Negroes from southern schools are ineligible to attend a northern university; isn't that true?

Mr. Daniel: You are asking a leading question. We ask that you not lead him

By Mr. Marshall:

Q. Are there any Negro schools in the south that are unaccredited?

A. Yes.

Q. Can you get into an accredited university in the north if you come from an unaccredited school?

A. You can get in, but you are conditioned.

Q. Does a condition mean that you have to do more work?

A. Yes. My own personal experience bears that out. I got a Bachelor's Degree at Virginia University, and when I went to the University of Chicago, I had to do more work to get another Bachelor there.

Q. And you had already been to some kind of an academy in Mississippi, hadn't you?

A. That is right.

Q. Now, as to your experience in examining the relationship between the education in white and colored schools, on the question that was asked you on cross-examination as to one applicant to a law school, I want to ask you if, in your [fol. 472] opinion, what, in your opinion, would be the same viewpoint of a governmental agency as to that one pupil applying for a law school——

Mr. Daniel: We object to that. That would be a conclusion of the witness.

The Court: I don't see what a governmental agency would have to do with it.

Mr. Marshall: I am speaking of the University of Texas, with the University of Texas, with one Negro student applying for the law school, and the duty of the University to conserve the funds of the taxpayers.

A. I believe it would be the same answer that I gave the Attorney General when he asked me the same question a while ago in a different form. It seems reasonable the student should be admitted to the University of Texas.

Q. The question was asked whether or not Meharry was a Negro school. You testified on direct examination as to both Meharry and Howard. I now ask you whether or not Howard is a mixed school, or a Negro school?

A. Howard University has no restrictions as to race. In fact, we have all types of races at Howard. At least, they have had during the 20 years that I have been there.

Q. Getting back to this question of comparing the schools, the population of schools, is the population of the school— [fol. 473] what determines the number of students a school can accom-odate?

A. Well, there are a number of things. Of course, your physical plant, the things I enumerated this morning, physical plant, the number of teachers you can get, the number of facilities that you can offer.

Q. Even assuming that they are doing no better job than they are doing right now, could Prairie View accom-odate any more students?

A. I doubt it. I was there last week, and I understand they are overcrowded.

Q. As to library facilities, you did compare Meharry as to individual schools and student body?

A. Meharry?

Q. I mean Prairie View.

A. Yes.

Q. And are you familiar with the approximate size of the State of Texas—are you not?

A. I thought I was until I came here. I doubt it.

Q. What relationship to the number of students attending college is it to the fact that in one instance you have eleven schools scattered all over the state and in the other instance you have one school at the far—one of the far sides of the state?

A. Of course, geographically, it would be difficult, if [fol. 474] Negroes lived on the other side of the state, and would have to come to the other side of the state.

Q. Does that have some determinative bearing as to the number?

A. It probably would.

Q. That is all.

(Witness excused.)

The Court: We will take a recess for a few minutes.

Court was recessed at 3:15 p. m., until 3:40 p. m., May 15, 1947, at which time proceedings were resumed as follows:

Mr. Daniel: It is agreed that the following publications may be marked by the Court Reporter and left with him, and that he shall place in the record excerpts from such publications that may be requested by either of the parties.

Mr. Durham: We want to be bound only by what portions we offer.

(Thereupon, the following publications were marked for the purposes above stated as:)

(Exhibit A, 16th Census of the United States, 1940.)

(Exhibit B, Accredited Higher Institutions, 1944, Bulletin 1944, No. 3, U. S. Office of Education.)

(Exhibit C, General Studies of Colleges for Negroes, Misc. No. 6, Vol. II, U. S. Office of Education.)

[fol. 475] (Exhibit D, Directory, Colleges and Universities offering Graduate Courses leading to Master's and Doctor's Degrees, 1940-1945.)

(Exhibit E, Federal Government Funds for Education, 1944-1945 and 1945-46, Leaflet No. 77.)

(Exhibit F, Biennial Survey of Education in the United States, 1942-44, Statistics of Higher Education, 1943-44.)

(Exhibit G, Biennial Surveys of Education in the United States, 1938-40 and 1940-42, Statistics of Higher Education, 1939-40 and 1941-42.)

(Exhibit H, Biennial Survey of Education in the United States, 1942-44, Statistics of State School Systems, 1943-44, Chapter II.)

(Exhibit I, Federal Security Agency Biennial Survey of Education, 1936-1938.)

(Exhibit J, Statistics of Land Grant Colleges and Universities, year ended June 30, 1944.)

Mr. Daniel: We wish to take one in this group from which we read excerpts in the case.

Mr. Durham: We object, first, that it hasn't been certified to, and that nobody has identified it as being the official document.

The Court: Well, I think I will let him offer it, as the Doctor has testified from it.

(Said instrument, the same being National Survey of the Higher Education of Negroes, a Summary, Misc. Vol. [fol. 476] IV, was admitted in evidence as Respondents' Exhibit No. 15.)

Mr. Daniel: Number sixteen will be the Report of Senior Colleges for Negroes. We will get that from Dr. Thompson tomorrow.

(Said instrument, being "The Senior Colleges for Negroes in Texas," was admitted in evidence as Respondents' Exhibit No. 16.)

Donald G. Murray, a witness produced by the Relator, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Marshall:

Q. Give your full name.
A. Donald G. Murray.
Q. And your address?
A. 424 Y Court, Baltimore, Maryland.
Q. Your present occupation?
A. Attorney.
Q. Where did you go to college?
A. Amherst College.
Q. Where is that?
A. Amherst, Massachusetts.
Q. When did you finish Amherst?

A. 1932.

[fol. 477] Q. And did you apply for admission to the University of Maryland Law School?

A. I did.

Q. First; and what happened to your application?

A. It was refused.

Q. On what grounds?

A. On the grounds it was against the policy of the State of Maryland to admit Negroes to the University of Maryland Law School.

Q. What happened thereafter?

A. I consulted briefly with attorney Thurgood Marshall.

Mr. Daniel: We object to that as being irrelevant and immaterial, as to how he got in the school.

The Court: Tell me your purpose of it. I don't quite see.

Mr. Marshall: The whole purpose of it is that in the State of Maryland they have segregation statutes similar to the State of Texas. He was refused admission, and a lawsuit was filed, and they said if he was admitted to the school it would wreck the University, and he was admitted, and everybody got along fine.

The Court: How is he going to prove what the State said except by hearsay?

Mr. Marshall: We have here a document from the Court of Civil Appeals, and motion to advance a case, signed by [fol. 478] the Attorney General, and the Assistant Attorney General, from the State of Maryland. That is the only piece of evidence we are going to introduce in evidence as to what the State of Maryland said.

The Court: Might not that be the attorney's contention?

Mr. Marshall: He was representing it as the official attorney of the State of Maryland.

The Court: I will let you have it on your bill. You can offer it on your bill.

Mr. Marshall: Thank you, sir.

By Mr. Marshall:

Q. Was a lawsuit filed as a result of your case?

Mr. Daniel: We object to that.

The Court: It is on his bill.

Mr. Daniel: The records would be the best evidence.

The Court: He can say whether it was filed or not.

By Mr. Marshall:

Q. Did the Court of Appeals of Maryland in a decision reported in the official documents of the Court of Appeals of Maryland, and reported in the Atlantic Reporter, the title of which was Pearson against Murray, decide upon the case of which you were speaking?

A. Yes, it did.

Q. Now, I ask you as to whether or not you were admitted to the University of Maryland prior to the decision of the [fol. 479] Court of Appeals of Maryland?

A. Yes, I was.

Q. And prior to the decision of that case, I will ask you, did the Attorney General in Maryland, Herbert R. O'Conor, and the Assistant Attorney General, Charles T. LeViness, III, file a certain document with the Court of Appeals of Maryland concerning your case?

A. Yes, they did.

Mr. Daniel: As I understand it, all of this is going into his bill of exceptions?

The Court: That is right.

By Mr. Marshall:

Q. I show you this document entitled Raymond A. Pearson, President, and other names, versus Donald Murray, in the Court of Appeals of Maryland, with the certification from the archivist of the State of Maryland, and ask you if you can identify it?

A. Yes, I can.

Q. What is it?

A. It is the notice to advance the hearing in the Court of Appeals of Maryland on the case Pearson, et al. vs. Murray.

Mr. Marshall: If Your Honor please—you still have your objection to it?

Mr. Daniel: Yes, my objection is already in, and the Court sustained it.

The Court: Yes, and it is coming in on the bill of excep- [fol. 480] tion.

(Thereupon counsel for relator had the Reporter mark said instrument above referred to as Relator's Exhibit

No. 7, and same was admitted for the purpose of the Bill of Exception as such exhibit.)

Mr. Marshall: Thank you, sir.

Q. Mr. Murray, the sum and substance of the relator's Exhibit No. 7 is the request to the Court of Appeals of Maryland to advance the hearing in this case from the October term on the theory that if you were admitted that dire results would come about at the University of Maryand; is that not correct?

A. That is correct.

Q. You were admitted in September, 1935, were you not?

A. That is correct.

Q. Will you tell briefly to the Court what, if anything, happened to bear out the predictions of the Attorney General of Maryland?

A. Absolutely nothing happened.

Q. Were you ostracized in any way?

A. No, I was not.

Q. Were you segregated in any way?

A. No, I was not.

Q. Were you mistreated in any way?

A. No, I was not.

Q. What was your experience, briefly?

[fol. 481] A. My experience, briefly, was that I attended the University of Maryland Law School for three years, during which time I took all of the classes with the rest of the students, and participated in all of the activities in the school, and at no time whatever did I meet any attempted segregation or unfavorable treatment on the part of any student in the school, or any professor or assistant professor.

Q. Where is the University of Maryland Law School located?

A. Baltimore, Maryland.

Q. Are the public schools there mixed or separate, according to race?

A. Separate.

Q. Are housing conditions mixed or separate?

A. Separate.

Q. Are eating facilities mixed or separate?

A. Separate.

Q. With the exception of the separation of races on buses and trolley cars here in Austin, do you find any item of segregation that is not present in Baltimore, Maryland?

A. As far as I have observed, I have observed none.

Q. Attorney General Herbert O'Conor signed this motion to advance, did he not?

A. Yes.

Q. Who gave you your diploma when you graduated from the University of Maryland?

[fol. 482] A. Governor O'Conor.

Q. The same man?

A. Yes.

Q. And Charles T. LeViness, III, signed that motion as Assistant Attorney General?

A. Yes.

Q. Who gave you your first job when you left the law school?

A. Charles T. LeViness, III.

Q. How did that come about?

A. I applied for a position as inspector with the Board of Liquor License in Baltimore City. At the time Mr. LeViness was the Chairman of that Board, and in charge of the hiring of applicants. I applied and was accepted and worked for about eight months with him.

Q. And then you went to the Army?

A. No, I went in private practice.

Q. Do you know of your own knowledge whether other negroes have attended the University of Maryland since your time?

A. Yes, I do.

Q. About how many are in there now?

A. Nineteen.

Q. Has there been any trouble of any kind since you have been there that you know of?

A. Not that I know of.

Q. Your witness.

[fol. 483] Mr. Daniel: That is on the bill of exception. No questions.

(Witness excused.)

Mr. Durham: Your Honor, we desire to offer a portion of the cross interrogatories of the witness L. E. Angell, and

I will ask Mr. Nabrit to read the answers as I read the questions.

(Mr. Durham read the following cross interrogatories, and Mr. Nabrit read the answers, from Deposition of E. L. Angell.

E. L. ANGELL (Deposition):

Q. 3. How much money was expended in setting up this Law School for Negroes in Houston?

A. 3. I do not know.

Q. 4. Were books, equipment and supplies for this Law School for Negroes in Houston purchased for cash or by State requisition or vouchers?

A. 4. They were purchased by Prairie View University using their funds.

Q. 5. If purchased for cash, who paid for them and out of what fund was the money secured and on whose authority was the payment made?

A. 5. They were paid for from funds of Prairie View [fol. 484] University and on the authority of the Principal of the Prairie View University.

Q. 20. How many rooms were there in this building or in these housing facilities and what was the floor area of each?

A. 20. There was a suite of three rooms, but I do not know the floor area.

Q. 30. State what was the academic rank of each of these teachers in the faculty of the Law School.

A. 30. I do not know.

Q. 32. How many lecture rooms or class rooms were provided in this building or in these housing facilities and what was the floor area of each? For identification purposes, number this room or rooms.

A. 32. I do not know the disposition to be made of the suite of rooms that was rented.

Q. 33. Was an office for the Dean provided in this building or in these housing facilities? If so, what was its floor area and its approximate distance from the lecture rooms? For identification purposes, number this room.

A. 33. I do not know.

Q. 34. Was an office for the registrar provided in this building or in these housing facilities? If so, what was its

area and its approximate distance from the lecture rooms? For identification purposes, number this room.

A. 34. The registrar for this court was the Registrar at [fol. 485] the Prairie View University, and I do not know if they provided any space in Houston for him or not.

Q. 36. Into how many rooms was this Law Library divided and what was the floor area of each? For identification purposes, number each of these rooms.

A. 36. See answer to Cross Interrogatory No. 35.

Q. 37. What was the floor area of the main reading room in the Law Library? For identification purposes, number this room.

A. 37. See answer to Cross Interrogatory No. 35.

Q. 38. What was the floor area of the cataloguing and receiving room of the Law Library? For identification purposes, number this room.

A. 38. See answer to Cross Interrogatory No. 35.

Q. 39. Was there a librarian's office in the Law Library, if so, what was its approximate distance from the main reading room?

A. 39. See answer to Cross Interrogatory No. 35.

Q. 40. What was the approximate distance of the Law Library from the lecture rooms, the Dean's office and the registrar's office?

A. 40. See answer to Cross Interrogatory No. 35.

Q. 41. When was this library purchased and what was its purchase price?

A. 41. Some 400 basic reference law books were made [fol. 486] available by the Texas A. & M. College library, and it was ascertained that books for first year law students, a list of which, was furnished by the Dean of the Law School of the University of Texas, could be delivered on short notice, and the authorities of Prairie View were ready to purchase these books if a student registered in the law course.

Q. 42. How many library stacks or book cases were acquired and what kind?

A. 42. These were to be furnished by the library of Prairie View University.

Q. 45. Give the name and qualifications and salary of each of these officers of the Law School for Negroes in Houston: (a) Dean; (b) Registrar; (c) Librarian.

A. 45. The Dean and Registrar were officials of Prairie View University and Prairie View University was to furnish Librarian services at the Houston establishment.

Q. 48. Give the budget for the Law School in Houston for Negroes for the first year. Itemize as follows:

(a) Salaries—Instruction.

(b) Library.

(c) Operation and maintenance.

(d) Travel.

[fol. 487] (e) Publication.

(f) Equipment.

(g) Supplies and expenses.

(h) Administration.

(i) Scholarships and student aid.

(j) Annuities.

A. 48. No specific budget was approved, it being understood that if a student registered for the law course that the officials at Prairie View would then submit a budget.

Q. 50. State whether announcements of the new school, its curriculum, its schedule of classes, its organizations, expenses and program was made. If written announcements were made, attach copies of the same to this deposition.

A. 50. The only announcement that I know was made by the press.

Q. 51. If oral, who issued them and how were prospective students to become aware of these verbal announcements?

A. 51. I do not know.

Q. 52. What officer of the Law School for Negroes in Houston made these announcements?

A. 52. I do not know.

Q. 53. Did the faculty of the School of Law for Negroes in Houston prepare the curriculum, schedule the classes and otherwise conduct the general educational work of the Law School?

A. 53. It was understood that they would follow the course [fol. 488] offerings of the University of Texas.

Q. 54. How many meetings did the faculty of the Law School for Negroes in Houston hold. Attach copies of the minutes of these meetings to this deposition.

A. 54. I do not know.

Q. 55. Who was the Secretary of the Law School for Negroes in Houston. State the qualifications of the Secretary.

A. 55. Prairie View University was to furnish secretarial assistance for the law course in Houston. I do not know the qualifications of the personnel.

Q. 56. Attach copies of the application blanks or forms for admission to the Law School for Negroes in Houston to this deposition.

A. 56. I have no copies, blanks or forms.

Q. 57. Attach copies of each of the registration forms, blanks or cards used by the Law School for Negroes in Houston.

A. 57. The registration forms would be those of Prairie View University. I haven't these forms available.

Q. 58. Is this Law School for Negroes still in existence in Houston?

A. 58. The facilities were rented until the 1st of March. It was understood that if no student registered that the authorities of Prairie View would discontinue the offering of the course and made disposition of the equipment.

[fol. 489] Q. 59. If not, when was it closed and upon whose authority was it closed?

A. 59. See answer to Cross Interrogatory No. 58.

J. B. RUTLAND, a witness produced by the Relator, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Marshall:

Q. Give your full name, please.

A. J. B. Rutland.

Q. And your address?

A. 4112 Duval.

Q. And your occupation, sir?

A. Director of Education for Negroes, State Department of Education.

Q. And do you also have a position with the Scholarship Committee for Negroes?

A. Executive Secretary of the Scholarship Committee.

Q. And what is the Scholarship Committee for Negroes?

A. It provides for out of state scholarships, scholarships to out of State institutions for Negroes in subjects that are not offered at Prairie View.

Q. And when was that committee set up?

A. In 1939.

[fol. 490] Q. And how much money did it have to operate on the first year?

A. Twenty-five thousand.

Q. And was that all for scholarships, or was part of that for administration?

A. Part of it for secretarial.

Q. Approximately how much was available for scholarships?

A. About twenty-four hundred the first year.

Q. Twenty-four hundred?

A. Twenty-four thousand the first year.

Q. And was that all contributed?

A. I am not sure about the first year. I wasn't in the office at that time.

Q. When did you take over?

A. 1945.

Q. 1945?

A. Yes.

Q. Do you have the records there for the previous years? Will you look at those records and let us know how much was actually expended in 1939? I am wondering if we might shorten this by giving him time to consider each year. The thing I am interested in is the amount of money and the number of subjects that were covered by the students, and the students for each year, and then he could present that. Do you have it?

A. I have it for 1945-46 here.

[fol. 491] Q. We wanted it back a little ways, if we could. Do you have any other years there? Well, I think, if Your Honor please, I might ask one more question, and I might save you some time there. Is this 1945-1946 about the way it has been running since you have been there?

A. Since I have been there, it is.

The Court: That is the one since you have been there, isn't it?

A. Yes.

By Mr. Marshall:

Q. Do you have a copy of the rules and regulations for the issuance of scholarships that you mail to the pupils?

A. No.

Q. Is this it?

A. That is right.

Q. That is it. May we have these two marked?

A. 1943 and 1944 there was $24,000.00 spent.

Q. How many law school students were included in that year?

Mr. Daniel: Your Honor, we would like to make the same objection to this line of testimony that we made to the previous testimony about other schools. The relator here is asking only the Dean and the Registrar and the Board of Regents of the University of Texas to get into the University of Texas. He isn't concerned at all with out of state scholarships, didn't want one, and didn't apply for one. We [fol. 492] think it is irrelevant and immaterial to this case.

The Court: We will hear the testimony.

Mr. Daniel: Note our exception.

By Mr. Marshall:

Q. Can you tell me how many law school students went in the year 1944-1945?

A. Three.

Q. And the previous year, can you go back?

A. The total up to now is 11, since we have started.

Q. The total is 11 in law schools?

The Court: Altogether.

A. Altogether since the work started.

By Mr. Marshall:

Q. When was the first year you had an applicant for a law school scholarship?

A. In this 1939 to 1943 report we have eight law students.

Q. You have eight law students in that report. You don't know what years they applied, do you?

A. No, except during the years 1939 to 1943.

Q. All right. Can we have the—is that a mimeographed copy, or is that the only one?

A. I have only the one copy.

Mr. Marshall: Any objection?

Mr. Daniel: The same objection we made to all of them.

Mr. Marshall: We are introducing as Exhibit 8 the report of the Scholarship Aid Fund for Texas Negro Graduate and Professional Students, 1945-1946.

[fol. 493] (Said instrument was admitted in evidence as Relator's Exhibit No. 8.)

Mr. Marshall: And Relator's Exhibit No. 9, from the office of the Executive Secretary of the Texas Scholarship Aid Committee, State Department of Education, statement of policy and procedure. That is applicable, of course, to the Negro Scholarship Fund.

(Said instrument was admitted in evidence as Relator's Exhibit No. 9.)

Mr. Marshall: That is all.

Mr. Daniel: No questions.

(Witness excused.)

Mr. Durham: Your Honor, the relator rests at this time, with the understanding, because of the order in which the testimony has been put on, he reserves the right to rebut any further testimony, under the agreement.

The Court: All right.

Mr. Daniel: Your Honor, I want to exchange the smaller picture for a larger picture, more equal to the size of the picture of the University Law School introduced by the relator, for this little picture we introduced yesterday.

Mr. Marshall: We only object on the ground there is too much sky in it.

Mr. Daniel: For the record, in reply to that last remark, [fol. 494] we tried to take it about the same distance as the one introduced by the relator of the Texas University Law School.

(Said photograph was marked by the Reporter as Respondents' Exhibit No. 14, and same is substituted for the instrument originally introduced as such exhibit.)

HENRY DOYLE, a witness produced by the Respondents, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Daniel:

Q. State your name.
A. Henry Doyle.
Q. Where do you reside?
A. 1205 Leona Street.
Q. Austin, Texas?
A. Austin, Texas.
Q. Did you reside here in Austin during the months of February and March of 1947?
A. I did.
Q. Were you acquainted with the opening of a Negro Law School here in Austin on March 10, 1947?
A. Yes, sir.
Q. Did you, prior to March 10, 1947, consider entering [fol. 495] that law school?
A. I did.
Q. Did you on the Saturday before March 10, 1947, attend a meeting in Dallas, Texas?
A. I did.
Q. Were other members of the Negro race at that meeting?

Mr. Durham: Your Honor, the relator objects as to whether a meeting was held, or ten thousand meetings were held, unless it is shown they were held at the request and instance of relator.

The Court: We will see how it develops.
Mr. Durham: Will you note our exception?
The Court: Well, I haven't ruled on it yet.
Mr. Durham: All right, Your Honor.

By Mr. Daniel:

Q. Do you know Maceo Smith?
A. I do.
Q. What position, if any, does he hold with the National Association of Colored People.

Mr. Durham: Your Honor, we object to that. Any connection he has with the National Association for Colored

People would not be binding, and any action he did would not be binding upon this relator.

The Court: I believe we will let him pursue it a little further.

A. State the question again.

[fol. 496] By Mr. Daniel:

Q. What position does he hold with the National Association for the Advancement of Colored People?

A. I am not familiar with his title.

Q. Is he an officer in the Association?

A. I am not sure. I know he works with them, but whether he holds an office or not, I don't know.

Mr. Durham: We object to the last statement as not responsive.

The Court: Yes, just answer the questions.

By Mr. Daniel:

Q. Was he at that meeting attended by you in Dallas on the Saturday before March 10, 1947?

A. He was.

Q. Did he make a talk or report of any kind at that meeting in Dallas the Saturday before March 10, 1947?

The Court: I am still holding that in abeyance.

A. Again, will you ask it again, please?

By Mr. Daniel:

Q. Did—first, let's get this. Maceo Smith, was he at the meeting in Dallas?

A. He was.

Q. Did he make any kind of talk or report there at the meeting?

A. I don't recall.

Q. Were discussions held at the meeting by——

Mr. Durham: Your Honor——

Mr. Daniel: I withdraw it.

The Court: I think it would be hearsay.

[fol. 497] By Mr. Daniel:

Q. How long did you stay there at the meeting in Dallas?

A. I am not sure, approximately two hours.

Q. Were other officers of the National Association for the Advancement of Colored People there?

Mr. Durham: We object to that as assuming that he knows them.

The Court: Unless he knows of his own knowledge.

Mr. Durham: We object to it for the reason that he presupposes that he knows, and it is an assumption not based upon any facts.

A. I do not.

By Mr. Daniel:

Q. You do not know. What was the name of the group that held that meeting?

Mr. Durham: We object to that as assuming that he knows.

The Court: If he knows.

A. I do not know.

By Mr. Daniel:

Q. Who notified you to come to the meeting?

A. I was notified by circular letter.

Q. From whom?

A. I don't recall the signature.

Q. Was the support of this lawsuit pending here by the National Association for the Advancement of Colored People mentioned at that meeting by anyone?

[fol. 498] Mr. Durham: We object to that.

The Court: Of course, it would not be admissible unless the relator was there, and unless he made it.

Mr. Durham: And unless it was by his authority, and we object to it as not being binding upon the relator, unless he shows that connection.

The Court: That is right.

By Mr. Daniel:

Q. Did you see Heman Marion Sweatt there?

A. I did not.

Q. Did you see Mr. Durham, the man that just made the objection, any time during that meeting?

A. I saw him.

Q. Did he appear before the meeting?
A. He did.
Q. Before that meeting concluded, did you announce to that meeting that you would not enter the law school, Negro Law School on March 10, 1947?

Mr. Durham: We object to that as being irrelevant and immaterial as to what he would do.
The Court: I believe I will let him answer it, in view of our prior rulings of that. We may strike it all later.

By Mr. Daniel:

Q. Did you make such statement to the meeting before it adjourned?
A. I said I was seeking information relative to making up my mind whether or not I would enter the law school.
[fol. 499] Q. Did you announce before the meeting was over that you would not enter the law school the next Monday morning?
A. I did not.
Q. Didn't you tell me that you did?

Mr. Durham: We object to him arguing with his own witness.
The Court: That is right.

By Mr. Daniel:

Q. Did you enter the Negro Law School on March 10, 1947?
A. I did not.
Q. That is all.

Mr. Durham: That is all.
The Court: I think the testimony is perhaps not relevant.
Mr. Durham: We ask that it be stricken.
The Court: All right.
Mr. Daniel: Note our exception.

(Witness excused.)

Mr. Daniel: That is all of the witnesses we have here now, Your Honor. We have two for in the morning. That is all we know about.

The Court: Then we will recess until nine o'clock in the morning.

(Court was recessed at 4:20 p. m., May 15th, 1947, until 9:00 a. m., May 16, 1947.)

[fol. 500] Morning Session, May 16, 1947, 9:00 A. M.

A. W. WALKER, JR., a witness produced by the respondents, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Greenhill:

Q. Will you please state your name?
A. A. W. Walker, Jr.
Q. What is your occupation, Judge Walker?
A. Professor of Law at the University of Texas Law School.
Q. Would you please give us your educational background for that teaching?
A. I received my B. A. Degree from the University of Texas in 1921 and my LLB in 1923. I took work at some other schools, graduate work at the Yale Law School, some extra graduate work at Columbia Law School.
Q. Do you belong to any professional societies?
A. Yes, the Association of American Law Schools, American Judicature Society, Texas Bar Association.
Q. Have you been admitted to the practice of law in Texas?
A. Yes.
Q. When were you admitted?
A. I was admitted in 1923.
[fol. 501] Q. State whether or not you have engaged in the private practice of law?
A. I have.
Q. When did you engage in the practice?
A. I practiced in Dallas, Texas, from 1923 to 1925.
Q. Would you state whether or not you have written any legal articles or books on the subject of law?
A. I have written quite a few articles published in law reviews and some in trade magazines.

Q. Would you please name some of the articles in the law reviews?

A. I wrote a series of articles on the subject of the law of oil and gas which were published in The Texas Law Review, one in the Mississippi Law Review, and various articles also published in the Oil & Gas Journal, and other trade publications.

Q. In what courts are you licensed to practice?

A. The Supreme Court of Texas, the Supreme Court of the United States, the Federal Court for the Northern and Western Districts of Texas.

Q. What subjects have you taught in the law school?

A. That is quite a long list. My teaching has been primarily in the real property fields. I have taught courses in personal property, real property, conveyances, called future interests, oil and gas, domestic relations, wills, administration of estates.

[fol. 502] Q. What courses are you now teaching?

A. At the present time I am teaching oil and gas and a real property seminar.

Q. What system of law instruction do you use in your classes?

A. The case book system.

Q. How long have you been using that system?

A. Since I have been teaching law, which is about 22 years.

Q. Would you please describe briefly the nature of the case book system?

A. The case book system is designed to cause your students to go to the primary sources of law, rather than to secondary sources of law for their information. In other words, they go to the decisions of the courts and study those and be prepared to recite upon them in class, and then to discuss them and the conclusion, with all questions that might be raised in regard to those cases.

Q. In addition to the—is there any additional feature of the system in addition to the recitation and discussion? Is there any other part of the case book system which you use?

A. I don't know that I understand your question.

Q. I mean, do you ever lecture to the class?

A. Oh, yes. I would not call that a part of the case book system, but frequently there is material that you don't think

that requires the detailed attention that the case book system necessitates, which you want the students to have, but [fol. 503] where you can cover the situation by simply a lecture covering that particular topic.

Q. I will ask you whether or not in your opinion the case book system is flexible?

A. A very flexible system.

Q. How many students are in your classes, Judge Walker?

A. Well, in my class in oil and gas at the present time, there is something over a hundred students. In my seminar class, it is restricted to fifteen.

Q. How often does an individual student get called upon to recite in a class of a hundred?

A. I would say that in a class of 100, for being called upon to recite on a case, that the average would not be called upon to recite more than one case.

Q. In what period of time?

A. During a course.

Q. Three and a half months?

A. Yes, about 100 cases. Possibly you might cover more than a hundred cases, but you wouldn't cover probably as many as 200 cases.

Q. So, as I understand you, an individual student would be called on——

A. About one and a half cases.

Q. One and a half times in a four and a half months course?

A. That is right.

[fol. 504] Q. Have you taught any smaller classes than 100?

A. Yes. Of course, at the present time I am teaching a seminar class which has fifteen students. In the past, before our law school got so large, in the summer time I suppose we had an attendance of about 150 students on the average, and the classes were relatively small. I have taught some of those classes where there were around 20 students to the class.

Q. And what system of teaching did you use in those classes?

A. The case book system.

Q. I will ask you whether or not you think such system is adaptable to a small class?

A. Yes, I think it is adaptable to a small class.

Q. Could it be used by a class of ten?

A. I think so, without question.

Q. Would the students in that class receive the same or similar experience and education as those in the class of 100?

A. In my opinion, they would receive better.

Q. Would you please explain that answer?

A. For the reason that they would be called upon more frequently. They would take a more active part in the discussions. In a class of 100 students, many of them, realizing that under the law of averages their chances of being called upon are rather remote, are inclined*d* not to take an active part in the discussion. There is always a certain group of such students. In a class of ten, all of the students are on their toes all the time, because they realize [fol. 505] they are apt to be called upon next.

Q. Are you familiar with The Texas Law Review?

A. Yes.

Q. Have you been connected with the publication officially?

A. Yes, I was the first student editor in chief, and I have acted as faculty adviser on two different occasions, of the publication of the review.

Q. Do you know the nature of the legal existence of The Texas Law Review?

A. It was organized in cooperation with the Bar of Texas as a corporation, and stock was sold, and it exists as a separate legal entity, a corporation.

Q. Does it have any official connection with the School of Law?

A. Not officially, no.

Q. Who decides what articles may be published in the Texas Law Review?

A. The faculty adviser.

Q. I will ask you if in the past, and at the present time articles have been accepted by The Texas Law Review which have been written by students other than of the University of Texas, and faculty members of the University of Texas?

A. Yes. I assume that it is considerably more than half of the articles. We make a distinction in the Review in [fol. 506] what we call articles and comments and case notes.

Of the leading articles, more than half of them are prepared by outsiders. As to the comments, largely they have been prepared by our own students, but occasionally comments have been submitted by students of Baylor and S. M. U.

Q. Do you know whether or not Baylor has a law review in connection with its law school?

A. The last information I have on it, they do not have. I feel reasonably sure they have not organized it.

Q. Do you know whether or not the Baylor Law School is an accredited Law School?

A. Yes, it is an accredited law school.

Q. Now, if a member of the Negro Law School should prepare and submit an article to the Texas Law Review, of merit, I would ask you if there is any reason why that should not be published in the Texas Law Review?

Mr. Durham: We object to that as to whether or not there is any reason or not. It is too speculative, and not binding upon this relator. It has no bearing upon any issue.

Q. I will withdraw the question. Do you know of any rule of The Texas Law Review or society which would prohibit its use in the law review?

A. No, there is no such rule.

Q. Did you hear the testimony of Dean Harrison, from the stand?

[fol. 507] A. Yes, I heard it.

Q. Did you hear that portion of his testimony in which he cited with approval some sort of review, or otherwise, which divided law schools into large, medium size, and small?

A. Yes.

Q. Did you hear that portion of his testimony which intimated that the smaller schools would consist of schools wherein the student population was between 50 and 150?

A. Yes.

Q. Did you hear that portion of his testimony that the so-called smaller schools would be inferior in that they would not be in a position to offer equal educational advantages with larger or medium size schools?

A. Yes.

Q. I will ask you whether or not you know of any of the schools, law schools, that have a population of from 50 to 150 in their class rooms?

A. Yes, there are quite a few.

Q. Would you name some of those?

A. I couldn't give you the figures of their enrollment at the present time. Most of them, of course, as you realize, are crowded because of the present situation. Prior to the war, schools like Duke University and North Carolina University had on the average about 100 students. Stanford [fol. 508] University had approximately 150, I believe 148 in 1941—in 1940-41, was their attendance.

Q. Do you know the general reputation of these law schools?

A. The three schools I have named are outstanding law schools with very high reputations.

Q. Are they at least of equal reputation with the University of Texas?

A. Yes.

Q. Your witness.

Cross-examination.

Questions by Mr. Nabrit:

Q. Professor Walker, in stating the courses which you have taught and which you now teach, you stated that you have taught real property courses primarily?

A. That is correct.

Q. Personal property, conveyances, and one of oil and gas, administration of estates, and similar courses, and that in teaching those courses you used the case method of teaching?

A. That is right.

Q. You also stated that in your class of a hundred you called on each student probably once during the semester?

A. I said I called on them once for a principal case, once and a half, on the average, I would say.

Q. And you stated that you have approximately 100 principal cases during the——

[fol. 509] A. No, it would — a little larger than that, one and a half times, about a hundred and fifty cases, I would say.

Q. Yes. Now, is not one of the attributes of the case system that, as used by professors of law, that most of these principal cases are not covered by calling on the students,

but rather by, especially in the larger classes, by having the students volunteer? Don't you have that in your classes?

A. That isn't my system.

Q. Your system is to go by the roll on each principal case?

A. I call on a specific student for a case.

Q. Do you ever call on a student out of order?

A. I don't have a roll. I have a class seating chart with their names, and I skip from one seat to another, and the name of the student is there, so I never call on them in order.

Q. You skip about over your chart?

A. Over the room, yes.

Q. Do you have some number or some method of indicating when you have been in that particular spot last?

A. That is right.

Q. After you have called on that particular student, let's say student "A," for a principal case, let's assume first that "A" gives the case. Then do you throw that case open for discussion, or do you make your comment? Give us what procedure is next.

[fol. 510] A. Of course, a generalization is all you can do here. It depends on the case, largely. Sometimes it may be a relatively simple case, and the student may have handled it satisfactorily, and you may not get any further discussion. Normally, however, the subject will be thrown open for general discussion, and the students will ask questions and raise points and take different viewpoints about the case, and general discussions.

Q. So that if the student has some idea which he wants to present, or some question which he wishes to ask about that case, after this one student has given the case, he has that opportunity?

A. Yes.

Q. I will ask you, in the second place, in your courses, is each student supposed to brief these cases? I put it "supposed" because we understand then he is supposed to brief?

A. That is correct.

Q. So that if he has done that, and if he is called on he may recite from his brief?

A. I try not to let them recite from the brief.

Q. Let's say from his recollection of his work in briefing the case.

A. That is right.

Q. So that we have these 100 students supposedly having [fol. 511] done that spade work before they come, and one is chosen, and all participate?

A. That is right.

Q. Isn't one of the basic virtues of the case system just this, that spade work which all of the students do in preparing the case, and this wide discussion of getting the viewpoints of persons in the class who have a viewpoint. In future interests that may not be true, but over in oil and gas—that may not be true. Let's take personal property or domestic relations. There might be a wide variety of opinion. Isn't that one of the virtues of the case system, that comment and explanation and oral argument about the case?

A. Unquestionably that is one of the virtues, and the larger the class the more essential it is to have that, because, otherwise, you don't know whether your students are understanding the subject.

Q. That is right. Now, if you had one student in a class, obviously that student would have to do his spade work every day or he couldn't come? We agree to that, don't we?

A. He would get a very intensive course.

Q. So that he would get that side of his law training thoroughly examined every day?

A. Yes.

Q. But he would miss the discussion of other class mem- [fol. 512] bers, would he not?

A. He would. I think so, and it would be the province of the instructor to try to supply that by asking questions himself.

Q. But he begins to lose some of the merits of the system itself when he can't have this discussion which goes on in the class?

A. There is a certain value to that.

Q. Yes. Now, let's go from that just a moment to this law review at the University of Texas which has been—do you consider the law review at the University of Texas an extraneous and unimportant feature?

A. If I understand your question, extraneous—do you mean foreign to teaching in the law school?

Q. No, I mean as one of the assets of the University and a part of its reputation, and a part of its value to the student.

A. I think work on the law review is of value to the student.

Q. It is of such recognized value that it is a distinction to the student to state after he has graduated that he was a member of the law review staff, is it not?

A. That is correct.

Q. In the school it is an honor also to be known as one of the law review staff, is it not, for the student?

A. That is correct.

Q. Obviously, from the catalogue, the law review at the [fol. 513] University is incorporated, and I understand you to say that is a private corporation. Nevertheless, in your opinion, to all intents and purposes, is not the law review at the University of Texas under the supervision of the faculty and students at the University, in fact?

A. It is so long as the corporation permits it.

Q. I am assuming that they have not forbidden your supervision. It is to all intents and purposes under the supervision of the faculty and students?

A. That is true of the content that goes into the review; the financial end of it, no.

Q. I am just speaking of the control and operation of the law review as a legal publication, not as to its expenses or things of that sort. It is under the control and supervision of the faculty and students?

A. That is correct, although there is a Board of Editors of outstanding lawyers who are appointed each year.

Q. Yes.

A. By the stockholders.

Q. Yes.

A. Who would have, if they cared to exercise it, complete authority, I assume.

Q. Yes, but isn't it a matter of fact that they don't, they consider it an honor to be on there, and they leave it to the faculty?

[fol. 514] A. That has been the practice.

Q. There is nothing strange at the University of Texas in operating The Texas Law Review from the way it is operated at other institutions, is there? By that I mean all other institutions, or most of the institutions, the students write the case notes and comments. You have some other comments and you might have some other professors writing case notes for articles by members of the faculty and by distinguished lawyers and jurists all over the state; isn't that the way the Texas Law Review operates?

A. That is correct. It is different in that its set up is independent.

Q. I am not talking about the corporation; I am talking about your testimony that most of your leading articles, a great many of them, were written by lawyers and distinguished men in the legal profession who were not at the University of Texas, and that those comments were solicited from other persons than the students and faculty. That is not strange in law reviews, is it?

A. No.

Q. It is an accepted practice?

A. That is particularly true of our articles. I don't know that we have solicited any comments from outsiders, although they have been submitted and accepted. They were not solicited.

Q. So that it operates just like the Columbia Law Review where you were, as far as that goes?

[fol. 515] A. I don't know what the policy of the Columbia Law Review on accepting outside articles is, or what is the students' portion.

Q. I don't mean the students' portion. You have just stated the students would keep their portion, but Columbia accepts leading articles?

A. Yes, articles.

Q. So that you did not intend to give the impression that there is something peculiar about the way the Texas Law Review operated in that matter of articles?

A. No, not in regard to articles.

Q. Did you intend to give the impression about case notes?

A. Case notes, I think there is a difference there, and I use the word "think" because I am not qualified to speak on the rules that the law reviews have in that respect, but we do on occasions accept contributions for what we call the students' portion of the review, to the comment and case note section from outside sources. As a matter of fact, we accept them from our own students who are not on the editorial staff of the review. In that respect, I don't know what the policy of other reviews has been, but that has been our policy. We have accepted contributions from students at S. M. U. and students at Baylor.

Q. You spoke of Baylor a moment ago. What is the size of the law school at Baylor?

[fol. 516] A. At the present time?

Q. Yes.

A. They closed down during the war for want of students, and it was only reopened this fall. I am not sure what those figures are. It would be purely a guess.

Q. Would you mind guessing?

A. I would say 150 students.

Mr. Daniel: We object to the guess, Your Honor, because it is so far from the facts.

The Court: Of course, the guess wouldn't help any.

By Mr. Nabrit:

Q. In your opinion, Professor Walker, the law schools with 50 and 100 students, from your knowledge, do any of those law schools possess law reviews?

A. Well, the three schools I named all possess law reviews, Duke and North Carolina and Stanford. I haven't checked to see whether there were others. I did check those three schools.

Q. As a professor of law you are familiar with most of the law reviews, are you not?

A. I am familiar with most of the law reviews, but I wouldn't be familiar, offhand, with the number of students in the various schools.

Q. So you just know of these three schools?

A. I simply checked those, because I happened to know those were small schools, and did have good law reviews.

[fol. 517] Q. Do you know how those law reviews operate, of your own knowledge?

A. No, I don't.

Q. Now, your experience with your seminar of 15 students, you don't teach a seminar in the same way in which you teach your regular classes, do you?

A. No, I don't.

Q. So that it would not illustrate the case system?

A. Well, seminar courses are very flexible.

Q. Yes.

A. On some days we have two hour sessions, if needed, of the class, and sometimes we use the case book system on a certain topic, and other days we have students contribute their own research and discussion. It varies from class to class, the system we use.

Q. In your opinion, and as a law professor, would you advise a prospective law student to attend a law school where he would be the only student?

A. That depends, of course, on the law school, and the set up.

Q. This law school would be one that was just opening.

A. I would say that he would have an opportunity to get a wonderfully intensive course of study, being one student.

Q. After you said that, what would you advise him, as a law professor?

A. I believe I would.

Q. You would advise him?

[fol. 518] A. I believe I would. I don't know of any student that would ever have that much care and attention given to his education.

Q. You are assuming the care and attention. You don't think there is any value in having upper classmen in the law school, and you don't think it is of any value that he have discussion with fellow classmates?

A. There are values and values, and you have got a lot of balancing to do. In a large law school the student misses a great deal. There are a great many disadvantages in a large law school, a large class. There are certain advantages. In a small class there are many advantages, and there are certain disadvantages. I would say you would have a balance there. I don't think that a one-man class would be a very desirable class from the teacher's standpoint, but I think from the student's standpoint he would have a wonderfully intensive course of instruction.

Q. Well, you stated that it would not be advantageous for the teacher, and the teacher is the stimulating influence in a one-man law school, isn't he?

A. Well, a lot would depend on your instructor. He could make it very, very interesting, if the instructor had the ability to do so.

Q. We raise a lot of suppositions.

A. You have to adjust your teaching to the size of the [fol. 519] class. You don't teach a 15 or 20 man class the same way you would teach a 100 or 150, and in some cases, I believe I have had over 200.

Q. To teach a one-man class in a one-man law school would be a lot of adjusting from that, wouldn't it?

A. Yes, it would be a rather marked adjustment.

Redirect examination.

Questions by Mr. Greenhill:

Q. Judge Walker, would you please state whether or not in your opinion the preparation in a small class for class room recitations would be as great or smaller than in a large class?

A. The preparation—are you talking about the students' preparation?

Q. On the part of the student, yes.

A. You mean on the average?

Q. On the average, yes.

A. Yes, I think it would be, because the chances of being called upon are just that much greater.

Q. In other words, they would be greater?

A. There would be more pressure on the student to keep his daily work up.

Q. And if the student realized he was to be called on that day, he would probably bone a little harder, would he not?

A. That would be the natural tendency.

[fol. 520] Q. Judge Walker, in the case book system, are all of the questions asked by the students?

A. Oh, no, the instructor asks many.

Q. Why does the professor ask questions?

A. For many reasons. One, frequently, just to provoke discussion. Sometimes to feel out the class to see whether or not they understand the case. In other words, the instructor has had a report only from one student. He has 99 other students. He doesn't know just how much they know about that case, and frequently he will sample the class by questioning to bring out additional points, perhaps, and also to find out how well the class as a whole has understood the discussion.

Q. Did I understand you to say that you had used the case book system in small classes?

A. Yes.

Q. Has that been used satisfactorily?

A. Satisfactorily from my standpoint. As a matter of fact, I would much prefer to teach a small class than a large class.

Q. And would you use the case book system?

A. Yes.

Q. Professor Walker, would you please state whether or

not first year law students at the University of Texas are eligible to write for the law review?

A. No.

Q. Do you know any reason why a Negro law school could [fol. 521] not establish a law review?

A. No.

Q. Judge Walker, I will ask you whether or not you think it would be reasonable to assume that had the relator or some other student who was only one of 12 to 14 inquiries, had enrolled, that there would have been other students in this law class?

Mr. Durham: We object to his reasoning and assumption, as not being binding, or as not being based upon any hypothesis.

Mr. Greenhill: I want to further qualify that question by saying if there had not been some outside influence to keep students from coming in.

The Court: I think there is no evidence of that, and I think it would be speculative on the part of the witness. He can state the effect of this man enrolling.

By Mr. Greenhill:

Q. Have you noticed enrollments generally in the law schools?

A. Over the United States?

Q. In Texas?

A. Yes, generally.

Q. Do you have any idea of the number of actual applicants, or the relation that bears to the number of inquiries you have, that is, if you have, say, 14 inquiries, how many of those students would probably attend?

[fol. 522] Mr. Durham: We object to that. We don't mind the witness testifying. We certainly don't want the Assistant Attorney General testifying. We object to it as being leading and suggestive.

The Court: Let's let him answer.

A. I don't know that I could answer that accurately. Normally a student doesn't inquire unless he is interested in enrolling. That is our experience in our Law School.

By Mr. Greenhill:

Q. You would assume if 14 people made inquiry at the law school at least four or five of them would enroll?

Mr. Durham: Your Honor, that is the assumption again.
The Court: I think that is an assumption again.
Mr. Greenhill: That is all.

Recross-examination.

Questions by Mr. Nabrit:

Q. Professor Walker, are you aware of the fact that under the present crowded conditions of law schools and educational institutions that former G. I.'s, that have the benefits under that act, write to a large number of schools asking about the courses offered? Are you aware of that?

A. I have personal knowledge of only one or two instances.

Q. Do you handle enrollment at the University of Texas Law School?

A. No.

[fol. 523] Q. So that you are not in a position to state what the statistical experience is as to the number of inquiries and the number——

A. I am not.

Q. Do you know of a law school in the United States with one student?

A. No, I don't know of any law school like that.

Q. Do you know of a law school in the United States with 10 students?

A. Not at the present time. During the war there were.

Q. During the war was abnormal, too, was it not?

A. That is right.

Q. Now, so far as a student is concerned, Professor Walker, is it not true that if he is to do the assignment of the instructor, he prepares as hard, under the case system, for his particular work as if he were in a class with 600? That is, that is true as far as each student is concerned; is that not true? That is, all he can prepare is what the assignment was, and excess work which he wishes to do, is that not true?

A. That is true as far as preparation of the case is concerned, but——

Q. That is what I mean, just preparation of the cases.

A. In other words, there is a certain amount of work in preparing a case, if that is——

Q. An "A" student does that, if he does the professor's [fol. 524] assignment?

A. Assuming he does.

Q. All right. If he doesn't have the incentive to do it, and the instructor doesn't give him the incentive to do it, then he doesn't do it; is that not the fact?

A. Well, assuming all of your points, yes. There are other factors.

Q. I am going to get to the other factors. You are postulating the proposition that the pressure of facing the professor every day with nobody to look around at to take that burden off of him will make him do more work. I am giving you a hypothesis that the discussion of his class mates will provoke viewpoints that he himself did not have the experience and capacity to bring forth. Do you agree that both of those are present in considering the case system of study?

A. I agree to the raising of questions by the students and the discussion. I don't agree that you have to have a large class.

Q. I didn't get to that yet. I am coming to that. Now, let's go to that. What would you suggest from your experience as the ideal size class in law under the case book system or method?

A. That would be a difficult question to answer. It would be less than 25. I think after—my experience has been after you get above 25 your class is getting a little bit unweildy [fol. 525] Q. Unweildy. Do you mean that the ability to properly instruct them is declining in inverse proportion as the numbers accelerate or increase?

A. The amount of attention that you can give to the student, and the kind of work he is doing, and you get to the feeling you don't know what the individual students are doing when the class gets large.

Q. Are you saying as the classes at the University of Texas increase, the amount of training they get diminishes in quality?

A. I think that is true of a considerable number of students.

Q. Of the 886 out there, what percentage of those?

A. The top ranking students would get a good legal education under almost any circumstances.

Q. So you are talking about the bottom ranking students?

A. Not necessarily the bottom, but those below the top, at least.

Q. So that the best——

A. There is a grade in between there.

Q. The best students at the University of Texas Law School are going to get a good legal education, no matter how poor you teach them, or how large the classes get?

A. I am inclined to think that is virtually true.

Q. You can have him.

[fol. 526] Redirect examination.

Questions by Mr. Greenhill:

Q. Judge Walker, these thought provoking questions that counsel is asking you about; I will ask you whether or not it is not often that the professor himself asks those questions?

A. Oh, yes.

Q. That is all.

(Witness excused.)

Dr. Benjamin Floyd Pittenger, a witness produced by the Respondents, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Greenhill:

Q. Will you please state your name?

A. Benjamin Floyd Pittenger.

Q. What is your profession?

A. I am Professor of Educational Administration at the University of Texas.

Q. What is your educational background, Dean Pittenger?

A. Well, I was educated in the public schools in Michigan, took my Bachelor's Degree, Bachelor of Arts Degree, from the Michigan State Normal College at Ypsilanti, in 1908. A Master of Arts Degree from the University of

Texas in 1912, and my Ph. D. from the University of Chicago in 1916.

[fol. 527] Q. Dean Pittenger, in your class room experience at Ypsilanti and the University of Chicago, would you state whether or not those classes were exclusively white, or exclusively colored, or mixed.

A. I recall one Negro in the class which I attended at Ypsilanti and I recall two or three classes in which there were several colored persons at the University of Chicago.

Q. How long have you been in the teaching profession, Dean Pittenger?

A. Well, with the exception of the years spent in college, and two years in the Army, since 1904—since 1902.

Q. Where have you taught?

A. In the public schools in Michigan, in the University of Illinois, in the University of Minnesota, at the University of Michigan, at the University of Colorado, and, of course, the University of Texas, Teachers College in Colorado. That is all that I recall for the moment.

Q. What positions have you held at the University of Texas?

A. I came as what was then known as adjunct professor in the School of Administration and Education, and after two or three years in that service, after I came back from the Army, I became an associate professor of Education and Administration, and I was then advanced in a year or two to a professorship. In 1926 I became Dean of the School of Education, and I served in that capacity until [fol. 528] February first of this year. I also continued my professorship when I was Dean, and on February first I retired to my professorship.

Q. When did you come to Texas?

A. In 1911, for the first time.

Q. That was after you had received your Bachelor's Degree, is that right?

A. That is right.

Q. So that when you came to Texas from Michigan, would you state whether or not you had an open attitude as to the Negro question at that time, as far as education is concerned?

A. Well, I think that I could say that I reflected pretty much the attitude that had developed in Michigan in that community, and later in Kansas where I taught for three

years at Fairmont College. I forgot to mention that a while ago, preceding my coming to Texas.

Q. Did you teach any colored students in your classes, Dean Pittenger, at any of the places you taught?

A. The only place I recall is the University of Colorado.

Q. Are you a member of any professional societies in education?

A. Yes, sir; I am a member of the American Association of Administrators, which is a branch of the National Educational Association, and a member of the Texas Teachers Association, and a life member of the Texas Association of School Administrators, and during the time I was Dean I was ex-officio member of the Association of Colleges and [fol. 529] Departments of Education.

Q. Is that a national association?

A. Yes.

Q. Did you hold any office in that organization?

A. I was President of that for three years.

Q. Have you ever held any office in the Texas State Teachers Association?

A. I was Chairman of the Committee on Finance for that organization for the period of probably 12 years, ending about 1936, and I was President of the Association in 1941 and 1942.

Q. Have you had any dealings or association with higher education for Negroes in Texas?

A. Yes, I have had.

Q. What experience have you had?

A. I think my first experience was as a member of the Board of Trustees, a local Board of Trustees of Tillotson College. Right after the war I participated in several school surveys. I do not recall that there were higher institutions involved, however, in the public schools, which would bring me in contact with Negro education. I visited one or two of the Negro colleges in Texas. I recall Bishop College at Marshall, at the instance of the American Medical Association. That was probably 20 years ago. I consulted with the group at Prairie View during the development of [fol. 530] the graduate program of that institution. During the past summer, I was a member of a committee appointed by the Southern Association of Schools and Colleges to visit five, I believe it was, of the Negro colleges in Texas, to consider the continuation or the raising of the

accreditment level which those colleges had with the Association.

Q. Is Tillotson College a colored institution?

A. Yes.

Q. What Negro institutions did you visit in your tour for the Southern Association?

A. Tillotson College, Wiley College, at Marshall, Jarvis College, which is in a rural community north of Tyler, Texas College, I believe it is ca*use*d, at Tyler, and Prairie View.

Q. Now, are you acquainted with any of the leaders of Negro education in Texas?

A. Yes.

Q. Would you name some of those with whom you are familiar?

A. Well, I think my acquaintance probably is—that I know best of all former Principal Banks of Prairie View. I also have known President Rhodes for a number of years. My recollection for names, unfortunately, is not very good.

Q. Have you participated in discussions with those men on the subject of education for Negroes in Texas?

A. Yes, I have. I don't recall that I participated in conversations with them as individuals to any great extent, [fol. 531] but in conferences at which they were present, and in which a number of other Negroes were also present.

Q. I will hand you a pamphlet entitled "The Senior Colleges for Negroes in Texas," and ask you to examine it. Did you participate in the preparation of that booklet in any manner? That is, did you have anything to do with the existence of the book, in the first place?

A. Yes.

Q. What connection did you have with it?

A. I was Chairman of a committee that was called a Steering Committee of the Biracial Conference on Negro Education, and this committee set up a survey, of which this is the report, and chose the persons who participated in the survey and in making the report.

Q. Who called, or who assembled that group which you have mentioned there?

A. Governor Stevenson. You mean the conference?

Q. Yes, sir. Now, were the members of the conference there of mixed races?

A. Yes, sir.

Q. Would you name some of the people on that committee there?

A. Well——

Q. And identify them as to white or colored, white or Negro?

A. Dr. T. D. Brooks, Dean of the Graduate School of Texas A. & M. College, white; Principal W. R. Banks, of [fol. 532] Prairie View, colored; President J. J. Rhoades, of Bishop College at Marshall, colored; Mrs. Joe E. Wessendorf, past President of the Parents-Teachers Association, white; Dr. Thomas W. Currie, of the Austin Theological Seminary, white;—Dr. Currie died shortly after the committee was set up, and became active, and Dr. T. S. Montgomery, head of the Department of Education of Sam Houston took his place, white. Dr. R. P. Hamilton, physician and surgeon in Dallas, was originally appointed. Dr. Hamilton was colored. He requested to be relieved because of his health, and Dr. H. E. Lee, of Houston, took his place, and Mr. Gordon Worley was Secretary of this Committee and was Director of Special Problems for Negro Education at that time.

Q. Did you write the foreword to this booklet?

A. Yes.

Q. I will ask you to state whether or not you have been interested in the development and improvement of Negro education in Texas?

A. Very much.

Q. In your experiences in visiting the Negro colleges, and those colleges at which Negroes and whites attend, have you had the opportunity to observe the educational opportunities and advantages offered by these institutions?

A. I have.

Q. In your experience as an expert in the field of educa- [fol. 533] tional administration, assuming the facilities of both colleges are equal, is it possible for a Negro to receive an equal education in a separate college?

Mr. Durham: We object to the part of the question "is it possible." We have no objection to him expressing his opinion.

The Court: Yes.

By Mr. Greenhill:

Q. In your opinion, Dean Pittenger?

A. If by equal you do not mean exact duplicate, yes.

Q. It would be substantially equal?

A. That is right.

Q. Assuming otherwise equal facilities or substantially equal facilities, would the mere fact that the college is composed exclusively of colored students, of itself, mean an inequality?

A. With the same interpretation of inequality, it would not, in my judgment.

Q. Now, in your judgment, are there advantages to the Negro in being taught in a separate institution?

A. Yes.

Q. What are they?

A. Well, the reason that I made the statement that I did with respect to equality appears at this point. I think that the educational value of—that the value of an education to a student at any level is determined by the total college situa- [fol. 534] tion in which he carries on his college work. It isn't merely a question of class room teaching and study, or of laboratory activities or of library activities, but I think that a very large part, and an increasing part of the value of eduction at any level is in the total influence, the influence of the total contact of the student with the institution.

Q. I will ask you whether or not you think the Negro student would have the same opportunity to develop leadership in a mixed institution, or at a separate institution?

A. I think that normally, ordinarily, he would have a better opportunity to develop leadership in a separated institution than in a mixed institution, and I make that statement because the whole life of the institution would then be open to the Negro's participation. My judgment is that particularly in the south, that the Negroes' opportunities in institutions patronized in the great majority by whites would be limited to the class room facilities, and the regular educational activities almost wholly.

Q. Now, Your Honor, I want to ask him the next question simply in rebuttal to testimony developed by the relator. It is our understanding that we did object to this line of testimony, but since it has been put in, we want to ask this question in reply to those statements of relator's witnesses. I will ask you, Dean Pittenger, in your opinion as an expert [fol. 535] in the field of Educational Administration, whether or not you think it would be to the best advantage of the State of Texas and of students to continue the policy of segregation in the schools and colleges of Texas?

Mr. Durham: Just a minute. Now, Your Honor, they have objected to that form of testimony. I don't want to object to it, if I have got a right to reopen my testimony. I won't object, if I have got a right to tender certain testimony that the Court excluded yesterday.

The Court: Of course, if it is the same, if this is admissible in rebuttal, testimony on your side would be admissible.

Mr. Durham: No objection.

Mr. Greenhill: Mr. Reporter, would you read him the question, please?

(The Reporter read to the witness the last question set out above.)

A. All of the consequences considered, I think so.

Q. Would you please state your reasons for that answer?

A. Part of it was included in the statement I made a moment ago that I believe a part of the value, a great part of the value of higher education, especially in the identification and development of leaders, gives more opportunity for participation in all of the activities of college to the extent that those are restricted to that extent, that essential value of higher education is lost, but my fundamental feeling [fol. 536] about the matter rests in what I conceive to be the effect of the elimination of segregation on the higher level upon segregation upon the lower level. Let me say that my experience as professor of school administration, and my training and my teaching have directed my attention more toward the public school level, the elementary and secondary level of teaching, than toward the higher level.

I function in a higher institution of learning, but my principal interest, and my principal work has been to try to advance and improve public education in Texas, especially in the elementary and secondary levels. So, I have been concerned with the school administration that functions at those levels.

I am unable to see how segregation could be constitutionally maintained below the college level and be unconstitutional at the college level, and so my feeling is that the—my principal fear of the breakdown of segregation on the higher level is what I conceive to be the breakdown, the influence upon segregation in the lower level. I believe that the—I believe that the development of the public school system in Texas historically was pretty much—was pretty much

aided by the early appearance of segregation in this state. To put it definitely, I think that the progress of public education in Texas would have been much more retarded than it is if we had not had segregation. I think that the reasons [fol. 537] that justified, as I say, the segregation in those days, still obtain. The public educational system of Texas is a long way from having reached anything like the national standard as a whole, and we are still in the formative period.

My judgment is that is segregation were abandoned in the lower level, that it would become as a bonanza to the private white schools of the State, and that it would mean the migration out of the schools and the turning away from the public schools of the influence and support of a large number of children and of the parents of those children, and that those migrants and their parents are necessary because there would be additional tuition involved coming from a group of citizens who are the largest contributors to the cause of public education, and whose financial and moral support is necessary for the continued progress of public education.

Now, the south has had to fight against the private school tradition since the beginning. Public education started later in the south, in the main, and advanced more slowly in the south, and it is today more backward in its development than elsewhere in the country, and that was due to the plantation system, of course, of economy, and to the English tradition that, with respect to education, the tradition that education was the prerogative of the home and the school. That was held by the influential people of that day. Now, [fol. 538] the fight for public education in this State has been to a very large extent the matter of the converting of people with that background to the support of public schools, and to the patronage of public schools.

The matter counts in another way, I think. There are some nine or ten thousand colored public school teachers in Texas. If segregation were abandoned, I can't help asking myself what would become of that body of Texas teachers, our colored teachers in Texas. If these teachers moved with the pupils into the public schools, it seems to me that that would mean that we would not only have the colored and white together as students, but that we would have rather indiscriminate assignment of teachers to classes, wholly irrespective of the merits of the feeling that exists and operates here as a fact. I believe that that bringing of colored

teachers in the class rooms for white students would accentuate this movement of public schools.

However, that question, I have no means of knowing, but I think it is reasonable to believe that at the present time the attitude of Texas people being what it is to a very considerable degree, that the effect of the abandonment of segregation on the lower level would set back the public school movement in this state, and as one who has devoted his life to an attempt to improve it, I can't regard that with equanimity. If the teachers are not moved with the students, then what becomes of the colored teaching profession in Texas?

[fol. 539] The great majority of the colored teachers are employed in the colored public schools, both in Texas and elsewhere. Teaching is a principal outlet of service for the educated colored man and woman. There are somewhere between seventy-five and a hundred thousand colored teachers, I would estimate, in public schools in the south, and the implications of segregation for that group, in my judgment, are serious. Now, I think that that not only affects the question of segregation on the higher level, in that it would seem to me that the breaking of segregation on the higher level would move in that direction, but I think it also affects the efficiency of the education of the colored and white students in preparation for higher education. So, I think it has a double relation, and in my judgment, it would at least in that way come back and affect higher education adversely in this state.

Those, I think, are my principal reasons for the statement that I made.

Mr. Marshall: May it please the Court, we have waited as we have been doing all along, to see just where the testimony was going. At this time we move to strike everything said about lower schools. The reason I do, sir, is that although Dr. Pittenger is an expert in the field, I think his original statement was assuming that you can't have unconstitutionality at the graduate level without affecting the [fol. 540] lower level, and he isn't a legal expert, and he doesn't have a right to draw that conclusion.

The Court: He doesn't have a right to draw a conclusion as to constitutionality.

Mr. Marshall: All of his testimony was based on that, and we move to strike it.

Mr. Greenhill: Their witness yesterday on the stand testified that in his opinion——

The Court: Are you abandoning your theory that it is only higher education and only one man involved in this case?

Mr. Greenhill: Oh, no, sir.

The Court: Then, this would not be admissible.

Mr. Greenhill: Sir?

The Court: This would not be admissible as to the others, would it?

Mr. Greenhill: On the stand yesterday, over our objection, their witness testified that the time was ripe now to just throw off segregation entirely from the graduate school to the kindergarten.

Mr. Marshall: No, he didn't. He said just the opposite, that the time was ripe for the graduate school.

The Court: That is what I understood, was for the graduate school.

Mr. Daniel: Yesterday we objected to all of the testimony [fol. 541] concerning schools in general.

The Court: Yes.

Mr. Daniel: That was overruled, and we preserved a bill. We offer this simply in rebuttal to that, in case the Court allows that yesterday to stand.

The Court: In so far as any evidence has been received here affecting the secondary schools or less than graduate schools, I am not considering it.

Mr. Greenhill: We certainly do not waive our point that the case should be limited to the two schools in question.

Q. Now, Dean Pittenger, I will read you a portion of this pamphlet from which relator's witness testified yesterday, entitled "The Senior Colleges for Negroes in Texas," on page 83, which is in the nature of a summary from all of the statistics drawn in this pamphlet.

Mr. Marshall: We object to any reading of conclusions from that pamphlet. The witness can testify as to his conclusions.

Mr. Greenhill: I am going to ask him if these are his conclusions.

Mr. Marshall: All right.

The Court: All right.

By Mr. Greenhill:

Q. (Reading.)

> "Admission of Negroes to existing State Universities [fol. 542] for whites is not acceptable as a solution of the problem of providing opportunity for graduate and professional study for Negroes, on two counts: (1) Public opinion would not permit such institutions to be opened to Negroes at the present time; and (2) even if Negroes were admitted they would not be happy in the conditions in which they would find themselves."

I will ask you to state to the Court whether or not these views are your views?

Mr. Marshall: We object, if Your Honor please, because the testimony offered yesterday in the form of Donald Murray was directed to the point as to whether or not there was validity in the fact that if you attend a school you will be unhappy, and was stricken on the motion of the Attorney General. Either that goes in or nothing.

Mr. Greenhill: We would be very happy for all of the evidence offered throughout this book on all the State institutions and appropriations and their faculty to be stricken.

The Court: We are not concerned with that. The only question here resolves itself into legal administration of schools, and it is difficult for us to determine the condition of one's emotions when he enters any school, so I think we are concerned as to whether or not the first part of that is [fol. 543] his opinion, that it is to the best interest for this, for the abolition of segregation.

Mr. Greenhill: Did you sustain his objection?

The Court: Yes.

Mr. Greenhill: Note our exception.

The Court: Yes, sir.

Q. Relator also brought over this "General Study of Colleges for Negroes," a publication, I believe, prepared by Mr. Caliver, in which it was stated, "negro students in northern universities do not, as a rule, participate fully and freely in the life of the institution." You having been educated in a northern school, and having taught there, do you believe that is a correct statement?

Mr. Marshall: If Your Honor please, that was around 1911, I think it was. I think that is a little far back.

By Mr. Greenhill:

Q. Have you made any study of that in recent years? Have you studied any of the recent scientific reports on this subject?

A. Not to any great extent, no, sir. I would say this——

Mr. Durham: We object to that.

The Court: If he doesn't know that.

A. The date 1911 is incorrect.

Mr. Marshall: I apologize.

By Mr. Greenhill:

Q. Do you know whether or not these are the facts?

[fol. 544] Mr. Durham: We object to that. He says he doesn't know, I believe.

By Mr. Greenhill:

Q. When was your latest study of northern schools, Dean Pittenger?

A. My latest contact was in a summer session at the University of Colorado in the middle thirties, I would say 1935 or 1936.

Q. Well, now, at that time did you notice whether or not this statement that I have read here was the fact?

Mr. Durham: We object to that as being a conclusion and opinion of the witness as to what the mental processes of the students were in that school.

The Court: Yes, you had better ask what he saw.

By Mr. Greenhill:

Q. Did you observe whether or not the students were given a full opportunity to participate?

Mr. Durham: We object to that as an assumption that he did observe.

The Court: Just what he did see.

By Mr. Greenhill:

Q. What did you observe?

A. I can relate one incident that occurred. In my class in school in finance at that institution, I taught a Negro principal from Houston, and since he was from the same part of the country I was, I stopped him after class and talked to him about his experiences in that institution.

Q. Go right ahead, sir.

A. I didn't inquire as to the extent of his participation [fol. 545] in the general college activities. I feel very certain as to the extent of it.

Mr. Durham: We object to his feeling.

The Court: Yes, I think that is right. He would have to recite things he saw and observed.

A. All right. I asked the principal where he was living, and he said that he was living at a small——

Mr. Durham: We object to that as hearsay, anything the principal said.

The Court: Of course, that is true.

By Mr. Greenhill:

Q. That is correct. Would you just recite what you observed in connection with that student?

A. Well, I didn't observe any participation by Negroes outside the class room.

Q. Did you observe any activities on the part of that student outside of the class room which would have tended to develop leadership and other qualities?

Mr. Durham: That is an opinion and conclusion.

The Court: He can testify what he observed.

Mr. Durham: What it tended to do would certainly be a conclusion.

By Mr. Greenhill:

Q. Have your observations of mixed groups at universities in the north, whenever there was revealed any discrimination there that would prevent full participation in the total college activities?

[fol. 546] Mr. Durham: We object to that because it is a wholesale question, at any period or any time, as being indefinite and uncertain.

The Court: He asked if he observed it. I will let him answer it.

A. I didn't observe any participation——

Mr. Durham: We ask——

A. —outside of the class room.

Mr. Durham: —that that be stricken as not responsive.

Mr. Greenhill: Read him the question.

(The Reporter read to the witness the question last set out above.)

A. No.

Mr. Durham: We ask that it be stricken because he didn't ask him if he observed. If the Court please, he asked, "your observations," assuming he had observed.

The Court: I believe I will let it stand.

By Mr. Greenhill:

Q. Dean Pittenger, I will ask you whether or not in your opinion as an expert in the field of Educational Administration, whether or not a Negro student can receive substantially an education, substantially equal, in a colored institution to that which he would receive in a white institution, or mixed, provided the facilities of both schools were substantially equal?

Mr. Durham: We object to the word "can", and sub-
[fol. 547] stantially.

The Court: Does he have an opinion, is what we want. You can amend it by saying, does he have an opinion.

Mr. Durham: Further, we think any testimony should be upon his conclusions, and not a conclusion of law that is the issue in this case.

By Mr. Greenhill:

Q. What is your opinion on that point, Dean Pittenger?

A. I confess that am a little confused by the status of the question now. Will you clear me up on that?

Q. I will ask you whether or not, based on your experience as an expert in the field of educational administration, assuming equal facilities in the schools involved, whether or not a Negro student can and will or could receive, I will say, could receive——

The Court: Has the opportunity to receive.

By Mr. Greenhill:

Q. Does he have the opportunity to receive an equal education in a school exclusively colored, as compared with that of mixed colored and white?

A. That is one I am puzzled about. May I ask about that?

The Court: Yes.

A. I am unable to think for the moment of colored institutions and white institutions which do have equal facilities with which I have been associated.

By Mr. Greenhill:

Q. I understand that, Dean Pittenger. I am asking [fol. 548] you to assume equal facilities.

A. And then you ask me does he——

Q. Did he have the same or equal opportunity?

A. In my judgment, yes. He would have equal opportunity, as I defined equal opportunity a while ago, a total opportunity, but not the same.

Q. That is all.

Cross-examination.

Questions by Mr. Marshall:

Q. Dean Pittenger, this Negro principal from Houston who was in Colorado when you were teaching; you testified that he didn't participate in any of the outside activities. I want to ask you a question as to how wide was your knowledge of what he did when he wasn't in class?

A. Only what I got through conversations with him.

Q. Only through conversation?

A. That is right.

Mr. Marshall: If Your Honor please, may we have that answer stricken?

The Court: He didn't answer anything.

Mr. Marshall: I mean his original answer, not that answer.

The Court: It was based on his observations, and rather goes to the weight than to the admissibility.

[fol. 549] Mr. Marshall: All right, sir.

Q. Do you know of any institution for college training—I am speaking of college training, public or private, in the

State of Texas, to which Negroes are admitted which is equal to any of the State supported schools operated exclusively for white students?

A. There is only a range of merit in both. I believe that in total Wiley College is comparable with some of the smaller colleges for whites in Texas.

Q. First of all, I will ask you, Wiley is a private institution, is it not?

A. I beg your pardon?

Q. I wanted to get that clear.

A. It is. That is right.

Q. Wiley College, in the first place, isn't a university, is it?

A. No.

Q. It is a mere four year college. Now, does, in your estimation, does Prairie View—first of all, let me ask you this. Is Prairie View, to your mind, a university?

A. No.

Q. What is the highest classification you could give it, as an expert, as of today?

A. Well, I think it is more than a college, and there is no intermediate term, so far as I know. I think I interpreted [fol. 550] your question. I don't regard Prairie View as a university in the sense that I would conceive of an efficient university. It is more than a college.

Q. What makes it more than a college?

A. The fact that it has graduate work. It offers graduate work.

Q. But it has no professional schools?

A. No.

Q. Is not usually the term "university" applied to schools —professional schools?

A. Graduate work is generally regarded as professional.

Q. Are there any other universities in the country that have only graduate work, and no professional work? By professional work, I mean law, engineering, dentistry, et cetera?

A. I don't know of any. I could not answer that.

Q. Can you name two State supported schools of higher learning, from college level up, that you compare Prairie View favorably with, in Texas?

A. I think so.

Q. Which ones?

A. I believe that, in total, it would compare with one or two of the teachers colleges in Texas.

Q. Could you give us any one of them?

A. Well, a statement of this sort sounds derogatory, but I think that in total it is comparable for the purpose which it serves with perhaps the Teachers College at Alpine.

[fol. 551] Q. Are you familiar with the fact that the physical plant at Prairie View is less in value than any of the teachers colleges?

Mr. Daniel: Your Honor, we want, just for the purpose of the record, to renew our objection to all of this line of testimony as to other schools.

Mr. Marshall: Your Honor, he said it was equal to——

Mr. Daniel: I want the record to show the point.

The Court: All right, you can save your point.

A. No, sir; I have not compared the values of the plants of two institutions, but I have thought that that was probably the case.

Q. When you say "equal," what do you mean by "equal"?

A. Well, I mean in the total educational value of the services of the institution. Now, the institution at Prairie View is much more many-sided than the institution in Alpine, or almost any other of the Texas Teachers Colleges. It offers a much more varied program and much more varied opportunity to the Negroes of the State than does—than do several of the teachers colleges, perhaps all of them, to the whites of that area. It is not—so far as the equipment that it has, piece by piece, building by building, it is not the equal. There is more of it, and it serves a greater variety of purposes.

Q. In your teaching of education and school administra-

[fol. 552] tion, and your general knowledge in the field, is it correct in educational, rather, in approved colleges you give credit for A. B. Degrees for mattress making in a college?

A. No, I don't think it is.

Q. Or for broom making? Do you know of any institution other than Prairie View where that is done? As a matter of fact, in your teaching, do you not teach, and in your administration, do you not recognize the fact that that is not a proper subject for credits in a college?

A. I think that that might be a proper subject of instruction in a college which serves the functions of Prairie View.

We have a great deal of vocational work offered in our white colleges for the services of people with different vocational objectives, and I would want to know more than I know about the quality of the work done, and the length of the course, and the things involved in a course of instruction of that sort.

Q. Isn't it just general that such vocational subjects are usually taught in vocational high schools and regular high schools?

A. No, they are becoming increasingly,—it depends on the level of the work, and the quality of the work. That is the reason I say I would like to know more about the course, because I don't know.

Q. I see. In going back to our comparing the quality of [fol. 553] the type of education offered at Prairie View, isn't the amount of money available to the school a value in arriving at the equality of the facilities offered?

A. That is one measure, yes.

Q. Isn't it true that Prairie View gets less operating funds than any of the other operating schools in the State?

A. It did at the time this survey was made. I can't answer that question as of today.

Q. Didn't your survey also point out the fact that because of its lack of money, Prairie View lost many of its good teachers?

A. Yes.

Q. Many with Ph. D.'s?

A. Yes, sir.

Q. So that we then get to the faculty of the school. Isn't that a basis for comparison?

A. That is right.

Q. As of the time your survey was made, did you find that the level of the faculty at Prairie View would compare with the other schools?

A. Not on the average, no.

Q. Now, isn't library facilities and library books, number and quality, a valid basis of comparison?

A. Yes, that is right, and it would not compare.

Q. It would not compare with any of the schools, would it? [fol. 554] A. That is right.

Q. If you compare it item by item, isn't it true that Prairie View is below any of the other schools; isn't that true?

A. If you leave out the scope of its work, the scope of the institution, and take it up piece by piece and compare with

other institutions, I think that is true. I think that it was true at that time.

Q. Dr. Pittenger, you testified as to the college and graduate level to the effect that if Negroes were admitted to the University of Texas, or one of the other State supported schools, to sum it up, it wouldn't work; isn't that correct?

A. I think that I testified that I didn't believe that the Negro would have the opportunity to participate in the activities of the school to the extent that he would have in a segregated school.

Q. Is that based on your opinion as to what the students, the attitude the other students would take?

A. Yes, in part.

Q. Has anybody polled the students of the University of Texas to find out how they feel?

A. Not to my knowledge.

Q. Your opinion is just based on your own personal knowledge?

A. Personal knowledge, yes; based on thirty years of contact.

Q. Thirty years of contact. Do you know anything about the student body of the Law School?

[fol. 555] A. Very little.

Q. Is there any factual basis you have for your opinion as to what would happen if a Negro was admitted to the Law School of the University of Texas?

A. The only factual basis I have is what we—would be the knowledge and understanding that I have of the attitude of the people in this section of the world.

Q. You are aware, are you not, of the fact that members of the Bar of the State of Texas do not suffer from any segregation after they once pass the bar; are you aware of that?

A. Yes.

Q. What reason do you have that would make it so contrary to that principle to have the students to go to school together a week before they pass the Bar Examination?

A. I don't think I understand that question.

Q. Well, I started with the question that when they passed the Bar, the white and Negro lawyers practiced together. There is no friction at all among them. They take the Bar Examination together. What I am asking you is that why is it that if they can take the Bar Examination together and

try cases together, that you make the assumption that they can't sit down in a class room one week before that, before they take the Bar Examination together?

A. I think there is a difference between an experience of that sort and a three or four year association.

[fol. 556] Q. I would be very interested in the difference, sir.

A. Well, in the first place, you have, by the time you get to the Bar Examination, you have your more serious students selected. In the second place, there is the interest of the group at that time, all very definitely centered on a final project, that of taking the Bar Examination. Over a three year college course you don't have the same selection of students. You have the activity going on on a general campus where there are not only law students, but thousands of others, and you have the opportunity for the cumulative feature.

Q. What I am trying to get at is that the Law School is in a separate building from the rest of the campus?

A. Yes, it is.

Q. It has its own library there, is that correct?

A. Yes.

Q. And is it not true that by the time you reach the stage of going to the Law School, you have a pretty staid objective then, don't you?

A. I think so, more so than the usual college freshman.

Q. Isn't it also true that there is, as I understand your testimony, there is just three years' difference in this matter. For example, do you think anything would happen, or any of the results you have testified would occur if a Negro transferred and entered for the first time the third year of Law School of the University of Texas, which is [fol. 557] less than a year before the time we were talking about?

A. May I,—I think that you have a wrong impression of my testimony, if I understand your question. I have not been intending to intimate that I thought something would happen.

Q. I didn't mean that. I meant exactly what you testified to, to the effects of it on the students.

A. My statement was, if I recall, that I thought that the opportunity of the colored student to participate in the activities, the total life of the mixed institution would be

limited as compared with the opportunities on a segregated campus.

Q. Get back to our question, then; since I understand you.

A. Yes.

Q. If the Negro was admitted to the third year law class, having gone to school in some other approved school for the other two years, would there be any effect on the student as to campus activities or anything else?

A. I would think he would have less opportunity then than if he had gone in and spent three years.

Q. Is there anything that you can name that would stand in the way of a Negro entering the Law School in the third year that would affect that student's legal education?

A. I am not a professor of law.

Q. I am just judging, on your other assumptions, as to what they wouldn't get in outside community life, as to [fol. 558] that part of it.

A. But, if I understand you, you have restricted your question to legal education?

Q. Yes, sir; that is what I was trying to do.

A. And I started out with the assumption of education on every level, on the subject matter of education. It is the opportunity that the student has to mix and to develop in the whole college situation that must be considered, and it was from that point that I was talking. I can't answer a question with respect to legal education.

(Court was recessed at 10:45 a. m., until 10:55 a. m., May 16, 1947, at which time proceedings were resumed as follows:)

Mr. Marshall: Your witness.

Mr. Greenhill: We have no further questions.

(Witness excused.)

Mr. Daniel: Before the State rests, we would like to be just understood, or have the right to at some time this afternoon before the case closes completely, to again present to the Court the testimony of Henry Doyle, and present to the Court certain authorities under which we believe that part of his testimony is admissible as circumstantial evidence as to the participation of the N. A. A. C. P.

[fol. 559] The Court: I would be glad to hear any proposition you have to make.

Mr. Daniel: We rest, with the understanding we may present that a little later on.

Mr. Durham: As I understand, the only matter the Attorney General will be permitted to present or bring up is the Doyle testimony?

Mr. Daniel: And any rebuttal testimony that we might have to your rebuttal testimony.

Mr. Durham: I think we have a right to close this case.

The Court: You close, ordinarily.

Mr. Marshall: At this time, for the purpose of the record, I want to first make a statement that as to the testimony of Donald Murray yesterday, and prior to that time, and the witness today, have both quoted from a statement, and his testimony is all to the effect that if a Negro is admitted to a Law School or to a University in the south that the student body will withdraw and go to private schools, and that is exactly the type of testimony that was given by Mr. Murray yesterday; that in an exactly similar situation, the exact statement made, that that didn't happen, and the students didn't withdraw and go to private schools, and we would like to re-tender that evidence which we put on in a bill of exception.

[fol. 560] The Court: I am not going to consider either of those bits of testimony myself.

Malcolm P. Sharp, a witness produced by the relator, having been by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Marshall:

Q. Will you give your full name, please?

A. Malcolm Pittman Sharp.

Q. Your address?

A. 5329 Greenwood Avenue, Chicago.

Q. What is your present occupation?

A. Professor of Law, University of Chicago.

Q. Will you state briefly your legal education and your qualifications in general, in the field of law?

A. I received my A.B. at Amherst in 1918, A. B. in Economics at the University of Wisconsin in 1920, L.L.B. at Harvard Law School in 1923, Doctor's Degree, Harvard Law School, in 1927. I did some teaching while I was still in college. Then I have been teaching law since 1925, at Iowa, Wisconsin, and the University of Chicago; a member of the New York Bar,—counting a period for establishing residence, I practiced in New York City for about two [fol. 561] years, served in various advisory capacities in Wisconsin and Washington during the past years.

Q. And are you a member of the Association of American Law Schools?

A. I am.

Q. And have you recently held any position on any committees of that association?

A. I was Chairman of the Curriculum Committee that reported in 1942. Our work was somewhat disorganized by the war.

Q. What was the purpose of that committee?

A. The committee is appointed annually to consider the curriculum of member schools, recommend changes, improvements, make suggestions to member schools.

Q. Now, as a result of your studies and your teaching experience, along with your experience in the Association of American Law Schools, would you state briefly the recognized purposes of a law school as of today?

A. The purpose of a law school is, of course, first; to train for practice of the profession in the familiar way. The second purpose has been becoming more and more important, as all of the leading schools have recognized, training for positions of public service, as lawyers are called on to fill, to a marked extent, administrative agencies, the bench, legislative positions. The schools are paying more and more attention to training for that purpose. Of course, [fol. 562] the training of teachers and scholars in the field.

Q. In the several items you have mentioned, what type of student body do you need in order to best accomplish that purpose?

A. You need more than anything else, what I should call, a stimulating student body.

Q. What is that?

A. Where competition is great, lively; people from all walks of life. It is more important than your faculty.

The most important thing a faculty does, perhaps, is to attract a stimulating, large student body.

Q. Speaking of the student body, your testimony is that you need all walks of life. Are there any other factors you need as to individual students?

A. You need to be well prepared, I should say, in so far as the group of students came from educational institutions whose standards were not up to the best that the others have. They would be a less stimulating group, to that extent. Their native capacity, and their training would not have been up to that of the other students.

Q. What method do you use in teaching in the University of Chicago?

A. We use the case method.

Q. Will you explain that briefly?

A. I agree with much of what Professor Walker and Dean Harrison have said. We have our individual differ- [fol. 563] ences. The case system is designed to, in the first place, to bring out clearly the rules of law, partly by making discussions clear, working over discussions in class room; partly by practicing the application of the principles applied to cases.

I should say those particular advantages in a controlled situation starts the students off to what they are to do all through their careers at the bar. Of course, with practical problems, they have, perhaps they have heard of them in law school, and developed capacity for judgment, which is the mark of a good lawyer. I think in these days a very important addition to the case system is the seminar system which has been considered, and again, we give the students a chance to develop, present their own individual work, differ perhaps, and present it to the class mates for criticism, and hashing over in small groups.

Q. Do you believe the seminar method can be used in a first year law class?

A. I think it can be.

Q. Under what conditions?

A. This is a rather odd notion of my own. As a matter of fact, I think not many law teachers would agree with me, but we have had some success in our tutorial work in our first year students, not for the first year students to work right away at problems, if you are talking about the familiar [fol. 564] first year class. The use of the case system would be better than the most likely alternative, lecture. Seminar

is theoretically possible for first year students, but as far as I know, it isn't used anywhere, and I haven't heard that that was suggested here in connection with the proposed new school.

Q. Dr. Sharp, the other question I wanted to ask was—first, I will ask you, is it possible to use the case system in a one-man class, with one man and a professor?

A. Well, as a matter of words, but it wouldn't be what I call the case system.

Q. And is it—which system is the recognized system for teaching a law school today?

A. The case system.

Q. And as used in the progressive law schools of the country today, is it possible to use that same system with a one-man class?

A. Not really, no, I think not.

Q. Doctor, as a matter of fact, wouldn't it come mighty close to the lecture method?

A. I think there would be a great danger that it would.

Q. Do you believe that—well, in your experience—let me ask you this question. Assuming that the proposed Negro Law School is equal in all other respects to the Law School of the University of Texas, except in respect to the size of the [fol. 565] student body, and further assuming that the proposed Negro Law School has a student body which consists of one student; in your opinion, would the Negro Law School offer to that Negro student a legal education equal to that offered to any student at the University of Texas which has a student body of more than 800 students?

A. Certainly not.

Q. With the same hypothetical question put as to the Negro Law School, inserting the word "ten" for the word "one" student, would that change your answer at all?

A. It seems to me still very clearly that the education there wouldn't be in any sense equal.

Q. In your opinion, would it offer to that Negro student a legal education substantially equivalent to that offered to the students at the University of Texas?

A. As far as I can visualize the situation, it would not.

Q. Assuming that the Negro Law School is equal in all respects to that of the University of Texas, and had a sizable number of students, but all restricted to the Negro race, would that school give an education equal to that at the

University of Texas, which accepts all students of all groups and all nationalities, other than Negroes?

A. I do not see how it could, for many years, at least.

Q. Will you give your reason for that?

A. You are back to that point about competition. Not [fol. 566] only does it give you argument and give you the examination of the issues that you get in the class room, and having a pretty good class, some size, some opportunity for competition, but a great deal of the student's education occurs outside the class room, as we all know. There has been a saying in the teaching profession for some time that students at Harvard Law School got a good deal of their education by arguing on street corners and in restaurants, and bickering back and forth among themselves. The best thing a teacher can do is start that sort of arguing going, and let it go on all day, with intervals out for briefing cases; a good deal of discussion back and forth.

In view of the testimony that has been given about the character of Negro education at the lower levels——

Mr. Daniel: We object to that. That isn't responsive.

The Court: I think not.

Mr. Marshall: Very well. Go right ahead.

A. Unless the education of the Negro group at all lower levels is equal to that of the white group, we can't expect the competition of the Negro Law School to be as stimulating as the competition in the white law school, which we have assumed to be equivalent in other respects. I should think that one very important function of legal training would be neglected in the Negro school. That is the function [fol. 567] of preparing law students for positions of responsibility as lawyers in Government. The experience of three colored lawyers whom I know particularly well——

Mr. Daniel: We object to that.

Mr. Marshall: I was going to ask him that anyhow.

Q. Doctor Sharp, the University of Chicago, as to race, is the faculty of its law school mixed, or is it separate?

A. It is mixed. We have just called back one of our colored graduates to take a position on our staff as Associate Professor, and Research Professor.

Q. What about the student body?

A. It is mixed. The first time I had had occasion to count the Negroes, I found we had 13 in a student body of about 300.

Q. You mentioned the fact of the purpose of the law school to develop men and women for public service to the country. Well, in your experience at the University of Chicago, can you name any students who happen to be Negroes who have graduated from the Law School, and of your own personal knowledge, gave themselves to public service to the country?

Mr. Daniel: We believe that specific instances are irrelevant and immaterial. He has drawn his conclusions from it.

The Court: Yes. I think the conclusions are well taken, but I doubt if the special instances would assist us any.

[fol. 568] Mr. Marshall: May we have an exception?

The Court: Yes.

Mr. Durham: You will have to let him answer the question.

The Court: To make the bill, he can answer the question.

By Mr. Marshall:

Q. Answer for the bill of exception.

A. There are a number of such cases. Three or four come to mind, particularly. Mr. Ming, who has just come back on our staff, has had a career of public service. Mr. Truman Gibson has had a distinguished public service career.

Q. Would you mind giving that?

A. I am coming back. I was just selecting. Judge Hastie is not one of our graduates, is one of the best I know.

Q. Do you know which school he is from, law school?

A. He is from Harvard; a different generation from mine, but I know of his career. Earl Dickerson, one of our graduates, served on the Council in Chicago. Mr. Charles Houston, a year ahead of me at the Harvard Law School, and on the Harvard Law Review with me, is a bills and notes expert. I can say a word about the career of two or three of these men particularly that seem to illustrate the importance of the point. We naturally think teaching is important. I see no reason for losing talent to the teaching profession on account of color. We are glad to have Mr. [fol. 569] Ming back with us, and it is an advantage to us

and to the school that he was not trained in a separate school. He is an American, working on the problems of the State, public utility problems, in which he has had special experience, on cases of problems relating to the regulation of business by Government, which is an increasingly important problem for lawyers, and it is important, it seems to me, that he should be trained to think as a member of the total community. Particularly, he should be trained to think professionally as a member of the total community.

Mr. Gibson is a striking example. He was Special Assistant to the Secretary of War during the war, and was given a medal for his services, and is a member of the President's distinguished committee on public military training. He is a member of the National community, and it is of utmost importance that he was not trained at a segregated school.

Mr. Houston, another schoolmate at Harvard, is working in the field of labor, Government regulation and industrial regulation, working on problems of seniority in the law. He is sometimes able to point out the effects and the abuses of the labor organization practice.

Judge Hastie had a very distinguished career in the field of law——

Mr. Daniel: We will agree in their bill of exception they [fol. 570] can write all of that out in there. We can agree they can write up everything he would have testified to about it.

Mr. Marshall: We have just a few more.

The Court: Maybe you can conclude it here now.

By Mr. Marshall:

Q. Will you give Judge Hastie's present position?

A. Governor of the Virgin Islands.

Q. In your experience with these and other students, do you believe that those students, excluding Hastie, whom you do not know personally, from personal contact with him, could any of those men you have named obtained their information that they have used for public service, in a segregated law school?

A. That question of "could" again troubles me. There are distinguished graduates of Howard, which is not strictly a colored law school, but it is largely colored. I wouldn't want to be that sweeping in my statement.

Q. Do you believe you can get equal value with training of other students, in a segregated law school?

A. Other things being equal, I most emphatically do not.

Q. You testified a while ago about the more competition——

Mr. Durham: We tender this as testimony outside of the bill of exception.

The Court: All right. I will give you your bill.

Mr. Daniel: That is the end of the bill?

[fol. 571] Mr. Durham: Yes.

By Mr. Marshall:

Q. In your opinion, is it possible for one student or ten students entering the first year law class in the proposed Negro Law School that you have heard testified about here where there are no upper classmen, second and third year students, to secure equal or substantially equivalent of legal training to that received by first year law students at the University of Texas where there are hundreds of upper classmen?

A. I think it is not possible for them to receive equal training.

Q. Will you give your reason?

A. What has been said about the competition among classmates, the emphasis has been on the competition of classmates so far. What has been said about that applies to the stimulation a man gets from the upper classmen, and the guidance. Sometimes loose guidance is very healthy, worried about one thing and encouraged about another, and the stimulus which comes from having a full complement of classes and full complement of upper classmen is a matter of first rating in any school. It is essential to the existence of what I should call an operating school.

Q. Do you consider a law review as extraneous to a legal education?

A. Certainly not. One of the most important devices, [fol. 572] most important instruments of legal education in a modern law school is the law review.

Q. Is it of any value to a first year student?

A. It is, in so far as the competition for that outstanding honor, as it is in most schools, makes itself felt all the way down the years. It sets the tone. The law review men are the people that set the tones.

Q. Do you believe the Order of the Coif and other honors are extraneous to a legal education?

A. No, I do not.

Q. What do you classify them as, in your mind?

A. Actually, I think those awards are next important to the law review. The law review is of first-rate importance, but all awards which recognize attainment help in the process of stimulating friendly competition. Competition and friendly association are not by any means incompatible. In fact, they go together, a part of the business in preparing people to deal with the community as a whole. All of these awards step up competition in what I regard as a healthy manner.

Q. In your opinion, do you believe—first of all, you know about the University of Texas and its accreditation?

A. It is a thoroughly accredited school, a first-rate school in excellent standing, of course.

Q. Do you believe that a Negro student could get an equal education in a law school that started in Houston, Texas in [fol. 573] February of this year, moved to Austin in March of this year——

Mr. Daniel: We object to that part of the statement, because it is not in accordance with the facts of the case. They are entirely separate schools, Your Honor. There is no move of that school to Austin.

Mr. Marshall: I will change the question.

The Court: I believe I will let you—I believe I had better sustain his objection as to its moving.

Mr. Marshall: Yes, sir.

Q. Do you believe that a Negro could get a legal education in a law school which had been previously established in Houston, Texas, in February of this year, and was closed the same month, and another law school opened in Austin in March of this year, and the record further showing that that school would be moved to Houston in August of 1948; do you believe that a law school student, whether he be white or colored, could get an adequate education in a school, law school of that type?

A. I don't see how he possibly could.

Q. Well, of what importance is the stability of a law school?

A. Well, it has a human importance which we all recognize. If you settle down to study, you want to stay at least

a year, certainly at least a semester. Normally, when you start in, you plan to finish your course in the school that [fol. 574] you select, go right through. Occasionally there are occasions for moving, sometimes there are advantages. Certainly, the normal law student settles down to complete a course, and he can look three or four years ahead, depending on whether it is a three or four year course.

Q. Is the reputation of a law school of any value to the student, its reputation in the legal field?

A. To the student while he is a student?

Q. To the student while he is a student?

A. I think it is; it gives him confidence, pride, interest; it is a good deal of difference to the student if he feels he is in a good school, running well.

Q. Is the reputation of a law school of any value to the student after he graduates?

A. Well, we all know it may be of importance getting a job for a time. As one builds up a practice it may become of less importance, rank of the schools from which they come. Certainly, in the earlier stages of the lawyer's career, it may make a good deal of difference.

Q. You have heard the testimony about the so-called Negro Law School. I will ask you if a school which opened on March 10th in a—the ground floor of a building which had been leased for a period of one year, and in which there were three part-time professors to teach, and a library consisting solely of a hundred or two text reference books, could [fol. 575] give a Negro an education equal to that at the University of Texas?

A. May I ask one question there?

The Court: Yes.

A. May I ask what you mean by "opening"?

By Mr. Marshall:

Q. It opened on—that the doors were opened, and there was a person to register other students?

A. That is all you mean?

Q. Yes, that is all.

A. I don't see how it could, possibly.

Q. Then, I will ask you the next question. Is it possible to get a legal education equal to that at the University of Texas in a law school consisting of one student?

A. No, I should think not.

Q. In a law school consisting of ten students?

A. I think not.

Q. In a law school consisting of a hundred students?

A. One hundred students, how selected?

Q. One hundred Negro students?

A. No, certainly not.

Q. Well, would that type of school with one, ten or a hundred Negro students give a legal education substantially equivalent to that obtained at the University of Texas?

A. I should think not. I am a little troubled by your one hundred case, if you can imagine such a case, conditions [fol. 576] would be a good deal changed, but nothing I can visualize now would give substantial equality in any of the cases you supposed.

Q. Dr. Sharp, assuming a law school established in the basement of a building, ground floor, rather, of a building, and with a library of ten thousand volumes, assuming that they met the requirements of the Association of American Law Schools, and with three part-time professors, and from one to ten students, would that give education substantially equivalent to that at the University of Texas,—Negroes only?

A. I should think not.

Q. Dr. Sharp, a law school established in a building with three floors, assuming that the three floors are adequate in space, adequate in space to accom-odate ten students, and assuming further that a total budget of a hundred thousand dollars is spent for reconditioning and stacks, et cetera, would that type of law school give an education substantially equivalent to the Negroes there as that given other students at the University of Texas?

A. I think I have lost the trend of the question.

Q. The difference between the two questions is that one we have one floor and the other we have three floors, plus a library of ten thousand books, plus a budget of a hundred thousand dollars.

A. That budget is for repairs?

[fol. 577] Q. It is for everything.

A. Salaries?

Q. Including books, salaries, and everything else.

A. I should think not, by any means.

Q. Would your answer be changed if we added that there were four full-time professors there, and all Negro students, in the same situation?

A. Well, if you got four most eminent professors in the United States, about whose names I would have to think a little before I decided who they were, it is perhaps conceivable that this select group of Negroes would get an education that was at any rate comparable to that which the boys got, sizable classes with competition and so forth, at Texas, but I should think even then it unlikely, and I suppose no one school can hope to have the four greatest teachers in the United States, least of all, a new school, and least of all, one established under these conditions.

Q. Even with those circumstances, could you get the total community thinking in a school of that type?

A. I wouldn't think so. It would take extraordinary teachers, indeed.

Q. That is all.

Cross-examination.

Questions by Mr. Daniel:

Q. Dr. Sharp, would your answer to the questions just [fol. 578] asked you be changed if in the same situation you had two law schools, one for Negroes, one for whites, both law schools had exactly the same faculties, exactly the same facilities; by that, I mean the men of equal prominence and ability, and both of them had the same courses, the same number of students, the only difference between the two law schools being that the student body of one was made up of Negroes, the student body of the other made up of white students, the student bodies, however, being equal, I will ask you if, in your opinion it would be possible that the school for the Negroes would furnish substantially equal opportunities for training in law and procedure as the one for the whites?

A. May I ask about one of the conditions?

Q. Yes.

A. Where does the faculty have their offices?

Q. In exactly the same in one school as in the other?

A. I don't understand that.

Q. Sir?

A. Where do they do the most of their work?

Q. The same in the Negro school as in the white school. I am asking you a hypothetical question along the lines that you have had hypothetical questions on direct examination. In my question, everything concerning one school is the same as the other, identical, the only difference being that one is made up of white students, the other made up of [fol. 579] Negro students?

A. Well, I can answer the question, but I have still a doubt in my mind as to the conditions. As a teacher, I visualize certain things about that condition. I can't imagine operating from two offices equally.

The Court: It would probably be different teachers of equal standing.

By Mr. Daniel:

Q. Yes, sir, different faculty, but the total of the faculty such that even you would say that one was absolutely as good as the other?

A. Well, I should still say no.

Q. In other words, it is your opinion it is an absolute impossibility to set up a separate law school for Negroes, no matter how good a faculty, no matter how good a building, and no matter how good a library that would be equal to exactly the same kind of institution set up for whites?

A. No, I think I have avoided saying that. I recognize that some point of extraordinary faculty, and perhaps extraordinary equipment, might turn the balance. It is a point that hasn't been suggested to me in any realistic way by the questions.

Q. Where the faculty amounts to the same, you don't believe that the Negro school could furnish substantially equal opportunities as the white school, everything else being equal except that they are separate schools?

[fol. 580] A. No, for the reasons I have already explained.

Q. Then I will ask you if it is also your opinion that on the basis of the reasons that you have testified about, that in higher education that a separate school for girls can furnish, being exactly with the same faculty and all facilities, can furnish substantially equal educational opportunities as exactly the same but separate schools set up for men?

A. I thought you were—you asked me about co-education. I haven't answered.

Q. I believe that is the word.

A. Are you asking me about new colleges? You asked me to contrast women's schools with co-educational colleges.

Q. We are asking for the same opinion along the same lines we have been asking you about here this morning, where you have exactly equal facilities, as good a faculty, and all, in a separate women's college, separate from the men, whether or not in your opinion it would be possible, based on the reasoning that you have given here, for that school for girls to offer substantially equal opportunities for higher education as the separate school for men?

A. That is, they are both segregated?

Q. Segregation on each side.

A. You are not asking me to compare co-education?

Q. I am asking about separate.

A. Everything else being equal, I see no reason why the [fol. 581] separate school for girls should not have the same advantages and disadvantages that the separate school for men has. I happen to think this; co-education, other things being equal, is better.

Q. Let's take co-education. In your opinion, the mixed school, in so far as men and women are concerned, co-educational schools, in your opinion, can the separate schools for men and women furnish equal opportunities with the co-educational schools?

A. First, of course, they can and actually do, because you have cases where we know like Harvard and Bryn Mawr, very distinguished staff, and where work is done on a very high level. Other things being equal, I should prefer the situation in Chicago. It has the advantages of a non-segregated school. I should prefer the situation like we have in Chicago, where we have co-education.

Q. I am not asking what you prefer. I was asking if in your opinion substantially equal educational opportunities could be furnished in the separate school for women as could be furnished in co-educational schools, with all having the same type of faculty and facilities?

A. Other things being equal, I should think not, not as desirable.

Q. I asked you whether equal educational opportunities could be furnished. Is your answer the same on the opportunities that are afforded for equal education?

[fol. 582] A. Yes, other things being equal, the opportunities would not be equal in the segregated school as compared to the co-educational school.

Q. Have you ever taught school in Texas or any other southern state?

A. No.

Q. Have you ever gone to school in the south?

A. I trained in the south during the last war, taught flying in Miami, a teaching assignment.

Q. I mean in schools of higher learning?

A. No.

Q. Have you made any study of the schools of higher education in the south?

A. No, sir.

Q. Have you made any study of the attitudes of the people of the south on the question of segregation, regardless of the merits of those attitudes, or how they came about? Have you made any thorough investigation of what those attitudes, good or bad, are?

A. It depends on what you call study, or what you call thorough investigation. I haven't made the kind of study Dr. Thompson has made.

Q. You are not, then, fully acquainted with the attitudes as they relate to the possibility of mixed schools, are you, in the south?

[fol. 583] A. Not in the sense Dr. Thompson has.

Q. You don't feel qualified as an expert on whether or not the social attitudes in the south, good or bad, are such that mixed schools would work better than the separate schools, are you?

A. You are talking about schools at all levels?

Q. I am talking about higher levels, colleges; whether or not you are acquainted with those attitudes, or have made any study of those attitudes for the purpose of determining whether or not they would work better in the south, better in the separate schools, or in the mixed schools? In other words, are you willing to qualify as an expert on it? Do you feel like you have made the study necessary to give an expert opinion on that question?

A. I think I have made enough study of law schools and have spent enough time in them so that my opinion about mixed or segregated law schools——

Q. In the south?

A. South or north.

Q. I am talking about whether or not you have made any study of the attitudes of the people of the south, if you have made a thorough enough study to be acquainted with those attitudes and the influence they would have on the success of a separate law school?

A. I think I have some acquaintance, but I have not made [fol. 584] the kind of technical study Dr. Thompson made.

Q. You would not attempt to give this Court an expert opinion on that question today?

A. The question of education generally.

Q. The question of the attitudes of the people of the south as applied to the possibilities of the mixed schools being as successful as separate schools in higher education and fields of training?

A. If—I don't mean to fence with you, or be facetious, but I have not made any special study of race relations in the south.

Q. Back to your point as to a stimulating student body being one of the requirements for, in your opinion, for a good law school, I will ask you, Dr. Sharp, if you will not agree that the attitudes of all of the members making up that student body, social attitudes, whether they be good or bad, or regardless of where they came from, if those social attitudes will not have some bearing on the stimulating study body that you are talking about?

A. Surely.

Q. Will those not also have some bearing on whether or not the student in a mixed school would have the same encouragement or help from upper classmen as he would receive in a separate school?

A. Surely.

[fol. 585] Q. You will agree also that the attitudes, whether good or bad, of course, will have some bearing on the support of the institution involved in a southern state, won't you, the State support given to them, and the support of individual citizens?

A. I think you have disqualified me to testify in this crowd. I am not an expert——

Q. I will ask you if you don't know enough about it in general to know that the social attitudes in any state will have some bearing on the support given a mixed school in that state?

A. I do not know more about this subject than—it is the same sort of general acquiring of knowledge that I have

about race relations in the south. If you want me to speak about it on the same sort of qualifications, I am willing to, but I am not willing to leave the other question and——

Q. I will withdraw that question. Now, you talked about the various benefits of the case system, one of them being the chance, the opportunity for the student to recite, to report on the work that they have done on the particular cases assigned. That is one of them, is it not?

A. One of them, only one.

Q. Only one. Beginning with that one, all other things being equal, I will ask you if it isn't true that in a class made up of 125 students, that a smaller percentage of the [fol. 586] students will have an opportunity to recite and report on each case than in a class made up of ten students during a one hour period, the same period of time?

A. In a very mechanical sense, that is true.

Q. And is it not true that a greater percentage in the smaller class will have an opportunity to discuss and criticize the case and be heard from on the case than in the larger class?

A. I would rather say no, not necessarily, but in a mechanical sense, it is conceivable, if you divide up the minutes you will get some such result as that, but I don't think that touches the real point.

Q. On that one point, regardless of what you would rather say, the truth is that you would have to say yes, as far as the greater percentage of students having a chance to, the time in which to comment on each of the cases assigned?

A. May I explain my qualification?

Q. As soon as you answer the question.

A. In a mechanical sense, yes.

Q. Yes.

A. But I don't know how you could with 30 or 40 fellows all wanting to be heard, which happens in a good class. They can't all talk. When you have a good class, you see all sorts of people ready to say something all at once. Of course, they can't all talk. That is the kind of class that goes well.

Q. In a class of 125, they can't all talk, can they?

[fol. 587] A. No, but they can all be ready to, in a really good class.

Q. They can all be ready to in a really good class. In a class of ten they can all be ready to, can't they?

A. Yes, they can, but I am not so sure it is likely.

Q. It is possible they can all be ready?

A. Yes.

Q. And it is possible to call on more of them than in a class of 125 during an hour's class?

A. In a mechanical way, yes. It is a very good feeling for them all to want to talk.

Q. From the standpoint of the professor?

A. And the standpoint of the student.

Q. You mentioned that with first year students you had found tutorial work to be successful?

A. Yes.

Q. What do you mean by tutorial work?

A. Work which is conducted with us by a special staff of younger men in the preparation of papers on problems, the examination of those papers by the tutorial staff, and instruction in the art of writing, using language, as well as in the art of legal research, building up a case, doing some productive work on one's own.

Q. Derived from the old tutor system of instruction?

A. It has been used very successfully in the English universities.

[fol. 588] Q. And that system is applied to the individual student?

A. Yes.

Q. The tutor works with the individual student?

A. Yes.

Q. You have found that quite successful, you say, with first year students?

A. In this form, this form of promoting the development of individual skills and talents and capacities by the assignment or awarding pieces of work.

Q. That system, that tutor system that you have spoken of as being successful with first year students, comes much nearer to operating that law school with one student than any other system you have described here today, does it not?

A. Oh, I think not. I think what I said about the value of competition in the class room, and outside the class room, applies to this sort of thing. Boys get together. We don't prohibit them from talking over their papers together. We desire it sometimes by groups.

Q. In a law school with one law student, the type of instruction will be nearer the tutorial type than the lecture type, wouldn't it?

A. Not necessarily, at all.

Q. It could be, though, you will agree?

A. I don't see any special likelihood of it. There is an equal likelihood that the student would begin to lean on the [fol. 589] one professor. It is quite as likely to develop into a rather casual lecture. It is easy to lecture one student.

Q. It would be similar to your tutorial system with the one student?

A. I think it would be very different. Our tutorial system depends on the work over an extended time, with particular problems, developing skills in a school of some size where there is enterprise. I see no real similarity between the essential character of the tutorial system and a school with one student.

Q. No connection. On your question a minute ago, and your answer about a law school moving, you don't mean to state to the Court that in your opinion that if Harvard Law School moved to another city in the State of Massachusetts that that would cause any inequality to a one year law student who had been there only the year before the move, do you?

A. If the move is in the middle of the year?

A. No. At the end of the year.

A. The question was about the middle of the year.

Q. Did you think Mr. Marshall's question a minute ago about the move of the proposed Negro Law School, that he meant that it would come in the middle of the year, school year?

A. It came in a month, as I recall it, which is normally in the school year.

Q. And your assumption is that that date was in the mid- [fol. 590] dle of the school year; right?

A. Yes, sir, on that, but I don't think that is the only factor in my answer.

Q. Now then, if the Harvard Law School moved at the end of the school year, the student who had been there during his first year's work, only his one year, do you feel it would be any inequality to him at all if the school happened to move to another city in Massachusetts where he was allowed to continue his work under the same direction?

A. I can hardly imagine such a move being made for anything but a good reason, and I don't imagine it would do the student any harm.

Q. The same would be true of any other good law school that made a move at the end of the year, all other things being equal, that would cause no particular disadvantage to the student?

A. The same thing would be true of any first-rate school.

Q. I said, substantially equal.

A. It is hard to visualize, but I can't imagine such a case.

Q. We will imagine such a case. Is it your answer it would do him no harm, or furnish no inequality by such a move?

A. Harvard goes from Cambridge to Northampton, Massachusetts, leaving the University. It is a hard case to think of, but——

Q. We have already effected the move. I am asking you about a move of any law school substantially equal to Harvard Law School, if it moved at the end of the school year [fol. 591] to another location, whether or not in your opinion that would cause any disadvantage or inequality to the first year law students who had been enrolled in that school?

A. I suppose it would cause some inconvenience, all right, but no disadvantage.

Q. That is all.

Redirect examination.

Questions by Mr. Marshall:

Q. Dr. Sharp, if Harvard should move this year, it would be after how many years at the same stand?

A. About 120 years.

Q. That is all.

Mr. Daniel: That is all.

(Witness excused.)

The Court: We will resume at two o'clock.

Court was recessed at 12 o'clock noon, May 16, 1947, until 2 o'clock p. m., May 16, 1947.

[fol. 592] AFTERNOON SESSION

May 16, 1947

2:00 P. M.

Mr. Daniel: You have rested?
Mr. Durham: Yes.

PRESENTATION OF AUTHORITIES

Mr. Daniel: Now, Your Honor, I would like to present the authorities I have mentioned before going back to Henry Doyle's testimony. I do apologize for asking the Court to change its ruling on the matter, but I would like for the Court to consider the purpose.

The Court: All right.

Mr. Daniel: In the first place, it bears on the point that there are no students in the school. We really believe, Your Honor, that the relator has made quite an issue of the fact that no students are in there, and especially the situation where there is only one student there, all through this case.

We also think that there is no question that the evidence shows the National Association for the Advancement of Colored People are giving active assistance to relator, but I would like for the record certainly to show that we make no objection to it, and think that it is only proper that they do render that help, if they think relator's case is right.

The only thing we point out about the National Association for the Advancement of Colored People, and the chain [fol. 593] of evidence being in the attempt to show the discouragement given by that association to students in the school, given not only by the association, but by the attorney for relator, whose acts certainly do have a bearing, him being in that position with relator.

Now, we have direct evidence in the case, Your Honor, showing this. We have direct evidence in the case by the relator himself that when he received his notice about the school being open, that he didn't make up his own mind about whether he would attend, but went to his attorney in Dallas to make the decision. His attorney in Dallas testified that he did not make any investigation of this school down here, but he called Maceo Smith, and Maceo Smith was shown to be the Secretary for the National Association for the Advancement of Colored People here in Texas. That upon the report received within four or five days from

Maceo Smith, Mr. Durham and the relator made up their minds that he would not enter. Therefore, we have the direct evidence of at least some influence.

We could not go into what the report was, but some influence of the association bearing on at least one student not going to the school, the relator here himself. We feel that any other evidence as to another prospective student, the fact that he was mentioning going, and he didn't go, even though it is circumstantial evidence, it would certainly have a bearing in this case.

[fol. 594] Yet, Your Honor may not consider any of that evidence. If this case is appealed by whichever side loses the case, I am just thinking about if some other court might not wonder what about other students. We at least have one on whom we offer circumstantial evidence.

I would like to read from about three authorities on circumstantial evidence in cases of this kind. In the first place, quoting from two Texas cases by the Supreme Court of Texas, the general rule stated in those two cases is as follows:

> "As a general rule, in the absence of direct evidence, evidence of any circumstance, however slight, which conduces or tends in any degree to establish a material fact, or which affords fair presumption or inference to the question in dispute is relevant and admissible."

And from Texas Jurisprudence I quote:

> "It is not necessary that the fact sought to be proved should have direct reference to the main issue and however remote from the main issue, it is proper to submit such issue if the evidence refers to a fact relevant to a fact in issue."

And then Duke v. Houston Oil Company, a recent case, this statement:

> "Generally, any conclusion may be based upon cir-
> [fol. 595] cumstantial evidence, and fact that evidence is circumstantial does not render it incompetent. Where it is sought to prove an ultimate fact by a chain of circumstances every circumstance should be considered."

And them I quote from McCormick and Ray on Evidence:

> "A design, plan or intention may also be evidenced circumstantially by conduct showing it. The kinds of conduct usable for this purpose are infinite in variety, but the decided cases deal with comparatively few of them. In general, however, it may be said that any act which under the circumstances and in the light of experience would indicate a probable design, is admissible."

We admit readily that we do not have direct evidence from Henry Doyle that the National Association for the Advancement of Colored People persuaded him to make up his mind not to enter the law school on March 10th, but we do feel like his evidence contains certain circumstances such as this that are important. First, for instance, where he resides, and that he was considering prior to March 10, 1947 this new law school, and entering it. That while he was still considering this school he attended a meeting of others of his race, including Maceo Smith, the Secretary—shown by the evidenec to be Secretary of the N. A. A. C. P., [fol. 596] in Dallas, while still considering whether or not he would attend this school, at that meeting. Mr. Durham, attorney for the relator, appeared before that meeting, and that the witness, Henry Doyle, on March 10th, did not enter the school. No direct evidence, but Your Honor, it does show that in making up his mind he was in a meeting with the same people, Mr. Durham and Maceo Smith, that made up the mind or helped influence one student not to go to the school, and we think those circumstances are at least, maybe only slight, but they bear in a way in explaining at least what one prospective student did in making up his mind, and the fact that he did not finally enter the school; that that conduct in the meeting in Dallas is admissible for the purpose of showing at least what one other student who did not enter did about considering the matter.

The Court: And you re-tender the evidence of Doyle?

Mr. Daniel: Yes, sir, we re-tender the evidence of Doyle, that particular portion of it that is on the point that I have outlined here to the Court. Some of it is not admissible, of course, but only the points that are not objectionable on some other ground.

The Court: I think I will give you your bill.

Mr. Daniel: Note our exception.

The Court: Have you anything further?
Mr. Daniel: That is all, Your Honor.
Mr. Marshall: We are through.

Testimony closed.

[fol. 597] RESPONDENTS' EXHIBIT No. 1

Standards of the American Bar Association

(1) The American Bar Association is of the opinion that every candidate for admission to the bar should give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition to admission at least two years of study in a college.

(b) It shall require its students to pursue a course of three years' duration if they devote substantially all of their working time to their studies, and a longer course equivalent in the number of working hours, if they devote only a part of their working time to their studies.

(c) It shall provide an adequate library available for the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

(e) It shall not be operated as a commercial enterprise and the compensation of any officer or member of its teaching staff shall not depend on the number of students or on the fees received.

(f) It shall be a school which in the judgment of the Council of Legal Education and Admissions to the Bar [fol. 598] possesses reasonably adequate facilities and maintains a sound educational policy; provided, however, that any decision of the Council in these respects shall be subject to review by the House of Delegates on the petition of any school adversely affected.

[fol. 599] RESPONDENTS' EXHIBIT No. 2

Resolution

Minute Order No. 203-46

ESTABLISHMENT OF LAW COURSE FOR NEGRO STUDENTS

On motion by Mr. Buchanan, seconded by Mr. Reese, and approved by a majority vote of the Board, the following resolution is adopted.

Whereas, by Senate Bill No. 228 of the 49th Legislature the name of Prairie View State Normal and Industrial College at Prairie View was changed to Prairie View University; and

Whereas, the act further provides that whenever there is any demand for same the Board of Directors of the Agricultural and Mechanical College of Texas is authorized to provide for a course in law at Prairie View University substantially equivalent to that offered at the University of Texas; (Other courses not pertinent to this order were also authorized.) and

Whereas, the Board of Directors of A. & M. College in cooperation with the University of Texas named a joint committee to study the obligations of these institutions in connection with Negro education and made a report to the Governor in connection therewith, said, (Minute Order No. 124-46), being attached to and made a part of this order; and

Whereas, the Board of Directors of the A. & M. College [fol. 600] of Texas stongly reaffirms the position taken in the recommendations made to the Governor, particularly that part which urges the establishment of a first-class University for Negroes, preferably at Houston, Texas, under the supervision of the Board of Regents of the University of Texas; and

Whereas, it has been brought to the attention of the Board of Directors that at this time there is pending an application for admission to the University of Texas by one or more colored youth seeking to enroll in the School of Law, and this Board has been requested to make arrangements for these young men to embark on their legal studies pending final action by the Legislature on the recommendations made or to be made to its 50th session; and

Whereas, the Board of Directors has by investigation determined that arrangements may be made for standard courses of first-year law to be given in Houston, Texas with qualified Negro lawyers as teachers:

Therefore, be it resolved

1. That if the applicant and/or similar other applicants for first-year courses in law offer themselves to the Registrar at Prairie View University, bringing with them a suitable transcript and a certificate from the Dean of the Law School of the University of Texas that they are scholastically prepared for a course of law equivalent to that given [fol. 601] at the University of Texas, they will be admitted to Prairie View University for the semester begining February 1947.

2. The course will be offered in Houston, Texas and will be substantially the same approved course as is now offered by the University of Texas School of Law for entering students, and the qualifications of the personnel to teach the students will be determined by the State Board of Law Examiners, and they will be judged acceptable by it before instruction begins.

3. The Board of Directors of A. & M. College, through Prairie View University, will provide instruction in accordance with the requirements of the Supreme Court of Texas and the American Bar Association, and will provide or make available to the students such books or library material as are needed for the first-year course in which they will be enrolled. The Governor will be asked for a deficiency appropriation to provide the cost of instruction.

Certificate

I, E. L. Angell, certify that the foregoing is an exact copy of Minute Order No. 203-46 passed at the meeting of the Board of Directors of the Agricultural and Mechanical College of Texas held at Austin, Texas on November 27, 1946.

[fol. 602] In witness whereof, I have hereunto affixed my hand and seal of the said institution this 4th day of December 1946.

(S.) E. L. Angell, Secretary, Board of Directors, Agricultural and Mechanical College of Texas (Seal.)

[fol. 603] RESPONDENTS' EXHIBIT No. 3

Resolution Adopted by the Board of Regents of the University of Texas

Re: The Texas State University for Negroes

Adopted February 28, 1947

Resolution—Re: The Texas State University for Negroes

Chairman Woodward presented the following resolution re The Texas State University for Negroes, as was proposed in Senate Bill No. 140, 50th Legislature of Texas, which resolution was adopted unanimously by the Board upon motion of Mr. Bullington, seconded by Mr. Kirkpatrick. The roll call reflected the following vote:

Aye:	No:
Judge Woodward	
Mr. Bullington	
Mr. Kirkpatrick	
Dr. Scherer	
Mr. Schreiner	
Mr. Tucker	
Mr. Warren	

Whereas, Senate Bill No. 140, being an Act to establish a University of the First Class to be styled "The Texas State University for Negroes" has been passed finally by [fol. 604] both Houses of the Legislature of the State of Texas now in Session, and

Whereas, it is anticipated that said bill will be signed forthwith, and will, by its terms, become immediately effective, and

Whereas, Section 11 of the said Act provides that "The Board of Regents of The University of Texas is authorized and required to forthwith organize and establish a separate school of law at Austin for Negroes to be known as the 'School of Law of The Texas State University for Negroes' and therein provide instruction in law equivalent to the same instruction being offered in law at The University of Texas;" and

Whereas, The Board of Regents of The University of Texas desires to cooperate fully and immediately in carry-

ing out in good faith all of the duties imposed upon it by said bill, and

Whereas, The Dean and the Members of the Staff of the School of Law of the University of Texas have signified their willingness and desire to cooperate fully in the establishment and conduct of said School of Law of The Texas State University for Negroes to the end that the instruction therein given may be in all respects equivalent to that currently and heretofore offered in the School of Law of The University of Texas; and

[fol. 605] Whereas, The Registrar of The University of Texas has signified his willingness and desire to cooperate in the organization and conduct of the School of Law of The Texas State University for Negroes as contemplated in said bill, now, therefore,

Be It Resolved, That the Board of Regents of the University of Texas hereby assumes and undertakes to discharge promptly and in full compliance with the letter and the spirit of Section 11 of said bill all of the duties and responsibilities imposed upon or delegated to it by the terms thereof; and

Be It Further Resolved, That the Chairman of the Board of Regents of The University of Texas be, and he is hereby authorized, immediately upon said law taking effect, to take all steps necessary to acquire in the immediate vicinity of the State Capitol at Austin, Texas, quarters fully adequate for the conduct of the School of Law of The Texas State University for Negroes and to do all other acts and things, including the employment of necessary personnel, the acquisition of furniture and other facilities and utilities necessary to the full equipment and operation of said school;

Be It Further Resolved, That the first semester of said school begin on Monday, March 10, 1947, which is hereby designated as the final date for registration therein and that [fol. 606] such semester extend through June 28, 1947, and

Be It Further Resolved, That the Dean of the School of Law of The University of Texas be, and he is hereby, requested and directed to discharge the duties of Dean of the School of Law of The Texas State University for Negroes.

Be It Further Resolved, That there shall be offered for students entering such school the identical courses now being taught the same classes in the Law School of The University of Texas, which courses shall be given by the same instructors or instructors of equivalent experience and

ability with those now giving such courses in the Law School of The University of Texas;

Be It Further Resolved: That the Registrar of The University of Texas be, and he is hereby, requested and directed to discharge the duties of the Registrar of the School of Law of The Texas State University for Negroes and in that capacity to distribute forthwith to all persons who may be interested therein bulletins covering the work to be offered in the semester opening March 10, 1947, which bulletins shall contain the information customarily contained in bulletins issued by The University of Texas and which may be compiled by incorporating by reference material contained in the bulletins heretofore issued by The University of Texas;

Be It Further Resolved, That the Chairman of The Board [fol. 607] of Regents of The University of Texas be, and he is hereby, authorized and directed to purchase for the account of The Texas State University for Negroes a library with necessary cases and appurtenances sufficient to meet the requirements of the American Law School Association and of the American Bar Association;

Be It Further Resolved, That pending receipt and installation of such library, the Dean of the Law School of The University of Texas be, and he is hereby, authorized to supply on a loan basis books from the Law Library of The University of Texas which may be needed in the efficient conduct of the School of Law of The Texas State University for Negroes;

Be It Further Resolved, That the Chairman of the Board of Regents be, and he is hereby, authorized to negotiate with the personnel of said proposed school such arrangements as may be required for its immediate organization and conduct, which arrangements shall be reported to the next meeting of the Board of Regents for confirmation and approval by it;

Be It Further Resolved, That the Board of Regents of The University of Texas extends to the Board of Directors of The Texas State University for Negroes, when it shall have been duly constituted, its best wishes and assurances of cooperation for the success of the undertaking committed to its care.

[fol. 608] THE STATE OF TEXAS
County of Travis

I, Betty A. Thedford, Secretary of the Board of Regents of The University of Texas, do hereby certify that the foregoing is a true and correct excerpt from the minutes of a regular meeting of said Board of Regents held in Austin, Texas, on February 28 and March 1, 1947, at which a majority of the members were present and voted favorably on the motion contained therein.

Executed under my hand and the seal of The University of Texas this the 18th day of March, 1947.

(S.) Betty A. Thedford, Secretary of the Board of Regents of The University of Texas.

(Seal of the University of Texas.)

THE STATE OF TEXAS
County of Travis

Before me, the undersigned authority, on this day personally appeared Betty A. Thedford, Secretary of the Board of Regents of the University of Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the [fol. 609] same for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and the seal of office this the 18th day of March, A. D. 1947.

(S.) Maryvenice E. Stewart, Notary Public in and for Travis County, Texas. (Notary Seal.)

[fol. 610] RESPONDENTS' EXHIBIT No. 6

School of Law, The University of Texas

Full-time faculty members:

Bailey, E. W.—Professor of Law. B. A. 1920, LL. B. 1928, S. J. D., 1942. At University since 1930.

Davis, Kenneth C.—Professor of Law. A. B. 1931, LL. B. 1934. At West Virginia 1935-40, at U. T. since 1940.

Fritz, W. F.—Asst. Professor of Law, B. A. 1935, M. A. 1938, LL. B. 1946. Taught seven years in Texas High Schools, at U. T. since 1946.

Hodges, Gus M.—Professor of Law, B. B. A. 1930, LL. B. 1932. At U. T. since 1940.

Hudspeth, C. M.—Assistant Professor of Law. B. A. 1940, LL. B. 1946. At U. T. since 1946.

Huie, W. O.—Asst. Dean and Professor of Law. B. A. 1932, LL. B. 1935. At U. T. since 1936.

Leary, Leo W.—Associate Professor of Law. B. A. 1940, LL. B. 1945, LL. M. 1946. At U. T. since 1946.

McCormick, C. T.—Dean and Professor of Law. B. A. 1909, LL. B. 1912. At U. T. 1922-26. At North Carolina 1926-31. At Northwestern 1931-40. At U. T. 1940.

Morris, Clarence—Professor of Law. LL. B. 1925, LL. M. 1926. At Univ. of Wyoming 1926-40. At U. T. since 1940.

Moriss, S. T.—Assistant Professor of Law, LL. B. 1946. At U. T. since 1946.

Stayton, R. W.—Professor of Law. B. A. 1907, LL. B. 1927. At U. T. since 1925.

[fol. 610a] Stumberg, G. W.—Professor of Law. B. A. 1909, LL. B. 1912, J. D. 1924. At Louisiana State Univ. Law School 1919-25. At U. T. since 1925.

Wade, John W.—Visiting Professor of Law. A. B. 1932, LL. B. 1934, LL. M. '35, S. J. D. 1942. At Univ. of Mississippi 1936-46. At U. T. 1946-47.

Walker, A. W., Jr.—Professor of Law. B. A. 1921. LL. B. 1923. At U. T. since 1925.

Williams, Howard R.—Associate Professor of Law. A. B. 1937, LL. B. 1940. At U. T. since 1946.

Williams, Jerry S.—Associate Professor of Law. A. B. 1938, LL. B. 1941. Instructor in Law Univ. of Iowa 1941-42. Asst. Prof. of Law, Univ. of Denver 1946. At U. T. since 1946.

Woodward, M. K.—Associate Professor of Law. B. A. 1933, M. A. 1940, LL. B. 1943. Teacher in Texas Public Schools 1935-41. At U. T. since 1946.

Part-time Faculty Members:

Hargrave, Miss Helen—Instructor of Law and Law Librarian. LL. B. 1926. At U. T. since 1930.

Patterson, W. W.—Director of Legal Aid Clinic. LL. B. 1936.

Ynsfran, P. M.—Lecturer in Law. Bachiller en Ciencias y Letras, Escribano Publico. Lecturer in Law at U. T. part time since 1945.

(Fall of 1946—Tisinger, D. L.—Lecturer in Law. A. B. 1935, LL. B. 1939. (Lecturer in Law part-time since 1944.))

[fol. 611] RESPONDENTS' EXHIBIT No. 7

Announcement of Courses for the Spring Semester, 1947, of the School of Law of the Texas State University for Negroes

The School of Law will begin its program of instruction March 10, 1947. It is located in the building at 104 East 13th Street, Austin, Texas, adjoining the grounds of the State Capitol.

For beginning students, the courses for the Spring Semester will be as follows:

Contracts, six hours per week. Instructor, Leo W. Leary, Associate Professor of Law, The University of Texas (A. B., LL. B., University of Wisconsin.) Casebook: Grismore's Cases on Contracts.

Torts: six hours per week. Instructor, Starling T. Morris, Assistant Professor of Law, The University of Texas, (LL. B., The University of Texas). Casebook: Thurston & Seavey, Cases on Torts.

Legal Bibliography, one hour per week. Instructor, Chalmers M. Hudspeth, Assistant Professor of Law, The University of Texas (A. B., Rice Institute; LL. B., The University of Texas.) Casebook: Brandt, How to Find the Law.

[fol. 612] All of these instructors are teaching or have taught the same courses in The University of Texas School of Law during the current school year, and the program of courses is identical with those offered to beginning students in that school who entered February 1, 1947.

Registration day for the Spring Semester is March 10, 1947. Classes will begin on that day. The semester ends June 28. Programs of work for the summer session and for the fall and subsequent semesters will be announced later and will conform, generally, to the programs and offerings of the Law School of The University of Texas.

The State Library, which includes the Library of the Supreme Court of Texas, located in the State Capitol, is for the time being designated as the Library of the School. This contains about 44,000 volumes of legal material and includes all of the statutes and reports of decisions of all the states and of the United States.

The reference books needed for immediate use in the classes are available in the school building, and any other books which may be required, if not available in the State Library, will be furnished as needed from the Library of the School of Law of The University of Texas. A collection of 10,000 carefully selected volumes meeting the requirements of the Association of American Law Schools, to con- [fol. 613] stitute the nucleus of the permanent library of the School has been ordered.

Requirements for admission, fees, and regulations relating to the classification of students, class-work, and examinations, grades and credits, standards of work required, and degrees awarded, are the same as those contained in the attached Catalog of the School of Law, dated August 1, 1945, which is the latest published catalog of that school.

For further information apply to Charles T. McCormick, Dean or E. J. Mathews, Registrar, School of Law, Texas State University for Negroes, Austin, Texas.

[fol. 614] RESPONDENTS' EXHIBIT No. 13

The School of Law of The Texas State University for Negroes

Box E, University Station

Austin 12, Texas,
March 3, 1947.

Mr. Heman Marion Sweatt, 3402 Delano Street, Houston, Texas.

DEAR SIR:

Since our last correspondence concerning your application for admission to the University of Texas Law School, the Texas Legislature has authorized the Board of Regents of the University of Texas to establish and operate a sepa-

rate school of law equal in all respects to the University School of Law.

I am pleased to advise that your qualifications heretofore established and your application heretofore made will entitle you to attend the new school now being opened at 104 East 13th Street, Austin, Texas.

The new school, known as The School of Law of the Texas State University for Negroes will open March 10, 1947, and the first semester will run until June 28, 1947. A [fol. 615] summer session is being planned which will allow you to complete the same amount of work prior to the semester beginning in September as would be possible at the University of Texas.

Dean Chas. T. McCormick of the University of Texas Law School will serve as Dean of the newly established Law School and the courses and instructors will be identical with those available at the University of Texas Law School. I assure you that in accordance with the authority from the Legislature and the Board of Regents, the newly established school will offer the students thereof equal training and educational opportunities. The school is located directly across the street from the State Capitol Building. A library is being installed and full use of the State Library on the second floor of the Capitol building is available for research prior to the delivery of a complete law library now on order. This new library will include all books required to meet the standards of the American Association of Law Schools and the American Bar Association.

There is enclosed a copy of the current bulletin of the Law School of the University of Texas, which has been adopted as the bulletin and list of courses available at the new School of Law. The courses, texts, collateral reading, standards of instruction and standards of scholarship will be identical with those prevailing in the Law School of the [fol. 616] University of Texas. Since your application is for a first year law course, I might add that in the University of Texas Law School first year students are eligible to take Contracts (6 hours weekly), Torts (6 hours weekly), and Legal Bibliography (1 hour weekly.) These same courses will be available to you by the same instructors.

If you desire to enter the semester beginning March 10, please advise me as soon as possible in order that arrangements may be made for you to interview Dean McCormick

and determine your schedule of classes and textbooks which will be required.

Yours very ruly, (S.) E. J. Mathews, Registrar.

(Here follows 1 Photolithograph, side folio 617)

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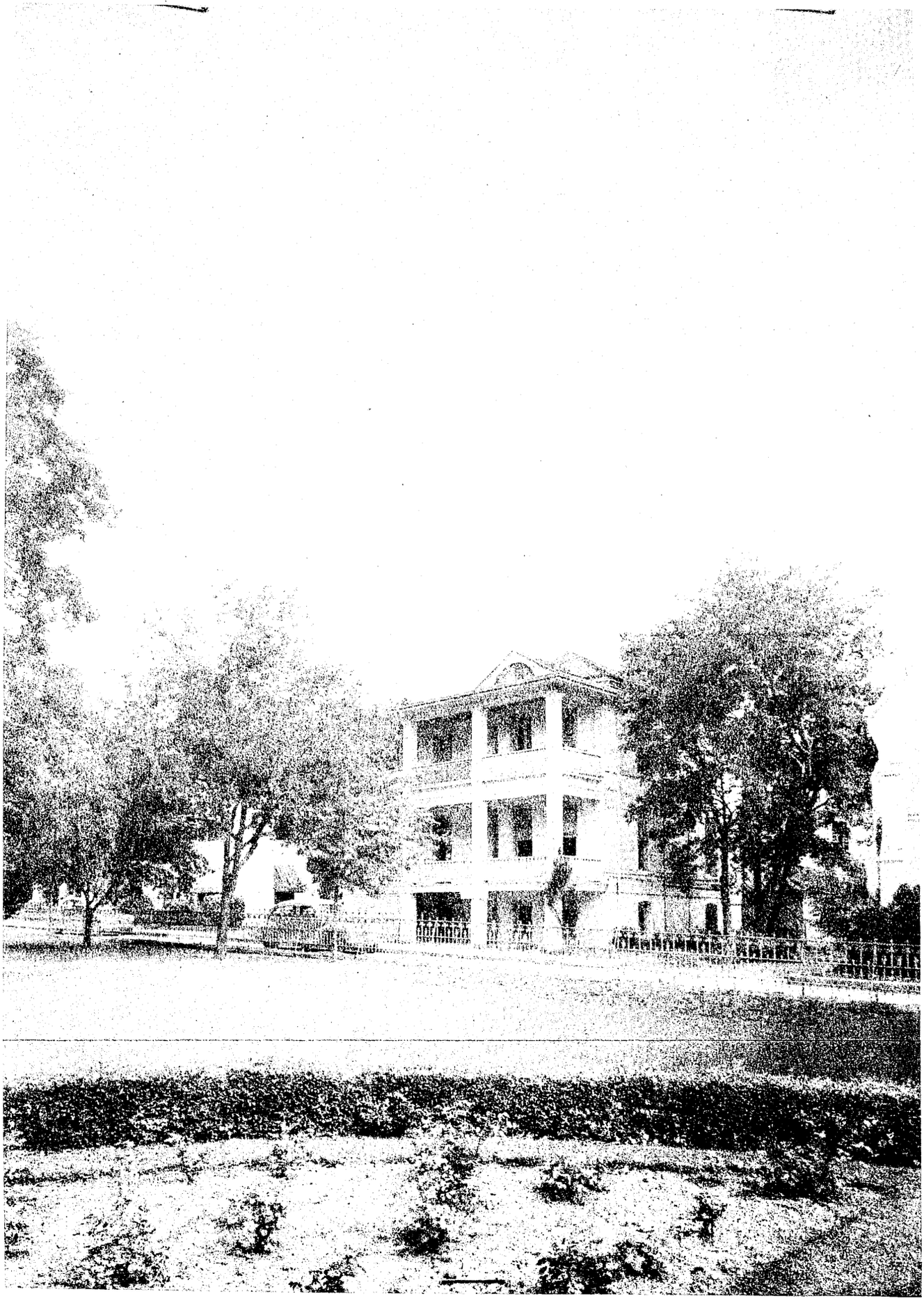
RESPONDENTS' EXHIBIT NO. 14



[fol. 618] RELATOR'S EXHIBIT No. 1

(Cover Title, as follows:)

Association of American Law Schools, 1945, Handbook

(From page 259 of Handbook.)

IV. Articles of Association

(From Handbook, beginning at 7th paragraph on page 260, ending last line on page 267.)

Sixth. Law Schools may be elected to membership at any meeting by a vote of the Association, but no law school shall be so elected unless for at least two years immediately preceding its application it has complied with the following requirements:

(Amended 1925: see Proceedings, 1925, pp. 6 to 12.)

1. It shall be a school not operated as a commercial enter- [fol. 619] prise, and the compensation of any officer or member of its teaching staff shall not depend on the number of students, nor on the fees received.

(Adopted 1922; see Proceedings, 1922, pp. 64-66.)

2. (a) It shall require of all candidates for any degree, other than special students, at the time of the commencement of their law study, the completion, in residence, of one-half of a four-year course of study acceptable for a Bachelor's degree at the State University of the state in which the pre-law work is taken, or in the event there is no State University then at a principal college or university located therein; except that not more than ten per cent of the credit presented for admission may include credit earned in non-theory courses in military science, hygiene, domestic arts, physical education, vocal or instrumental music or other courses without intellectual content of substantial value.

Pre-legal work done in residence within the meaning of Article Sixth, Section 2 (a), shall mean work done in class in an approved college, or, if done off the campus of the college, it shall mean work done in a class meeting in regular sessions each week under the personal supervision and instruction of a member of the instructional staff of an approved college.

(Approved by the Association by mail vote, September, [fol. 620] 1944.)

(b) A student's pre-legal work must have been passed with a scholastic average at least equal to the average required for graduation in the institutions attended, and this average shall be based on all the work undertaken by the student in his pre-law curriculum, exclusive of non-theory courses in military science, hygiene, domestic arts, physical education, vocal or instrumental music, or other courses without intellectual content of substantial value.

(c) It shall require from each student admitted a written statement as to his previous attendance at other law schools, and as to his previous applications for admission to other law schools.

(Amended 1927; see Proceedings 1927, pp. 9-20, 53, 54. Amended 1935; see Proceedings 1935, pp. 11-13. Amended, 1937, see Proceedings, 1937, pp. 29-37.)

3. A school whose curriculum and schedule of work are so arranged that, in the opinion of the Executive Committee, substantially the full working time of its students is required for the work of the school, shall be considered a full-time school. A full-time school shall require of its candidates for the first degree in law resident study of law during a period of at least ninety weeks and the successful completion of at least ten hundred and eighty hours of classroom instruction in law.

[fol. 621] A school whose curriculum and schedule of work are so arranged that, in the opinion of the Executive Committee, substantially the full working time of its students is not required for the work of the school, shall be considered a part-time school. A part-time school must maintain a curriculum which, in the opinion of the Executive Committee, is the equivalent of that of a full-time school. The action of the Executive Committee under this paragraph shall in each instance be reported to the Association at its next annual meeting and shall stand as the action of the Association until set aside by a vote of a majority of all the members of the Association.

Any school now or hereafter a member of the Association, that conducts both full-time and part-time curricula, must comply as regards each with the requirements therefore as set forth in the preceding paragraphs.

No school shall be or remain eligible to membership if the institution of which it is a part shall through any other agency conduct instruction in law designed to prepare students for admission to the Bar or for Bar examinations, save in conformity with the provisions of the preceding paragraphs.

No school shall be or remain eligible for membership if it accepts for credit toward the first degree in law, with or [fol. 622] without examination in such school, work taken in another American law school which at the time the credit was earned was not either a member of this Association or approved by the American Bar Association; provided, however, that credit may be given for work taken in another American Law school within the two-year period immediately preceding its admission to this Association.

(Amended December 31, 1936. See Proceedings, 1936, pp. 27-31; 91-96. Amended December 29, 1938. See Proceedings, 1938, pp. 24-28.)

At the sixteenth annual meeting the Executive Committee reported as follows, concerning Article VI (2):

"Some doubts have arisen as to whether Article VI (2) requires the three years' study to be in residence. These doubts appear to have been caused in part by certain resolutions passed in 1907 and 1908 before subsection 2 was amended in its present form. In order to set at rest these doubts the Committee offers the following resolution:

"Resolved, That the period of study required by Art. VI (2) is to be interpreted as meaning resident study." (The foregoing resolution was adopted. See Proceedings, 1916, p. 82.)

4. The conferring of its degree shall be conditioned upon [fol. 623] the attainment of a grade of scholarship ascertained by examination.

"Resolved, That no student should be unconditionally advanced from one class to a higher one without passing satisfactory examination upon the studies previously pursued by the former class. (Adopted, Proceedings, 1902, p. 7.)

"It was the sense of the Committee that final examinations under the rule should not be considered as required

in practice court and in courses involving the drafting of legal instruments, but that as to such courses as legal bibliography, a final examination might very well be expected. The general principle was declared to be that final examinations should be required in all courses reasonably susceptible thereto." (Exec. Com. Report, 1923.)

5. Students with less than academic credit required of candidates for the law degree by Section 2 of this article, may be admitted as "specials" provided:

a. They are at least twenty-three years of age, and

b. There is some good reason for thinking that their experience and training have specially equipped them to engage successfully in the study of law, despite the lack of the required college credits, and

c. The number of such "specials" admitted each year [fol. 624] shall not exceed ten per cent of the average number of students admitted by the school as beginning regular law students during the two preceding years.

(See Proceedings, 1927, pp. 55-59.)

In 1928 a ruling of the Executive Committee relative to Article VI (2d) was approved, under which the requirement of two years of college work was made to apply to summer sessions where credit is given to any student toward his law degree. (See rulings and annotations to Art. VI (2d).)

The following interpretation by the Executive Committee was approved:

In estimating the ten per cent to determine the number of special students that may be admitted, fractions are not to be counted. (See Proceedings, 1927, p. 9.)

In calculating the number of special students who may be admitted under Article Sixth, Section 5, it shall not be necessary to include members of the bar who are enrolled in courses without expectation of academic credit.

(Approved by the Association by mail vote, September, 1944.)

6. Commencing September 1, 1932, it shall own a law library of not less than ten thousand volumes, which shall be so housed and administered as to be readily available for use by students and faculty. Commencing September 1, 1940, it shall have, in addition to the four instructors speci-

[fol. 625] fied in Section 7 of this Article, a qualified librarian, whose principal activities are devoted to the development and maintenance of an effective library service.

Commencing September 1, 1932, for additions to the library in the way of continuations and otherwise, there shall be spent over any period of five years at least ten thousand dollars, of which at least fifteen hundred dollars shall be expended each year. Commencing September 1, 1939, such library shall include substantially the following:

1. The published reports of appellate decisions of the state in which the school is located, together with commonly used editions of the statutes and digests.

2. The published reports prior to the Reporter System of decisions of the courts of last resort in at least one-half the states of the United States with reasonably up-to-date editions of statutes in one-fourth the states.

3. The published reports of the decisions of the United States Supreme Court with the generally used editions of federal statutes and digests.

4. The National Reporter System complete.

5. Leading up-to-date publications in the way of general digests, encyclopedias, and *th*eatises of accepted worth.

6. At least ten legal periodicals of recognized worth, com-
[fol. 626] plete with current numbers.

7. The English reports covered by the so-called reprint, together with the law reports to date.

(Amended 1924, see Proceedings, 1924, pp. 50, 51; 1925, see Proceedings, 1925, pp. 85-87; 1930, see Proceedings. 1930, pp. 23, 25; 1937, see Proceedings, 1937, pp. 38-44.

The 1927 recommendations of the Executive Committee, as to content of the library, were incorporated in the Articles at the 1937 Meeting, with two changes, (1) decreasing the number of statutory editions required from those of one-half to those of one-fourth the states, and (2) increasing the number of legal periodicals from six to ten. (See Proceedings, 1927, p. 7, 1937; pp. 38-44.)

7. Commencing September 1, 1932, its faculty shall consist of at least four instructors who devote substantially all of their time to the work of the school; and in no case shall the

number of such full-time instructors be fewer than one for each one hundred students or major fraction thereof.

(Adopted December 29, 1916. See Proceedings, 1916, pp. 67-80. Amended in 1924, see Proceedings, 1924, pp. 51-64 and in 1930, see Proceedings, 1930, pp. 24, 25.)

At the Thirty-Third Annual Meeting the Executive Committee made the following recommendations which *was* adopted:

[fol. 627] "Resolved, That the first clause of Article Sixth, Section 7, applies in substance though not in letter to summer sessions where any credit is given to any student toward his law degree. Resolved further, that a faculty for any such summer session may comply substantially with the said clause although containing fewer than four full-time instructors, provided that no instructor is responsible for more courses, more hours of teaching per week, or more students than is the normal standard in the particular school, and that no larger percentage of part-time instruction is given than in the balance of the school year."

(See Proceedings 1935, p. 17-18.)

8. Each member shall maintain a complete individual record of each student, which shall make readily accessible the following data: Credentials for admission; the action of the administrative officer passing thereon; date of admission; date of graduation or final dismissal from school; date of beginning and ending of each period of attendance, if the student has not been in continuous residence throughout the whole period of study; courses which he has taken, the grades therein, if any, and the credit value thereof, and courses for which he is registered; and a record of all special action of the faculty or administrative officers.

(Adopted December 31, 1919. See Proceedings, 1919, [fol. 628] pp. 87, 88.)

9. It shall be a school which possesses reasonably adequate facilities and which is conducted in accordance with those standards and practices generally recognized by member schools as essential to the maintenance of a sound educational policy.

(Adopted December 29, 1930. See Proceedings, 1930, pp. 24, 25.)

Seventh: Any school which shall fail to maintain the requirements provided for in Article Sixth, or such stand-

ard as may hereafter be adopted by resolution of the Association, shall be excluded from the Association by a vote at the general meeting, but may be reinstated at a subsequent meeting on proof that it is then bona fide fulfilling such requirement.

Any member school which shall fail to be represented by some member of its faculty at the annual meeting at least once in any three-year period shall be deemed to have discontinued its membership.

(Amended 1925. See Proceedings, 1925, pp. 17-19.)

Eighth. The officers of this Association shall be a President, a President-Elect, and a Secretary-Treasurer. The President-Elect and the Secretary-Treasurer shall be chosen [fol. 629] from among the delegates at each annual meeting. The President-Elect, upon the election of his successor, shall become the President and shall serve as such until the next election of a President-Elect. The Secretary-Treasurer shall hold office until his successor is elected. Provided, however, that, in event of the death or resignation of the President at any time during his term of office, the President-Elect shall immediately become the President, and shall serve as such until the second election of a President-Elect thereafter; and, in event of the death or resignation of the Secretary-Treasurer at any time during his term of office, the Executive Committee shall have the power and it shall be its duty without unnecessary delay, to appoint from among the teachers in the member schools a Secretary-Treasurer, who shall hold office as such until his successor is elected. At the annual meeting in 1937, in addition to the election of a President-Elect and a Secretary-Treasurer, a President shall be chosen from among the delegates and shall hold office until the next election of a President-Elect. The President-Elect shall have power to appoint committees and (in cases where the delegates at round table conferences do not elect councils) round table councils, to serve during his presidency; and he shall have no other power except that attaching to a member of the Executive Committee.

(Amended 1937, see Proceedings, 1937, pp. 45-51.)

[fol. 630] Ninth. At each annual meeting there shall be chosen from among the delegates two (or, if the Secretary-Treasurer is chosen also as the President-Elect, three) per-

sons to be members of the Executive Committee, who with the President, the President-Elect and the Secretary-Treasurer shall form such Committee. The Secretary of the Association shall be Secretary of the Committee.

(Amended 1937, see Proceedings, 1937, pp. 45-51.)

Tenth: The Executive Committee shall have charge of the affairs of the Association and is especially intrusted with seeing that the requirements of Articles Sixth and Seventh are complied with. All complaints shall be addressed to the Executive Committee, and shall be filed at least ninety days before the annual meeting of the Association. The Committee shall investigate all complaints and report its findings, with such recommendations as it shall think proper, to the Association for its action and shall make a report at the annual meeting. This provision shall not, however, prevent any matter being taken up and passed upon by the Association, except that no Law School shall be excluded from the Association under the Seventh Article unless the Executive Committee has given it thirty days' notice that it has in the opinion of that Committee failed to comply with the provisions of the Sixth and Seventh Article. When the Executive Committee has as- [fol. 631] certained that a member school has failed to maintain the requirements provided for in Article Sixth, or such standards as may be hereafter adopted by the Association, it may by a unanimous vote suspend such school from membership until the Association shall decide at the next general meeting whether the school shall be reinstated or definitely excluded.

(Amended 1935, see Proceedings, 1935, pp. 14-17.)

For discussion of the powers and duties of the Executive Committee under this section see Proceedings, 1906, pp. 114-129.

As to power of Executive Committee to pay expenses of committees, see Proceedings, 1921, pp. 136, 137.

Eleventh. Applications for membership shall be addressed to the Secretary, accompanied by evidence that the school applying has, for at least two years immediately preceding complied with the requirements as set forth in Articles Sixth and Seventh. The Executive Committee shall examine the application and report to the Association whether the applicant has fulfilled the requirements. Appli-

cations for membership shall be made at least sixty days before the meeting of the Association.

(Amended 1923, see Proceedings, 1923, p. 49; and 1925, see Proceedings, 1925, pp. 6-11.)

Twelfth. The Executive Committee may conduct its busi- [fol. 632] ness by correspondence.

Thirteenth. The officers may be re-elected and a retiring officer may be elected a member of the Executive Committee, but no person shall serve as an elected member of the Executive Committee in successive years, no school shall have an elected member of the Executive Committee in successive years, and no school shall have more than one member on the Executive Committee in any year. The term "elected member" in this Article does not include the President, the President-Elect or the Secretary-Treasurer.

(Amended 1936, see Proceedings, 1936, pp. 31-36. Amended, 1937, see Proceedings, 1937, pp. 45-51.)

Fourteenth. The annual assessment on each school shall be sixty-five dollars, payable in advance, and any school which shall have failed to pay its assessments during the year shall be dropped from the Association but may be reinstated by vote of the Association upon payment of arrears.

Recommendation of the Executive Committee, April 18, 1915: "The committee voted to recommend that Article Fourteenth of the Articles of Association be amended by substituting the word 'twenty-five' for the word 'ten' so that it will read: 'Fourteenth. The annual assessment on each school shall be twenty-five dollars, payable in advance,' etc." This recommendation was modified at the December, [fol. 633] 1915, meeting, by making the annual assessment twenty dollars. See Proceedings, 1915, p. 53. At the December, 1920, meeting, the annual assessment was fixed at thirty dollars. See Proceedings, 1920, p. 133. At the twentieth annual meeting 1922, the annual assessment was fixed at forty dollars. See Proceedings, 1922, p. 54. At the December, 1930 meeting, the annual assessment was fixed at sixty-five dollars. See Proceedings, 1940, p. 20.

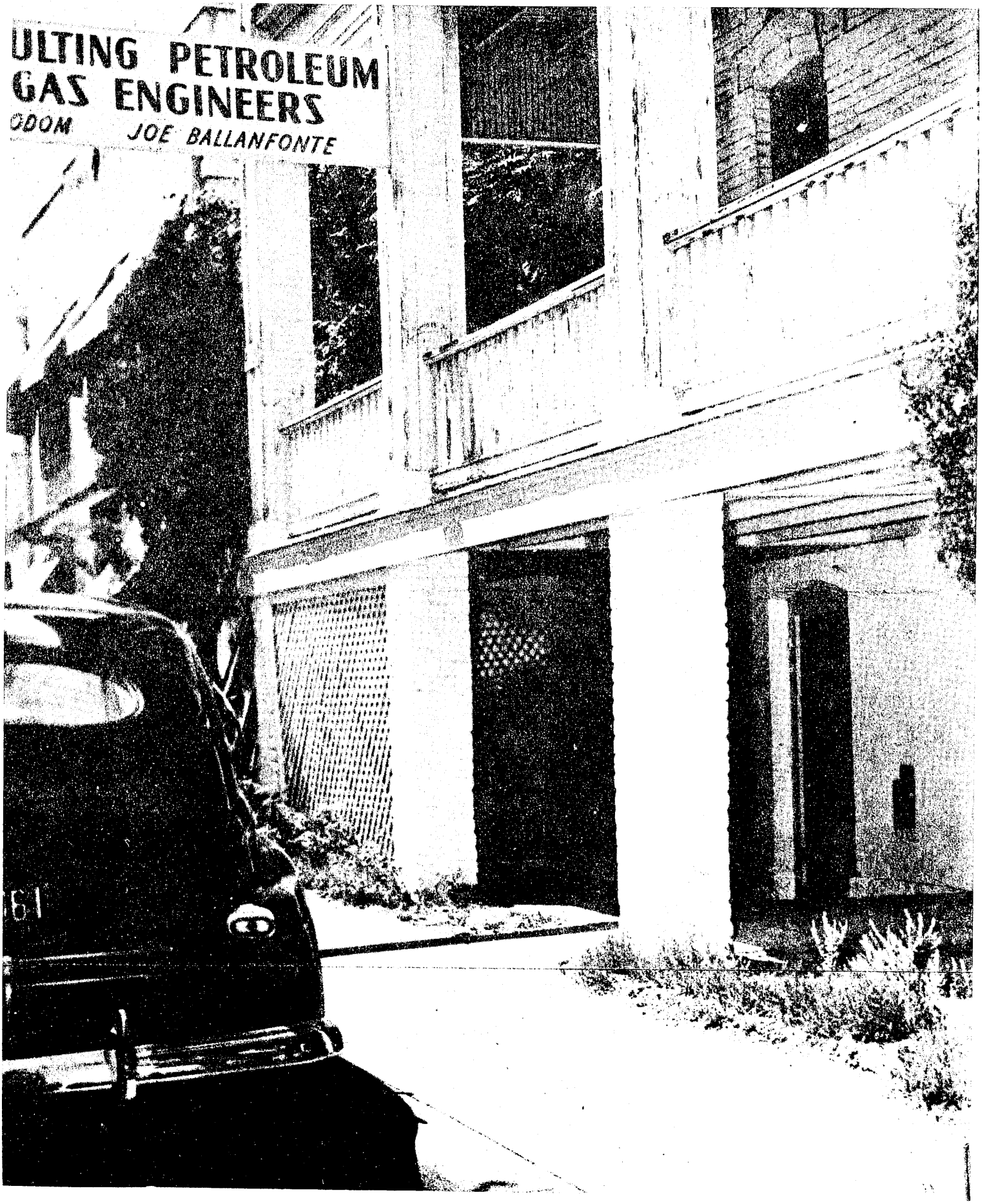
A recommendation of the Executive Committee on September 28, 1931, that "the annual assessment on each school shall be one hundred dollars ($100), payable in advance, and any school which shall have failed to pay its assessment during the year shall be dropped from the Association, but

may be reinstated by vote of the Association upon payment of arrears. The round-trip railway fare of one delegate from each school to the annual meeting shall be paid from the treasury of the Association, but such payment shall not be made for travel beyond the United States or in the Dominion of Canada, or where no delegate has been in attendance'' was lost, on a vote on December 29, 1931, at the nineteenth annual meeting. (See Proceedings, 1931, pp. 31, 55-77.)

Fifteenth. These articles may be changed at any annual meeting, the vote on such change shall be by schools, and no change shall be adopted unless it is voted for by two- [fol. 634] thirds of the schools represented, nor unless it is voted for by at least one-third of all the members of the Association; provided, that no motion for an amendment shall be considered unless a copy of such proposed amendment be filed with the Secretary at least sixty days before the meeting and a copy thereof sent forthwith by the Secretary to each member. (As amended 1923. See Proceedings, p. 49.)

''Two-thirds of the schools represented'' was held to mean, represented in the vote on the question before the convention. (Proceedings, 1922, pp. 96-98.)

RELATOR'S EXHIBIT NO. 2

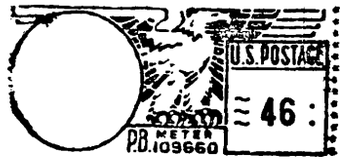


385

RELATOR'S EXHIBIT NO. 3

RELATOR'S EXHIBIT NO. 4

THE SCHOOL OF LAW of
THE TEXAS STATE UNIVERSITY FOR NEGROES
Box E, University Station
Austin 12, Texas



Return Receipt Requested
FEE PAID

REGISTERED
~~No. 10454~~
12158

Mr. Heman Marion Sweatt
3402 Delano Street
Houston, Texas

RELATOR'S EXHIBIT NO. 5

RELATOR'S EXHIBIT NO. 6

[fol. 640] RELATOR'S EXHIBIT No. 8

Scholarship Aid Fund

For Texas Negro Graduate and Professional Students

1945-1946

Due to inadequate funds the following figures are based on tuition and travel grants which were insufficient to cover actual costs. For example, the tuition charged at Teachers College Columbia University for 15 points of work is $470.00 per long session; roundtrip travel is $96.00. This, less the tuition charged at Prairie View University and less roundtrip travel from applicant's home to Prairie View University, makes the differential $508.44. However, the amount of the grant allowed is $235.00—$165.00 tuition for both semesters and $70.00 roundtrip travel, leaving $273.44 to be paid by the applicant.

Regular Appropriation 1945-1946:

Long Session Grants	$14,843.66
Summer Session Grants	9,559.51
Secretarial Salary	480.25
Supplies	116.58
Total	$25,000.00

Deficiency Appropriation 1945-1946:

Warrants issued on August 2, 1946	$5,749.75	
Warrants issued on August 29, 1946	779.71	
Warrants to be issued	590.68	
Total as of October 9, 1946		7,120.14
Total for the Year 1945-1946		$32,120.14*

* The Deficiency Appropriation was made on July 26th, 1946 when it was too late for a large number of applicants to attend school. Had the Deficiency Appropriation been made earlier, more than $40,000.00 would have been required for the year 1945-1946.

[fol. 640a] Financial Statement as of May 1, 1946

Scholarship Aid Fund

1945-1946

Scholarship Aid Fund		$25,000.00
Amounts Encumbered as of May 1st, 1946		
Long Session Grants (1945-1946)	$14,717.10	
Postage, Supplies and Secretarial Salary (approx.)	534.17	
Total Amount Encumbered	15,251.27	
Balance on hand	9,748.73*	

* It should be noted that the balance on hand as of January 31, 1947 is only $8,915.33 indicating that there will be a greater deficit this year.

Actual and Approximate Amounts Needed for Summer Session		
Old Applications completed (actual)	$13,255.51	
New Applications completed (actual)	4,590.68	
Incomplete Applications (New & Old Appr.)	6,752.02	
Total needed for summer, 1946	$24,598.21	
Total amount on hand	9,748.73	
Deficit		$14,849.48

[fol. 640b] Statistics Concerning Applications for Texas Scholarship Aid

1945-46

Applications Received		
Long Session	108	
Summer Session	360	
Total Applications 1945-1946 School Year		468

Committee Action

Applications Approved:

Long Session	93	
Summer Session	231	
Total applications approved		324*

* Of this number 65 withdrew their applications or failed to attend because grants could not be assured.

Applications Disapproved

(Work available at Prairie View	20
Incomplete applications	124

[fol. 640c] Schools Attended by Texas Scholarship Aid Recipients

1945-1946

	Long Session	Summer Session
Atlanta University	9	11
Boston University	2	4
University of California	1	3
University of Southern California	2	19
Catholic University of America	1	1
Chicago Musical College	0	1
Chicago School of Art	0	1
Chicago University	2	12
Colorado A. & M. College	1	0
Colorado State College	0	9
Colorado University	1	14
Columbia University	7	30
Cornell University	0	3
University of Denver	0	4
University of Detroit	1	0
Fisk University	0	1
Margaret Hague Maternity Hospital	0	1
Howard University	12	0
Indiana State Teachers College	0	1
Indiana University	1	1
Iowa State College	2	3
Iowa State University	4	6

1945-1946

	Long Session	Summer Session
Kansas State College	2	4
Loyola University	1	0
Meharry Medical College	18	0
University of Michigan	5	30
Michigan State College	1	0
New England Conservatory	1	0
University of New Mexico	0	1
New York University	2	1
Northwestern University	0	9
Ohio State College	0	3
University of Pennsylvania	0	3
University of Pittsburgh	0	1
Robert H. Terrell Law School	1	0
Tuskegee Institute	3	0
Washington University	0	1
Wayne University	1	2
Western Reserve	0	1
University of Wisconsin	1	6
Xavier University	0	1
Total	82	188

[fol. 640d] Subjects Taken by Texas Scholarship Aid Recipients

1945-1946

	Long Session	Summer Session
1, Art (Including Fine Arts)	0	2
2. Business Administration	2	0
3. Education		
(1) Admin. & Supervision	3	22
(2) Education	0	26
(3) Educational Guidance	0	19
(4) Educational Psychology	1	1
(5) Health & Physical Education	3	11
(6) Rural Education	0	3
4. Languages		
(1) English	2	9
(2) French	1	0
(3) Spanish	1	3

1945-1946

	Long Session	Summer Session
5. Library Science	3	7
6. Mathematics	1	5
7. Music	3	11
8. Professions		
(1) Dentistry	12	0
(2) Dental Surgery	1	0
(3) Dental Technology	2	0
(4) Engineering (Mechanical)	1	0
(5) Law	3	0
(6) Medicine	13	0
(7) Medical Techinology	1	0
(8) Pharmacy	2	1
(9) Veterinary Medicine	5	0
9. Sciences		
(1) Chemistry	1	3
(2) Physiology	1	1
(3) Natural Science	0	1
10. Social Science		
(1) Economics	1	1
(2) History	0	7
(3) Psychology	1	1
(4) Social Science	0	1
(5) Social Service	0	1
(6) Social Work	9	14
(7) Sociology	2	1
(8) Public Health	0	7
11. Speech	0	4
12. Vocations		
(1) Agriculture	1	9
(2) Home Economics & Child Care	6	16
(3) Trade & Industries	0	1
Total	82	188

[fol. 640e] Financial Statement as of January 31, 1947

Scholarship Aid Fund

1946-1947

Amounts Encumbered as of January 31, 1947		
Scholarship Aid Fund—1946-1947		$25,000.00
Long Session Grants	$18,223.37	
Withdrawals	2,429.85	
	$15,793.52	
Secretarial Salary	227.50	
Supplies	63.65	
Amount encumbered as of January 31, 1947		16,084.67
Balance on hand		$8,915.33

[fol. 641] Relator's Exhibit No. 9

Office of Executive Secretary

Texas Scholarship Aid Committee

State Department of Education

Austin, Texas

Statement of Policy and Procedure

Adopted by the Committee on Scholarship Aid for Negro Residents of Texas Attending Graduate and Professional Schools Outside the State)

I. To be eligible for scholarship aid:

1. The applicant must be a resident of Texas and must have resided in Texas for eight years or more.

2. If desiring to do graduate study, the applicant must hold a Bachelor's degree from an institution approved by the Southern Association of Colleges and Secondary Schools, or by an equivalent agency.

3. If desiring to do professional study, the applicant must clearly meet the requirements for admission to such professional school work. If selection is necessary, preference will be given to college graduates. There are few

fields of study that can be considered "professional" that do not require some college work in preparation.

4. The applicant must file an application on blank supplied by the Committee, and must file with it, or have sent to the Executive Secretary complete transcripts of all college or university work done, together with three testimonials and a letter stating the purpose of the study; and must complete the questionnaire form giving full details.

5. No grant will be made to applicants who plan to work for the Master's degree in fields in which such work, of approved quality and standard, is provided at Prairie View University.

6. Each applicant is required to submit, as a part of his application, a letter from the Dean of the Graduate School certifying that he is eligible for admission to Graduate School with not more than eight semester hours of undergraduate work to be made up.

7. To be eligible for a renewal grant, the student must write a letter requesting consideration for the grant and must be certain that a transcript of the last work done by him under the last grant of the Committee has been sent to the office of the Executive Secretary. For a renewal grant the student is not required to file a complete new application, but only the letter, supplementary transcript, and questionnaire form referred to above.

8. Students who are eligible to receive G. I. Scholarship Aid or Rehabilitation Aid may not receive State Scholarship Aid during the period of eligibility for G. I. Scholarship Aid or Rehabilitation Aid.

II. The Grants:

1. Each grant will be planned to compensate the student for the increased costs of tuition and travel necessary to secure graduate or professional instruction, not provided by a publicly supported institution for Negroes in Texas, in an out-of-State school.

2. In determining the amount of the grant, the Committee will include the following:

a. Actual tuition charged the student by the out-of-State institution, but not to exceed $100 for a semester (except that in approved medical institutions the tui-

tion may be $150 for the semester), less in each case $25 per semester, the tuition charged residents in State supported Texas institutions.

b. For the Long Session the cost of one round trip, at 3¢ per mile, by the shortest rail route from the student's home to the location of the approved institution, less the round trip cost at the same rate from the student's home to Prairie View University will be provided.

c. The amount of travel grant to be allowed Summer School students will be determined by the length of time to be devoted to study.

d. An addition of not to exceed 10 per cent of the allowance made on the foregoing bases, to cover incidental increased expense.

(Each applicant should note that the grants cannot take into account other phases of expense than those mentioned.)

3. All grants will be paid to the recipients in the following manner:

a. A State warrant payable to the student, in an amount determined by one-half the travel plus the tuition for the first semester or term (each as allowed for in the grant) with a proportionate addition as provided in 2-d above, will be forwarded to the chief financial officer of the institution approved for the student, to be delivered to the student on completion of registration.

b. In the same way, warrants similarly covering the allowance for tuition for the subsequent semesters or terms will be forwarded to the financial officer of the institution just prior to the tuition payment periods.

[fol. 641a] c. A final warrant covering the return travel cost will be sent to the financial officer for delivery to the student just prior to the close of the session or other approved period of study.

(Those who receive grants should note that no part of the grant can be made available to them until they have reached the institution and completed registration.)

III.

1. Students who receive grants from this Committee will be required to carry a normal schedule as students. They may accept any scholarship or employment from the institution they attend, to which their merit may entitle them, without reduction of the grant, provided the duties incident to such scholarship or employment do not prevent registration for and satisfactory completion of a normal schedule of work.

2. Any grant made by this Committee will be terminated after any report period in which it appears that the student is not succeeding in his studies.

[fol. 642] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 643] AGREEMENT OF COUNSEL

We hereby agree that the foregoing pages numbered 1-641, inclusive, (noting that through typist's error pages 357-366 were skipped in numbering), constitute a full, true and correct transcript of all of the testimony in Question and Answer Form admitted in evidence by the Court upon the trial of Cause No. 74,945, styled Heman Marion Sweatt, Relator, vs. Theophilus Shickel Painter, et al, Respondents, in the 126th Judicial District Court of Travis County, Texas.

We further agree as to the documentary evidence admitted on the trial that this Volume I of the Statement of Facts, numbered pages 1-641, inclusive, also contains copies of Respondents' Exhibits Numbers 1, 2, 3, 7, 13, and copy of Relator's Exhibit No. 1; and also contains either original or photostatic copies of Respondents' Exhibits Numbers 6 and 14, and original or photostatic copies of Relator's Exhibits Numbers 2, 3, 4, 5, 6, 8 and 9.

We further agree that in Volume II of this Statement of Facts and accompanying same and being a part hereof, are contained original or photostatic copies of Respondents' Exhibits Numbers 4, 5, 6, 8, 9, 10, 11, 12, 15 and 16, and of Relator's Exhibit No. 7; and that Exhibits A, B, C, D, E, F, G, H, I, J, in original form accompany this Statement of Facts not bound in Volume I or II, and are a part hereof.

We further agree that this Volume I of the Statement of Facts contains all objections to the admission or exclusion of testimony, the rulings of the Court thereon, and the [fols. 644-647] exceptions reserved thereto.

And we further agree that this record shall be filed as the Statement of Facts and Bills of Exception (except such other and further Bills of Exception as may be filed separately) in this cause.

Dated this 7 day of July, A.D. 1947.

Price Daniel, Attorney General of Texas, Jackson Littleton, Assistant Attorney General of Texas, Joe R. Greenhill, Assistant Attorney General of Texas, Counsel for Respondents; W. J. Durham, Thurgood Marshall, James M. Nabrit, Jr., E. B. Bunkley, Jr., Counsel for Relator.

[fol. 648] CAPTION

THE STATE OF TEXAS,
County of Travis:

At a term of the 126th Judicial District Court of Travis County, Texas, begun and holden at Austin on the 17th day of March, A. D. 1947, before the Hon. Roy C. Archer, Judge thereof presiding, and which said term of Court, by order duly entered on the 14th day of June, 1947, was extended until and including the 1st day of July, 1947, and which said term, as so extended, was by order duly entered on said date, finally adjourned, the following numbered and entitled suit came on for trial, to-wit:

No. 74,945

HEMAN MARION SWEATT

vs.

THEOPHILUS SHICKEL PAINTER, et al.

[fol. 649] IN DISTRICT COURT OF TRAVIS COUNTY

APPLICATION FOR TRANSCRIPT—Filed May 29, 1947

Law Offices

W. J. Durham, 2419 San Jacinto Street, P. O. Box 641, Dallas 1, Texas

W. J. Durham, Phone: Central 5236, District Clerk, Austin, Texas; C. B. Bunkley, Jr., Phone: Riverside 1011.

May 27, 1947.

#74945

In Re: HEMAN MARION SWEATT, vs. PAINTER, et al.

DEAR SIR:

Will you please prepare transcript in the above case and include therein the following pleadings:

1. Relator's Original Application or Petition for Writ of Mandamus.

2. Relator's Second Supplemental Petition.

3. Relator's Third Supplemental Petition.

4. Respondents' First Amended Answer.

[fol. 649a] 5. Respondents' First Supplemental Answer.

6. Respondents' Suggestion of Want of Parties.

7. Respondents' Motion to Strike Stipulated Facts.

8. Stipulation of Facts.

9. Relator's Answer to Respondents' Motion to strike Stipulated Facts.

10. Judgment of the Court.

11. Appeal Bond.

12. Certificate of Cost and etc.

This notice is given under and by virtue of Rule 376 of the Texas Rules of Civil Procedure.

We ask that the same be prepared under your hand and seal of the Court for transmission to the Court of Civil

Appeals for the Third Supreme Judicial District of Texas, sitting at Austin.

I am respectfully yours, W. J. Durham

This is to certify that I have this day mailed to the Honorable Price Daniels, Attorney General for the State of Texas and the Attorney of Record for Respondents at Austin, Texas a true copy of the Precipe.

W. J. Durham.

[File endorsement omitted.]

[fol. 650] In District Court of Travis County

Request for Additional Instruments to Be Included in the Transcript—Filed June 18, 1947

Office of the Attorney General, Austin, Texas

June 17, 1947.

The District Clerk, Travis County, Austin, Texas.

No. 74945

In re: Sweatt v. Painter, et al.

Dear Sir:

Please include the following in the transcript in the above styled cause:

1. Judgment of June 26, 1946.

2. State's Motion, filed December 17, 1946, showing availability of Law School.

3. Judgment of December 17, 1946.

4. Orders (Mandate) of the Court of Civil Appeals.

(a) granting permission to substitute parties.

(b) setting aside trial court's judgment and remanding the cause for further proceedings.

5. Order concerning fact stipulations, dated on or about June 17, 1947.

Yours very truly, Price Daniel, Attorney General of Texas, by Joe R. Greenhill, Executive Assistant.

[fol. 651] [File endorsement omitted.]

[fol. 652] IN THE 126TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS

No. 74,945

HEMAN MARION SWEATT

VS.

THEOPHILUS SHICKEL PAINTER, CHARLES TILFORD McCORMICK, Edward Jackson Matthews, Board of Regents; Dudley K. Woodward, Jr., Orville Bullington, E. E. Kirkpatrick, W. H. Scherer, W. Scott Schreiner, D. M. Strickland, C. O. Terrell, Edward B. Tucker and David M. Warren

APPLICATION FOR WRIT OF MANDAMUS—Filed May 16, 1946

To the Honorable Judge of Said Court:

Now Comes, Heman Marion Sweatt, hereinafter called Relator, who resides at 3402 Delano Street, Houston, Harris County, Texas, complaining of Theophilus Shickel Painter, Charles Tilford McCormick, and Edward Jackson Matthews, who resides in Austin, Travis County, Texas; Dudley K. Woodward, who resides in Dallas, Dallas County, Texas; Orville Bullington, who resides in Wichita Falls, Wichita County, Texas; E. E. Kirkpatrick, who resides in Brownwood, Brown County, Texas; W. H. Scherer, who resides in Houston, Harris County, Texas; W. Scott Schreiner, who resides in Kerrville, Kerr County, Texas; D. M. Strickland, who resides in Mission, Hidalgo County, Texas; C. O. Terrell, who resides in Ft. Worth, Tarrant County, Texas, Edward B. Tucker, who resides in Nacogdoches, Nacogdoches County, Texas; and David M.

Warren, who resides in Panhandle, Carson County, Texas, the Respondents, and each of them, alleges and states:

[fol. 653] 1

That relator, Heman Marion Sweatt, is a resident and citizen of the United States, and of the State of Texas, County of Harris, and City of Houston; that relator is desirous of studying law in the School of Law of the University of Texas, which is supported and maintained by the tax payers of the State of Texas, for the purpose of preparing himself to practice law in the State of Texas, and to render public service therein; that he has been arbitrarily refused admission to the School of Law of the University of Texas; that on the 26th day of February, 1946, relator duly made application for admission to the first year class of the School of Law of the University of Texas; that at the time said application for admission to the School of Law of the University of Texas was made by relator, he then possessed and still possesses all the scholastic, moral and other lawful qualifications prescribed by the Constitution and Statutes of the State of Texas, by the Board of Regents of the University of Texas, 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.

2

That the relator, Heman Marion Sweatt, was at the time of the making of the aforementioned application for admission to the School of Law, of the University of Texas, and still is ready, willing and able to pay all lawful Registration fees and other regular fees and charges required of first year students in the School of Law of the University of Texas, and conform to all lawful uniformed rules and regulations, established by lawful authority for admission to the first year class of the School of Law of the University of Texas; [fol. 654] that relator's application was arbitrarily and illegally rejected pursuant to a policy custom or usage denying qualified Negro applicants to the equal protection of the laws, solely on the ground of his race and color.

3

That the School of Law of the University of Texas is the only law school in the State, maintained by the State and under its control, and is the only law school in Texas that relator is qualified to attend. Relator desires that he be admitted in the first year class of the School of Law of the University of Texas at the next regular registration period after this cause has been heard and determined, and upon his paying the requisite uniform fees and conforming to the lawful, uniform rules and regulations for admission to such class.

4

That the respondents, Dudley K. Woodward, Orville Bullington, W. E. Kirkpatrick, W. H. Scherer, W. Scott Schreiner, D. M. Strickland, C. O. Terrell, Edward B. Tucker and David M. Warren, Board of Regents of the University of Texas, is an administrative agency of the State and excercises 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 Texas; the respondent, Theophilus Shickel Painter, is the duly appointed and qualified 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 [fol. 655]schools of the said University; the respondent, Charles Tilford McCormick, 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 relator; the respondent, Edward Jackson Matthews, is the Registrar and Dean of Admission, whose duty is to pass on the eligibility of applicants who seek to enroll as students therein, including your relator; that admission to the School of Law is under the control of said Registrar and Dean of Admission; all respondents 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

Texas and there is no other law school maintained by the public funds of the State where relator can study law and procedures to the same extent and on an equal level of scholarship and intensity as in the School of Law of the University of Texas; the arbitrary and illegal refusal of respondents, Board of Regents, Theophilus Shickel Painter, Charles Tilford McCormick and Edward Jackson Matthews, to admit relator to the first year class of the said law school solely on the ground of race and color, inflicts upon your relator an irreparable injury and will place him at a distinct disadvantage at the bar of Texas and in the public service of the foresaid State with persons who have had the benefit of the unique preparation in Texas law and procedure offered to white qualified applicants in the School of Law of the University of Texas.

[fol. 656] 6

That certain requirements for admission to the first year class of the School of Law of the University of Texas have been prescribed by the Board of Regents or other administrative officials of the University of Texas; that said requirements prescribed by the aforesaid Board of Regents or other administrative officials of the University of Texas, provides as follows: Applicants for admission must be at least nineteen (19) years of age; must furnish satisfactory evidence of good moral character; said requirements further provide that an applicant holding a bachelors degree from the University of Texas or from any other acceptable institution is entitled to full admission to the School of Law of the University of Texas. Relator is over nineteen (19) years of age, has furnished Registrar and Dean of Admission proof of his good moral character, and has completed the full four (4) year college course at Wiley College, an accredited college by the Southern Association of Colleges and Secondary Schools of the Southern States and possesses a bachelors degree from the aforementioned Wiley College; that said relator has completed twelve (12) semester hours of Graduate work at the University of Michigan, Ann Arbor, Michigan, and maintained an average of B-plus or more, while attending the University of Michigan; that relator has in all particulars met the qualifications necessary for admittance to the School of Law of the University of Texas, which fact respondents

have admitted; relator is ready, willing and able to pay all lawful charges and tuition, requisite to admission to the first year class of the School of Law, and is ready, willing, and able to fulfill all other requisites for admission to the School of Law of the University of Texas.

[fol. 657] 7

On the — day of ——, 1946, relator applied for admission to the School of Law of the University of Texas and complied with all the rules and regulations entitling him to admission by filing with the proper officials of the University an official transcript of his scholastic record; said transcript was duly examined and inspected by the President, Dean of the School of Law and Registrar and Dean of Admission of the University; respondents aforementioned, and found to be an official transcript as aforesaid entitling him to admission to the School of Law of the University; relator 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 Texas.

8

Respondents 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 Texas 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

That on the 16th day of March, 1946, the respondent, Theophilus Shickel Painter, refused admission to the Law School of the University of Texas to relator, although admitting that relator was duly qualified for admission to the [fol. 658] School of Law at the University of Texas, save and except for the fact that he is a Negro; that relator was denied admission to the school of law at the University

of Texas on the ground that there is a long continued policy of segregating race in educational institutions in the State of Texas; that relator was denied admission to the School of Law of the University of Texas solely because of his race and color.

10

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

Wherefore, Relator being otherwise remediless, prays this Honorable Court to issue a Writ of Mandamus requiring and compelling said Respondents to comply with their statutory duty in the premises and admit the relator in the School of Law of the said University of Texas and have such other and further relief as may be just and proper.

(S.) W. J. Durham, Attorneys for Relator.

Duly sworn to by Heman Marion Sweatt. Jurat omitted in printing.

[fol. 659] [File endorsement omitted.]

[fol. 660] IN THE 126TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS

[Title omitted]

RELATOR'S SECOND SUPPLEMENTAL PETITION—Filed May 8, 1947

To the Honorable Judge of Said Court:

Comes now, Heman Marion Sweatt, Relator in the above entitled and numbered cause and files this his Second Supplemental Petition and for such second supplemental petition, he alleges as follows:

I

1. Relator specially excepts to the following portion of allegations in Respondent's First Amended Answer, begin-

ning at Line 16 with the word "And" and reading as follows:

> "And arranged for instructor's classes, library and other facilities"

for the reason that the same does not set out what arrangements were made with said instructors, what classes were arranged for, if any, what library was established, if any, [fol. 661] and what other facilities were acquired and established, if any. The same is vague and indefinite and is the conclusion of the pleader and does not inform the relator what evidence will be required to meet such defense and relator can not prepare a defense to said vague and indefinite allegation and respondent should be required to specifically plead what arrangements had been made for instructors, if any, and what courses had been established, if any, and what other facilities had been provided for, if any.

Wherefore, Relator prays that the respondent be required to specifically set out said alleged arrangement for instructors, the classes alleged to have been provided, the library alleged to have been established and what such other alleged facilities were if any.

2. Relator further specially excepts to the following portion of the respondent's First Amended Answer, beginning with the word "Relator" in line 2 of the second section of Allegation 2, which reads as follows:

> "Relator had notice of such law school and arrangement."

for the reason that respondents do not allege whether such notice was verbal or in writing, by whom such notice was sent, how such notice was sent nor the contents of such notice, and relator can not determine from said pleading what proof will be required to meet said purported allegation of fact, that is pleaded as a defense and relator is unable to prepare to meet said purported allegation of fact because said allegations is indefinite and does not give relator sufficient information to prepare by testimony to meet such alleged defense, and of this special exception [fol. 662] relator prays judgment of the Court.

3. Relator further specially excepts to the following por-

tion of respondents' first amended answer, beginning at line 7 with the word "And", section four (4) of Allegation 2, and reads as follows:

> "And adequate text and reference library was installed."

for the reason that the same is a conclusion of the pleader that the library established, if any, was an adequate library and the respondents do not allege the list of books, if any, that was installed in said alleged library. That the respondents should be required to plead specifically a list of books and periodicals, if any, installed in said library in order that relator may adequately prepare his defense to said purported allegation of fact pleaded herein as a defense and of this special exception relator prays that the Court sustain the same, and that the respondent be required to set out specifically the list of books alleged to have been installed in said reference library.

4. Relator further specially excepts to the following portion of respondents' first amended answer beginning at Line 11 with the word "For" in section 4 of allegation Two (2) which reads as follows:

> "For permanent use, approximately ten thousand carefully selected books were ordered which together with those already in the school are sufficient to satisfy the standards of the American Bar Association and the American Association of Law Schools."

[fol. 663] for the reason that said allegation that said books were sufficient to satisfy the standards of the American Bar Association and the Association of American Law Schools is a mere conclusion of the pleader and the respondents do not set out the list of books claimed to have been carefully selected, it does not say from whom said books were ordered and respondents do not allege the standards of the American Bar Association or the standards of the Association of American Law Schools (American Association of Law Schools), and the relator can not determine what standards respondents claim to have satisfied and all of said matters are alleged as a defense in this case and relator can not determine what type and character of evidence he will be required to procure to meet said alleged

defense, and of this special exception prays that the court sustain, and that the respondents be required to specifically plead the list of books claimed to have been selected, the dates said books were ordered and from whom said books were ordered together with the price thereof, and he further prays that the *p*respondent be required to list supplies and specifically the books claimed to have already been in the school, and he specifically prays that respondents be required to set out the standards of the American Bar Association which respondents alleged they have satisfied, and the rules and standards of the Association of American Law Schools (American Association of Law School) which respondents alleged that they have satisfied in order that relator might proper*t*y prepare his defense.

II

Comes now, the relator, Heman Marion Sweatt, herein without waiving any of his foregoing special exceptions but [fol. 664] still insisting upon the same, denies each and every allegation contained in respondents' second amended answer and demands strict proof of the same.

III

And specially pleading herein, Relator respectfully shows: On December 17, 1946, judgment was entered denying the writ of Mandamus sought by Relator. Relator excepted to said judgment and perfected an appeal of this cause to the Court of Civil Appeals for the Third Supreme Judicial District of Texas. Thereupon the respondents (as appellees) filed a motion to remand the cause without decision. The brief filed by respondents (as appellees) prayed that the Court of Civil Appeals "affirm the constitutionality of providing equal opportunities in separate schools, finding that a reasonable time therefor is allowed, and this cause be remanded to the District Court without final decision and without prejudice to either party." On March 26, 1947, the Court of Civil Appeals entered an order as follows: "the motion for substitution of appellees was granted; appellees motion to remand was dismissed; and the trial court's judgment was set aside and the cause remanded generally to the trial court, without prejudice to the rights of either party, by agreement of the parties in open court this date. The costs of appeal are assessed against appellees. On

April — 1947, respondents filed their first amended original answer.

1. The respondents' have not established any law school other than the University of Texas School of Law that satisfies and meets the requirements and standards of the Association of American Law Schools, and relator further specially pleading herein states that the University of Texas [fol. 665] School of Law is the only law school now existing in the State of Texas and operated by public funds which satisfies the requirements, standards and rules of the Association of American Law Schools, and that the University of Texas School of Law has held and now holds membership in the Association of American Law Schools and has held said membership since on or about the year 1907, and that said law school is the only law school in the State of Texas operated by public funds which holds a membership in the Association of American Law Schools.

2. Administrative officers of the public schools system of Texas including the respondents while purporting to act under the policy, custom and usage of the State of Texas of requiring separation of white and Negro students have denied Relator and other qualified Negro students educational facilities equal to those afforded white students with similar qualifications solely because of race and color. At the time relator made his application for admission to the Law School of the University of Texas and at the time of the filing of this suit there was no state supported law school except the one to which he applied. The continued refusal of Respondents to admit the Relator *of* the Law School of the University of Texas is in violation of the Fourteenth Amendment to the Constitution of the United States. Insofar as Respondents claim to be acting under authority of the Constitution and laws of the State of Texas their continued refusal to admit the Relator to the Law School of the University of Texas is none the less in direct violation of the Fourteenth Amendment to the Constitution of the United States.

3. The State of Texas acting through its administrative [fol. 666] agents including Respondents has refused to admit qualified Negro students to the University of Texas or any of the other Colleges and Universities maintained by the State of Texas except Prairie View State Normal and

Industrial College, the name of which was changed to Prairie View University in 1945 by S. B. No. 228 which stated: "There is no adequate educational facilities for the education of the Colored population of this State." Prairie View has never offered to Negroes education equal or equivalent to that offered in any of the many universities and colleges maintained by the State of Texas for the exclusive use of all qualified students other than those of the Negro race. The quantity and quality of education offered at Prairie View is not and never has been equal to that offered at any of the other state universities and colleges in Texas in physical plant, facilities, curriculum, faculty, library, accreditation, available funds or any of the other recognized standards of comparison of colleges and secondary schools. The schools authorized by Senate Bill No. 140 Ch. 29, p. 36; Sect. 1947 have not been established.

4. Action of the Respondents in continuing to refuse to admit Relator to the Law School of the University of Texas solely because of his race and color pursuant to the Constitution and laws of Texas requiring segregation of white and Negro students is in direct violation of the Fourteenth Amendment to the United States Constitution. Insofar as the Constitution and laws of Texas relied on by Respondent prohibit Relator from attending Law School of University of Texas because of his race and color such constitutional and statutory provisions of the State of Texas as [fol. 667] applied to Relator are in direct violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, Relator prays herein for the same relief as prayed for in his original petition and he prays for such other and further relief in law and in equity to which he may be entitled to.

Thurgood Marshall, J. M. Nabrit and W. J. Durham, Attorneys for Relator, Heman Marion Sweatt, by (S.) W. J. Durham.

This is to certify that I have this day mailed a true and correct copy of this petition to the Honorable Price Daniels,

Attorney General of Texas and the Attorney for Respondents, whose address is Austin, Texas.

Dated this the 7th day of May, 1947.

Thurgood Marshall, J. M. Nabrit and W. J. Durham
by (S.) W. J. Durham.

[File endorsement omitted.]

[fol. 668] In the 126th District Court of Travis County, Texas

[Title omitted]

Respondents' First Amended Original Answer—Filed May 1, 1947

To the Honorable Judge of Said Court:

Come Now, Theophilus Shickel Painter, Charles Tilford McCormick, Edward Jackson Mathews, Dudley K. Woodward, Jr., E. E. Kirkpatrick, W. Scott Schreiner, C. O. Terrell, Edward B. Tucker, David M. Warren, William E. Darden, Mrs. Margaret Batts Tobin, and James W. Rockwell, Respondents in the above entitled and numbered cause and file this their first amended original answer to Relator's complaint. Heretofore, an answer was filed by the Respondents, an interlocutory order was entered after the first hearing hereof on June 17, 1946, and in a second hearing on December 17, 1946, judgment was entered denying the writ of mandamus sought by Relator. The answer, order and judgment were related to and based upon the provisions of and actions under Senate Bill No. 228, Acts 49th Legislature, 1945, c. 308, p. 506. To said judgment [fol. 669] Relator duly excepted and perfected an appeal of this cause to the Court of Civil Appeals for the Third Supreme Judicial District of Texas. Subsequent to said judgment and during the pendency of said appeal the 50th Legislature, Regular Session, enacted Senate Bill No. 140, Acts 1947, repealing the above cited Senate Bill No. 228, thereby changing the law and facts pertinent to the issues herein. Thereupon the Respondents (as Appellees) moved the Court of Civil Appeals to remand this cause without decision and without prejudice in order that it might be considered under the newly enacted legislation and the new facts

and material resulting therefrom. To this the Relator (as Appellant) agreed and said judgment of December 17, 1946, was set aside and the cause was remanded to this Court without prejudice to either party by mandate dated March 27, 1946. Respondents now, therefore, with leave of the Court, file this their First Amended Original Answer in lieu of their Original Answer, and would respectfully show to the Court:

I

Respondents deny each and all of the allegations contained in Relator's Original Petition, and demand strict proof of the same, and of this they put themselves upon the country.

II

For further answer herein, the Respondents would respectfully show to the Court:

1. The Constitution and laws of the State of Texas require equal protection of the law and equal educational opportuni- [fol. 670] ties for all qualified persons but provide for separate educational institutions for White and Negro students. The Respondents therefore deny that their refusal to admit Relator was arbitrarily or illegal or in violation of the Constitutions of the United States and the State of Texas, since equal opportunities were provided for Relator in another State supported law school as hereinafter shown.

2. At the time the Relator made application for admission to the Law School of the University of Texas, and at the time of the institution of this suit, there was in effect a law providing for the establishment of a course in law for the colored youths of Texas by the Board of Directors of the Agricultural and Mechanical College at the Prairie View University at Prairie View, Texas, said law being Senate Bill 228, Acts of the 49th Legislature, 1945. Said Prairie View University was originally established in the year 1876 as an industrial and mechanical college for the colored youths of Texas, and since that date had been enlarged in scope to include other subjects as need therefor arose. Pursuant to the provisions of the cited Senate Bill No. 228, the Board of Directors of the Agricultural and Mechanical College established at Houston, Texas, a law school as a branch of Prairie View University, and arranged for instructors, courses, library, and other facilities so as to offer

to negro citizens law courses substantially equivalent to those offered at the University of Texas. Such school was open for registration and instruction on February 1, 1947. Relator had notice of such law school and arrangements, but failed and refused to avail himself of the courses in law [fol. 671] then offered, and failed to present himself or communicate in any way with any of the officials for the purpose of being registered and securing the legal training allegedly desired by him.

3. On or about March 3, 1947, the 50th Legislature of Texas enacted Senate Bill No. 140, ch. 29, p. 36, Acts 1947, providing for the establishment of a university of the first class for the negroes of Texas, to be organized in two divisions; the first to be styled "The Texas State University for Negroes," to be located at Houston, Texas, and the second to be styled "The Prairie View Agricultural and Mechanical College of Texas," located at Prairie View, Texas. Section 11 of said bill authorized and required the Respondents herein to establish immediately a separate school of law for negroes at Austin, Texas, to be known as The School of Law of the Texas State University for Negroes, and therein to provide instruction in law equivalent to the instruction being offered in law at the University of Texas. The Board of Regents of the University of Texas (Respondents herein) were constituted the governing board of such law school until its transfer to the control of the Texas State University for Negroes, and there was appropriated an adequate sum in the amount of $100,000.00 to be expended by the Respondents in the establishment and operation of said law school.

4. Pursuant to said Senate Bill No. 140, Acts 50th Legislature, 1947, and particularly Section 11 thereof, the Respondents immediately established a separate law school for negroes in Austin, Texas, in a suitable building at 104 East 13th Street, adjoining the grounds of the State Capitol building and between the Capitol and the campus [fol. 672] of the University of Texas. An adequate text and reference library was installed, and the Texas State Library, including the library of the Supreme Court of Texas, located in the State Capitol directly opposite the newly created school was made available for students of said institution. For permanent use, approximately 10,000 carefully selected law books were ordered, which, together with

those already in the school, are sufficient to satisfy the standards of the American Bar Association and the American Association of Law Schools. Courses of instruction were set up identical with those offered in the University of Texas School of Law, and the identical professors of the University of Texas were assigned to instruct said courses. The Dean of the University of Texas School of Law and the Registrar were assigned to serve in the same capacities for the new school, so that with the same courses and the same faculty, the School of Law of the Texas State University for Negroes offers education in law equal to that offered by the University of Texas. The requirements for admission, fees, class work, length of semesters, standards of work, and other related features are the same as those of the School of Law of the University of Texas, the same provisions and catalog being adopted for the new school. Notice of all the foregoing was circulated by the Respondents in a bulletin and in the public press. The law school for negroes was opened for registration and instruction on March 10, 1947, when the school and all persons connected therewith were and still are ready, willing and able to give equal instruction and opportunities to students in law and procedures.

5. On or about March 3, 1947, the Relator was personally notified by letter of the establishment of said school, of [fol. 673] its immediate availability to him, of the nature of the school, that he was eligible for admission, and that his application for legal training was accepted by said school, but the Relator, as of the date hereof, has not presented himself nor communicated in any way with any of the persons in charge of said school. Relator did not make reply to the official notice from the Registrar as requested in such notice.

6. By reason of the foregoing there is now available, and there was available to the Relator on March 10, 1947, legal training and courses in law equivalent to those in the School of Law of the University of Texas, and the Relator could have commenced the study of law to the same extent and on an equal level of scholarship and intensity as in the School of Law of the University of Texas, all of which Relator declined to do. The Respondents, therefore, specifically deny the allegation that the School of Law of the University of Texas is the only State law school that the Relator

is qualified to attend, and further deny the allegation that there is no other law school maintained by public funds where the Relator can study law and procedures to the same extent and on an equal level as in the School of Law of the University of Texas.

Wherefore, premises considered, Respondents pray that the writ of mandamus sought herein be denied, and that the Respondents go hence with their costs without day.

(S.) Price Daniel, Attorney General of Texas. (S.) Jackson Littleton, Assistant Attorney General. [fol. 674] (S.) Joe Greenhill, Assistant Attorney General.

Copies of the foregoing First Amended Original Answer of the Respondents have been mailed to W. J. Durham, Attorney for the Relator, whose address is P. O. Box 641, 2419 San Jacinto Street, Dallas, Texas.

[File endorsement omitted.]

[fol. 675] In the 126th District Court of Travis County, Texas

[Title omitted]

Respondents' First Supplemental Answer—Filed May 12, 1947

To the Honorable Judge of Said Court:

Come now, Theophilus Shickel Painter, Charles Tilford McCormick, Edward Jackson Mathews, Dudley K. Woodward, Jr., E. E. Kirkpatrick, W. Scott Schreiner, C. O. Terrell, Edward B. Tucker, David M. Warren, William E. Darden, Mrs. Margaret Batts Tobin, and James W. Rockwell, Respondents in the above entitled and numbered cause, and file this their first supplemental answer, answering the Relator's second supplemental petition filed herein, and would respectfully show:

I

1. Respondents specifically except to the allegation of Relator contained in Section III, 2 of the Relator's second

supplemental petition wherein it is alleged that the Respondents have denied to Relator "and other qualified negro [fol. 676] students" educational facilities equal to those afforded white students with similar qualifications, because this suit was brought by Relator as an individual, and Relator did not assume to act as a representative of other negroes, and said allegation is therefore improperly included, and is prejudicial in a suit involving solely the individual rights of the Relator, and Respondents say that said allegation, if true, (which is not admitted but denied) should have no bearing on the Relator's individual rights.

Wherefore, Respondents pray that the Court sustain this exception, and that the Relator be required to omit or strike the allegation as to other negroes, and the policy of the Respondents toward them.

2. Respondents specifically except to allegation III, 3, of the Relator's Second Supplemental Petition wherein it is alleged as follows: "The quantity and quality of education offered at Prairie View is not and never has been equal to that offered at any of the other state universities and colleges in Texas in physical plant, facilities, curriculum, faculty, library accreditation, available funds or any of the other recognized standards of comparison of colleges and secondary schools." and Respondents say that said allegation is not germane to the issues of this cause, is general, vague and indefinite, and is prejudicial to the Respondents in a determination of the issues drawn by the pleadings, and Respondents say that said allegation, if true, (which is not admitted but denied) should have no bearing in the determination of this suit involving solely the individual rights of the Relator.

Wherefore, Respondents pray that the Court sustain this [fol. 677] exception, and that the Relator be required to omit or strike said allegation from said second supplemental petition.

II

Further answering the Second Supplemental Petition of the Relator, the Respondents herein would respectfully show:

1. Respondents specifically deny the allegation contained in Paragraph III, 2, of the Relator's Second Supplemental Petition wherein it is alleged that it has been the policy,

custom and usage of the Respondents to require separation of the white and negro students, and have denied to Relator and other qualified negro students educational facilities equal to those offered to white students, and Respondents say that the Respondents denial of admission to the Law School of the University of Texas to Relator does not constitute a policy or custom, and further say that the Relator's application for admission to the University of Texas Law School is the first such application ever to have been made, and that the Respondents have not denied to "other qualified negro students" admission to the Law School of the University of Texas, since no such negro students have applied for admission thereto.

2. Respondents specifically deny those allegations contained in Paragraph III, 2 and 4, of Relator's Second Supplemental Petition, wherein it is alleged that the Respondents denial to the Relator admission to the Law School of the University of Texas, violated the 14th Amendment of the Constitution of the United States, and Respondents show that such amendment does not require that educational facilities be provided for white and negro students in the same school; that when a demand by a negro student [fol. 678] for a particular cou-se or facility is made for the first time, the State has the constitutional right to provide within a reasonable time separate courses or facilities, and Respondents further show, as previously alleged, that separate courses and facilities have been provided for Relator, and that such provision does not constitute any violation of the 14th Amendment of the Constitution of the United States.

Wherefore, Respondents pray that the writ of mandamus sought herein be denied, and that Respondents go hence with their costs without day.

(S.) Price Daniel, Attorney General of Texas; Jackson Littleton, Assistant Attorney General; Joe R. Greenhill, Assistant Attorney General, Attorneys for Respondents.

[File endorsement omitted.]

[fol. 679] IN THE 126TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS

[Title omitted]

RELATOR'S THIRD SUPPLEMENTAL PETITION—Filed May 12, 1947

To the Honorable Judge of Said Court:

Come, now, Heman Mation Sweatt, Relator herein and with leave of the court first obtained files this his third supplemental petition and for such supplemental petition herein alleges;

I

Relator specially excepts to the following portions of allegation 2 section 2 of respondent's first supplemental answer which reads as follows: "that separate courses and facilities have been provided for relator," for the reason that said allegation or said statement in said allegation read and considered in connection with all other alleged matters of fact set out therein does not inform relator as to the courses alleged to have been provided and it does not inform the relator what facilities were provided if any and it does not inform this relator when and where said courses and facilities are alleged to have been provided and this relator cannot determine from said allegation and from any other portion of said supplemental answer [fol. 680] what said alleged courses were, and what said alleged facilities were, where said alleged facilities and courses were provided and when said alleged courses and facilities were provided and this relator is unable to determine from said allegation what evidence will be required to meet said vague and indefinite allegation and of this special exception relator prays that respondents be required to plead specifically the alleged courses provided and the alleged facilities provided and the time and place where said alleged facilities and courses were provided if any.

II

Comes now, the relator, Heman Marion Sweatt, herein, without waiving any of his foregoing special exceptions but still insisting upon the same and denies each and every

allegation contained in respondents first supplemental amended original answer and demands proof of same.

And specially pleading herein, relator respectfully shows: that the respondents have pleaded the statutes and laws of Texas; and have alleged that these statutes and laws require separation of white and negro students; and respondents have further alleged that these statutes and laws require educational facilities for negroes equal to those provided for whites. In so far as respondents rely on these statutes and laws as a basis for a denial of relator's application for admission to the University of Texas School of Law, these statutes and laws and this action of respondents are the policy, custom and usage of respondents.

And further specially pleading herein relator respectfully shows that, he was compelled to go out of the State of Texas, to-wit, in 1937, to the University of Michigan [fol. 681] for the purpose of doing graduate study in Medical Bacteriology and Imm-nology, and Preventative Medicine which are offered to white students at the University of Texas but which were not offered at Prairie View University, the only school of higher learning for negroes in Texas, supported by public funds.

And relator further alleges that Prairie View University did not in 1937 offer equal educational facilities to him which were available to whites at that time at the University of Texas and other state supported schools in Texas, nor, does it now offer equal educational facilities to him which are now available to whites at the University of Texas and other state supported schools for whites in Texas.

Wherefore, relator prays for the same relief contained in his prayer in his original petition and he prays for such other relief special and general in law and in equity to which he may be entitled.

W. J. Durham, Attorney for Relator, Heman Marion Sweatt.

[fol. 682] In the 126th District Court, Travis County, Texas

[Title omitted]

Suggestion—Want of Parties—Filed June 17, 1946

Come now the respondents in the above styled and numbered cause, and make known to the court that this court

can not proceed to trial and final judgment in this case for the want of an indispensable party—that is to say, the State of Texas as a respondent in this case, in that the suit while nominally against the respondents herein is in substance and legal effect a suit against the State of Texas for this: That the Board of Regents of the University of Texas constitutes and is a governmental agency of the State of Texas, the property of every character and description, and every incidental right therein, while legally vested in the Board or Regents, nevertheless is in law the property of the State of Texas, and any relief whatever that might possibly be granted to relator herein against the respondents now before the court would in reality in essence and in law be against the State of Texas, with respect to a governmental function by it, and as such can not be lawfully rendered by this court in the absence of the State of Texas, not now a party, and no permission to relator to institute and maintain this suit against the State has been given in any manner whatsoever.

[fol. 683] In this connection the respondents would show that the matter here suggested is not a defense that could in any event be waived by these respondents, or by the Attorney General representing them, and no intention of these respondents, nor of the Attorney General representing them, has been evidenced, nor could be evidenced by failure to plead the matter of want of parties here set forth in the formal pleadings, it being sufficient that such matter be called to the court's attention.

Respondents respectfully submit that this cause should, therefore, be dismissed and stricken from the docket of this court, in support of which they call the court's attention to the following authorities:

League v. DeYoung, 2 Tex. 497;
San Antonion Independent School District v. State Board of Education, 108 S. W. (2) 445;
McKamey v. Aiken, 118 S. W. (2) 482;
Railroad Commission v. Dyer, 144 S. W. (2) 375;
Texas Prison Board v. Cabeen, 159 S. W. (2) 523;
Bryan v. Texas State Board of Education, 163 S. W. (2) 837;
Walsh v. University of Texas, 169 S. W. (2) 993;
Sherman v. Cage, 279 S. W. 508;

State Banking Board v. Winters State Bank, 13 S. W. (2) 391;
Parr v. Dunlap, 26 S. W. (2) 1082;
State Highway Com. v. Tengg, 57 S. W. (2) 929;
Mosheim v. Rollins, 79 S. W. (2) 672;
Watson v. Dodge (Ark.) 63 S. W. (2) 393;
California Securities Co. v. State (Cal.) 295 Pac. 583;
[fol. 684] Ramsey v. Hamilton (Ga.) 182 S. E. 392;
Wetz v. Potter (Okla.) 28 P. (2) 562;
State v. John's (Wash.) 15 P. (2) 693;
Sullivan v. Board of Regents (Wis.) 244 N. W. 242.
Am. Jur., Vol. 45 ss. 92-94.

Respectfully submitted. Grover Sellers, Attorney General of Texas, by (S.) Carlos Ashley, First Assistant Attorney General, by (S.) W. V. Geppert, by (S.) Jackson Littleton, Assistant Attorneys General, Attorneys for Respondents.

[File endorsement omitted.]

[fol. 685] IN THE 126TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS

[Title omitted]

JUDGMENT OF THE COURT—Filed June 26, 1946

On this the 17th day of June, 1946, came on for hearing the petition of the relator, Heman Marion Sweatt, for Writ of Mandamus against the Respondents, Theophilus Shickel Painter, et al., and all parties appeared in person and by and through their attorneys of record and announced ready for said hearing, and all matters of fact as well as of law were submitted to the Court sitting without a jury, and the Court, having heard the pleadings, evidence and argument of counsel, finds as a fact that the relator is a citizen of Texas and of the United States and is above nineteen (19) years of age, and is scholastically qualified to enter the first year law class in the Law School of the University of Texas; that the respondents are administrative agents of the State of Texas; that the respondents are the duly appointed and legal administrative officers of the State of Texas and have [fol. 686] authority to admit qualified applicants to the

Law School of the University of Texas; that relator made his application for admission to the Law School of the University of Texas on the 26th day of February, 1946, and that at the time, he made his application he was scholastically qualified for admission to the first year law class of the University of Texas; that on the 15th day of March, 1946, relator's application was denied solely on account of his race and color.

(1) That under the Constitution and laws of the United States of America and of the State of Texas, the relator, being colored, is entitled to educational advantages and privileges equal to those offered to the white people of the State of Texas.

(2) That the Constitution and laws of the State of Texas provide for the segregation of the white and colored races in educational institutions maintained by the State of Texas; and that such laws are valid and subsisting and must be sustained by this Court unless they clearly and unmistakably deny to the relator his rights under the Constitutions of the United States and of the State of Texas.

(3) The Court further finds that the State of Texas, through its administrative agents and the Legislature of Texas, have provided for courses in law and facilities for teaching the same at the University of Texas for persons of the white or caucasian race, and that no provision has been made for the courses of law and the facilities for teaching the same substantially equivalent to those offered at the University of Texas for persons of African descent and of Negro blood; that an act of the 49th Legislature, being [fol. 687] Senate Bill 228, Chapter 308, page 506, places a mandatory duty upon the officers or agency named therein to provide university courses in law for the relator substantially equivalent to those provided at the University of Texas; and that the constitutional rights of the relator will be amply preserved if such a course in law is established within the State of Texas and made available to relator within a reasonable time from the date hereof.

The Court further finds that the denial of relator's application by respondents was a denial to the relator's equal protection of laws for the reason that no provision has been made for courses in law and facilities for teaching the same

for persons of African descent and of Negro blood at any school within the State of Texas supported by public funds while the courses of law and the facilities for teaching the same have been afforded to persons of the white or caucasian race.

It is therefore ordered that no writ of mandamus issue at this time and that if within six months from the date hereof a course for legal instruction substantially equivalent to that offered at the University of Texas is established and made available to the relator within the State of Texas in an educational institution supported by said State, the writ of mandamus sought herein will be denied, but if such a course of legal instruction is not so established and made available, the writ of mandamus will issue; and it is further ordered that this court retains jurisdiction of this cause; and that this cause be continued upon the docket of this court from term to term; and that at the expiration of said six months' period, towit, on the 17th day of December, 1946, at 10 o'clock a.m., a hearing will be held to determine the then existing facts and whether said Law School has [fol. 688] or has not been established; whereupon the Court will enter its final order herein.

This order made and entered on this the 26th day of June, 1946.

(S.) Roy C. Archer, Judge, 126th Judicial District Court of Travis County, Texas.

[File endorsement omitted.]

[fol. 689] In the 126th District Court of Travis County, Texas

[Title omitted]

Motion Showing Availability of Law School and Requesting Denial of Writ of Mandamus—Filed December 17, 1946

To the Honorable Judge of Said Court:

Come now Theophilus Shickel Painter, Charles Tilford McCormick, Edward Jackson Mathews, Dudley K. Woodward, Jr., Orville Bullington, E. E. Kirkpatrick, W. H. Scherer, W. Scott Schreiner, D. M. Strickland, C. O. Terrell, Edward B. Tucker, and David M. Warren, Respondents in the above entitled and numbered cause, acting herein by

and through Grover Sellers, the duly elected and qualified Attorney General of the State of Texas, and without waiving any pleas or exceptions heretofore filed but still insisting on same, respectfully show to the Court as follows:

I

That heretofore on the 17th day of June, 1946, this cause came on to be heard by this Honorable Court, and the Court [fol. 690] after hearing the evidence and the argument of counsel was of the opinion that if within a period of six months from the date of said hearing the law courses or legal training alleged to be desired by the Relator were made available to the Relator in an institution supported by the State of Texas, the writ of mandamus sought herein should be denied; that it was so ordered and decreed by the Court, and this cause was continued upon the docket of the Court from term to term, and a hearing on this 17th day of December, A. D., 1946, was set.

II

That it was found by the Court that Senate Bill 228, ch. 308, p. 506, Acts of the 49th Legislature, 1945, placed a mandatory duty upon an agency of the State of Texas to provide a law course substantially equivalent to that offered at the University of Texas; and that said act places such duty upon the Board of Directors of the Agricultural and Mechanical College of Texas directing that these courses will be provided by said Board at the Prairie View University.

III

That in compliance with the Court's order and decree, aforesaid, and in compliance with said Senate Bill 228, above cited, the Board of Directors of the Agricultural and Mechanical College of Texas have made available to the Relator, and other applicants for first year courses in law, the legal training alleged to be desired and have provided therefor by a resolution adopted at a meeting properly called and held on the 27th day of November, 1946, a copy [fol. 691] of which resolution is attached hereto as Exhibit "A" and by reference made a part hereof for all purposes.

IV

That the Board of Directors of the Agricultural and Mechanical College, acting within its legal authority so to

do, has included in the foregoing resolution the requirement that the Relator or other applicants for legal training offer themselves to the Registrar at the Prairie View University and present a suitable transcript and a certificate from the Dean of the Law School of the University of Texas that they are scholastically prepared for a course of law equivalent to that given at the University of Texas; and Respondents show that Relator by acting in good faith in the premises and presenting said transcript and certificate may now obtain at a State supported institution the legal training alleged to be desired by him beginning with the next regular term of the Prairie View University in February, 1947.

V

That there is a presumption in law that the said Board of Directors having adopted the resolution above mentioned will properly provide for the legal training of the Relator; and further that in the original hearing of this cause, it was stipulated that ample funds were available to provide for said legal training and law courses.

VI

That Relator's action herein was primarily based upon there being no other law course or legal training available to [fol. 692] the Relator at the time this suit was instituted and that by reason of the foregoing action by the Board of Directors of the Agricultural and Mechanical College, the basis of Relator's action has ceased to exist and that Relator can now by acting in good faith as aforesaid obtain the legal training alleged to be desired at the next term of the said State supported institution, Prairie View University; and Respondents further show that this Court by issuing a writ of mandamus could not cause the legal training to be offered to Relator at an earlier date than February, 1947, without arbitrarily disregarding the school terms maintained at State supported institutions.

VII

That by reason of the resolution aforesaid and Senate Bill 228 above cited, the legal duty to provide law courses or legal training alleged by Relator to be desired and resting with the Board of Directors of the Agricultural and

Mechanical College has been met; and that said legal duty does not rest with these Respondents.

Wherefore, premises considered, Respondents pray judgment of this Honorable Court that the writ of mandamus requiring them to admit Relator to the Law School of the University of Texas, as sought by the Relator herein, be denied, and that the Respondents go hence with their costs without day.

(S.) Grover Sellers, Attorney General of Texas;
Jackson Littleton, Assistant Attorney General.

[fol. 693] RESOLUTION

Minute Order No. 203-46

Establishment of Law Course for Negro Students

On motion by Mr. Buchanan, seconded by Mr. Reese, and approved by a majority vote of the Board, the following resolution is adopted:

Whereas, by Senate Bill No. 228, of the 49th Legislature the name of Prairie View State Normal and Industrial College at Prairie View was changed to Prairie View University; and

Whereas, the act further provides that whenever there is any demand for same the Board of Directors of the Agricultural and Mechanical College of Texas is authorized to provide for a course in law at Prairie View University substantially equivalent to that offered at the University of Texas; (Other courses not pertinent to this order were also authorized.) and

Whereas, the Board of Directors of A. and M. College in cooperation with the University of Texas named a joint committee to study the obligations of these institutions in connection with Negro education and made a report to the Governor in connection therewith, said, (Minute Order No. 124-46), being attached to and made a part of this order; and

Whereas, the Board of Directors of the A. and M. [fol. 694] College of Texas strongly reaffirms the position taken in the recommendations made to the Governor, particularly that part which urges the establish-

ment of a first-class University for Negroes, preferably at Houston, Texas, under the supervision of the Board of Regents of the University of Texas; and

Whereas, it has been brought to the attention of the Board of Directors that at this time there is pending an application for admission to the University of Texas by one or more colored youth seeking to enroll in the School of Law, and this Board has been requested to make arrangements for these young men to embark on their legal studies pending final action by the Legislature on the recommendations made or to be made to its 50th session; and

Whereas, the Board of Directors has by investigation determined that arrangements may be made for standard courses of first-year law to be given in Houston, Texas with qualified Negro Lawyers as teachers:

Therefore, be it resolved

1. That if the applicant and/or similar other applicants for first-year courses in law offer themselves to the Registrar at Prairie View University, bringing with them a suitable transcript and a certificate from the Dean of the Law School of the University of Texas that they are scholastically prepared for a course of law equivalent to that given at the University of Texas, [fol. 695] they will be admitted to Prairie View University for the semester beginning February 1947.

2. The course will be offered in Houston, Texas and will be substantially the same approved course as is now offered by the University of Texas School of Law for entering students, and the qualifications of the personnel to teach the students will be determined by the State Board of Law Examiners, and they will be judged acceptable by it before instruction begins.

3. The Board of Directors of A. and M. College, through Prairie View University, will provide instruction in accordance with the requirements of the Supreme Court of Texas and the American Bar Association, and will provide or make available to the students such books or library material as are needed for the first-year course in which they will be enrolled. The Governor will be asked for a deficiency appropriation to provide the cost of instruction.

CERTIFICATE

I, E. L. Angell, certify that the foregoing is an exact copy of Minute Order No. 203-46 passed at the meeting of the Board of Directors of the Agricultural and Mechanical College of Texas held at Austin, Texas on November 27, 1946.

[fol. 696] In witness whereof, I have hereunto affixed my hand and seal of the said institution this 4th day of December, 1946.

(S.) E. L. Angell, Secretary, Board of Directors, Agricultural and Mechanical College of Texas. (Seal.)

[fol. 697] MINUTE ORDER No. 124-46

Higher Education for Negroes in Texas

On motion by Mr. Newton, seconded by Mr. Peeples, and approved by a majority vote of the Board, it was ordered that the following report of a Special Joint Committee of the A. & M. College of Texas and the Board of Regents of The University of Texas on "Higher Education for Negroes in Texas" be adopted:

The Board of Directors of The Agricultural and Mechanical College of Texas
College Station, Texas

The Board of Regents of The University of Texas
Austin, Texas

GENTLEMEN:

The undersigned special committee, authorized by your joint meeting held at Fort Worth, Texas, January 13, 1946, to inquire into the respective responsibilities of The Agricultural and Mechanical College of Texas and The University of Texas concerning higher education for negroes in Texas respectfully recommends that steps be taken to accomplish the following:

1

Reestablish at Prairie View, Texas the college for negroes offering instruction in agriculture and the

mechanic arts, including engineering, and providing both undergraduate and graduate instruction in these fields, as well as certain other vocational courses and teacher training now being offered at this institution, [fol. 698] and to conform to the requirements of the Land-Grant College Act.

2

For all other instruction, both graduate and undergraduate, establish a first-class university for negroes, preferably at Houston, Texas, to be supervised by the Board of Regents of The University of Texas, if so determined by the Legislature; to the end that all courses of study offered at The University of Texas or The Agricultural and Mechanical College of Texas will be provided at one of the two institutions.

3

To this end it is our opinion that our two Boards should petition the Governor of the State to appoint from its citizenship an outstanding biracial committee of such number as he may think appropriate for the purpose of reporting detailed plans for these schools to the Legislature for its consideration at the earliest practicable time.

Respectfully submitted, (S.) T. S. Painter, D. K. Woodward, Jr., Gibb Gilchrist, Chairman. (S.) T. D. Brooks, Scott Gaines, Henry Reese III.

[fol. 699] CERTIFICATE

I, E. L. Angell, certify that the foregoing is an exact copy of Minute No. 124-46 passed at the meeting of the Board of Directors of the Agricultural and Mechanical College of Texas held at Corpus Christi, Texas on July 13, 1946.

In witness whereof, I have hereunto affixed my hand and seal of the said institution this 4th day of December, 1946.

(S.) E. L. Angell, Secretary, Board of Directors, Agricultural and Mechanical College of Texas. (Seal.)

[File endorsement omitted.]

[fol. 700] In District Court of Travis County

[Title omitted]

Judgment of the Court—Filed December 17, 1946

On this the 17th day of December, 1946, came on for hearing the Motion of the respondents in the above entitled and numbered cause pursuant to an order of this Court made and entered of record herein on the 26th day of June, 1946. All parties appeared in person or by their attorneys of record and announced ready for said hearing, and all matters of fact and law were submitted to the Court sitting without a jury, and the Court having heard the pleadings, evidence, and argument of counsel is of the opinion that the said order of June 26, 1946, has been complied with in that a law school or legal training substantially equivalent to that offered at the University of Texas has now been made available to the Relator and that the Relator may now obtain legal training within the State of Texas at the Prairie View University, an institution supported by said State, by presenting to the proper authorities a suitable transcript and a certificate from the Dean of the Law School of the University of Texas that he is scholastically prepared for legal training equivalent to that given at the University of Texas. And, further, the Court is of the opinion that provision for legal training for the Relator at said [fol. 701] Prairie View University does not constitute any abridgment or denial of his constitutional rights.

It is therefore ordered, adjudged and decreed that the Writ of Mandamus sought herein be in all things denied and that the costs hereof be assessed against the Relator.

To which action of the Court the relator in open Court excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, sitting at Austin, Texas.

And to the action of the Court in overruling the exceptions of the respondents, the respondents except and in open Court give notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, sitting at Austin, Texas.

This order made and entered on this the 17th day of December, A. D. 1946.

Roy C. Archer, Judge, 126th District Court of Travis County, Texas.

[File endorsement omitted.]

[fol. 702] In District Court of Travis County

Mandate of the Court of Civil Appeals—Filed March 28, 1947

In the Court of Civil Appeals for the Third Supreme Judicial District, at Austin

On Wednesday, March 26, 1947.

Motion #10,363 Cause #9619

Heman Marion Sweatt

vs.

Theophilus Shickel Painter, et al

Appeal from District Court of Travis County

Motion for Substitution of Appellees

This day came on to be heard the motion of the appellees to strike the names of Orville Bullington, W. H. Scherer and D. M. Strickland as appellees in this cause and to substitute therefor William E. Darden, Mrs. Margaret Batts Tobin and James W. Rockwell. It appearing that the aforesaid Orville Bullington, W. H. Scherer and D. M. Strickland have ceased to be regents of the University of Texas and in their stead the aforesaid William E. Darden, Mrs. Margaret Batts Tobin and James W. Rockwell have been appointed and qualified as such regents, It is therefore ordered that said motion be substituted and that said substitution be and same is hereby made.

[fol. 703] 9619—Heman Marion Sweatt

vs.

Theophilus Shickel Painter, et al

Appeal from District Court of Travis County

No opinion Rendered.

This cause came on to be heard on the transcript of the record and the parties, both appellant and appellee appeared by their respective attorneys of record and in open court agreed that the judgment of the trial court in this

cause may be set aside and the cause remanded generally to the trial court for further proceedings without prejudice to the rights of any party to this cause: It is therefore considered, adjudged and ordered that the trial court's judgment in this cause be and the same is hereby set aside and the cause is remanded generally to the trial court for further proceedings without prejudice to the rights of any party to this suit. It is further Ordered that all costs of appeal in this cause be and the same are hereby taxed against the appellees herein in their respective official capacities, and that a copy of this Judgment be certified below for observance.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 704] [File endorsement omitted.]

[fol. 705] IN THE 126TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS

[Title omitted]

RESPONDENT'S MOTION TO WITHDRAW STIPULATIONS—Filed May 12, 1947

To the Honorable Judge of Said Court:

Comes now Theophilus Shickel Painter, et al, Respondents in the above styled and numbe-d cause, before any of the parties hereto have announced ready for trial, on this the second and new trial of such cause, and would show the Court the following:

1. That on or about June 17, 1946, the date of the first trial of this cause, and for the purposes of facilitating the procedure thereof and saving the Court's time, a stipulation of facts was entered into and executed by all parties hereto. Such stipulation began "it is admitted by Relator and Respondent that the following facts are true and admitted in evidence upon *the trial* of this cause" (emphasis added.) That the stipulations were entered into for the purposes of *that* trial, with the facts as they were understood to be as of that time.

2. That subsequent to that trial, the facts and conditions have materially changed, so that the former stipulations [fol. 706] do not now reflect the true facts.

3. Specifically, the matter contained in the follow- numbered paragraphs is no longer accurate:

Sections 6, 10, 11, 12, 13, 17, 20, 21, 22

Among other material changes causing the above sections to be erroneous are those brought about by the last enactment of S. B. 140, 50th Leg., 1947. This Act repealed S. B. 228, Acts 49th Leg. (1945), which was effective when the above stipulations were executed. Further, the personnel of the Board of Regents of the University of Texas has changed, rendering stipulations as to the identity thereof erroneous.

All of these inaccuracies are material and are detrimental and prejudicial to the rights of Respondents.

4. Further, paragraphs 7 and 15, though entered into in good faith by all parties, have subsequent-y been found to contain statements which are incorrect and inaccurate.

The inaccuracies of section 7 and 15 are material, and are detrimental and prejudicial to the rights of the State.

5. The remainder of the stipulations formerly entered into, left standing above, and without the new facts which have subsequently come into being, leave such an erroneous and insomplete recital of the facts, as to render such stipulation useless and fa-lacious.

6. In the interest of shortening the record of this cause, and to conserve the Court's time, Respondents stand ready and willing to enter into and execute new stipulations. Respondents have been willing and desirous of entering into new stipulations since the reversal of this cause by the [fol. 707] Court of Civil Appeals. Relator's counsel has been appraised of such willingness. By letter, such counsel has indicated a willingness to stipulate anew; and on March 26, 1947, reiterated such willingness to stipulate as soon as amended pleadings were filed. However, no stipulations have been offered by Relator, and none have executed. Respondents have prepared a set of stipulations which they now offer to Relator in good faith.

Wherefor, it is respectfully prayed that the former stipulations of June 17, 1946, be in all things withdrawn; that they be not admitted in evidence; and that they form no part of the record in this cause.

(S.) Price Daniel, Attorney General of Texas.

[File endorsement omitted.]

[fol. 708] In District Court of Travis County

[Title omitted]

Order Extending March Term of Court—June 14, 1947

On this the 14th day of June, A. D. 1947, it appearing to the Court that he is in the midst of the trial of the above numbered and entitled cause and that the date for adjournment of the March Term, A. D. 1947, of the 126th Judicial District of Texas at Austin, Texas, has arrived and that there is insufficient time left during said term of said Court in which to complete the said pending trial of said cause, the Court deems it necessary and advisable that an extension of said term of said Court be granted in order that the Court may be able to complete the said pending trial of said cause;

It is therefore Ordered by the Court that this March Term, A. D. 1947, of the 126th Judicial District of Texas at Austin, Texas, be, and the same is, hereby extended solely for the purpose of terminating the trial of the above numbered and entitled cause until and including the 1st day of July, A. D. 1947, at which time, if found necessary, a further extension of said term of said Court for this cause may be had.

Entered this the 14th day of June, A. D. 1947.

Roy C. Archer, Judge, 126th Judicial District Court, Travis County, Texas.

[fol. 709] In District Court of Travis County

74,945 Heman Marion Sweatt

vs.

Theophilus Shickel Painter, et al

Judgment—Filed June 17, 1947

On the 12th day of May, 1947, came on for hearing the petition of the Relator, Heman Marion Sweatt, for Writ of Mandamus against the following officials of the University of Texas: Theophilus Shickel Painter, President; Charles Tilford McCormick, Dean of the School of Law; Edward Jackson Mathews, Registrar; and Dudley K. Woodward, Jr., E. E. Kirkpatrick, W. Scott Schreiner, C. O. Terrell, Edward B. Tucker, David M. Warren, William E. Darden, Mrs. Margaret Batts Tobin, and James W. Rockwell, Regents; who are the Respondents; and all parties appeared in person and by their attorneys of record and announced ready for said hearing, and all matters of fact as well as of law were submitted to the Court, without a jury, after the Court heard and passed upon the special exceptions of the parties as hereinafter set out.

And the Court, having heard the pleadings, evidence, and argument of counsel, finds as follows:

That this petition came on for hearing originally on the 17th day of June, 1946, and on the 26th day of June, 1946, an interlocutory order was entered finding that Relator, a [fol. 710] negro citizen seeking entrance to the School of Law of the University of Texas, was duly qualified, and under the Constitutions of the United States and the State of Texas, he was entitled to educational advantages and opportunities equal to those furnished by the State to white citizens; that the Constitution and laws of Texas provide for separate schools for the white and negro races, and that such laws were valid and did not abridge or deny Relator's constitutional rights so long as equal facilities were furnished Relator in a separate school; that a valid law, Senate Bill 228, Chapter 308, page 506, Acts of the 49th Legislature, 1945, placed a mandatory duty upon Prairie View University to establish a law school for negroes substantially equal to that of the University of Texas, and that establishment of such courses in law within a reasonable time would preserve the rights of Relator; and it was

thereupon ordered by this Court on June 26, 1946, that if within six months a course of legal instruction substantially equal to that offered at the University of Texas was established and made available to Relator in a State educational institution, the Writ of Mandamus would be denied; but if such a course was not so established and made available, the Writ of Mandamus would issue. Whereupon this Court retained jurisdiction and continued the cause until December 17, 1946.

Pursuant to the interlocutory order of June 26, 1946, the further hearing was held on December 17, 1946, and this Court, after having heard the pleadings, the evidence and the argument of counsel, was of the opinion that said order had been complied with, and that legal training substantially equivalent to that offered at the University of Texas had been made available to the Relator by establishment of the Prairie View University Law School in Houston, [fol. 711] Texas. Thereupon, the Writ of Mandamus sought herein was denied, and judgment was accordingly entered, from which judgment the Relator perfected his appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, in Austin, Texas.

During the pendency of said appeal, the 50th Legislature of the State of Texas convened in Regular Session and enacted Senate Bill 140, Acts 1947, Chapter 29, page 36, creating a new first class University, The Texas State University for Negroes, and appropriated the sum of $3,000,000.00 therefor. In Section 11 of said Act it was provided that Respondents herein would immediately provide for a new and separate school of law at Austin, Texas, to be known as the School of Law of the Texas State University for Negroes, and appropriated the sum of $100,000.00 for the establishment and maintenance thereof. By reason of this change in the law, and upon a showing by the Respondents that said new School of Law had been established, the parties hereto agreed before the Court of Civil Appeals, March 26, 1947, that this cause should be remanded for further proceedings, and the Court of Civil Appeals accordingly issued its mandate remanding the cause generally to this Court for further proceedings, without prejudice to either party.

And accordingly, upon this rehearing, having heard the pleadings, evidence and arguments, this Court is of the

opinion and finds from the evidence that during the appeal of this cause and before the present hearing, the Respondents herein, pursuant to the provisions of Senate Bill 140, Acts of the 50th Legislature, 1947, have established the School of Law of the Texas State University for Negroes [fol. 712] in Austin, Texas, with substantially equal facilities and with the same entrance, classroom study, and graduation requirements, and the same courses and the same instructors as the School of Law of The University of Texas; that such new law school offered to Relator privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas; that Relator, although duly notified that he was eligible and would be admitted to said law school March 10, 1947, declined to register; that from his own testimony, Relator would not register in a separate law school no matter how equal it might be and not even if the separate school affords him identical advantages and opportunities for the study of law equal to those furnished by the State to the white students of the Law School of the University of Texas; and the constitutional right of the State to provide equal educational opportunities in separate schools being well established and long recognized by the highest State and Federal Courts, and the facts in this case showing that Relator would be afforded equal if not better opportunities for the study of law in such separate school, the petition for Writ of Mandamus should be denied.

It is, therefore, Ordered, Adjudged and Decreed:

1. That the exceptions of the Relator to the First Amended Original Answer of the Respondents, as well as the exceptions of the Relator contained in his Third Supplemental Petition be, and the same are hereby overruled, to which order the Relator in open court duly excepted and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, Texas.

[fol. 713] 2. That the exceptions of the Respondents to the allegations of the Relator contained in Section III, 3, of Relator's Second Supplemental Petition relating to the quantity and quality of education offered at universities and colleges maintained by the State of Texas generally, be stricken from said pleading as being immaterial and irrelevant to the issues of whether a suitable law school

maintained by the State is available to the Relator, and that the evidence introduced by the Relator herein over objection of Respondents, concerning the facilities provided by other State universities and colleges (specifically that of the witness, Dr. Charles H. Thompson), be stricken from the record as beyon*g* the scope of the pleadings and the issues, and immaterial and irrelevant thereto, to which the Relator in open court duly excepted, and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, Texas.

It is further Ordered that other exceptions presented by the Respondents herein to the Second and Third Supplemental Petition of the Relator be, and the same are hereby overruled.

3. That the Writ of Mandamus sought herein by the Relator be, and the same is hereby in all things denied, and that the costs hereof be assessed against the Relator, to which judgment the Relator in open court duly excepted, and gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, Texas.

Entered of record on this the 17th day of June, 1947.

Roy C. Archer, Judge 126th Judicial District, Travis County, Texas.

[fol. 714] Approved as to form, Thurgood Marshall and W. J. Durham, Attys. for Relator. Approved as to form, Price Daniel, Attorney General of Texas, By Joe R. Greenhill, Executive Assistant.

[File endorsement omitted.]

[fols. 715-717] Bond on appeal for $1,000.00 approved and filed June 17, 1947, omitted in printing.

[fol. 718] In District Court of Travis County

[Title omitted]

Order of the Court Concerning Fact Stipulations—Filed June 17, 1947

On this the 17 day of June, 1947, came on to be heard the motion of T. S. Painter, et al, to strike the stipulations from

the record. And it appearing to the Court that counsel for relator and respondents are agreed that such stipulations should form no part of the record on this appeal, such stipulations not having been offered in evidence by either party on this trial, and it appearing to the Court that such stipulations should not form a part of the record on this appeal,

It is therefore Ordered, Adjudged, and Decreed that such stipulations form no part of the record in this case, and that they be not included in the transcript of this appeal.

Roy C. Archer, Presiding Judge.

[File endorsement omitted.]

[fol. 719] In District Court of Travis County

[Title omitted]

Order Closing March Term of Court—Filed July 1, 1947

On this the 1st day of July, 1947, it appearing to the Court that heretofore, to-wit on the 14th day of June, 1947, this Court was in the midst of the trial of the above numbered and entitled cause, and that the time for the expiration of the March Term, A. D. 1947, of the 126th Judicial District Court of Travis County, Texas, had arrived and that the Court deemed it advisable and necessary, in order to complete the said pending trial of said cause, that said term of said Court should be extended, made and entered its order granting an extension of said term of said Court for the said purpose only;

And it now appearing to the Court that a final judgment has been entered in said cause; that all motions, if any, to perfect an appeal, if desired, have been duly filed, acted upon and appropriate orders entered thereon;

The Minutes entered in said cause, having been examined in open Court, and the same being found correct, are hereby approved.

And this Court will now stand finally adjourned.

[fol. 720] Witness my hand at Austin, Texas, this the 1st day of July, 1947.

Roy C. Archer, Judge, 126th Judicial District Court, Travis County, Texas.

[File endorsement omitted.]

[fol. 721] IN THE 126TH DISTRICT COURT OF TRAVIS COUNTY, TEXAS

[Title omitted]

RELATOR'S MOTION RE ORIGINAL EXHIBITS—Filed July 8, 1947

To the Honorable Judge of Said Court:

Comes now the relator and respectfully shows to the Court:

I

That the relator's exhibits from one (1-8) to eight should be sent up to the Appellate Court with the record in this case in the original form for the reason that said exhibits can not be reproduced and placed in such form as to intelligently advise the Appellate Court of the contents thereof. That respondents' exhibits 4, 5, 8, 9, 10, 11, 12, 14, 15 and 16 and exhibits from A to J should be sent up with the record in this case in their original form for the said reason as hereinbefore set out in connection with relator's exhibits from two (2-8) to eight.

[fol. 722] Wherefore, Relator prays that the original exhibits hereinbefore described in this motion be sent up in their original form as a part of the record in this case.

W. J. Durham, Attorney for Relator, Heman Mation Sweatt.

[File endorsement omitted.]

[fol. 723] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER DIRECTING CLERK TO SEND ORIGINAL EXHIBITS TO COURT OF CIVIL APPEALS—Filed July 8, 1947

On this the 8th day of July, 1947, relator's motion to send relator's original exhibits two (2-8) to 8 and respondents' exhibits 4, 5, 8, 9, 10, 11, 12, 13, 15, 16 and A to J, inclusive in the original form came on for hearing, and the Court is of the opinion that said motion should be granted.

It is therefore the order of this Court that relator's

exhibits two (2-8) to eight, inclusive and respondents' exhibits 4, 5, 8, 9, 10, 11, 12, 14, 15, 16 and A to J, inclusive, be sent to the Court of Civil Appeals in the original form and as a part of the record in this case, and the Clerk of this Court is directed to send said exhibits in their original form to the Court of Civil Appeals, 3rd Supreme Judicial District of Texas as a part of the record in this case.

[fol. 724] Roy C. Archer, Judge of the 126th District Court.

[fol. 725] In District Court of Travis County

[Title omitted]

Order Amending Judgment—July 8, 1947

On this the 7th day of July, 1947, came on for consideration a suggestion to the Court by Attorneys of record as to the recitation of the dates of the hearing in the Judgment of the Court heretofore entered in this cause, and it appearing to the Court that the suggestion was well made, and that the days during which the hearing was held should have been recited, and that the attorneys for both parties have agreed thereto.

It is, therefore, Ordered, and Decreed that the Judgment of the Court heretofore entered in this cause be supplemented to cure said omission and to show that all matters of fact as well as of law in said hearing were submitted to the Court without a jury on the 12th day of May, 1947, as recited in said Judgment, and from day to day thereafter until the 18th day of May, 1947, when both parties rested and the Court pronounced his judgment as heretofore entered.

Entered of Record on this the 8th day of July, 1947.

Roy C. Archer, Judge 126th Judicial District, Travis County, Texas.

[File endorsement omitted.]

[fol. 726] [Bill of Costs omitted in printing.]

[fol. 727] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 728] IN COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

No. 9684

HEMAN MARION SWEATT, Appellant,

vs.

THEOPHILUS SHICKEL PAINTER ET AL., Appellees

Appeal from 126th District Court, Travis County

OPINION—Filed February 25, 1948

February 26, 1946, Heman Marion Sweatt, a Negro, applied for admission to the School of Law of the University of Texas as a first year student. Admittedly, he possessed every essential qualification for admission, except that of race, upon which ground alone his application was denied, under Sec. 7 of Art. 7 of the Texas Constitution, which reads:

> "Separate schools shall be provided for white and colored children, and impartial provision shall be made for both."

May 16, 1946, he filed this suit, as Relator, for a writ of mandamus, against the President, members of the Board of Regents, Dean of the School of Law, and Registrar of the University of Texas, as Respondents, to compel his admission, upon the ground that its denial constituted an infringement of rights guaranteed to him under the equal protection clause of the fourteenth amendment to the Federal Constitution. In a trial to the court the sought relief was denied and Relator has appealed.

At the outset it should be borne in mind that the validity of state laws which require segregation of races in state supported schools, as being, on the ground of segregation alone, a denial of due process, is not now an open question. The ultimate repository of authority to construe the Federal Constitution is the Federal Supreme Court. We cite

chronologically, in a note below, the unbroken line of deci- [fol. 729] sions of that tribunal recognizing or upholding the validity of such segregation as against such attack.[1]

The gist of these decisions is embodied in the following excerpts from the opinion in Plessy v. Ferguson (Mr. Justice Brown [2] writing):

> "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms un-

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[1] (1878) Hall v. DeCuir, 95 U. S. 485, 24 L. Ed. 547;
(1896) Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256;
(1899) Cumming v. County Board of Education, 175 U. S. 528, 20 S. Ct., 197, 44 L. Ed. 262;
(1914) McCabe v. A T & S F R Co., 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169;
(1927) Gong Lum v. Rice, 275 U. S. 78, 48 S. Ct. 91, 72 L. Ed. 172;
(1938) Missouri v. Canada, 305 U. S. 337, 59 S. Ct. 232, 83 L. Ed. 208;
(1948) Sipuel v. Oklahoma, — U. S. —, — S. Ct. — 92 L. Ed. 256;
A like uniformity is to be found in decisions of other Federal and State Courts. Their citation is not of importance here.

[2] Mr. Justice Henry Billings Brown was born in Lee, Massachusetts, March 2, 1836. His academic education was at Yale, and among his fellow students were Chauncey M. Depew and his later associates on the Supreme bench, Mr. Justice Brewer and Mr. Justice Shiras. His education in law was obtained at Yale and Harvard. In 1859 he moved to Michigan, where he practiced law until 1861. He then served as Deputy U. S. Marshal and Assistant District Attorney until 1868, when he became Judge of the Wayne County Circuit Court. In 1875 he was appointed U. S. District Judge by President Grant, and in 1890 Associate Justice of the U. S. Supreme Court by President Benjamin Harrison.

satisfactory to either. Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.

* * * * * * *

"The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in schools, theaters, and railway carriages, has been frequently drawn by the courts."

[fol. 730] This holding had the express approval of Mr. Justice Harlan in the Cumming case, of Mr. Justice Taft in the Gong Lum case, and of Mr. Chief Justice Hughes in the Canada case. Its approval is implicit in the latest enunciation of that court on the subject (January 12, 1948) in the Sipuel case.

Relator's brief asserts:

"The record in the instant case for the first time presents testimony and documentary evidence clearly establishing that:

"(1) There is no rational basis for racial classification for school purposes.

"(2) Public schools, 'separate but equal' in theory are in fact and in practical administration consistently unequal and discriminatory.

"(3) It is impossible to have the equality required by the Fourteenth Amendment in a public school system which relegates citizens of a disadvantaged racial minority group to separate schools."

And further:

> "The doctrine of racially 'separate but equal' public facilities is merely a constitutional hypothesis which has no application where racial segregation is shown to be inconsistent with equality."
>
> * * * * * * *
>
> "Although separate school laws have been enforced by several states, an examination of the cases in the United States Supreme Court and lower courts will demonstrate that these statutes have never been seriously challenged nor their validity examined and tested upon a record adequately presenting the critical and decisive issues such as are presented by the record in this case:
>
> "(1) Whether there is a rational basis for racial classification for school purposes.
>
> "(2) Whether public schools, 'separate but equal' in theory are in fact and practical administration consistently unequal and discriminatory.
>
> "(3) Whether it is possible to have the equality required by the Fourteenth Amendment in a public school system which relegates citizens of a disadvantaged racial minority group to separate schools."

Implicit in these quotations is the assertion that race segregation in public schools, at least in the higher and pro- [fol. 731] fessional fields, inherently is discriminatory within the meaning of the fourteenth amendment, and cannot be made otherwise.

This assertion in effect impeaches the soundness of the various decisions of the Federal Supreme Court which hold to the contrary, as being predicated upon a purely abstract and theoretical hypothesis, wholly unrelated to reality. To so hold would convict the great jurists who rendered those decisions of being so far removed from the actualities involved in the race problems of our American life as to render them incapable of evaluating the known facts of contemporaneous and precedent history as they relate to those problems.

It is of course of the very essence of the validity of segregation laws that they provide for each segregated group

or class facilities and opportunities the equivalent, or (as often stated) substantial equivalent of those provided for the other group or class. Our constitution (quoted above) so provides. The brief asserts that there can be no "substantial equality," the two words being in themselves incompatible. This is of course true in pure, as distinguished from applied, mathematics. "Equality" like all abstract nouns must be defined and construed according to the context or setting in which it is employed. Pure mathematics deals with abstract relations, predicated upon units of value which it defines or assumes as equal. Its equations are therefore exact. But in this sense there are no equations in nature; at least not demonstrably so. Equations in nature are manifestly only approximations (working hypotheses); their accuracy depending upon a proper evaluation of their units or standards of value as applied to the subject matter involved and the objectives in view. It is in this sense that the decisions upholding the power of segregation in public schools as not violative of the fourteenth amendment, employ the expressions "equal" and "substantially equal" and as synonymous. The framers of the Texas constitution of 1876 recognized the necessity [fol. 732] (both inherent and under the 14th amendment) of "equal protection" in the must (shall) requirement (Art. 7, Sec. 7) of "impartial provision" for "both" races. The question, and we think the controlling one, which this appeal presents is whether under the record showing in this case the State at the time of the trial had provided and made available to Relator a course of instruction in law as a first year student, the equivalent or substantial equivalent in its advantages to him of that which the State was then providing in the University of Texas Law School. We are not dealing here with abstractions but with realities.

In the latter portion of Relator's brief the following proposition is asserted:

> "The expert testimony introduced at the trial establishes that there is no rational justification for segregation in professional education and that substantial discrimination is a necessary consequence of any separation of professional students on the basis of color."

The supporting evidence deals generally with the subject of race segregation in professional and other schools from

biological and other viewpoints, giving conclusions of scientists, educators and other experts in the several fields, and data compiled and conclusions reached in reports of surveys, etc. In so far as this evidence is directed against the policy of segregation the subject dealt with is outside the judicial function. The people of Texas, through their constitutional and legislative enactments, have determined that policy, the factual bases of which are not subjects of judicial review. See Watts v. Mann, 187 SW 2d 917, error ref.; 11 Am. Jur., §§ 142-144, pp. 82, et seq. The only appropriate judicial inquiry here is whether the facilities furnished and made available by the State to Relator as an applicant for a first year law course meet the test of due process under the fourteenth amendment.

Nor are we concerned here with whether the State has discharged its obligations under that amendment in other segregated fields or branches of education.

[fol. 733] For these reasons we hold that the trial court correctly excluded: 1) Relator's pleadings as to what happened at Prairie View in 1937 (Relator's first point); 2) evidence of Dr. Thompson regarding facilities at other state institutions and colleges (Relator's second point); and 3) evidence of Donald Murray regarding what happened at the University of Maryland in 1929-32 (Relator's third point).

The record shows that this cause was called for trial June 17, 1946, and after a hearing the court passed an interlocutory order, which, after reciting the (below) 1945 Act, provided that, if by December 17, 1946, "a course for legal instruction substantially equivalent to that offered at the University of Texas is established and made available to the relator within the State of Texas in an educational institution supported by the State, the writ of mandamus sought herein will be denied, but if such a course of legal instruction is not so established and made available, the writ of mandamus will issue." The cause was ordered held on the docket until December 17, 1946, on which date final judgment was entered denying the writ, upon a showing by Respondents that the A & M (Texas Agricultural and Mechanical College) Board had provided for a first year law school at Houston to open with the February 1947 semester, as a branch of Prairie View University. This judgment was set aside by this court March 26, 1947, and

the cause remanded generally, without prejudice to the rights of either party, upon agreement of counsel in open court. Thereafter (May 17-June 17, 1947) the cause was again tried, the judgment denying the writ, upon the specific finding by the court that in compliance with the Act of 1947 (noted below) the Respondents:

> "* * * have established the School of Law of the Texas State University for Negroes in Austin, Texas, with substantially equal facilities and with the same entrance, classroom study, and graduation requirements, and with [fol. 734] the same courses and the same instructors as the School of Law of The University of Texas; that such new law school offered to Relator privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas; that Relator, although duly notified that he was eligible and would be admitted to said law school March 10, 1947, declined to register; that from his own testimony, Relator would not register in a separate law school no matter how equal it might be and not even if the separate school affords him identical advantages and opportunities for the study of law equal to those furnished by the State to the white students of the Law School of the University of Texas; and the constitutional right of the State to provide equal educational opportunities in separate schools being well established and long recognized by the highest State and Federal Courts, and the facts in this case showing that Relator would be afforded equal if not better opportunities for the study of law in such separate school, the petition for Writ of Mandamus should be denied."

The sufficiency of the evidence to support these findings and conclusions to the extent that the stated facilities provided by the State meet the requirements of due process, constitutes the controlling question in the case; upon which issue the record shows: Relator's application was the first ever made by a Negro for admission to the University of Texas Law School. It also appears to have been the first application of any Negro for admission to any other department or school of the University of Texas. The Prairie View Normal and Industrial School for Negroes was estab-

lished in the 1870's, and was operated under the governing board of the A. & M. Neither Prairie View nor any other state supported school for Negroes offered any courses in law. The name of Prairie View was changed by the Act of June 1, 1945, to Prairie View University; and it was provided:

> "Whenever there is any demand for same, the Board of Directors of the Agricultural and Mechanical College, in addition to the courses of study now authorized for said institution, is authorized to provide for the establishment of courses in law, medicine, engineering, pharmacy, journalism, or any other generally recognized college course taught at the University of Texas, in said Prairie View University, which courses shall be substantially equivalent to those offered at the University of Texas." (Acts 49th Leg., Ch. 308, p. 506.)

The Act of 1947 (S.B. 40, Ch. 29, Acts 50th Leg.) was passed and became effective March 3, 1947. It provided (inter alia) for the establishment of "The Texas State [fol. 735] University for Negroes" to be located at Houston, with a governing board of nine "to consist of both white and negro citizens of this State," and appropriated $2,000,000 for land, buildings and equipment, and $500,000 per annum for maintenance for the biennium ending August 31, 1949. And that:

> "The Texas State University for Negroes shall offer all other courses of higher learning, including, but without limitation, (other than as to those professional courses designated for The Prairie View Agricultural and Mechanical College), arts and sciences, literature, law, medicine, pharmacy, dentistry, journalism, education, and other professional courses, all of which shall be equivalent to those offered at the University of Texas. Upon demand being made by any qualified applicant for any present or future course of instruction offered at the University of Texas, or its branches, such courses shall be established or added to the curriculum of the appropriate division of the schools hereby established in order that the separate universities for Negroes shall at all times offer equal educational opportunities and training as that available to other persons of this state."

And further:

> "Sec. 11. In the interim between the effective date of this Act and the organization, establishment and operation of the Texas State University for Negroes at Houston, upon demand heretofore or hereafter made by any qualified applicant for instruction in law at the University of Texas, the Board of Regents of the University of Texas is authorized and required to forthwith organize and establish a separate school of law at Austin for negroes to be known as the 'School of Law of the Texas State University for Negroes' and therein provide instruction in law equivalent to the same instruction being offered in law at the University of Texas. The Board of Regents of the University of Texas shall act as the governing board of such separate law school until such time as it is transferred to the control of the Board of Directors of the Texas State University for Negroes."

For this latter purpose $100,000 was appropriated.

Pursuant to this Act the school for first year Negro law students was established at Austin. Relator was notified amply in advance of its opening on March 10, 1947, but did not and has not attended. A resume of the evidence showing the facilities, opportunities and advantages afforded by this school and a comparison thereof with those afforded by the University of Texas School of Law is set forth in an appendix to this opinion, copied in the main from Respond-
[fol. 736] ents' brief, and approved and adopted by us as a fair statement of the evidence in this respect.

The evidence shows, on the part of the State of Texas, an enormous outlay both in funds and in carefully and conscientiously planned and executed endeavor, in a sincere and earnest bona fide effort to afford every reasonable and adequate facility and opportunity guaranteed to Relator under the fourteenth amendment, within the State's settled policy (constitutional and statutory) of race segregation in its public schools. We hold that the State has effectually accomplished that objective.

The trial court's judgment is affirmed.

Affirmed.

James W. McClendon, Chief Justice.

[File endorsement omitted]

Breaking the elements of the School of Law into component parts, the following evidence was deduced.

Entrance, Examination, Graduation, and Similar Requirements

The requirements for admission and fees, and regulations relating to classification of students, classwork, examinations, grades and credits, standards of work required, and degrees rewarded are exactly the same as those published in the latest published catalogue of The University of Texas and used at such institution.

The Faculty

The instructors at the School of Law of the Texas State University for Negroes were and are the very same professors which had taught or were teaching the same courses at The University of Texas Law School. They were the same instructors Sweatt would have had if he had been enrolled in The University of Texas. The instructions from the Board of Regents were to use all of the faculty of the University Law School, so far as necessary, in order to maintain a full curriculum at the Negro Law School until four more full-time professors could be employed for the Negro Law School. The budget provided for four professors at $6,000 per year—the same pay base for professors at The University of Texas. Each of the instructors devotes all of his time to teaching—each a full-time professor. None are engaged in the private law practice. With the small enrollment at the Negro Law School, the instructors would be more available to the students for consultation than they would be to students at The University of Texas with its large class of 150 to 175 students. The Dean and Registrar of the two law schools were respectively the same persons.

Curriculum

The curriculum at the Negro Law School and at The University was exactly the same; it was the same as that adopted in the latest University of Texas School of Law Bulletin. The courses offered beginning students at the Negro Law School were identical with those offered begin-

ning students at the University: Contracts, Torts, and Legal Bibliography. These courses, with the same professors, are set out in Respondent's Exhibit 7.

Classroom

The classroom requirements were identical. With much smaller classes, the Negro Law School would provide the student with the opportunity to personally participate in classroom recitations and discussions. In an average law class at The University of Texas Law School, an average student would be called upon to recite only an average of 1½ times a semester. In a smaller class the students would receive better experience and education; they would be called on more frequently, would be more "on their toes". The students would come to class better prepared because their chances of being called upon are much greater; there would be a greater pressure to keep up their daily work. Dean McCormick testified that "in the Negro Law [fol. 738] School he (Sweatt) would have gotten a good deal more personal attention from the faculty than he would have had he been in the large entering class in The University of Texas."

Library

At the time of trial, there were on hand in the School of Law of the Texas State University for Negroes books customarily used by the first-year class of the University, and other books which Miss Helen Hargrave, Librarian of the University Law School, thought would be useful. There were about 200 of these books. There were also available for transfer to the Negro Law School between 500 and 600 books from the University, plus gifts of between 900 and 950 books. In addition, the entire library of the Supreme Court of Texas was specifically made available to the Negro Law School by Section 11 of H. B. 240, Acts 50th Legislature. The Supreme Court Library is located in the State Capitol Building on the second floor. The Capitol grounds are some 20 feet from the Negro Law School, and the entrance is only about 300 feet from that School.

The Supreme Court Library contains approximately 42,000 volumes, which number is far in excess of the 7,500-book minimum requirement of the American Bar Association. Excluding duplicates, The University of

Texas Law Library contains 30,000 to 35,000 books. Counting duplicates, it contains around 65,000. These books serve 850 law students of The University of Texas.

In some respects the Supreme Court Library is stronger than that of the University. Being a Governmental Depository, the Supreme Court Library automatically receives many reports, such as those of administrative bodies. It is the strongest library in the South on State Session Laws. It contains Attorney General's Opinions, Tax Board Opinions, Workmen's Compensation Reports, and other items not carried by the University. The Supreme Court Library is more spacious for a student body of ten students than are the facilities at The University of Texas Law School Library, which are exceedingly crowded. There is no more confusion, and in most instances, less confusion in the Supreme Court Library than at the Law Library at the University because of the large number of persons using the latter.

On the other hand, the Supreme Court Library does not have as many textbooks, legal periodicals, or English reports as the University Law Library. The Court's Library contains the Harvard, Columbia, Yale, and Texas Law Reviews, and the American Bar Association Journal. It has the English Reports up to 1932. The Law Library of The University of Texas and that of the Supreme Court are substantially equal except for the texts, legal periodicals, and English Reports.

However, all of such texts, legal periodicals, and English Reports, not available in the Supreme Court Library, are readily available to the Negro Law School on a loan basis from the Law Library of The University of Texas.

In addition to the books in the Negro Law School and in the Supreme Court Library, and those available on a loan basis from the Law Library of The University of Texas, a complete law library is being procured, consisting of some [fol. 739] 10,000 law books, some of which are already available. The rest have been placed for order through the Board of Control for the School of Law of the Texas State University for Negroes. The list of the 10,008 books which will constitute the Negro Law School Library is set out in Respondent's Exhibit No. 8. Of such number 1,261 are immediately available, and 8,727 books were already requisitioned. Bids had already been requested on the 8,727

books requisitioned, and 23 bids were received. Orders have already been placed for 5,702 of the books, all deliverable within ten to sixty days. Wherever new books were available, they were ordered; second-hand books were only ordered where new ones were not available. The library requisitioned included 20 Law Reviews, Indices of legal periodicals, Citators, Digests, Restatements, textbooks, statutes, the complete West Publishing Company Reporter System, etc. The undisputed evidence is that the books ordered for the Negro Law School are sufficient to meet the requirements of the American Association of Law Schools.

The Physical Facilities

Whereas The University of Texas Law School has 3 classrooms for 850 students, the School of Law of the Texas State University of Negroes has two classrooms, plus a reading room, toilet facilities, and an entrance hall, for a much smaller student body. The two law schools possess approximately the same facilities for light and ventilation, ("There are ample windows and lights.") though most law schools, including The University of Texas, need artificial light in the daytime. The Negro Law School, assuming a class of 10 students, has a greater floor space per student.

The location of the Negro Law School is particularly good. It is directly north of the State Capitol, separated only by a 20-foot street. It is within 100 yards of the Supreme Court of Texas, the Court of Civil Appeals, the Attorney General's Office, and the Legislature. It is between the business district of Austin and The University of Texas —8 blocks south of the University, and hence 8 blocks nearer the business district.

The building housing the Negro Law School is a three-story building of brick construction. The first floor was occupied by the School at the time of trial, but the upper two stories of the building were available as needed. Before March 10, 1947, the premises were cleaned up and painted. The building has ample space to house the 10,000 volume library and leave sufficient space for classrooms and reading room.

Hon. D. A. Simmons, President of the Texas Bar Association 1937-38; President of the American Judicature So-

ciety 1940-1942; and President of the American Bar Association 1944-1945, testified:

> "In my opinion, the facilities, the course of study, with the same professors, would afford an opportunity for a legal education equal or substantially equal to that given the students at The University of Texas Law School."

Hon. D. K. Woodward, Jr., Chairman of the Board of Regents of The University of Texas, testified:

> [fol. 740] "What we set up there was a plant fully adequate to give the very best legal instruction for the only man of the Negro race who had ever applied for instruction in law at the University in about 63 years of the life of the School."
>
> * * * * * * *
>
> "I am talking as a man familiar with what it takes to provide a thorough training in law in the State of Texas, and I stated the facts within my own personal knowledge, that the facilities which the Board of Regents of the University set up in accordance with Senate Bill 140 are such as to provide the Relator in this case the opportunity for the study of law unsurpassed any time elsewhere in the State of Texas, and fully equal to the opportunity and instruction we are offering at the University any day."

Hon. Charles T. McCormick, Dean of the University of Texas Law School and President of the Association of American Law Schools, 1942, testified that the facilities at the Law School for Negro citizens furnished to Negro citizens an equal opportunity for study in law and procedure; that considering the respective use by the respective number of students, the physical facilities offered by the Negro Law School were substantially equal to those offered at The University of Texas Law School; and that: "I would say * * * the Negro student has at least equal and probably superior facilities for the study of law."

With reference to the membership requirements of the Association of American Law Schools, it was shown that the

Negro Law School, at the time of this trial, met the great majority of the 9 requirements:

(1) It is a school not operated as a commercial enterprise, and the compensation of any officer or member of its teaching staff is not dependent on the number of students or the fees received.

(2) It satisfies the entrance requirements, i.e., pre-legal training, etc.

(3) The school is a "full-time law school." The school work is arranged so that substantially the full working time of the student is required at the school.

(4) The conferring of its degrees is conditioned upon the attainment of a grade of scholarship attained by examinations.

(5) *No* special students are admitted. In this, the School's requirement is stronger than that of the Association, which permits such students under certain considerations.

(6) The 10,000 volume library ordered for the School is sufficient to meet the library requirements. The selection of the books is such as to conform with the Association's requirements. In addition, the Supreme Court Library of [fol. 741] 40,000 volumes is available plus loan privileges from the Law Library of the University of Texas.

(7) The seventh requirement is that the "faculty shall consist of at least four full-time instructors who devote substantially all of their time to the work of the school." The professors in this case are full-time professors in the sense that all of their time is devoted to teaching. However, all of their teaching is not done at the Negro school; they will also be teaching at the University.

(8) Provision has been made for keeping a complete and readily accessible individual record of each student.

(9) The requirement reads, "It shall be a school which possesses *reasonably adequate facilities* and which is conducted in accordance with those standards and practices generally recognized by member schools as essential to the maintenance of a sound educational policy." Dean Mc-

Cormick testified that in his opinion the Negro Law School met this requirement.

The testimony was that a two-year period is generally required before any law school may be admitted to membership in the Association of American Law Schools. Dean McCormick testified that he knew of no reason why the Negro Law School could not comply with all of those standards within that two-year period—before any entering student could graduate from the school.

[fol. 742] IN COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

No. 9684

Motion No. 10,502

HEMAN MARION SWEATT, Appellant,

vs.

THEOPHILUS SHICKEL PAINTER ET AL., Appellees

OPINION ON APPELLANT'S MOTION FOR REHEARING—Filed March 17, 1948

Point VII in the motion complains that this court "erred in ignoring testimony introduced by appellant and merely adopting appellees' interpretation of the evidence by attaching to its opinion, an appendix copied in the main from appellees' brief, and based its opinion and judgment on said appellees' brief, without making an independent evaluation of the record as to the comparative values of the two law schools as a basis for its opinion and judgment."

Implicit in the statement in our opinion that the resume of evidence set forth in the appendix was "approved and adopted by us as a fair statement of the evidence" in the stated respect, was the assertion (which we now make explicit) that we had made "an independent evaluation of the record as to the comparative values of the two law schools as a basis for its (our) opinion and judgment," and that from this "independent evaluation" we reached the conclusion and so held that the statement in the appendix contained a fair resume of the pertinent evidence, which we approved and adopted as our own.

It should always be held in mind that the members of this court are not the triers of fact. That is the function of the trial court. This court is one of review only. Where there is no evidence of sufficient probative value to support a judgment, we have the power to set it aside and render the judgment which the trial court should have rendered. We also have the power (when our jurisdiction in that regard is properly invoked) to set aside a judgment and order a [fol. 743] new trial on the facts, where the evidence so greatly preponderates against the judgment as, in our opinion, to require that it be set aside in the interest of justice. Our jurisdiction in this latter regard was not invoked in this case. See Wisdom v. Smith, — SW 2d —, 17 Sup. Ct. Reporter, 239; Hall Music Co. v. Robertson, 117 Texas 261, 1 SW 2d 857; Phillips v. Anderson, 93 SW 2d 171. However, we have carefully considered the evidence from that viewpoint as well as from that of its sufficiency as a matter of law; and were our jurisdiction in that regard properly invoked we would be constrained to hold that its preponderance and overwhelming weight support the trial court's judgment and the specific fact findings therein which are quoted in our original opinion; if in fact it does not conclusively do so, as a matter of law.

The motion in overruled.

James W. McClendon, Chief Justice.

Overruled.

[File endorsement omitted.]

[fol. 744] [File endorsement omitted]

IN THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

[Title omitted]

APPELLANT'S MOTION FOR REHEARING—Filed March 11, 1948

This case was tried without a jury and no assignments of error were required; and appellant presents his Motion for Rehearing upon the points presented in this Court on the original hearing, together with the other errors of the Court of Civil Appeals in affirming the judgment of the trial Court.

Now comes Heman Marion Sweatt, appellant in the above entitled cause, and respectfully moves the Court to set aside the judgment of this Court rendered on the 25th day of February, 1948 affirming the judgment of the lower court and to grant a rehearing herein.

[fol. 745] I

The Court of Civil Appeals erred in overruling and not sustaining appellant's First Point, reading:

The error of the Court in sustaining appellees' special exception to Allegation 3 of appellant's second supplemental petition (Paragraph 3, Relator's Second Supplemental Petition, TR page —).

II

The Court of Civil Appeals erred in overruling and not sustaining appellant's Second Point, reading:

The error of the Court in excluding the testimony of the witness, Dr. Charles H. Thompson, with reference to the quantity and quality of education offered at the universities and colleges other than Prairie View College, maintained by the State of Texas. (S. F. beginning with the testimony on page 380 and ending on page 469, inclusive).

III

The Court of Civil Appeals erred in overruling and not sustaining appellant's Third Point, reading:

The error of the trial court in excluding the evidence of the appellant as to the admission of Donald Murray to the Law School of the University of Maryland and the results thereof in a situation analogous to the instant case as shown in appellant's bill of exception as fully set out. (S.F. beginning on page 478 to page 482, inclusive).

IV

The Court of Civil Appeals erred in overruling and not sustaining appellant's Fourth Point, reading:

The Court erred in holding that the proposal of the State to establish a racially segregated law school afforded the equality required by the equal protection clause of the Fourteenth Amendment to the Constitution of the United

States; and thus justifies the denial of appellant's petition for admission to the Law School of the University of Texas.

[fol. 746]

V

The Court of Civil Appeals erred in affirming the trial court's judgment in holding that Article 7, Section 7 of the Constitution of the State of Texas was not unconstitutional in that the enforcement thereof against appellant denied to the appellant, that equality required by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and thus held that the appellees had the legal authority under such Article to deny appellant's admission to the Law School of the University of Texas.

VI

The Court of Civil Appeals erred in failing to hold that Article 7, Section 7 of the Texas Constitution, and the laws of Texas enacted pursuant thereto, were based upon no real distinction or actual difference; and therefore, violated the appellant's right under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

VII

The Court of Civil Appeals erred in ignoring testimony introduced by appellant and merely adopting appellees' interpretation of the evidence by attaching to its opinion, an appendix copied in the main from appellees' brief, and based its opinion and judgment on said appellees' brief, without making an independent evaluation of the record as to the comparative values of the two law schools as a basis for its opinion and judgment.

VIII

The Court of Civil Appeals erred in holding that the question of whether segregation in state-supported schools is a denial of due process is no longer an open question; because, in doing so, the Court thereby erred in not considering appellant's contention that the action of appellees denied appellant the equal protection of the laws guaranteed by the [fol. 747] Fourteenth Amendment to the Constitution of the United States.

IX

The Court of Civil Appeals erred in holding that the appellant was not entitled to the relief sought, and that the judgment of the court below should be affirmed; and citing as a basis for said judgment and opinion, the opinions of the Supreme Court in the cases of Pleasy vs. Ferguson and Hall vs. DeCuir as the grounds for said judgment and opinion, for the reason that said decisions were predicated upon a purely abstract and theoretical hypothesis, wholly unrelated to the realities; and for the further reason that the record in this case demonstrates, for the first time in any case presented for decision, the inevitable inequalities in a segregated school system.

Appellant respectfully prays that this motion be granted; and that upon final hearing, the judgment heretofore rendered be set aside and the judgment of the trial court be reversed and rendered, with instructions to the appellees to admit the appellant to the Law School of the University of Texas.

Appellant represents that the Honorable Price Daniels, Attorney General of the State of Texas, whose residence is Austin, Texas, is attorney for appellees.

W. J. Durham, Thurgood Marshall, Attorneys for Appellant.

Thurgood Marshall, 20 W. 40th Street, New York City 18; W. J. Durham, 814½ N. Good Street, Dallas 1, Texas.

I do hereby certify that I, W. J. Durham, one of the attorneys for the appellant, have on this the 10th day of March, 1948, mailed to the Honorable Price Daniels, Attorney for Appellees, whose address is Office of The Attorney General, Austin, Texas, a copy of this Motion for Rehearing.

W. J. Durham.

[fol. 748] IN COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

No. 9684

HEMAN MARION SWEATT

vs.

THEOPHILUS SHICKEL PAINTER et al.

Appeal from 126th District Court of Travis County

Opinion by CHIEF JUSTICE McCLENDON:

JUDGMENT—February 25, 1948

This Cause came on to be heard on the transcript of the record and same being inspected, because it is the opinion of the court that there is no error in the judgment, It Is Therefore considered, adjudged and ordered that the judgment of the trial court be, and same is hereby in all things affirmed; that the appellant, Heman Marion Sweatt as Principal and E. E. Ward and C. E. Jones as sureties on the cost bond filed herein, pay all costs in this behalf expended, and that this decision be certified below for observance.

IN COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

ORDER OVERRULING APPELLANT'S MOTION FOR REHEARING—March 17, 1948

Appeal from 126 District Court of Travis County, Appellant's Motion for Rehearing. Motion is Submitted and Overruled

(Opinion by CHIEF JUSTICE McCLENDON.)

[fol. 749] IN SUPREME COURT OF TEXAS

No. A-1695

HEMAN MARION SWEATT

vs.

THEOPHILUS SHICKEL PAINTER et al.

From Travis County, Third District

JUDGMENT REFUSING APPLICATION FOR WRIT OF ERROR—
September 29, 1948

This day came on to be heard the application of petitioner for a writ of error to the Court of Civil Appeals for the Third District, and the same having been duly considered, it is ordered that the application be refused; that applicant, Heman Marion Sweatt, and his sureties, E. E. Ward and C. E. Jones, pay all costs incurred on this application.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 750] [File endorsement omitted]

IN THE SUPREME COURT OF TEXAS

[Title omitted]

MOTION FOR REHEARING ON THE PETITION FOR WRIT OF ERROR ON BEHALF OF HEMAN MARION SWEATT, PETITIONER, IN CAUSE #9684 IN THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, WHEREIN THEOPHILUS SHICKEL PAINTER, ET AL., ARE RESPONDENTS—
Filed October 13, 1948

To the Supreme Court of Texas:

Petition for writ of error herein filed by Petitioner on April 17, 1948, having been denied by this Court on September 29, 1948,

Now Comes Heman Marion Sweatt, Petitioner in the above entitled cause and respectfully moves this court to set aside the judgment of this court herein rendered on the 29th day of September, 1948, refusing the petition for writ of error and to grant a rehearing for the following reasons:

I

The Court erred in refusing to grant said petition and in failing to hold that the *validity under the Federal Constitution and the Fourteenth Amendment and of statutes requiring segregation in Education where the claim is made that the segregated facilities are unequal presents a novel and important question which should be passed upon by the highest court of the State.*

The trial of this cause and the exception to the exclusion of evidence by the trial court present a factual picture in [fol. 751] support of the contention of the petitioner herein that the segregated educational facilities offered by the State of Texas are unequal. The question has never before been raised in this court in connection with the facilities offered by the State of Texas for graduate education in the field of law. The determination of the issues in this case will have a serious consequence for the petitioner and for all persons similarly situated. In the light of the novel and serious nature of the issues raised, this court should grant to the petitioner an opportunity to present argument and to have a full hearing upon the merits of his contention that the statutes as applied to him are unconstitutional and also that the refusal of the trial court to admit evidence on vital and relevant issues deny to petitioner due process of law.

II

The Court erred in refusing said petition for writ of error for the reason that the *petitioner was denied a fair hearing and due process of law by the refusal of the trial court, affirmed by the Court of Civil Appeals to admit testimony and evidence with reference to the difference in education at white and colored colleges and universities maintained by the State of Texas.*

In support of his allegation that the segregation statutes of Texas were invalid under the Fourteenth Amendment of the United States Constitution, the petitioner sought to

show that in every instance the State of Texas was providing fewer educational opportunities and an educational opportunity of poorer quality to Negro citizens than were offered to white citizens. Evidence in support of this contention was necessary for a fair determination of the issue involved. The refusal of the trial court to admit testimony of Dr. Charles H. Thompson with reference to the quantity [fol. 752] and quality of education offered at the universities and colleges other than Prairie View College maintained by the State of Texas denied to the petitioner the due process of law in that it prevented him from presenting competent and relevant evidence on an issue fundamental to the determination of petitioner's rights.

III

The Court erred in not holding that *the petitioner was denied a fair hearing and due process of law by the refusal of the Trial Court, affirmed by the Court of Civil Appeals, to admit testimony as to the results of unsegregated education in other states.*

The validity of laws requiring segregation was said to be established by the state on the ground that it was necessary for the maintenance of peaceful and harmonious relations between the Negro and the white race in Texas. The statute was alleged to have been enacted under the police power of the state and to be justified as a necessary measure.

The refusal of the trial court, affirmed by the Court of Civil Appeals, to admit testimony as to the admission of a Negro student, Donald Murray, to the Law School of the University of Maryland, after a law suit challenging the constitutionality of the segregation statutes of Maryland, and the court's refusal to hear any testimony as to the harmonious and peaceful race relations resulting from the admission of Negro students to the law school of the University of Maryland, denied to petitioner an opportunity to present relevant testimony in support of his contention that the constitutionality of the segregation statutes of Texas could not be supported by resort to the police power of the State. The exclusion of this evidence of a material fact necessary for the determination of the constitutionality of a statute restricting the individual liberty within the state denied to petitioner the due process of law.

[fol. 753] IV

The Court erred in its *refusal to hear argument and determine on the merits the grave question of individual liberty of Federal Constitutional rights denies to petitioner the due process of law.*

The question presented by the petition for writ of error and the issues raised by the petitioner's contention that the statutes requiring segregation in education are an infringement upon his personal liberty and a denial of property and a denial of the equal protection of the laws all in violation of the Fourteenth Amendment of the Constitution of the United States are of vital importance to petitioner's future education and to the future education of all persons similarly situated. In presenting the evidence and testimony in support of his allegations of unconstitutionality, petitioner was hampered by the refusal of the lower court to admit relevant testimony and was thus denied a fair hearing within the meaning of the guarantee of due process of law and the Fourteenth Amendment.

Further the decision of the Court of Civil Appeals summarily rejecting petitioner's contention that the statute was unconstitutional upon the theory that the constitutionality of the segregation statute could be established without regard to the quality of the facilities provided thereunder likewise constituted a denial of due process of law.

Unless this Court grant petitioner's hearing upon the merits in order to determine whether these grave constitutional issues can be decided without determining the equality of the facilities afforded to the segregated group under the statutes, petitioner will have been denied a hearing on relevant material matters necessary for the determination of his rights. Failure of the state judicial machinery to provide such a hearing for petitioner on such a vital issue constitutes a denial of due process of law.

[fol. 754] V

This Court erred in holding that the proposal of the State of Texas to establish a racially-segregated law school afforded the equality required by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and thus, justified the denial of petitioner's application for admission to the Law School of the University of Texas.

VI

This Court erred in refusing petitioner's writ of application, thereby affirming the judgment of the Court of Civil Appeals and the Trial Court and holding that Article VII, Section 7, of the Constitution of Texas was not unconstitutional, in that the enforcement thereof against petitioner denied to the petitioner that equality required by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and thus, held that Respondents had the legal authority, under such Article of the Constitution, to deny petitioner admission to the Law School of the University of Texas.

VII

This Court erred in refusing such petition for writ of error and approving the judgment of the Trial Court and the Court of Civil Appeals that Article VII, Section 7 of the Texas Constitution and the Statutes of Texas enacted pursuant thereto segregating races solely on account of race and color, and not based upon any real distinction or actual difference, did not violate the petitioner's right under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, petitioner respectfully prays that this motion be granted; that upon hearing, the judgment heretofore rendered be set aside, and that this cause be reversed and rendered, and for such other orders as the law requires.

Petitioner represents that the Honorable Price Daniel, Attorney General of the State of Texas, whose residence is [fol. 755] Austin, Texas, is attorney for Respondent.

Thurgood Marshall, 20 W. 40th Street, New York, N. Y.; W. J. Durham, P. O. Box 641, Dallas 1, Texas, Attorneys for Petitioner.

I do hereby certify that I, W. J. Durham, one of the attorneys for Petitioner, have on this the 12th day of October, 1948, mailed to the Honorable Price Daniel, attorney for Respondents, whose address is Office of the Attorney General of Texas, Austin, Texas, a copy of this motion for rehearing.

W. J. Durham, Attorney for Petitioner.

[fol. 755a] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 756] IN SUPREME COURT OF TEXAS

[Title omitted]

ORDER OVERRULING MOTION FOR REHEARING—October 27, 1948

The motion for rehearing filed herein by the petitioner having heretofore been submitted to the Court, and after due consideration of same, it is ordered that the said motion be, and is hereby, overruled.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 757] IN THE COURT OF CIVIL APPEALS FOR THE THIRD JUDICIAL DISTRICT OF TEXAS

[Title omitted]

AGREEMENT TO SEND ORIGINAL EXHIBITS UP TO THE SUPREME COURT OF THE UNITED STATES IN ORIGINAL FORM—Filed Nov. 24, 1948

It is agreed between counsel for appellant and counsel for appellees that all the original exhibits introduced upon the trial of this case in the Trial Court by both plaintiff and defendant shall be sent to the Supreme Court of the United States in original form with the transcript and statement of facts which are now on file in the original form in the Court of Civil Appeals for the Third Supreme Judicial District Court of Texas, said exhibits having been sent to the Court of Civil Appeals in original form by order of the Trial Court. That said exhibits are to be returned to the Court of Civil Appeals for the Third Judicial District of Texas after a final disposition has been made of this case by the Supreme Court of the United States.

Dated this the 22nd day of November, 1948.

Price Daniel, Attorney General of Texas, by Joe R. Greenhill, Executive Assistant Attorney General; Attorneys for Appellees: Theophilus Shickel Painter, Charles Tilford McCormick, Edward Jackson Mathews; Board of Regents: Dudley K. Woodward, Jr., E. E. Kirkpatrick, W. Scott Schreiner, C. O. Terrell, Edward B. Tucker, David M. Warren, William E. Darden, Mrs. Margaret Batts Tobin and James W. Rockwell. Thurgood [fol. 757-A] Marshall, W. J. Durham; Attorneys for Appellant Heman Marion Sweatt, P. O. Box 641, Dallas, Texas.

[File endorsement omitted.]

[fol. 758] [Bill of costs omitted in printing.]

[fol. 759] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 760] SUPREME COURT OF THE UNITED STATES

No. , October Term, 1948.

HEMAN MARION SWEATT, Petitioner,

v

THEOPHILUS SHICKEL PAINTER, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 23d, 1949.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 12th day of January, 1949.

[fol. 761] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 7, 1949

The petition herein for a writ of certiorari to the Supreme Court of the State of Texas 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.