

Nos. 34 and 44 -- Sweatt and McLaurin -- Memo to Conference

I hesitate to state my views prior to conference, but in these cases I think my convictions, based in part upon my experience in Texas, might be helpful to the Court.

First. I do not think decision should be made to turn upon the physical ~~xxxx~~ equality^{or inequality} of the educational plants or teaching faculties available to Negro and white students. I doubt that such a ground is open to us in Sweatt

~~And unless our judgment in Sweatt is to be a vain pronouncement upon a hypothesis which no longer exists, I do not think we can ~~entirely~~ ignore the new facilities Texas has made available to Negroes since the trial. I do not relish pronouncing the law as of three years ago, particularly when we could not, in justice to Texas, order Sweatt's admission to the ^{no} ~~white~~ law school at this time solely on the basis of ^{the} physical inequality of ~~the~~ ^{the} ~~white~~ Negro school in Austin.~~

Further, we would accomplish nothing by deciding on (this)

basis in Sweatt when we cannot do so in McLaurin, for in McLaurin

the only inequality is ~~is~~ segregation itself. ~~except for~~
These are ^{to be sure; but these we must}
~~the most~~ minor physical inconveniences ~~in~~ inconveniences which
~~regard as~~ ^{statement that} ~~we must regard as~~ ^{private} ~~embraced~~ within the ^{public} "equal does not mean ident-
ical." See the cases collected in 17 Geo. Wash. L. Rev. 208 (1949).

Second. (I ~~will~~ ^{will} not, of course, recite the reasons underlying)
my conviction that segregated education is unequal education. There

~~The~~ ~~segregated~~ ~~education~~ ~~is~~ ~~unequal~~ ~~education~~. (We must face facts;
we know that it is.) So far as I have been able to study the
historical materials, nothing ^{really} conclusive is shown for ^{or against} either

^{segregated education} ~~by~~ statements in Congress, the legislatures or the press

^{of briefs} at the time the Amendment was adopted. [^] But we know that the
facilities are unequal throughout the South [^] and, further, we
~~know~~ ~~that~~ need no modern psychologist to tell us ~~that it is~~
~~nonsense to believe that the~~ "enforced separation of the two
races ^[does] ~~does not~~ stamp the colored race with a badge of inferiority",

^{contrary to} Plessy v. Ferguson. [^]

~~Our duty as judges~~ ~~and~~ ~~the~~ ~~seems~~ ~~clear~~. ~~to reverse~~
~~to reverse~~ We must reverse. ^{to reverse} My question is "how", not "whether"
or "why".

There is fear that a flat overruling of the Plessy case

and ~~will~~
necessarily
will be ac-
long as the
whites in the
South have the
disposition and the
political superiority
to enforce local
segregation

the only possibility is segregation itself.
There are two ways to deal with it.
The first is to segregate the colored people into separate schools and colleges.
The second is to integrate the schools and colleges.

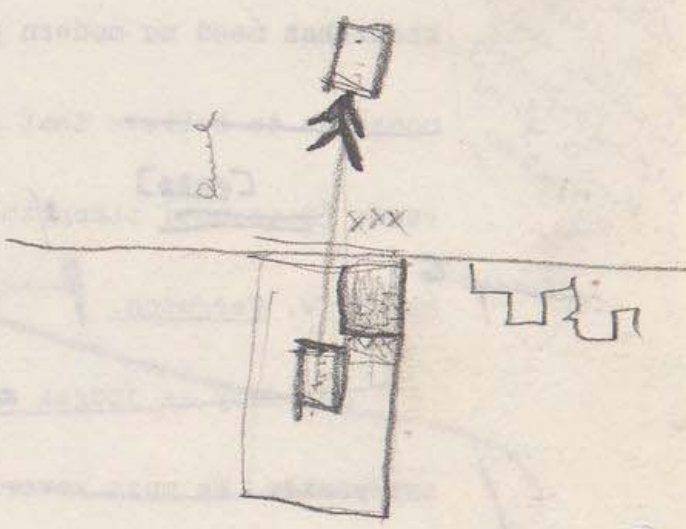
See the notes collected in 17 Geo. Wash. L. Rev. 202 (1952).
I was not at all surprised to find the reasons underlying
my conviction that segregated education is unequal education.

~~_____~~
So far as I have been able to study the

historical materials, nothing conclusive is shown for
the fact that the legislature of the state
at the time the amendment was adopted. But we know that the

facilities are unequal throughout the South. In fact, the
facilities are unequal throughout the South. In fact, the

as has been the modern psychologists to tell us
that the fact has rendered acquisition of the



~~_____~~

It is true that the fact that the

There is a fact that a fact concerning the

^{subversion or even}
~~subversion~~
would cause defiance of our mandates in many communities
and situations ~~or at least their subversion.~~ Intimidation, threats and Riots are
envisioned. A long and terrible step backward is forecast if
we go too far forward with legal doctrines at this time. ^{Taney's attempt,} Dred
Scott attempt to resolve political and social issues of this
magnitude is not comforting.

I think those fears are relevant
~~All of this you all know.~~ ~~To some extent~~ I would share
those fears should we begin holding, today or tomorrow, that
~~at parks or meetings in public auditoriums~~
swimming pools may not be segregated; or should we decide that
~~the high schools and grad schools~~ ~~and schoolhouses~~
the fourth grade in the ~~Little Red School house~~ ~~deed~~ in Miss-
issippi must be open to Negro and white alike.

in resolving
Constitutional
issues
of this
type and
of this
magnit-
ude.

feel confident
But I want to state with all the emphasis I can that those
~~at least~~ *groundless by and large*
fears are wholly without foundation should we rule that there
can be no segregation in the college or graduate level. There
by school administrators.
will be no ~~if~~ defiance ~~or~~ ~~subversion~~ ~~there will be little~~
~~grumbling.~~ Negroes now attend the University of Texas Medical
School, the Oklahoma law school, the Arkansas Medical and Law
Schools.) Nowhere are the forces of progress in the South more
apparent than in our colleges and graduate schools. *over*

Third. I am in accord with the suggestion that we limit our
opinion to graduate schools. I do not suggest that we write an

*In these
schools
the white
students
are really
reported to
have taken
the initiative
in widening
their own
fellowship,
in the classes,
at lunch,
and in study
groups, to
include the
negroes.*

For over 10 years a many of our colleges
in Texas have been ~~having~~ ^{presenting} negro speakers
permitting ~~negro~~ or sponsoring negro speakers; ^{by both white student groups}
~~they~~ students have been ^{going in} ~~making~~ as deputations
to negro communities, organizations, and churches;
the ~~church~~ denominational and interdenominational
groups at the colleges have been participating
in interracial conferences, ~~interracial~~ banquets, and
~~and~~ summer study camps, ^{and} have ~~been~~ engaged in
interracial folk dancing on the campuses. The only
protests have come from parents and others of an
older generation; ^{to my knowledge} there have been no reports of
any irregularity among the ~~young~~ students.

non-participating students have been ~~of the~~ ^{most} ~~of the~~ ^{of the} indifferent, a ~~few~~ ^{few} have been amused.

Nor do I think there will be any disturbance in
connection with the admission of negroes generally
to ~~southern~~ state supported institutions of higher
education in the South. While there may be for a time
an occasional prank ^{directed toward negro students by immature} or threat ~~on the part of undergraduate~~
~~college students~~, ^{such activity} ~~this~~ will ^{come to} ~~be~~ ^{soon} be regarded as
~~advisement~~ disapproved by the entire college community.
In all probability ~~the~~ the states will continue to maintain
a negro school as well as the ^{white} ~~segregated~~ school, and
~~the~~ at the outset only the more ambitious ^{negro students} will enroll
at the latter institution.

opinion reaffirming Plessy as to all but college and graduate schools. I would not sign an opinion which approved Plessy.

4 In terms of social equality, I recognize that segregated grammar schools may instill racism in ~~impressible~~ young minds/in at a time and a manner ~~andxxxxxxxx~~ more destructive of society's fabric than segregated colleges and graduate schools, ^{ever} will. ~~ever~~.

But our concern in these cases is not with social equality, ~~xxxxxxxxxxxx~~ but ^{with} educational ~~xxxxxx~~ equality. Broadly, of course, "education" means infinitely more than ^{acquiring} a specific skill -- in engineering, medicine, language, law. To "know anything you must know all", in Holmes' words. But I submit that we must treat

"education" in its normal, more narrow connotation and concern ourselves here ^{with} but, but one question: is the ^{segregated negro's} skill ^{opportunity to acquire} acquired by -- in ~~the broad sense of professional~~ "know-how" ^{as broad as the particular level} a Negro in a segregated school "equal" to that acquired by a ^{of a} white? ~~As we all know, in a law school that "know-how" comes from~~

formal education? training?

~~xxxxxx~~ If that is the issue, we are justified in writing in the focus of graduate schools and colleges -- or graduate schools, alone. It is entirely possible that Negroes in segregated grammar schools, learning ~~xxxxxx~~ arithmetic and ^{spelling} ~~grammar~~ ~~from the pedantic teacher~~ ~~xxxxxx~~ ^{elementary} ~~xxxxxx~~ would receive skills in those ^{subjects} equivalent

to ~~the~~ those of white students, providing that the ^{quality} of texts, physical facilities and instructors ^{is} "equal."

It is obvious that the same cannot be said of graduate ~~schools~~

~~professional~~ schools. The ~~whole~~ atmosphere of age and tradition at an established graduate school ^{of itself} ^{by stimulates} has profound effects upon its students ⁱⁿ

And that atmosphere draws ^{Professors} ~~the~~ of stature in ~~the~~ profession --

men who make ^{an older} ~~the~~ University ~~of Texas Law School~~, for example,

so different from ^a ~~the~~ ~~upstart~~, neophyte Negro ~~academy~~ academy.

Further, the opportunities for discussion available in a larger ^{uninhibited}

school are literally invaluable -- there surely can be no substitute for the exploration and combat of ideas ^{in a particular field subject matter} among ~~the~~

maturing minds of varied backgrounds and opinions. In this

latter, this ~~fundamental~~ fundamental inequality, the Sweatt and McLaurin

cases are one.

I join, then, with the proposal that we reverse this case

upon the ground that segregated graduate education denies Negroes

the equal ~~pro~~tection of the laws. I repeat that I would not

approve Plessy in any manner. We have before us just two cases.

Both concern ~~the~~ graduate schools. Perhaps the fundamental legal

reason for limiting discussion to graduate schools is that we

achieving professional competence.
 Negroes within a profession should not be compelled to defer until after graduation their formal education has ended the association with whites against whom they must compete and whose ^{professional} views they ^{often} must understand in order adequately to accomplish their professional tasks.

~~for example~~
Negroes, ~~lawyer~~ who at the time of
admission to the bar, ~~for example~~ have never been
allowed by the state to have any professional ~~social~~ ^{essence}
~~social experience~~ ~~association~~ with whites on a
Common level ~~of social experience~~,
~~ne necessarily lack~~ the ~~pro~~ have not
had ~~the~~ an equal opportunity to
acquire ^{indispensable} professional ^{insight} ~~skills~~ ~~in the~~
~~broad sense of know-how~~ which is the
~~necessary~~ ~~only~~ ~~relevant~~ ~~sense~~ in which
~~the term~~ may be used in the ~~context~~
~~with legal education~~

should avoid the decision of Constitutional questions in advance of the ~~strenuous~~ strict necessity for that decision.

How will I vote when the swimming pool and ~~Little Red~~ *grammar school* school house cases arise? I do not know; *that is irrelevant.* ~~I need not say.~~ Should

they arise tomorrow I would vote to deny certiorari or dismiss the appeal. That is ruthless; but it is not lawless. I cannot agree that the effects of a decision upon masses of people ~~in~~ in our society is irrelevant to the resolution of Constitutional questions of this type and of this magnitude.)

I leave to one side the segregated school system in the District of Columbia, which arises under the Fifth Amendment; and *the extremely remote possibility that will* ~~the nearly incredible case in which a state court concludes~~ that Plessy should be overruled entirely.

I join with those who would hold that whatever the present validity of Plessy v. Ferguson, there is no square ruling in this Court that separate graduate education is equal education within the meaning of the Fourteenth Amendment; and that for the reasons outlined above, ~~and others~~ the petitioner Sweatt should be admitted to the University of Texas Law School ~~at Austin~~, and the discrimination against McLaurin at Oklahoma *should be ended* ~~is ordered at an end.~~