On McLaurin + Sweatt -

1 - On separate & equal I don't think record shows equal in either case - I would make burden as heavy on State as we do in discrimination on juries - Can't set up new school that is equal = common sense tells us - Black would prefer separate & equal but cannot have same here. We could under that policy handle the cases one by one and not cause trouble -

2. This system was designed to set up a caste system - contrary to 14th Amend - a hangover from the Civil War - It is a badge of inferiority - If we reach this question then I would meet it regardless of the cases of this Court -

Reed :-

Of course we have the power to cast aside statutes - It is hard for me to say something that has been constitutional for years is suddenly bad - The 14th Amendment was not aimed at segregation - No statement by anyone such as Congress etc that segregation unconstitutional - We

have made great progress. It would be unfortunate at this time for us to say segregation unconstitutional - I agree on Henderson - We can go off on the statute -

On Okla when you admit a student they must all be equal -

On Texas I would prefer to say We have problem of whether facilities are equal - Sweatt says facilities are equal in Texas - Sweatt sent back for correction & amendment of record.

Frankfurter - Should be decided aside from any doctrinaire - or intentions as We construe them of 14th Amend - No one knows what was intended -

Cases are difficult - disposition of Henderson on Statute means what?

On Sweatt - This is no Dred Scott case - Here is the slow growth of insight and understanding - To have two schools

is not equality - It can't be made so -

Holmes speech 1886 at Harvard on use of law schools in turning out "specialists" - all lawyers are specialists who have taken all law to be their province - a branch closer to the ideals of ~~mankind~~ - ~~but~~ the school must be the workshop & the nursery. The enthusiasm of the lecture room etc should make the students partners -

Douglas: - We should meet issue head-on. I might go along on separate & equal if no overtones that segregation in education is constitutional. Perhaps we have overruled Plessy in deciding Henderson & McLaurin -

Jackson: - I think Southern whites are as much "caste" as negroes -

14th amendment history leaves you without support - Congress has **not touched** it. In effect we are amending the Constitution -

Government has not done it.

It would destroy the public schools in Va. -
Desirable to do it (reverse) my views
are fluid enough to join any theory -

Burton

McLaurin a case where you have been
admitted - hence must be equally
treated - otherwise there is discrimination -
At post graduate level cannot have Equal
and separate -

Minton: -

No constitutional question involved -
We have a statute (original I.C.C. Act)
providing in shipping no particular
person shall be subjected to unequal
treatment - Statute denies what is here?

On other 2 cases equal protection
clause applies -
If admit in white school then
on equal footing -
In Texas can't put in - unreasonable

classification - Perhaps we can meet grade & high school when we get to it. Unreasonable classification -

C.J.

In Henderson = Mitchell decided suit properly brought - new car subsequent to suit etc. That controls here - hence reverse on statute -

McLaurin :- Action in this Court in Sipuel & Fisher says she was entitled to Education at State expense - must admit her or provide equal facilities - If she not admitted then no whites could be admitted - Reverse McLaurin on basis of State took that course then without discrimination.

Sweatt - attempt to utilize benefits of separate & equal - Sweatt says he would not enter separate school for it could not be equal - I think this issue settled by legislative history surrounding adoption of 14th Amend - rely on legislative history of Act of 1866 re single schools - Can't conceive that they did not have that problem before them in Sumner's time etc

Here in DC. Congress maintains separate schools. States of North passed legislation providing for separate schools. Hence at that time it must have been thought that separate schools constitutional

Harlan - does not mention public schools in dissent in Plessy. Harlan wrote Cumming. All of these cases - Cumming - Lum etc held separate proper - in Gaines this Court and

Same types of language -

Shelley v Kraemer bothersome - its reasons all these cases evidently with approval - every one case in this group cited in Shelley v Kraemer had some slight difference -

No time to extend Constitution - when we have all this historical background it is hard for me to say schools should not be separate -

How can you have constitutional provision as to graduate but not as to elementary?

I doubt if separate + equal is true on Sweatt - any constitutional issue,
I tend toward affirming

Black on Henderson:

I think Statute covers it -
Even Plessy talks of reasonable segregation -