Supreme Court of the United States
Washington 13, D. C.

CHAMBERS OF
JUSTICE TOM C. CLARK

April 1, 1950

Dear Boss:

A word may be appropriate as to the strategy of the accompanying draft memorandum re the Sweatt and McLaurin cases.

As you know, certain members of the Court are understood to take extreme views which are to an extent synthesized by your own. Thus the view is reportedly held, on the one hand, that the Plessy rule is a desirable one which should be left on the books, while on the other hand, some would say that the Plessy rule should be overruled entirely. Some if not all of those who take the latter position regard it as improper or unwise to overrule the Plessy doctrine as to any area of relations if it is not overruled as to all areas. For those who think Plessy a good rule, we try to show that it is unsupportable, as a matter of analysis and justice, when applied to graduate professional education. For those who think that now is the time to terminate the doctrine altogether, we try to suggest that there is likely to be some degree of social unrest and dislocation if such sweeping action is taken. An effort is made to assure all that your position alone is supported by the present extent of social advancement in the South, and that adoption of it would not precipitate any difficulties of more than a temporary and inconsequential nature.

It seemed best, however, to keep the memo as brief as possible, so that it would (a) be read, and (b) be effective.

A concept of "education" is adopted which limits the term to "training in specific skills, and imparting of information, related to the subject matter of study." This does not include general social orientation and experience, and acquisition of self-confidence, all of which we think are part of education; but to consider equal education in this latter, broader sense would require you to take a position with regard to elementary and secondary education which would not accord with the realities of the existing social situation in the South.

As to the Texas procedure point discussed early in the memo: It is not necessary to take "assignments of error," as that term was used in Texas prior to the new Rules, in a non-jury case. But it is necessary to state the "points of error" relied upon in order to make a particular issue reviewable by the court of civil appeals or the supreme court. The lawyers in Texas refer to "points of error relied on" as "assignments of error," and it is in this sense that the latter term is used in the Texas brief. The Texas brief seems to be entirely correct in stating that the issue of physical equality of the schools is not before this court.

P.D.W.

L.T.