SWEATT v. PAINTER

This class suit was filed in the District Court of Travis County, Texas, on behalf of the petitioner, complaining of the respondent who was President of the University of Texas, and the officers of that school, for their refusal to permit the petitioner to register in its Law School. The complaint prayed for a mandatory injunction requiring the respondents to register the petitioner in the Law School.

The testimony was limited by the Court to one issue, i.e., whether the law school for Negroes, which had been established at Austin (together with the one being established at Houston, Texas) by the State, has substantially equal facilities for teaching as that of the Law School at the University of Texas.

The respondent was supported by the testimony of D. A. Simmons, former President of the American Bar Association; D. K. Woodward, Jr., Chairman of the Board of Regents of the University of Texas; Charles T. McCormick, Dean of the Law School of the University of Texas; and Miss Helen Hargrove, Librarian. This testimony began on May 12, 1947. At a previous hearing in the case, the Court had found that the petitioner was entitled to be enrolled in the Law School of the University of Texas, or in a school of substantially equal facilities operated by the State. After this determination, the State undertook to organize such a school and the testimony of these witnesses was with reference to the law school that had been organized since the said hearing.

The Austin school consisted of four rooms on the ground floor of a four-story building adjacent to the Capitol Building in Austin. The four rooms consisted of an entrance hall, two class rooms, one of which was 11-1/2' x 16-1/2', and the other 12' x 12-1/2'. The fourth room was a toilet. On

March 10, before the second hearing, the University had declared the school ready for occupancy and enrollment. There were some 200 books in shelves in the entrance hall, consisting largely of volumes used in first year law courses at the University of Texas. The legislature had passed an act authorizing the students of the Negro law school to use the library consisting of 42,000 volumes of the State, which was located in the Capitol Building some 150 yards from the Law School. The students could not remove the books, however. The Board of Regents had also appropriated $100,000 for the purchase of a complete set of books for the school, and these books had been advertised for by the State. It had also provided for a Librarian at $4500 a year, as soon as the enrollment of the school was thought to be sufficient. There was no office space in the building for either the professors or a Librarian or the Dean. All the staff was to be drawn from the University of Texas Law School, each one performing these duties in addition to his duties there. There were desks, however, that these might use. The Board of Regents also contemplated, as soon as the enrollment required, the employment of four full-time teachers and had appropriated $30,000 for this purpose, which included two summer sessions, and also the use of three more floors of the building.

The testimony indicated that the State was attempting to obtain a 53-acre campus with buildings in Houston, Texas, which was at that time a branch of the University of Houston. The state had rented two rooms in an office building in Houston, with a view of operating the school from these rooms until the 53-acre campus was acquired. A colored lawyer of Houston had been selected as a teacher, and his partner was to assist in the event he was needed. There were no books placed in the two rooms; however, the books were available in the event any students enrolled. The Houston operation was to be under the Prairie View University, which is a Negro College under the supervision of the A. & M. College of Texas, which is a State institution.

The witnesses for the State testified that in their opinion these facilities were substantially equal to those afforded the white students at the University of Texas.

The petitioner, in addition to his own testimony, offered that of Dr. Robert Redfield, of the University of Chicago; Earl G. Harrison, Dean of the Law School of the University of Pennsylvania; Dr. Charles Thompson, of Howard University Graduate School; and some lesser lights. Sweatt testified that he had attempted to enroll in the University Law School, but had been denied the privilege on the ground that the Constitution of Texas provided that separate schools for white and colored should be operated by the State. But after the first hearing he received a communication from the Registrar of the University advising him of the organization of the Negro Law School and the fact that its session would begin March 10th. He testified he advised with his lawyer concerning enrolling in the school, and decided not to enroll because in his opinion the school did not offer substantially equal facilities. On cross examination he said that he would not enroll in the school, even though it had the same facilities, unless white students were permitted to attend, because he was of the opinion that in studying law it was necessary for one to attend an unsegregated school so that a cross section of the community would be represented. Each of his supporting witnesses testified that in their opinion a segregated school could not offer substantially equal facilities because of that fact alone. Dr. Thompson testified that he had been employed by the petitioner to make a survey of the Texas schools. In his opinion the Negroes were not afforded substantially equal facilities in graduate work by State operated schools. He introduced statistics from the State auditor's report asserting they indicated that white students were afforded better facilities. The burden of those statistics was that the per capita appropriated to such

students was several times larger than that appropriated for the graduate work in Negro institutions. All the witnesses contended that the proposed law school in Austin was far from being equal to that of the University; that at the outside there would not be over 10 or 12 students in the school; in fact, only one, Sweatt, was then a prospect. Dr. Thompson testified that the Prairie View University was, in fact, not a university--that it was a college, and that the proposed school at Houston would not afford equal facilities for Negroes.

The Court found that the facilities were substantially equal and denied the application for relief, which action was affirmed by the Court of Civil Appeals passing on both points, i.e., segregation violates 14th Amendment and that the proof showed the State was furnishing substantially equal facilities.

The Attorney General (of Texas) contends the sole issue here is constitutionality of Texas segregation provision as petitioner did not raise the issue in lower courts. The Court of Civil Appeals, however, passed on this issue in its opinion, as well as on rehearing. The case was not before a jury and the application for writ of error to the Supreme Court of Texas raised the issue of "separate but equal". See R. 467.

The petitioner brings the case here by writ of certiorari on two grounds, the first being that the "separate but equal" doctrine violated equal protection clause of the 14th Amendment to the Constitution of the United States. The second ground attacks the Court's finding that the two schools had substantially equal facilities.

In its brief filed in May 1949, the State sets out additional facts. It seems the Austin school has been closed and the three students enrolled there

have been transferred to Houston. It asserts that the Houston school is now in full operation, having 23 students. It has 16,371 law books in the school, and 772 volumes in the warehouse; that it has a Dean who is paid $7500 a year and five full-time professors who are paid $500 a month and a full-time Librarian. The school is housed in the main building on the 53-acre campus known as the "Texas State University for Negroes". The school has been approved by the State Bar Examiners. The brief also points out that in addition to its present building a construction program, including an administration and class room building costing $1,637,000 is now being completed and that the legislature has appropriated $1,800,000 for additional buildings and over $2,000,000 for operation during the next two year period. It also points out that the University itself (Texas State University for Negroes) has an enrollment of 2,032 students, 211 of which are in its graduate school. It has 115 full-time professors on its faculty in addition to administrative personnel and its President and 17 members of the faculty hold Doctor's degrees. The university has been approved and given Class A rating by the Southern Association of Colleges and secondary schools. In 1948 it awarded 36 Bachelor degrees, 30 Master's degrees at the long session, and in the summer session awarded 68 Bachelor of Arts, 19 Bachelor of Science, and 65 Masters degrees.

No. 34

McLAURIN v. OKLAHOMA STATE REGENTS

A three-judge Court, composed of Circuit Judge Murrah and Vought and Broddus, District Judges, at the first hearing decided that petitioner had been denied the right to secure a post graduate education in Oklahoma in a state institution. It held that the state was constitutional duty to provide educational facilities for plaintiff to seek a post graduate course. The statutes of the State of Oklahoma which denied the petitioner admission to the University of Oklahoma were held to be unconstitutional and void.

The Court retained jurisdiction of the case with full power to issue further orders and decrees to the end that plaintiff secure the equal protection of the laws, which the Court decided meant equal educational facilities. Thereafter, the University admitted petitioner, but required him to sit at a desk in an alcove in the lecture room, segregated from the other students, all of whom were white. The petitioner contended that while he was in the same school that he was being segregated, and that the effect of this segregation was depriving him of an equal education and, secondly, that while the Court had held the statutes void that here an administrative board, the Board of Regents, had set up a system of segregation that discriminated against and degraded the petitioner. The petitioner contended that he should be admitted like any other student and take his seat in the class room in the same way.

Petitioner was admitted to the University and was allowed to take the courses which he sought to pursue and he attends the same classes that other students attend who are pursuing these studies. He has the same instructors and he is assigned a permanent desk and chair, but same is in an anteroom to the main class room. From his position in the anteroom he can see most of his fellow students. He is admitted to the library of the University where all the other students are admitted, except he is assigned a permanent desk

on the landing, above the second floor of the library. He is required by the rules to occupy this desk while using the library. When he wishes to get books he goes to the librarian and, after securing the books, takes them to this desk and uses them there, while other students select their own books from the stacks and take them home or any place that they may wish to pursue their studies. In the dining room petitioner is assigned to a place known as the "Jug", which is a regular eating place, where he eats by himself. The "Jug" is a respectful place and is used by white students, as well as the petitioner, but he is assigned a special place apart from where the white students are served. He is the only one there and he is not permitted to select his food cafeteria-style, as are the other students. He has to take what is brought to him, but the food is from the same sources as the white students.

Petitioner contended his required isolation from all other students created a mental discomfiture which affects his relationship with his fellow students and his professors.

The Court held that the petitioner was being afforded the same educational facilities as other students, and that it could not find any justifiable legal basis for the mental discomfiture which petitioner says deprived him of equal educational facilities. The Court further concluded that the classification, as enforced by the regulations of the Board of Regents, was based upon a reasonable basis and did not deprive the petitioner of the equal protection of the laws.

The petitioner attacks this judgment on the grounds that it is based on the public policy of Oklahoma, rather than on the constitutional right of the petitioner and, further, that the Fourteenth Amendment prohibits the State from making ■ racial distinctions among its citizens in the performance of its governmental function of providing public education at the graduate school level.

even though petitioner asserts that "The Texas Court was in error in holding that the law school established for Negroes at Austin was 'substantially equal' to the law school which the state makes available to non-Negroes at the University of Texas." Brief, Errors Relied Upon II, p. 5. The Texas Court of Civil Appeals, in its opinion on petitioner's motion for rehearing — the latest opinion in the case, stated that petitioner did not invoke its jurisdiction to set aside the finding of fact as to ~~the equivalence~~ physical equality of the two schools; it declared that the finding would have been upheld had it been made reviewable on proper assignment of error by petitioner. Although there was no opinion by the Supreme Court of Texas in connection with its refusal of a writ of error, it appears that again there was no assignment of error ~~preserving~~ raising the fact issue of physical equality, ~~of the schools, in the petition for writ of error~~ essential to invoke that Court's review; the assignments of error, insofar as relevant on this point, were worded identically on appeal to the Court of Civil Appeals, on motion for rehearing in that court, and on petition for writ of error in the Supreme Court.

If, then, the ~~ultimate fact~~ issue of physical equality of schools is ~~not before us~~ no longer in the Sweatt case, ~~I think~~ we cannot consider disposing of this case by redetermining whether the two schools were in fact equal on the present record, or by remanding for the introduction of further evidence ~~in view of the establishment since trial~~ as to the more adequate segregated law school now ~~being~~ maintained at the Texas State University for Negroes in Houston. Accordingly, it would seem ~~unless~~ we must ~~are able to~~ hold that there can be no separate professional schools, ~~I think~~ or that petitioner Sweatt is to be denied admission to the University of Texas.