No. 34

G.W. McLaurin
v.
Oklahoma State Regents for Higher Education, Board of Regents of University of Oklahoma, et al.

On appeal from the United States District Court for the Western District of Oklahoma

[April --, 1950]

Per curiam.

In this case we noted probable jurisdiction upon a record which indicated serious questions regarding denial by Oklahoma authorities of rights guaranteed appellant by the Fourteenth Amendment to the Constitution of the United States. Appellant, a Negro student at the University of Oklahoma graduate school, had been compelled to sit outside regular class rooms, participating in classes only through an open door. His place in the library was on a floor removed from the normal intercourse of graduate students; and he was forced to use the cafeteria at a time different than that of his fellow students. He was singled out for this unique treatment solely because of his race.

As we indicate in Sweatt v. Painter, ante, p. --, decided this day, one of the indispensable requisities of graduate study is the exchange of ideas among students of varied backgrounds and ideas, pursuing the same course of study. On the record before us, grave questions were presented concerning Oklahoma's fulfillment of the Constitutional mandate. A specially constituted three-judge District Court had upheld the State's action as consistent with the Constitution. 28 USC § 1253

At the bar of this Court, however, appellees contended and appellant conceded that the State authorities had taken measures

to correct the alleged inadequacies in appellant's educational treatment. Apellees inform us, in their brief that: "....."

It seems clear from this recital -- the only notification of changed circumstances we have before us -- that we are insufficiently apprised of the manner in which the current State program is being conducted to pass intelligently upon the serious Constitutional issues argued in this case. We do not know, for example, what freedom of discussion now exists between colored and white students; we do not know on what basis the seating of class room students is conducted -- where in the class rooms Negroes sit in relation to whites, whether Negroes sit together in an ostracized block of seats, or whether they are simply assigned individual chairs in the midst of white students. Most important, we are unable to determine without the testimony of the students, or possibly without that of expert witnesses, what/the psychological effects upon Negroes of Oklahoma's latest policies. It may be that unlike the/segregated graduate school, the segregation practised at present at Oklahoma has negligible effects upon members of the segregated races. The works of modern psychologists to which we have been referred indicate no clear-cut answer to these questions. It may be that the effects are so small that they must be embraced within that cardinal rule of our judicial process, de minimus non curat lex.

As well as the uncertainty concerning present practises, the University program is now in so large a state of flux that it may be ill advised for this Court to render decision at this time. If we are correctly informed by counsel, three distinct changes of policy have occurred in a single year; and all of these changes have been in the direction of greater assimilation of the Negro student into the life of the University. If this trend

continues, as the past eighteen months' experience indicates that it may, we will have nothing on which to base a ruling that unequal educational facilities are being provided. ~~xxxxx~~

Our jurisdiction to strike down State action will not be exercised in advance of the strict necessity for so doing. See Rescue Army v. Municipal Court, 331 U.S. 549, 568 (1947); Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346 (1936), Brandeis, J., concurring. As the Court in Rescue Army ~~xx~~ declined the opportunity afforded to examine the Constitutionality of state legislation when the precise construction and application of that legislation was unclear, so do we now decline the opportunity to examine state action whose consequences are unknown and whose firmness is open to serious doubt. The delicacy of our function ill befits a Constitutional adjudication upon shifting sands.

Our only course is to order the appeal dismissed, without prejudice to such further action as the parties may deem appropriate in the light of this opinion.

So ordered.