HERMAN MARION SWEATT VS.
THEOPHILIS SHICKEL PAINTER
(B)

IN THE SUPREME COURT OF THE

UNITED STATES

NO. 44

HEMAN MARION SWEATT, Petitioner

vs.

THEOPHILIS SHICKEL PAINTER, ET AL, Respondents

ORAL ARGUMENT TO BE

PRESENTED

ORAL ARGUMENT IN SWEATT CASE

Petitioner, a resident citizen of Texas, filed his application more than four (4) years ago; he is still out of school.

HISTORY OF LITIGATION

May 16, 1946, petitioner filed his suit in the District Court in Texas, for a petition for a writ of Mandamus seeking admission to the law school of the University of Texas (R. 403-408). On June 17, 1946, a hearing was held and on June 26, 1946, the court entered its judgment declaring the respondent's refusal to admit the petitioner to the University of Texas law school constituted a denial of equal protection of laws, on the grounds that this institution was the only school within the State providing legal training.

The court granted the writ but stayed the effect of its judgment for a period of six (6) months, for the stated reason of giving respondents six (6) months to provide a legal training "substantially equal" to the legal training provided at the University of Texas law school. The court, however, retained jurisdiction of the case during this period (R. 424-426).

Between June the 26th, 1946, and December 17, 1946, the

State of Texas opened a law school for the petitioner in Houston, Texas. This law school had no books, no teachers, and did not have a building, but had an option on a building in Houston. But during this same period of time the Legislature of Texas authorized by statute the setting up of a law school for Negroes, and pursuant to that law the Board of Regents of the University of Texas passed a resolution authorizing the Board of Directors of the Texas Agricultural and Mechanical College to set up such a law school for the petitioner.

On December 17, 1946, after a trial in which these developments were shown to the court, a judgment was rendered, holding that the State of Texas had made available another school which provided an opportunity for legal training for petitioner substantially equal to the legal training offered at the University of Texas law school, and that, therefore, the respondents had complied with the court's order.

At the time this judgment was entered respondents had only a paper law school--that is, the State had promised in the future to furnish separate facilities for petitioner's legal training (R. 426-432), but no such institution actually existed.

An appeal was instituted but on March 26th, 1947, the Court of Civil Appeals, upon motion filed by the respondents, reversed that

judgment without prejudice (R. 434-435). The respondents claimed in that motion in the Court of Civil Appeals that the facts had changed since the trial of the case on December 17, 1946, and before the motion was filed, and that the respondents had established in Austin, Texas, another law school which was available to petitioner, which afforded the petitioner law training equal to that furnished the white students at the University of Texas law school, and that the court should have such additional facts before passing upon the points raised by petitioner. On May 12-18, 1947, the case was again tried on its merits in the lower court.

In this trial it was shown that between the period of time embraced between the 17th day of May, 1947, and the 17th day of June, 1947, the State of Texas had established a law school which respondents claimed was available to the petitioner in a building in Austin, Texas, located approximately 100 feet from the state capital in the basement of a two-story brick building (R.). The testimony further showed that the portion of the building used for the school was divided into three rooms. Two of the rooms were to be used for classrooms, and the third room was intended to serve as a library. There were seats placed in the class room and a desk. Shelves were placed in the library and approximately 150 volumes were in the library at the Negro law school on May 12, 1947 (R.). A list

of 10,000 books had been given the librarian of the law school at the University of Texas. These would be used in the Negro law school, if and when received. The 10,000 books, of course, were not in the Negro school (R. 89). In fact, with the furniture in the Negro law school, there was not sufficient room in the building to put the 10,000 books. The students attending the Negro school would have been required to use the Supreme Court library which was housed in the capitol building, approximately 100 feet away. The Supreme Court library did not possess the same books, legal periodicals, etc., that the library of the University of Texas law school had, nor did the Supreme Court library contain other materials used in connection with the law training given at the University of Texas law school. The library in the University of Texas law school contains 65,000 volumes and is fully equipped with all of the necessary periodicals and text books. It fully meets the requirements of the Association of American Law Schools. The Supreme Court library did not meet these requirements and the library in the Negro law school did not meet such requirements. In addition, the public generally uses the facilities in the library of the Supreme Court while the University of Texas law library is used exclusively by students and faculty.

The Negro law school did not have full time professors. There were three professors assigned to it but they were also assigned to

duties at the University of Texas law school. The University of Texas had a full time librarian. The Negro law school had no librarian at all. The professors did not maintain offices in the Negro law school. Their offices were in the law school of the University of Texas. The building in which the Negro law school was housed is shown on page 385 and page 389 of the Record.

The University of Texas law school is housed in modern, spacious buildings (R. 386-387). The dean and the faculty of the University of Texas law school are located in the University of Texas law school. The University of Texas law school has a moot court, a law review, a legal aid clinic, and meets all of the requirements of all of the accrediting agencies. It is a fully accredited law school. The Negro law school was not an accredited law school. It had not met the standards and requirements of the American Section on Legal Action of the American Bar Association, or of the Association of American Law Schools.

After that trial, judgment was rendered on June 17, 1947, in favor of the respondent and petitioner's application for writ of mandamus was dismissed (R. 438-440). An appeal was prosecuted from the judgment of the lower court to the Court of Civil Appeals and the judgment of the lower court was affirmed on February 25, 1948 (R. 445-460). Thereafter, a motion

for rehearing was filed in the Court of Civil Appeals and on March 17, 1948, petitioner's motion for re-hearing was overruled (Opinion R. 460-461).

The petitioner filed his petition for writ of error to the Supreme Court of Texas from the judgment of the Court of Civil Appeals. The Supreme Court of Texas on September 8, 1948, refused the application for writ of error without an opinion (R. 466).

The petitioner thereafter, and within the time required by the rules controlling the filing of a motion for re-hearing, filed a motion for re-hearing in the Supreme Court, and the Supreme Court, on October 27, 1948, overruled that motion (R. 471). Petition for certiorari was filed in this court on and was granted on November 7, 1949.

Respondents in their brief advise us and the court that still a third law school for Negroes has been established at Houston.

The law school referred to in the respondent's brief, (R. 119-123) and in the appendix in such brief (R. 224-228) was never considered by the trial court, Court of Civil Appeals, or the Supreme Court of Texas.

Explain Texas rules

The Attorney General of Texas argues that at least this court ought to send this case back to a trial court for the purpose of taking testimony of the comparability of the University of Texas law school and the law school for Negroes at Houston. He has, somewhat improperly we think, endeavored to show to this court some information with respect to that law school for Negroes at Houston in his brief and argument and by the Appendix thereto. We submit that no weight should be given to such information. The reasons, we think, are obvious. In the first place the traditional guarantees with respect to the truth of factual assertions are completely lacking. One illustration of the harm which can result from ignoring the traditional guarantees of veracity appears in comparison of ~~Page 227 of the Appendix and~~ Page 121 of the Respondent's brief with the brief amicus and the certificate thereto filed on behalf of the American Association of Law Schools. On page 121 of Respondent's brief, it is asserted "The school, including of course its faculty, has also been found by the American Association of Law Schools to meet its standards." The statement of that organization is (read Griswold's certificate). If off the record assertions are to be relied upon in the disposition of Petitioner's claims for protection of his constitutional rights, there are innumerable assertions with respect to the Houston Law School which counsel for Petitioner would seek to make.

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We submit, however, that this court, briefs ~~filed~~ filed with it and oral arguments before it are not the proper places for the trial of such issues of fact.

The record, as such, contains no evidence with respect to the facilities, characteristics and policies of this third allegedly equal law school for Negroes at Houston. The record does show, however, that petitioner is still excluded from University of Texas solely on account of his race and color. We contend this deprives him of constitutional rights. The comparison of the two presently existing law schools is relevant only if the standard of the Plessy case is a valid construction of the "equal protection" clause. We contend that it is not, and my associate will argue that point. Thus, even though this record, like that in the McLaurin case, does not disclose all of the facts and circumstances surrounding the efforts of the State of Texas to evade the constitutional requirements, the record does disclose all of the facts which are relevant to the determination of the petitioner's claim of denial of constitutional rights.

Those facts are simple. The State of Texas, for many years, has provided legal education at the State University. Petitioner is qualified and has applied for admission. That has been denied him for four years solely because of his race. We contend this amounts to a denial of equal protection of the laws in violation of the 14th Amendment. Without more there could be no substantial controversy here since the Gaines and Sipuel cases would compel approval of that contention.

The state argues, however, that it has satisfied the 14th Amendment by providing "separate but equal" facilities for Petitioner and other Negroes. This contention is relevant only if the plain constitutional requirement can be so satisfied. The facts of this case, alone, demonstrate the fashion in which the rights of individual Negroes can be ignored by conniving state officials under the protection of that vicious "separate but equal" notion.

Sweatt was first offered a so-called legal education at a law school for Negroes in Houston. That school lasted a month. It was replaced by the basement institution in Austin which is fully described in this record. Now, for the first time in this proceeding, we are told in the state's brief that the Austin school has been replaced by another in Houston. If protection for Petitioner's constitutional rights depends on his ability to "catch" this moving institution we say, in all seriousness, that no individual or group can match the speed and flexibility of a great state bent on mischievous disregard of its constitutional obligations.

In this connection, we should like to remind the court of the proceedings in the Sipuel case, ~~There, after the decision by this court~~ & the result outlined to you by Mr. Hanson today.

that exclusion of that young woman from the University of Oklahoma law school amounted to a denial of equal protection. The State of Oklahoma purported to establish a separate law school for Negroes. When this court refused to consider the matter on motion to secure compliance with its mandate, the legal sufficiency of that segregated law school was attacked in a trial court in Oklahoma. After a long trial, that court, erroneously we thought, decided that the facilities of the separate law school for Negroes were "equal" to those afforded by the University of Oklahoma law school. Counsel then began the tortuous road back to this court from that decision. Last year, however, the State of Oklahoma, for reasons not publicly disclosed, abandoned its abortive separate law school and admitted Miss Sipuel to the University of Oklahoma law school. Counsel here, most of whom were counsel there, are pleased to report to this court, off the record, that in the second year of her law study, that young woman is more than adequately satisfying with the standards and regulations of the University of Oklahoma law school. Moreover, a second Negro law student has been admitted to that institution.

The State of Texas, however, argues here that this simple and obvious method of satisfying the plain constitutional rights of Petitioner is not open to it because of state statutes and constitution. At this

stage in our legal history, no serious contention can be made that the existence of such state statutes and constitutional provisions does more than raise the question of their validity when tested against the federal constitution.

Incidentally, the State of Texas contends that the justification for such statutes cannot be questioned in a judicial proceeding even in this court. That contention, also, only serves to raise, from a somewhat different angle, the same basic question as to whether the constitutional requirement that no state shall deprive any person of the equal protection of the laws should be read as if it can be satisfied by providing separate even if equal facilities.

classification

The language of the statutes and constitutional provisions of the State of Texas involved here is unambiguous. The intention is equally clear. Those state laws seek to achieve complete segregation of persons in state-supported and operated educational institutions solely on the basis of race and color of the persons involved.

We submit that when subjected to the scrutiny which any statutory classification must be given when attacked, this classification

fails to satisfy the constitutional obligations imposed upon all legislative bodies, whether state or federal, by the organic laws of the United States.

Actually, of course, as this court has hitherto pointed out, when the classification by a statute or other governmental action is based entirely on race, it must be subjected to a stricter scrutiny than other classifications. In fact, we submit, the decisions would support the inference that the ordinary presumption of validity or constutionality of state action does not rise when the basis for the state's action is race and race alone, but we need not go so far in this case.

In that connection, let me remind the court of its own language in connection with these matters. For example, Mr. Justice Stone thought "

See brief pp 31-33 Mr. Justice Black was of the opinion "

Shelley v. Kraemer The present Chief Justice said that "

Moreover, no distinction has been drawn by the court in this regard between the limitations on the action of the federal government found in the 5th Amendment and those imposed on the state governments found in the 14th Amendment. Probably no better illustration of this can be found than in the jointly rendered decisions in the so-called restrictive covenant cases, Shelley v. Kramer and Hurd v. Hodge, one case arising from a state and the

the other from the District of Columbia. That, we submit, is entirely proper. It would be unthinkable that one branch of our federal system should be free to draw invidious distinctions based upon race or color while the other may not. In that direction, we submit, would lay confusion, chaos and virtual anarchy. We have cited other cases in support of this proposition in our brief and we respectfully direct the court's attention to them.

In dealing with these matters of classification which are based solely upon race, not only does the legal theory require the rigid scrutiny for which we contend, but the national importance of political and social and legal institutions so modeled require that such distinctions be justified only if any such justification can be produced.

Unmindful of this obligation, or perhaps more accurately, seeking to evade it, the state of Texas in this case has not only not sought to justify this classification, it has gone so far as to contend that the justification appears upon its face and that no attack may be made upon it. But when the record was closed and the matter in this court the efforts at justification began. In its brief and in the brief amici of the attorney generals of certain states, an effort is made to justify this classification. Significantly, this justification is not supported by factual data which this court might evaluate and weigh and which Petitioner might meet

by countervailing evidence. Actually, all this justification is, and all that it purports to be, is a kind of threat that if this court applies the ordinary rules of construction and constitutionality to these statutes, the law enforcement officers of the several states represented in that brief amicus say that there will be public disorder. Bereft of its trappings that argument may be fairly characterized as saying that some undesignated group of persons in the community will ignore the lawful authority, both state and federal, which has power in this area and will seek to impose its will upon the duly ordained legal institutions by violence. From private persons, such a threat would be subversive. From the attorney generals of great states, such arguments are at least shocking. The short answer is reference to the very cases which have been hitherto cited. A longer answer would require a discourse on the theory of organized government.