To: Mr Justice Frankfurter

From: The Chief Justice

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SUPREME COURT OF THE UNITED STATES

No. 44.—October Term, 1949.

Heman Marion Sweatt, Petitioner, *v.* Theophilis Shickel Painter, et al.	On Writ of Certiorari to the Supreme Court of the State of Texas.

[May —, 1950.]

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The State trial court recognized that the action of the State in denying petitioner the opportunity to gain a legal education while granting it to others deprived him of the equal protection of the laws guaranteed by the Fourteenth Amendment. The court did not grant the relief requested, however, but continued the case for six months to allow the State to supply substantially equal facilities. At the expiration of the six months, in December, 1946, the court denied the writ on the showing that the authorized university officials had adopted an order calling for the opening of a law school for Negroes the following February. While petitioner's appeal was pending, such a school was made available, but petitioner refused to register therein. The Texas Court of Civil Appeals set aside the trial court's judgment and ordered the cause "remanded generally to the trial court for further proceedings without prejudice to the right of any party to this suit."

On remand, a hearing was held on the issue of the equality of the educational facilities at the newly established school as compared with the University of Texas Law School. Finding that the new school offered petitioner "privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas," the trial court denied mandamus. The Court of Civil Appeals affirmed. 210 S. W. 2d 442 (1948). Petition-

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The University of Texas Law School, from which petitioner was excluded, was staffed by a faculty of sixteen full-time and three part-time professors, some of whom are nationally recognized authorities in their field. Its student body numbered 850. The library contained over 65,000 volumes. Among the other facilities available to the students were a law review, moot court facilities, scholarship funds, and Order of the Coif affiliation. The school's alumni occupy the most distinguished positions in the private practice of the law and in the public life of the State. It may properly be considered one of the nation's ranking law schools.

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Moreover, although the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas Bar. With

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SEE ALSO - NO. 34 - McLAURIN V. OKLA.
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solely because he is a Negro.[1] Petitioner thereupon brought this suit for mandamus against the appropriate school officials, respondents here, to compel his admission. At that time, there was no law school in Texas which admitted Negroes.

The State trial court recognized that the action of the State in denying petitioner the opportunity to gain a legal education while granting it to others deprived him of the equal protection of the laws guaranteed by the Fourteenth Amendment. The court did not grant the relief requested, however, but continued the case for six months to allow the State to supply substantially equal facilities. At the expiration of the six months, in December, 1946, the court denied the writ on the showing that the authorized university officials had adopted an order calling for the opening of a law school for Negroes the following February. While petitioner's appeal was pending, such a school was made available, but petitioner refused to register therein. The Texas Court of Civil Appeals set aside the trial court's judgment and ordered the cause "remanded generally to the trial court for further proceedings without prejudice to the right of any party to this suit."

On remand, a hearing was held on the issue of the equality of the educational facilities at the newly established school as compared with the University of Texas Law School. Finding that the new school offered petitioner "privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas," the trial court denied mandamus. The Court of Civil Appeals affirmed. 210 S. W. 2d 442 (1948). Petition-

[1] It appears that the University has been restricted to white students, in accordance with the State law. See Tex. Const. Art. VII, §§ 7, 14; Tex. Civ. Stat. §§ 2643b, 2719, 2900 (Vernon, 1925, Supp. 1949).

er's application for a writ of error was denied by the Texas Supreme Court. We granted certiorari, 338 U. S. 865 (1949), because of the manifest importance of the constitutional issues involved.

The University of Texas Law School, from which petitioner was excluded, was staffed by a faculty of sixteen full-time and three part-time professors, some of whom are nationally recognized authorities in their field. Its student body numbered 850. The library contained over 65,000 volumes. Among the other facilities available to the students were a law review, moot court facilities, scholarship funds, and Order of the Coif affiliation. The school's alumni occupy the most distinguished positions in the private practice of the law and in the public life of the State. It may properly be considered one of the nation's ranking law schools.

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Whether the University of Texas Law School is compared with the original or the new law school for Negroes, we cannot find substantial equality in the educational opportunities offered white and Negro law students by the State. In terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the University of Texas Law School is superior. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the question close.

Moreover, although the law is a highly learned profession, we are well aware that it is an intensely practical one. The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned. The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which number 85% of the population of the State and include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner will inevitably be dealing when he becomes a member of the Texas Bar. With

such a substantial and significant segment of society excluded, we cannot conclude that the education offered petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.

It may be argued that excluding petitioner from that school is no different from excluding white students from the new law school. This contention overlooks realities. It is unlikely that a member of a group so decisively in the majority, attending a school with rich traditions and prestige which only a history of consistently maintained excellence could command, would claim that the opportunities afforded him for legal education were unequal to those held open to petitioner. That such a claim, if made, would be dishonored by the State, is no answer. "Equal protection of the laws is not achieved through indiscriminate imposition of inequalities." *Shelley* v. *Kraemer,* 334 U. S. 1, 22 (1948).

It is fundamental that these cases concern rights which are personal and present. This Court has stated unanimously that "The State must provide [legal education] for [petitioner] in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group." *Sipuel* v. *Board of Regents,* 332 U. S. 631, 633 (1948). That case "did not present the issue whether a state might not satisfy the equal protection clause of the Fourteenth Amendment by establishing a separate law school for Negroes." *Fisher* v. *Hurst,* 333 U. S. 147, 150 (1948). In *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337, 351 (1938), the Court, speaking through Chief Justice Hughes, declared that ". . . petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws, and the State was bound to furnish him within its borders facilities for legal education substantially equal to those the State there afforded for

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In accordance with these cases, petitioner may claim his full constitutional right: legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school as offered by the State. We cannot, therefore, agree with respondents that the doctrine of *Plessy* v. *Ferguson,* 163 U. S. 537 (1896), requires affirmance of the judgment below. Nor need we reach petitioner's contention that *Plessy* v. *Ferguson* should be reexamined in the light of contemporary knowledge respecting the purposes of the Fourteenth Amendment and the effects of racial segregation. See *supra,* p. ——.

We hold that the Equal Protection Clause of the Fourteenth Amendment requires that petitioner be admitted to the University of Texas Law School. The judgment is reversed and the cause is remanded for proceedings not inconsistent with this opinion.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 44.—October Term, 1949.

Heman Marion Sweatt, Petitioner, *v.* Theophilis Shickel Painter, et al.	On Writ of Certiorari to the Supreme Court of the State of Texas.

[May —, 1950.]

Mr. Chief Justice Vinson delivered the opinion of the Court.

This case and *McLaurin* v. *Oklahoma, post,* p. —, present different aspects of this general question: To what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university? Broader issues have been urged for our consideration, but we adhere to the principle of deciding constitutional questions only in the context of the particular case before the Court. We have frequently reiterated that this Court will decide constitutional questions only when absolutely necessary to the disposition of the case at hand, and that such decisions will be drawn as narrowly as possible. *Rescue Army* v. *Municipal Court,* 331 U. S. 549 (1947), and cases cited therein. Because of this traditional reluctance to extend constitutional interpretations to situations or facts which are not before the Court, much of the excellent research and detailed argument presented in these cases is unnecessary to their disposition.

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Reversed.

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Reversed.

Dear Fred:

This is written in beautiful style and I sincerely hope it can obtain a unanimous approval - Certainly I should say nothing unless some one writes in a way that makes me to express separate views - Full Court acceptance of this & the McLaurin opinions would add force to our holdings -

N L B.

May 18 - 50

Supreme Court of the United States

Memorandum

5/17, 1950

Dear Chief:-

#44 - Sweatt.

I agree, suggesting following change in one sentence page 6 - 2nd paragraph, line 4:-

"Such education is not available to him in a separate law school as offered by the State."

Tom

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

May 18, 1950

The Chief Justice.

No. 44 - Sweatt v. Painter.

Dear Mr. Chief Justice:

I agree.

R.H.J.

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

RECEIVED
MAY 18 12 38 PM '50
CHAMBERS OF THE
CHIEF JUSTICE

CHAMBERS OF
JUSTICE HAROLD H. BURTON

May 18, 1950

No. 44. Sweatt v. Painter

Dear Chief:

I agree. This seems to me to cover the situation well.

H.H.B.

The Chief Justice

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

CHAMBERS OF
JUSTICE FELIX FRANKFURTER

May 19, 1950.

Dear Chief:

Stanley was kind enough to show me your letter about the Segregation opinions, and I should like to associate myself with his suggestions. They are, after all, in the spirit of your opinions in that they seek to accomplish the desired result without needlessly stirring the kind of feelings that are felt even by truly liberal and high-minded Southerners like Jonathan Daniels. The problem is a perfect instance for requiring the wisdom of Bishop Phillips Brooks who, when a friend chided him for being so orthodox in his ecclesiastical dress although so heretical in his views, replied: "If the other fellow is willing to take my ideas I am ready to wear his clothes."

To the suggestions that Stanley made I should like to add two:

1. In Sweatt v. Painter I would not only make the change that Stanley suggested for the paragraph on page 4, but I personally would much prefer its entire excision. I am not disagreeing with the content, but one does not have to say everything that is so. The first paragraph on page 4, beginning "Whether the University of Texas Law School, etc." states the considerations that are decisive, and it seems to me desirable now not to go a jot or tittle beyond the Gaines test. The shorter the opinion, the more there is an appearance of unexcitement and inevitability about it, the better.

2. As to McLaurin, I have an emendation in the last sentence of the paragraph proposed in Stanley's letter, to which he agrees. He wrote:

"These are handicaps to an effective education."

I would make it:

"These are handicaps to graduate instruction."

Perhaps these minor suggestions will comend themselves to you. I hope very much that we can get an all-but unanimous, if not a unanimous, Court in the final form of your opinions.

Faithfully yours,

FF.

The Chief Justice.

SUPREME COURT OF THE UNITED STATES

Chambers of the Chief Justice:

HEMAN MARION SWEATT

Petitioner

NO. 44.

v.

OCTOBER TERM 1949.

THEOPHILIS SHICKEL PAINTER

Respondent

To Mr. Justice:

	CIRCULATION					
	1st. Draft 5/17		2d Draft 5/23		3r Draft	
	Date	Action	Date	Action	Date	Act
Black	5/18/50	Agree** * *				
Reed	5/18/50	Agree**	5/25/50	Agree		
Frankfurter	5/19/50	Agree***	5/23/50	Agree		
Douglas			5/31/50	Agree		
~~Murphy~~ Jackson	5/18/50	Agree				
~~Jackson~~ Burton	5/18/50	Agree				
~~Rutledge~~ Clark	5/17/50	Agree *				
~~Burton~~ Minton	5/18/50	Agree	5/23/50	Agree		

REMARKS:

* Made suggestion - Page 6 - 2nd paragraph line 4 - "Such education is not available to him in a separate law school as offered by the State."

** Made some suggestions

*** Agrees with Justice Reed's suggestions in the main; also has some of his own.

**** Black will not write unless some one else does