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

#34+44 — Clark

RECEIVED
APR 7 3 34 PM '50
CHAMBERS OF THE
CHIEF JUSTICE

To: The Chief Justice
From: Clark, J.
Circulated: 4/7/50
Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 34 AND 44.—OCTOBER TERM, 1949.

G. W. McLaurin, Appellant, 34 *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.
Heman Marion Sweatt, Petitioner, 44 *v.* Theophilus Shickel Painter, et al.	On Writ of Certiorari to the Supreme Court of the State of Texas.

[April —, 1950.]

Memorandum to the Conference from MR. JUSTICE CLARK.

Since these cases arise in "my" part of the country it is proper and I hope helpful for me to express some views concerning them:

1. The "horribles" following reversal of the cases pictured by the States, excepting Oklahoma, are highly exaggerated. There would be no "incidents," in my opinion, if the cases are limited to their facts, *i. e.*, graduate schools. Oklahoma was frank enough to admit this. Its concern was the extension of the doctrine to the elementary and secondary schools. Certainly this is not required now. I would be opposed to such extension at this time and would vote against taking a case involving same. Perhaps at a later date our judicial discretion will lead us to hear such a case.

2. The issue of *Plessy* v. *Ferguson's* application to these cases must be met. The only way to avoid it in *Sweatt*

is to remand for findings *re* the new law school; and that would really be deciding against petitioner's contention that however similar the two schools may be, they can't be "equal" when segregated.

3. I think *Sweatt* should be reversed. There are two courses:

(a) Overrule *Plessy* v. *Ferguson,* which would carry with it subsequent cases based on that doctrine. I am opposed to this course.

(b) Hold *Plessy* not applicable because it does not involve education; and state that the cases cited therein are not apposite to the *Sweatt* case. Distinguish *Gaines* as holding the State cannot avoid its obligation by furnishing funds for its Negro citizens to attend out-of-state institutions. *Gong Lum* involved elementary schools, and merely held the State was not obliged to furnish separate facilities for each race. *Fisher* and its companion *Sipuel* are not controlling for the question of "separate but equal" was excepted in the *Fisher* opinion.[1]

There are good reasons for us not to extend the *Plessy* doctrine to graduate schools. I am opposed to such an extension. Limitation to graduate schools ignores, of course, the influence of segregation upon children's minds when they are four or five years old; but I see no reason why we should not concern ourselves here with the equality of education rather than social recognition. These are, after all, education cases. And it is entirely possible that Negroes in segregated grammar schools being taught arithmetic, spelling, geography, etc., would receive skills in these elementary subjects equivalent to those of seg-

[1] "The petition for certiorari in *Sipuel* v. *Board of Regents,* 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.

regated white students, assuming equality in the texts, teachers, and facilities.

But it is obvious to me that the same would not apply to graduate schools. There are many reasons: (1) white schools have higher standing in the community as well as nationally, which means much to the graduate professional man; (2) the older and larger college has more alumni, which gives the graduate more professional opportunities; (3) the larger and older school attracts better professors; (4) competition among schools is much keener in the older and more established school, thus affording a wider professional competition; (5) the larger and older institution attracts a cross section of the entire State in its student body—affords a wider exchange of ideas—and, in the combat of ideas, furnishes a greater variety of minds, backgrounds and opinions which is most important in the professions; (6) it takes years and years to establish a professional school of top rank, affording law reviews, competitions, medals, societies, etc., which a Negro school would never attain; (7) acquaintance is important in the professions and segregation prevents it, thus depriving the Negro of many state-wide opportunities. These and other reasons are those which I am sure have led all but nine of the States to abandon the "separate but equal" doctrine at the graduate level.

4. *McLaurin* can, I think, be handled rather summarily. Some of the reasons for reversing *Sweatt*—particularly the seventh listed above—apply to *McLaurin*. Besides, once a Negro has been admitted he is obviously handicapped psychologically by being subject to all sorts of restriction. Discrimination in the cafeteria, library and class room would certainly hurt one's ability to concentrate on the business at hand. Alternatively, reversal could be placed upon the ground that there is no evidence of the reasonableness of the classification based on race—

there is no contention that any disturbance would result if the rules were not abrogated. This latter ground would, of course, leave the door open to contentions by other States that disorders would result—and perhaps even encourage the staging of those disorders.

I join with those who would reverse these cases upon the ground that segregated graduate education denies equal protection of the laws. I would follow the lead of the Congress in the only graduate school which it supports in the District of Columbia, Howard University, which is not segregated. As to the elementary schools in the District, I leave them to the Congress and the Fifth Amendment, at least for the present.

If some say this undermines *Plessy* then let it fall, as have many Nineteenth Century oracles.

C. J. Suggestions

SUPREME COURT OF THE UNITED STATES

No. 34.—October Term, 1949.

G. W. McLaurin, Appellant, *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.

[May —, 1950.]

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

In this case, we are faced with the question whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race. We decide only this issue; see *Sweatt* v. *Painter, ante,* p. —.

Appellant is a Negro citizen of Oklahoma. Possessing a Master's Degree, he applied for admission to the University of Oklahoma in order to pursue studies and courses leading to a Doctorate in Education. At that time, his application was denied, solely because of his race. The school authorities were required to exclude him by the Oklahoma statutes, 70 Okla. Stat. §§ 455, 456, 457 (1941), which made it a misdemeanor to maintain or operate, teach or attend a school at which both whites and Negroes are enrolled or taught. Appellant filed a complaint requesting injunctive relief, alleging that the action of the school authorities and the statutes upon which their action was based were unconstitutional and deprived him of the equal protection of the laws. Citing our decisions in *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 (1938), and *Sipuel* v. *Board of Regents,* 332 U. S. 631 (1948), the statutory three-judge District Court held that the

State had a constitutional duty to provide him with the education he sought as soon as it provided that education for applicants of any other group. It further held that to the extent the Oklahoma statutes denied him admission they were unconstitutional and void. On the assumption, however, that the State would follow the constitutional mandate, the court refused to grant the injunction, retaining jurisdiction of the cause with full power to issue any necessary and proper orders to secure McLaurin the equal protection of the laws.

Following this decision, the Oklahoma legislature amended these statutes to permit the admission of Negroes to institutions of higher learning attended by white students, in cases where such institutions offered courses not available in the Negro schools. The amendment provided, however, that in such cases the program of instruction "shall be given at such colleges or institutions of higher education upon a segregated basis."[1] Appellant was thereupon admitted to the University of Oklahoma Graduate School. In apparent conformity with the amendment, his admission was made subject to "such rules and regulations as to segregation as the President of the University shall consider to afford Mr. G. W. Mc-

[1] The amendment adds the following proviso to each of the sections relating to mixed schools: "Provided, that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at State owned or operated colleges or institutions of higher education of this State established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher education of this State established for and/or used by the colored race; provided further, that said programs of instruction leading to a particular degree shall be given at such colleges or institutions of higher education upon a segregated basis." Okla. Stat. Ann. tit. 70, §§ 455, 456, 457 (1950). Segregated basis is defined as "classroom instruction given in separate classrooms, or at separate times." *Id.* § 455.

Laurin substantially equal educational opportunities as are afforded to other persons seeking the same education at the Graduate College," a condition which does not appear to have been withdrawn. Thus he was required to sit apart at a designated desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, but not to use the desks in the regular reading room; and to sit at a designated table and eat at a different time from the other students in the school cafeteria.

To remove these conditions, appellant filed a motion to modify the order and judgment of the District Court. That court held that such treatment did not violate the provisions of the Fourteenth Amendment and denied the motion. This appeal followed.

In the interval between the decision of the court below and the hearing in this Court, the treatment afforded appellant was altered. For some time, the section of the classroom in which appellant sat was surrounded by a rail on which there was a sign stating, "Reserved For Colored," but these have been removed. He is now assigned to a seat in the classroom in a row specified for colored students; he is assigned to a table in the library on the main floor; and he is permitted to eat at the same time in the cafeteria as other students, although here again he is assigned to a special table.

It is apparent that the separations imposed by the State in this case are less tangible than symbolic. McLaurin uses the same classroom, library and cafeteria as students of other races; there is no indication that the seats to which he is assigned in these rooms are peculiarly removed from those of other students. He may wait in line in the cafeteria and there stand and talk with his fellow students, but while he eats he must remain apart.

Whether these restrictions reflect a general purpose to stigmatize a specific group or a particular attempt to

attain technical compliance with the state statutes, they can have but one effect: to serve as a reminder that the state considers McLaurin different from his white fellows. The reminder may be a fence and sign, a line painted on the floor, or assignment to a particular row of seats. It is the presence, not the nature, of the reminder which is significant. It requires no great knowledge of human behavior to recognize the psychological handicaps to effective study which are necessarily imposed upon a graduate student who is set apart and distinguished because of his race, a factor over which he has no control and which he could not alter if he so desired.

Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such expanding inequalities cannot be sustained.

It may be argued that appellant will be in no better position when these restrictions are removed, for he may still be set apart by his fellow students. This we think irrelevant. There is a vast difference—a Constitutional difference—between restrictions imposed by the state which prohibits the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar. *Shelley* v. *Kraemer,* 334 U. S. 1, 13–14 (1948). The removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the state will not be depriving appellant of the opportunity

to secure acceptance by his fellow students on his own merits.

We conclude that the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws. See *Sweatt* v. *Painter, ante,* p. ——. We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races. The judgment is

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 34.—October Term, 1949.

G. W. McLaurin, Appellant, *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.

[May —, 1950.]

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

In this case, we are faced with the question whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race. We decide only this issue; see *Sweatt* v. *Painter, ante,* p. —.

Appellant is a Negro citizen of Oklahoma. Possessing a Master's Degree, he applied for admission to the University of Oklahoma in order to pursue studies and courses leading to a Doctorate in Education. At that time, his application was denied, solely because of his race. The school authorities were required to exclude him by the Oklahoma statutes, 70 Okla. Stat. §§ 455, 456, 457 (1941), which made it a misdemeanor to maintain or operate, teach or attend a school at which both whites and Negroes are enrolled or taught. Appellant filed a complaint requesting injunctive relief, alleging that the action of the school authorities and the statutes upon which their action was based were unconstitutional and deprived him of the equal protection of the laws. Citing our decisions in *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 (1938), and *Sipuel* v. *Board of Regents,* 332 U. S. 631 (1948), a statutory three-judge District Court held that the

Laurin substantially equal educational opportunities as are afforded to other persons seeking the same education at the Graduate College," a condition which does not appear to have been withdrawn. Thus he was required to sit apart at a designated desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, but not to use the desks in the regular reading room; and to sit at a designated table and to eat at a different time from the other students in the school cafeteria.

To remove these conditions, appellant filed a motion to modify the order and judgment of the District Court. That court held that such treatment did not violate the provisions of the Fourteenth Amendment and denied the motion. This appeal followed.

In the interval between the decision of the court below and the hearing in this Court, the treatment afforded appellant was altered. For some time, the section of the classroom in which appellant sat was surrounded by a rail on which there was a sign stating, "Reserved For Colored," but these have been removed. He is now assigned to a seat in the classroom in a row specified for colored students; he is assigned to a table in the library on the main floor; and he is permitted to eat at the same time in the cafeteria as other students, although here again he is assigned to a special table.

It is apparent that the separations imposed by the State in this case are less tangible than symbolic. McLaurin uses the same classroom, library and cafeteria as students of other races; there is no indication that the seats to which he is assigned in these rooms have any disadvantage of location. He may wait in line in the cafeteria and there stand and talk with his fellow students, but while he eats he must remain apart.

These restrictions were obviously imposed in order to comply, as nearly as could be, with the statutory require-

Missing Page(s)

of his personal and present right to the equal protection of the laws. See *Sweatt* v. *Painter, ante,* p. ——. We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races. The judgment is

Reversed.

Copy used by C. J. in making announcement from Bench - 6/5/50 -

SUPREME COURT OF THE UNITED STATES

No. 34.—October Term, 1949.

G. W. McLaurin, Appellant, *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.

[June —, 1950.]

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

In this case, we are faced with the question whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race. We decide only this issue; see *Sweatt* v. *Painter, ante,* p. —.

Appellant is a Negro citizen of Oklahoma. Possessing a Master's Degree, he applied for admission to the University of Oklahoma in order to pursue studies and courses leading to a Doctorate in Education. At that time, his application was denied, solely because of his race. The school authorities were required to exclude him by the Oklahoma statutes, 70 Okla. Stat. §§ 455, 456, 457 (1941), which made it a misdemeanor to maintain or operate, teach or attend a school at which both whites and Negroes are enrolled or taught. Appellant filed a complaint requesting injunctive relief, alleging that the action of the school authorities and the statutes upon which their action was based were unconstitutional and deprived him of the equal protection of the laws. Citing our decisions in *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 (1938), and *Sipuel* v. *Board of Regents,* 332 U. S. 631 (1948), a statutory three-judge District Court held that the

State had a constitutional duty to provide him with the education he sought as soon as it provided that education for applicants of any other group. It further held that to the extent the Oklahoma statutes denied him admission they were unconstitutional and void. On the assumption, however, that the State would follow the constitutional mandate, the court refused to grant the injunction, retaining jurisdiction of the cause with full power to issue any necessary and proper orders to secure McLaurin the equal protection of the laws.

Following this decision, the Oklahoma legislature amended these statutes to permit the admission of Negroes to institutions of higher learning attended by white students, in cases where such institutions offered courses not available in the Negro schools. The amendment provided, however, that in such cases the program of instruction "shall be given at such colleges or institutions of higher education upon a segregated basis." [1] Appellant was thereupon admitted to the University of Oklahoma Graduate School. In apparent conformity with the amendment, his admission was made subject to "such rules and regulations as to segregation as the President of the University shall consider to afford Mr. G. W. Mc-

[1] The amendment adds the following proviso to each of the sections relating to mixed schools: "Provided, that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at State owned or operated colleges or institutions of higher education of this State established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher education of this State established for and/or used by the colored race; provided further, that said programs of instruction leading to a particular degree shall be given at such colleges or institutions of higher education upon a segregated basis." Okla. Stat. Ann. tit. 70, §§ 455, 456, 457 (1950). Segregated basis is defined as "classroom instruction given in separate classrooms, or at separate times." *Id.* § 455.

Laurin substantially equal educational opportunities as are afforded to other persons seeking the same education at the Graduate College," a condition which does not appear to have been withdrawn. Thus he was required to sit apart at a designated desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, but not to use the desks in the regular reading room; and to sit at a designated table and to eat at a different time from the other students in the school cafeteria.

To remove these conditions, appellant filed a motion to modify the order and judgment of the District Court. That court held that such treatment did not violate the provisions of the Fourteenth Amendment and denied the motion. This appeal followed.

In the interval between the decision of the court below and the hearing in this Court, the treatment afforded appellant was altered. For some time, the section of the classroom in which appellant sat was surrounded by a rail on which there was a sign stating, "Reserved For Colored," but these have been removed. He is now assigned to a seat in the classroom in a row specified for colored students; he is assigned to a table in the library on the main floor; and he is permitted to eat at the same time in the cafeteria as other students, although here again he is assigned to a special table.

It is said that the separations imposed by the State in this case are in form merely nominal. McLaurin uses the same classroom, library and cafeteria as students of other races; there is no indication that the seats to which he is assigned in these rooms have any disadvantage of location. He may wait in line in the cafeteria and there stand and talk with his fellow students, but while he eats he must remain apart.

These restrictions were obviously imposed in order to comply, as nearly as could be, with the statutory require-

ments of Oklahoma. But they signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.

Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained.

It may be argued that appellant will be in no better position when these restrictions are removed, for he may still be set apart by his fellow students. This we think irrelevant. There is a vast difference—a Constitutional difference—between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar. *Shelley* v. *Kraemer,* 334 U. S. 1, 13–14 (1948). The removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the state will not be depriving appellant of the opportunity to secure acceptance by his fellow students on his own merits.

We conclude that the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection

of the laws. See *Sweatt* v. *Painter, ante,* p. ——. We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races. The judgment is

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 34.—October Term, 1949.

G. W. McLaurin, Appellant, *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.

[May —, 1950.]

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

In this case, we are faced with the question whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race. We decide only this issue; see *Sweatt* v. *Painter, ante,* p. ——.

Appellant is a Negro citizen of Oklahoma. Possessing a Master's Degree, he applied for admission to the University of Oklahoma in order to pursue studies and courses leading to a Doctorate in Education. At that time, his application was denied, solely because of his race. The school authorities were required to exclude him by the Oklahoma statutes, 70 Okla. Stat. §§ 455, 456, 457 (1941), which made it a misdemeanor to maintain or operate, teach or attend a school at which both whites and Negroes are enrolled or taught. Appellant filed a complaint requesting injunctive relief, alleging that the action of the school authorities and the statutes upon which their action was based were unconstitutional and deprived him of the equal protection of the laws. Citing our decisions in *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 (1938), and *Sipuel* v. *Board of Regents,* 332 U. S. 631 (1948), a statutory three-judge District Court held that the

State had a constitutional duty to provide him with the education he sought as soon as it provided that education for applicants of any other group. It further held that to the extent the Oklahoma statutes denied him admission they were unconstitutional and void. On the assumption, however, that the State would follow the constitutional mandate, the court refused to grant the injunction, retaining jurisdiction of the cause with full power to issue any necessary and proper orders to secure McLaurin the equal protection of the laws.

Following this decision, the Oklahoma legislature amended these statutes to permit the admission of Negroes to institutions of higher learning attended by white students, in cases where such institutions offered courses not available in the Negro schools. The amendment provided, however, that in such cases the program of instruction "shall be given at such colleges or institutions of higher education upon a segregated basis."[1] Appellant was thereupon admitted to the University of Oklahoma Graduate School. In apparent conformity with the amendment, his admission was made subject to "such rules and regulations as to segregation as the President of the University shall consider to afford Mr. G. W. Mc-

[1] The amendment adds the following proviso to each of the sections relating to mixed schools: "Provided, that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at State owned or operated colleges or institutions of higher education of this State established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher education of this State established for and/or used by the colored race; provided further, that said programs of instruction leading to a particular degree shall be given at such colleges or institutions of higher education upon a segregated basis." Okla. Stat. Ann. tit. 70, §§ 455, 456, 457 (1950). Segregated basis is defined as "classroom instruction given in separate classrooms, or at separate times." *Id.* § 455.

Laurin substantially equal educational opportunities as are afforded to other persons seeking the same education at the Graduate College," a condition which does not appear to have been withdrawn. Thus he was required to sit apart at a designated desk in an anteroom adjoining the classroom; to sit at a designated desk on the mezzanine floor of the library, but not to use the desks in the regular reading room; and to sit at a designated table and to eat at a different time from the other students in the school cafeteria.

To remove these conditions, appellant filed a motion to modify the order and judgment of the District Court. That court held that such treatment did not violate the provisions of the Fourteenth Amendment and denied the motion. This appeal followed.

In the interval between the decision of the court below and the hearing in this Court, the treatment afforded appellant was altered. For some time, the section of the classroom in which appellant sat was surrounded by a rail on which there was a sign stating, "Reserved For Colored," but these have been removed. He is now assigned to a seat in the classroom in a row specified for colored students; he is assigned to a table in the library on the main floor; and he is permitted to eat at the same time in the cafeteria as other students, although here again he is assigned to a special table.

It is apparent that the separations imposed by the State in this case are less tangible than symbolic. McLaurin uses the same classroom, library and cafeteria as students of other races; there is no indication that the seats to which he is assigned in these rooms have any disadvantage of location. He may wait in line in the cafeteria and there stand and talk with his fellow students, but while he eats he must remain apart.

These restrictions were obviously imposed in order to comply, as nearly as could be, with the statutory require-

ments of Oklahoma. But they signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction. Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.

Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others. Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such expanding inequalities cannot be sustained.

It may be argued that appellant will be in no better position when these restrictions are removed, for he may still be set apart by his fellow students. This we think irrelevant. There is a vast difference—a Constitutional difference—between restrictions imposed by the state which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the state presents no such bar. *Shelley* v. *Kraemer,* 334 U. S. 1, 13–14 (1948). The removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the state will not be depriving appellant of the opportunity to secure acceptance by his fellow students on his own merits.

We conclude that the conditions under which this appellant is required to receive his education deprive him

of his personal and present right to the equal protection of the laws. See *Sweatt* v. *Painter, ante,* p. ——. We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races. The judgment is

Reversed.

To: Mr. Justice Black.
From: The Chief Justice
Circulated: MAY 17 1950
Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 34.—October Term, 1949.

G. W. McLaurin, Appellant, *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.

[May —, 1950.]

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

In this case, we are faced with the question whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race. We decide only this issue; see *Sweatt* v. *Painter, ante,* p. —.

Appellant is a Negro citizen of Oklahoma. Possessing a Master's Degree, he applied for admission to the University of Oklahoma in order to pursue studies and courses leading to a Doctorate in Education. At that time, his application was denied, solely because of his race. The school authorities were required to exclude him by the Oklahoma statutes, 70 Okla. Stat. §§ 455, 456, 457 (1941), which made it a misdemeanor to maintain or operate, teach or attend a school at which both whites and Negroes are enrolled or taught. Appellant filed a complaint requesting injunctive relief, alleging that the action of the school authorities and the statutes upon which their action was based were unconstitutional and deprived him of the equal protection of the laws. Citing our decisions in *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 (1938), and *Sipuel* v. *Board of Regents,* 332 U. S. 631 (1948), the statutory three-judge District Court held that the

to secure acceptance by his fellow students on his own merits.

We conclude that the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws. See *Sweatt* v. *Painter, ante,* p. ——. We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races. The judgment is

Reversed.

Dear Fred—

Yours—

N B

May 18-50

To: Mr Justice Frankfurter

From: The Chief Justice

Circulated:

Recirculated: MAY 23 1950

SUPREME COURT OF THE UNITED STATES

No. 34.—October Term, 1949.

G. W. McLaurin, Appellant, *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.

[May —, 1950.]

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

In this case, we are faced with the question whether a state may, after admitting a student to graduate instruction in its state university, afford him different treatment from other students solely because of his race. We decide only this issue; see *Sweatt* v. *Painter, ante,* p. —.

Appellant is a Negro citizen of Oklahoma. Possessing a Master's Degree, he applied for admission to the University of Oklahoma in order to pursue studies and courses leading to a Doctorate in Education. At that time, his application was denied, solely because of his race. The school authorities were required to exclude him by the Oklahoma statutes, 70 Okla. Stat. §§ 455, 456, 457 (1941), which made it a misdemeanor to maintain or operate, teach or attend a school at which both whites and Negroes are enrolled or taught. Appellant filed a complaint requesting injunctive relief, alleging that the action of the school authorities and the statutes upon which their action was based were unconstitutional and deprived him of the equal protection of the laws. Citing our decisions in *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 (1938), and *Sipuel* v. *Board of Regents,* 332 U. S. 631 (1948), a statutory three-judge District Court held that the

Yes, subject to notations on p. 4

FF

RECEIVED
MAY 23 1 36 PM '50
CHAMBERS OF THE
CHIEF JUSTICE

of the laws. See *Sweatt* v. *Painter, ante,* p. —. We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races. The judgment is

Reversed.

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

May 18, 1950

The Chief Justice.

No. 34 - McLaurin v. Oklahoma Regents.

Dear Mr. Chief Justice:

I agree.

R.H.J.

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

CHAMBERS OF
JUSTICE HAROLD H. BURTON

May 18, 1950

No. 34. McLaurin v. Oklahoma State Regents

Dear Chief:

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

H.H.B. HHB

The Chief Justice

Supreme Court of the United States

Memorandum

5/17, 1950 -

Dear Chief :-

#34 - McLaurin

I agree

FFF

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

CHAMBERS OF
JUSTICE SHERMAN MINTON

May 18, 1950

Dear Mr. Chief Justice:

RE: No. 34 - MCLAURIN V. OKLAHOMA
No. 44 - SWEATT v. PAINTER

I agree.

Sincerely yours,

SHERMAN MINTON

The Chief Justice

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

CHAMBERS OF
JUSTICE SHERMAN MINTON

May 23, 1950

Dear Mr. Chief Justice:

RE: Nos. 34 and 44 - McLAURIN V. OKLA.; SWEATT v. PAINTER
Recircl. of 5/23/50.

I'm still with you.

Sincerely yours,

SHERMAN MINTON

The Chief Justice

#25-34-44-
C.J.

Nos. 25, 34, 44 1949 Term
Henderson, McLaurin, Sweatt
Supplemental Memo

(1) The question of Henderson's standing to challenge the Interstate Commerce Commission's order is settled by Mitchell v. United States, 313 U.S. 80, in my judgment. In that case Mitchell had been denied Pullman accomodations solely because of his race and he ~~brought~~ made a complaint similar to that of Henderson. The Commission challenged his ~~standing~~ standing to sue, but this Court said (at p. 93):

> "Nor is it determinative that it does not appear that appellant intends to make a similar railroad journey. He is an American citizen free to travel, and he is entitled to go by this particular route whenever he chooses to take it and in that event to have facilities for his journey without any discrimination against him which the Interstate Commerce Act forbids. He presents the question whether the Act does forbid the conduct of which he complains."

The fact that Henderson has not been hurt by the particular regulation that is now in effect seems to be of little importance. Since he claims that the regulation in effect when he made his journey and the one substituted for it are both unlawful, and since "he is ~~entitled~~ entitled to go by this particular route whenever he chooses to take it and in that event to have facilities for his journey without any discrimination against him which the Interstate Commerce Act forbids", he may prosecute the complaint. In the Mitchell case, too, there had been some change of facilities since Mitchell's journey--the old-style car to which he had been relegated had been replaced by a modern car. But the Court said:

> "Nor does the change in the carrier's practice avail. That did not alter the discrimination to which appellant had been subjected, and as to the future the change was not adequate." 313 U.S. at 96.

It is thus apparent that the change was taken into account ~~by~~ by the Court and found wanting. I think, therefore, that the most recent regulation of the railroad, approved by the ICC, is properly before the Court and that Henderson may properly challenge it here.

(2) As to the changes in circumstances since the decisions below in the Sweatt and McLaurin cases, there is very little to guide the Court in the cases. The Court said in Patterson v. Alabama, 294 U.S. 600, 607:

> "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. We may recognize such a change, which may affect the result, by setting aside the judgment and remanding the case so that the state court

> may be free to act. We have said that to do this is not to review, in any proper sense of the term, the decision of the state court upon a non-federal question, but only to deal appropriately with a matter arising since its judgment and having a bearing upon the right disposition of the case."

See also Dorchy v. Kansas, 272 U.S. 306, 310-311.

In the Sweatt case, it seems to me that the question whether supervening facts may or should be considered depends upon what ground the court takes for its decision. If the "separate but equal" doctrine is overruled, of course such facts are immaterial. They are also immaterial if the Court takes the position that in graduate schools and law schools, the facilities and opportunities can never be equal, whatever may be the case in elementary and high schools. However, if the Court decides that it must try to weigh the advantages and disadvantages of the Negro law school against the white law school the question is more difficult.

SUPREME COURT OF THE UNITED STATES

Chambers of the Chief Justice:

NO. 34.

OCTOBER TERM 1949.

G. W. McLAURIN

Petitioner

v.

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION

Respondent

To Mr. Justice:

CIRCULATION

	1st. Draft 5/17: Date	Action	2d Draft 5/23: Date	Action	3r Draft 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		
Jackson ~~xxxxxx~~	5/18/50	Agree				
k Burton ~~xxxxxxx~~	5/18/50	Agree				
Clark ~~xxxxxxx~~	5/17/50	Agree				
~~Minton~~	5/18/50	Agree	5/23/50	Agree		

REMARKS:

* ~~Will join if everybody else does.~~

** Made some suggestions

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

Agree- Suggested certain deletions.

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

May 18, 1950

Dear Chief:

Re No. 34, McLaurin v. Oklahoma State Regents, and
No. 44, Sweatt v. Painter.

These cases are a good job.

In the Sweatt case I have only a single suggestion. On page 4, I would make the line eighth from the bottom read "from the interplay of ideas and the exchange of views with which the law is concerned."

In the McLaurin case I suggest that on page 3 the sixth line from the bottom read "which he is assigned in these rooms have any disadvantages of location."

I would drop the paragraph beginning at the bottom of page 3 with the words "Whether these restrictions." While limited to a graduate student, to me it carries further. I would suggest as a substitute something like the following:

> "The restrictions imposed upon petitioner have obviously been made to comply, as nearly as could be, with the statutory requirements of Oklahoma. The result is that graduate students of the colored race ~~are~~ set apart in the ~~Law School~~ Graduate School by rule from opportunities to ~~learn the law~~ learn by discussion of the studies and lectures with all the other students. The valuable experience of testing their ~~their~~ approach to conclusions in comparison with the approach of others is limited. These are handicaps to an effective education."

When we come to the dining car that can be handled as a federal question for equal treatment.

Yours,

Stanley Reed

The Chief Justice.

Dear Chief: -- McLaurin -

On further reflection would not the first sentence on P 3 last two lines read better thus:

"These restrictions were obviously imposed in symbolic compliance with the statutory requirements of Oklahoma".

It makes a little clearer to me that we are saying nothing as to segregation per se. We are speaking only of the effect on a graduate student's ability to profit by his instruction. I am with you.

S. Reed.

Dear Chief - McLaurin -

On further reflection would not the first sentence on P3 last two lines read better thus

"These restrictions were obviously imposed in symbolic compliance with the statutory requirements of Oklahoma." It makes a little

Clear to me that we are saying
nothing as to segregation per se.
We are speaking only of the effect
on a graduate student's
ability to profit by his
instruction. I am with you.

S. Reed

Fil-

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

CHAMBERS OF
THE CHIEF JUSTICE

May 24, 1950

Dear Felix:

Re: No. 34 - McLaurin v. Oklahoma State Regents, etc.

Thanks for your suggestions in regard to the recirculation of May 23.

I am agreeable to the deletion of the word "expanding" which precedes "inequalities" in the first sentence to which you refer on Page 4. I do not agree that the sentence as circulated "will duly serve to stir feeling of anger & resentment", or that "the Virginia Dabneys & Jonathan Daniels & Senator Grahams will be handicapped in their _____ efforts.

I certainly would not want to have anything in the opinion which would stir up feeling of anger and resentment in any portion of the country. I agree that there is a growing recognition in the South that the Fourteenth Amendment is a part of the Constitution. Much progress has been and is being made in this field, but it is my thought that the regional school idea, the devices used by Oklahoma, and the Texas action here are in the nature of circumventions, and I would not be surprised but what there are other techniques which are or might be used. It was this thought that caused me to use the word "expanding".

It is perfectly agreeable to me to delete the word, but I am of the opinion that the sentence as amended should remain.

I note your attitude toward the two sentences in the paragraph following on Page 4:

> "The removal of the state restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the state will not be depriving appellant of the opportunity to secure acceptance by his fellow students on his own merits."

I am inclined to think that the language suggests a very proper purpose. In the preceding sentence, reference is made to the "vast difference - a Constitutional difference" between state action and individual action, citing Shelley v. Kraemer. I had the notion that "will not necessarily abate individual and group predilections, prejudices and choices" had a salutary effect. The removal of state restrictions may very well be helpful in some spots. In others, it will not. The experience that follows the removal of the restrictions may do a lot to promote better relations in this field.

In the last sentence, I am trying to say that state action must not deprive the opportunity of a citizen to be received by his fellows.

I always have endeavored to meet the suggestions of my Brethren, and if the Court desires to delete the two sentences, they will be stricken.

Sincerely,

Mr. Justice Frankfurter.