No. 667, O.T. 1948
Cert to Sup. Ct. Tex.

Sweatt v. Painter, et al.

In February of 1946 petitioner was denied admission to Texas Law School on the ground that he is a Negro.

In May 1946 petitioner sought mandamus in a state court to order his admission.

The state court, noting that Texas provided no comparable facilities for Negroes, announced that it would issue the writ but would stay such issuance for 6 months, to give Texas time to create equal facilities. Six months later, a Negro law school having been authorized but not having been initiated, the state court denied the writ.

The Texas Court of Civil Appeals reversed without opinion and remanded the case for further proceedings.

At the hearing held on remand, petitioner introduced a mass of evidence tending to show (1) that no segregated law school could be the equivalent of a non-segregated school, (2) that the proposed Negro law school was not to be and could not be substantially equal to the University of Texas law school. Some of this evidence, adduced by law deans and teachers, anthropologists, etc., was controverted.

The state court in June of 1947 denied mandamus, holding that the proposed Negro law school (which came into being in March of 1947) was equal.

The Texas Court of Civil Appeals affirmed, holding that separate but equal facilities were valid under Plessy v. Ferguson, 163 U.S. 537, and later authority, and that the present record showed substantial equality.

Rehearing was denied. In denying rehearing the court noted that it had power to set aside a judgment which had no evidentiary support and enter the proper judgment and that, where its power was properly invoked, it had power to set aside a judgment and remand for a new trial where the evidence "so greatly preponderates against the judgment as, in our opinion, to require that it be set aside in the interest of justice." This latter type of review was not, said the court, properly invoked in this case. However, said the court, had this secondary power been invoked the court would still be of opinion that "the preponderance and overwhelming weight [of the evidence] supported the trial court's judgment …" R. 461.

A second petition for rehearing was denied.

Petitioner then sought a writ of error from the Texas Supreme Court, which was denied.

Rehearing was denied.

The question presented by petitioner is as follows:

"May the State of Texas consistently with the Requirements of the Fourteenth Amendment Refuse to Admit Petitioner Because of Race and Color to the University of Texas School of Law."

The petition frames the problem as a full-dress attack on the rule of Plessy v. Ferguson, noting the pendency before the Court of McLaurin v. Oklahoma State Regents, No. 614, O.T. 1948, the unacted-on appeal which may be thought to raise only that narrow problem.

As with McLaurin, I personally would like this Court to reverse by squarely overruling the whole "separate but equal rationale." But, as with McLaurin, I think the Court could if it insisted side-step the issue by finding these facilities not to be equal. Respondent urges that the factual issue of equality has not been properly preserved by petitioner – perhaps, though it does not do so specifically, basing this contention on the quoted language of the Texas Civil Appeals

Court. But that court did in any event hold that there was enough evidence of equality to support the verdict, so I would think this Court would have jurisdiction to consider that question, if the Court interprets the petition as impliedly raising the substantial equality of the schools in question as well as the validity of the whole separate but equal doctrine. I think cert should be granted here and the case set for argument with McLaurin, No. 614, in which, as I indicated in my memo, I think this Court must note probable jurisdiction.

GRANT THIS PETITION; NOTE PROBABLE JURISDICTION IN 614; SET FOR ARGUMENT TOGETHER.

6/2/49 LHP