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# Segregation in Professional Education

J. L. Hettinger

or a rest home, or other such purposes. It is possible that where there is an area occupied entirely by residential buildings, with little space for a drive-in, such a structure will not be allowed. The typical site for a drive-in, however, is one which has ample room, with open or semi-open lots surrounding it. In such a situation, complaints such as the one in the immediate case will probably be disallowed.

Wyoming has no cases bearing on this question, nor are there any statutes in effect which expressly govern such a situation.

LAWRENCE E. MIDDAUGH.

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SEGREGATION IN PROFESSIONAL EDUCATION

*Admission to the University of Texas Law School* was denied to Heman Marion Sweatt, a negro, in accordance with the provisions of the state constitution which required segregation of white and colored students in state educational institutions.[1] Sweatt was otherwise qualified for admission, and the University officials frankly based their action upon the applicant's color. He instituted mandamus proceedings in a Texas state court to compel his admission. The court recognized that denying admission to plaintiff and granting it to others deprived him of equal protection of the laws, but granted a continuance of six months to permit the State to provide substantially equal facilities at a separate school. During the interim, the University officials established a Law School for Negroes at the University of Texas and invited plaintiff to enroll there, which he refused to do. Thereafter, the Texas trial court found that the opportunities for study in the new school were substantially equivalent to those offered by the state to white students at the state university and denied the writ. Application for a writ of error was denied by the state courts, and plaintiff went to the U.S. Supreme Court on certiorari. *Held,* by a unanimous court, that the equal protection clause of the Fourteenth Amendment required the plaintiff be admitted to the University of Texas Law School. *Sweatt v. Painter,* 339 U.S. 629, 70 S.Ct. 848, 94 L. Ed. 1114 (1950).

The court did not expressly invalidate the segregation provisions of the Texas Constitution, nor directly question the "separate but equal" doctrine. Assuming the validity of these, the opinion merely found that the facilities offered by the law school at the Texas State University for Negroes were not equal to those existing at the University of Texas Law

1. See Tex. Const. Art. VII, secs. 7, 14; Tex. Civ. Stat., secs. 2643b, 2719, 2900 (Vernon, 1925, Supp. 1949).

School. Comparing the two schools, the court found the former deficient in mechanical facilities, the reputation of the faculty, experience of the administration, and in certain qualities "incapable of objective measurement" such as position and influence of the alumni, standing in the community and traditions and prestige. Also there was the fact that a substantial and significant segment of society was excluded from the professional education sought by plaintiff. As Mr. Chief Justice Vinson put it with respect to the last mentioned point:

"The law school to which Texas is willing to admit petitioner excludes from its student body members of the racial groups which will 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."

The Supreme Court has never directly ruled on the constitutionality of segregation of students in state-supported educational institutions,[2] but acceptance of segregation has been predicated upon the "separate but equal doctrine,[3] first developed and frequently applied in connection with common carriers.[4] Thus it has often been held that the Equal Protection clause of the Fourteenth Amendment[5] requires substantial equality of facilities in states which provide for segregation of races in state supported educational institutions.[6] The proctorship of the "separate but equal" theory has prevailed since the decision in *Plessy v. Ferguson* in 1896[7] and reflects the desire of courts to prevent inequality of facilities at various educational levels. However, the first case in the Supreme Court which presented the issue of the constitutionality of race distinctions in state-supported graduate and professional education was not decided until 1938. This was the *Gaines* case[8] in which the petitioner sought admission to a university attended by white students since no other was provided by the state. It was held that the petitioner should have been admitted to the "white university." In a state that afforded legal education to white residents but not to negroes, it was held that the state was bound to furnish an education equal to that offered white students or else furnish no law school education to any person of either race.[9] Such cases concern rights that are

2. Comment, 36 Va. L. Rev. 799 (1950).
3. Plessy v. Ferguson, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896).
4. Illinois Cent. R. Co. v. Redmond, 119 Miss. 765, 81 So. 115 (1919); Louisville & N.R. Co. v. Commonwealth, 160 Ky. 769, 170 S.W. 162 (1914); Pridgen v. Carolina Coach Co., 229 N.C. 46, 47 S.E. (2d) 609 (1948) (interstate buses).
5. U.S. Const. Amend. XIV, sec. I; reads in part: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
6. State of Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 59 S Ct. 232, 83 L. Ed. 208 (1938); State ex rel. Michael v. Witham, 179 Tenn. 250, 165 S.W. (2d) 378 (1942); Pearson v. Murray, 169 Md. 478, 182 A. 590, 103 A.L.R. 706 (1936); Corbin v. County School Board of Pulaski County, Virginia, 177 F. (2d) 924 (C.C.A. 4th 1949). No less than seventeen states impose segregation restrictions.
7. Plessy v. Ferguson, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896).
8. State of Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208 (1938).
9. Wrighten v. Board of Trustees of University of S.C., 72 F. Supp. 948 (E.D. S.C. 1947).

presonal and present,[10] and the state must provide the legal education for the negro "as soon as it does for applicants of any other group."[11]

It was contended in the *Sweatt* case that the Supreme Court should re-examine *Plessy v. Ferguson* "in the light of contemporary knowledge respecting the purposes of the Fourteenth Amendment and the effects of racial segregation."[12] The court held that such re-examination was unnecessary, thereby leaving the "separate but equal" doctrine nominally in force. It is evident that the pattern developed by the Supreme Court in the segregation cases is one of increasing impartiality toward the negro. At no time, however, has the court directly questioned the constitutionality of statutes and constitutions allowing segregation,[13] preferring to approach the problem through the substantial equality test.

Although it is still hypothetically possible for the state to provide separate educational institutions offering equal educational opportunities, the difficulties in the way of doing so have been made well nigh insuperable by the ruling of the Supreme Court in the instant case, to the effect that certain intangible qualities are an integral part of the educational facilities. As a result of the imposition of this new requirement, segregated education in professional study may now be virtually impossible both in those jurisdictions that have long adhered to segregation and in jurisdictions which heretofore have provided no higher educational institutions for negroes. In comparison with state-supported colleges for white persons few negro colleges provide faculties of equal size and reputation, physical equipment equal in amount and quality, equal variety of courses, like size of student body, comparable educational aids such as law reviews, equal scholarship funds, and alumni of as much prestige. Thus it would appear that without directly repudiating the "separate but equal" doctrine, the Supreme Court has, by the *Sweatt* opinion, completely undermined the foundations upon which it rested.

Evidently the court will exercise its independent judgment upon the facts relating to equality of educational opportunities. Although the instant case has to do with college education, there would seem no reason (other than one of degree) why it should not apply to secondary and elementary education as well.

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10. Sweatt v. Painter, 339 U.S. 629, 70 S. Ct. 848, 94 L. Ed. 1114 (1950).
11. Sipuel v. Board of Regents of the University of Oklahoma, 332 U.S. 631, 68 S. Ct. 299, 92 L. Ed. 247 (1948). This 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, 68 S. Ct. 389, 92 L. Ed. 604 (1948).
12. Mr. Justice Brown, who delivered the majority opinion in the Plessy case said, "Legislation is powerless to erradicate racial instincts, or to abolish distinctions based on physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation."
13. Note, "The Fourteenth Amendment and Racial Segregation in State-Supported Schools," 24 Temp. L. Q. 223 (1950).

The segregation states may be able to bring negro schools up to a substantial equality with white schools in point of physical facilities, but the "intangibles" will defeat them.

J. L. HETTINGER.

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## CLARIFICATION OF THE REGIONAL GRAZIERS DUTIES UNDER THE FEDERAL TORT CLAIMS ACT

The plaintiff was the lessee of certain property which lies adjacent to government land which is part of a grazing area supervised under the Taylor Grazing Act. The owner or lessor of such adjoining property called "base property"[1] is entitled in the normal course of administration of the Taylor Grazing Act to a grazing permit upon the government land adjoining the leased or owned land. The base property in this case had previously been leased to another party who had been issued a grazing permit. Upon the leasing of the land by the plaintiff, the Federal Grazier refused to cancel the outstanding permit to the plaintiff's predecessor, thus allowing the predecessor to remain in possession of the government land under color of right. Action was brought under the Federal Tort Claims Act. It was alleged that the government employee wrongfully permitted, aided, and directed the plaintiff's predecessor to use the land, and that the government employee wrongfully refused to cancel the outstanding permit. As a result the plaintiff was forced to buy additional feed for his livestock and was damaged in the amount of $109,000.00. District Court sustained the defendant's motion to dismiss, and the plaintiff appealed. *Held,* that the complaint stated a cause of action. The judgment of the District Court was reversed and remanded. *Oman v. United States,* 179 F. (2d) 738 (10th Cir. 1949).

In 1946 a further inroad upon the Federal Government's immunity to suit was brought about by the Federal Tort Claims Act.[2] This Act granted the United States District Courts exclusive jurisdiction of civil actions on claims against the United States for the negligent or wrongful acts of the Government's employees while acting within the scope of their office or employment, under circumstances where the United States, if a private person, would be liable.[3] This broad waiver of immunity was limited by

1. Base property is defined as "property used for support of livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed." 43 C.F.R. 1612 (e).
2. 28 U.S.C.A. secs. 1346 (b), 2671-2680; 43 U.S.C.A. secs. 314-315q.
3. "Subject to the provisions of chapter 171 of this title the District Courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States for money damages, accruing on or after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission