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Whatever Means Necessary: Uncovering the Case of Sweatt v Painter and Its Legal Importance

BY ADAM SCOTT MILLER

Abstract: The road to end segregation in the United States has been a long uphill battle for African Americans. The purpose of this paper serves several critical purposes. The first function is to educate the reader about the legal struggles that African Americans endured between the era of Reconstruction and the Supreme Court desegregating graduate school case of Sweatt v. Painter in 1950. Not only was this elusive case an important stepping stone in reversing the “Separate but Equal Doctrine” upheld by the Supreme Court in 1886, this case shows the lengths that segregationists went to in maintaining the status quo of racial separation. Finally, this paper will demonstrate the legal relevance that Sweatt v. Painter had to a current Supreme Court Affirmative Action case of Grutter v. Bollinger in 2003.
Introduction to Jim Crow Segregation

In 1946, mail carrier Heman Marion Sweatt, a college graduate, decided to apply for admittance into the University of Texas Law School. He was denied. Although he was clearly qualified to enter the law school, there was one overwhelming problem. He was black.¹

The legacy of Jim Crow Segregation has reverberated throughout American history. Many facets of segregation dominated the lives of black Americans for most of the twentieth century; although some may argue that it still exists today. Jim Crow segregation refers to the ways white Americans continually oppressed and segregated the races on buses, in restrooms, at drinking fountains, in schools, churches, restaurants, general stores, and government facilities; in nearly every component of life where the two races could interact. This psychologically damaging behavior soon dominated Southern society, even though blacks had gained constitutional equality decades before.

The closure of the Civil War brought new hope to a race forced into slavery. However, after Reconstruction, any hope for social or economic advancement soon dwindled. It took a painstaking century of struggle after emancipation for an exhortative Civil Rights leader named Dr. Martin Luther King Jr. to cry out “free at last,” illustrating his desire to finally end a degrading system of oppression.

In American culture, the adverse treatment of African Americans was considered acceptable behavior for whites. Simply put, blacks were inferior to other races. This way of thinking did not restore the ideas of slavery. Slavery held blacks against their will, a complete contradiction to the ideals of the Age of Enlightenment, which heavily influenced the abolition movement. However, as this paper will demonstrate,

¹ In today’s terminology the descriptive word “black” and “colored” can have a negative stereotype on the African American race. This paper will use the term “black” and “colored” to re-impose the historical attitudes of the period. Furthermore, the usage of “black” and “white,” for descriptive purposes, simplifies the dichotomy of the two races brought forth in this paper.
blacks were thematically classified at the bottom of the evolutionary hierarchy, which resulted in the perception that blacks were subhuman, giving whites justification for segregation. The mind-set for that period felt that mingling the races had the same effect as mixing oil and water. Henceforward, blacks were methodically ostracized and separated from white society. Over the years, historians’ views of racial segregation have reflected the general public’s perceptions in regard to segregation.

Southern historian Ulrich B. Phillips wrote in 1928 that white supremacy in the South must be kept in place to prevent future conflict and maintain social order. He blamed African Americans participation in the social and political upheavals of the Reconstruction Era on Radical Republicans. According to a primary document published in 1868, Phillips cited, “the black thread of the Negro has been spun throughout the scheme of Reconstruction. A design is betrayed to give to him the political control of the South, not so much as a benefit to him . . . as to secure power to the Republican party.” In other words, Phillips blamed the political motives of Republicans who put voting blacks into power. According to Phillips, the mass of blacks “were incompetent for any good political purpose and by reason of their inexperience and racial unwisdom [sic] were likely to prove subversive.” After the Civil War southern whites, which constituted a minority of the population, lost political power to the black majority. Over the Reconstruction period whites methodically disenfranchised new black voters to regain political power. Upon regaining authority, whites devised ways to segregate blacks. This system became widely known as Jim Crow segregation; a system first studied by historian C. Vann Woodward in the 1950’s.

Prior to Woodward’s scholarly work, The Strange Career of Jim Crow, segregation was not considered a system

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3 Ibid., 42.
of oppression, but an accepted form of day-to-day behavior. Woodward defined Jim Crow segregation as a system that casually formed after the withdrawal of federal troops in the South at the end of Reconstruction in 1877. From that point on, blacks lost the protection provided by federal authorities that had guaranteed their civil and political rights. Woodward contended, “What the new status of the Negro would be was not at once apparent, nor were the Southern white people themselves so united on that subject at first as has been generally assumed.” Whites remained divided on political and economic issues, but as they slowly resolved their grievances, blacks became targets of disfranchisement, which in turn eroded their economic and social status. Woodward reveals that Jim Crow was a system born in the North, which had time to fully develop before moving to the South. The author argues that the North condemned slavery 35 years before the South was forced to do so in 1865, and concludes that “Jim-Crowism” was a product of the termination of slavery. Thus, Woodward argued that Jim-Crowism began in the North and moved into the South after Reconstruction because of a lessening of Northern military presence, and slowly took shape right through the twentieth century, meaning it was a comparatively contemporary system for the South. However, to say that the North invented Jim-Crowism would be misleading.

If this were true the, North would have displayed the same distinct form of segregation as the South. The South developed “de jure” or legal segregation enforced by the government, which after all is the appropriate meaning of Jim Crow segregation. In contrast, the North developed “de facto” or customary segregation, a form far less oppressive. The legal instruments in the North did not exist as in the South. Discrimination happened at an individual level that allowed

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5 Ibid., 6.
6 Ibid.
7 Ibid., 17.
blacks to remain autonomous in the North while, the South remained vigilant in oppressing black autonomy.

After the Civil Rights Movement turned militant in the late 1960’s the focus of study turned to analyzing race relations, a side effect of segregation. The fact that urban riots broke out after the passage of the Civil Rights Act of 1964 and Voting Rights Acts of 1965 caused historians and sociologists to intensify their study of the grievances of blacks. Historian Joel Williamson in 1985 studied the legal and social legacy that pitted the two races in his book, *A Rage for Order*. Differing from his predecessor Woodward, Williamson expanded upon the argument that Jim Crow segregation emerged during the chaotic time between Reconstruction and 1915. By 1915, the South shifted from “de facto” or customary segregation to a system comparable to an apartheid that enforced law through lynching and outright murder. Furthermore, in the South, two distinct cultures emerged from Jim Crow segregation: white and black. This created division between the races, therefore unity and “brotherly love” never emerged. This racial tension, still evident in 1984, is a legacy of Jim Crow and past exploitation, and defines race relations in America today.

Most recently, historians began analyzing the antithesis of segregation. *Farewell to Jim Crow*, written by R. Kent Rasmussen argues the key solution to racial harmony questioned in the 1980’s is the continuation of desegregation. Integration will ultimately provide African Americans with the equality they have been denied for countless years. Historian Richard Wormser wrote *The Rise and Fall of Jim Crow* in 2003, which illustrating the history of Jim Crow segregation and its long-term effects projected onto present day society. Wormser brings to light the struggles still occurring in race relations today. For instance, the educational system actively sought

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9 Ibid., 153-167, 199.
10 Ibid., vii.
11 Ibid.
Sweatt v Painter

desegregation in the 1970’s, but whites resisted integration by moving to other schools not heavily attended by African Americans. “Schools have slipped back into a pattern of segregation,” argued Wormser. Even after countless court cases and the legal desegregation of the public school system, racial separation still remains a pressing social issue. The historiography of segregation parallels the narrative of this article and the contribution of the Supreme Court’s decision and subsequent rulings on Sweatt v. Painter.

The Legal Aspect of Jim Crow Segregation

The Fourteenth Amendment is probably the most legally debated Amendment to the Constitution. Its prescribed meaning has been interrupted countless times by the court system. After the Civil War the southern states instituted Black Codes to prevent African American access to the privileges whites coveted. The ratification of the Fourteenth Amendment in 1868 guaranteed equality for all races, but its prescribed meaning was left open for interpretation. In 1896 the Supreme Court upheld the Louisiana case Plessy v. Ferguson allowing segregation or as it was more widely known Jim Crow, even though the Fourteenth Amendment stated, “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.” In Plessy v. Ferguson the Supreme Court handed down a devastating blow to African Americans’ search for equality under the law.

14 There are three important components to the Fourteenth Amendment: First, the Citizenship Clause provides citizenship to all males twenty-one years of age; the Due Process Clause protects the right to life, liberty, and property; the Equal Protection Clause requires each state to provide equal protection under the law.
15 Black Codes refer to the laws States enacted after the Civil War to limit the civil liberties and equality of African Americans, whereas Jim Crow Laws recognized Blacks as equal under the law, but required separate facilities
However, for those in favor of integration the court’s decision also entailed one caveat. Blacks could be separated from whites if facilities for both were equal. In fact, many were not. For nearly six decades lawyers chipped away at the separate but equal doctrine and finally in 1954 the Supreme Court case of *Brown v. Board of Education* removed the legal shackles of injustice and ordered the desegregation of the public school system.

These two hallmark cases stand out as the most well-known amongst students and scholars. *Plessy v. Ferguson* provided the legal authority to constitutionally allow segregation between “colored” and “white.” On the other hand, *Brown v. Board of Education* reversed the 1896 Supreme Court’s racist decision and integrated the public school system. Much legal conjecture has arisen in the period between these two monumental decisions, but the Supreme Court did not abruptly arrive at two contradictory decisions. The High Court looked back at lower courts’ decisions to find the precedents that would shape a likeminded decision. *Plessy v. Ferguson* was not the only court case to vilify the separate but equal doctrine and by the same token *Brown v. Board of Education* did not suddenly tear down the wall of Jim Crow segregation. This paper will look at several other cases that either built or eroded the wall of segregation. In particular, *Sweatt v. Painter*, a Supreme Court case in 1950 that allowed an African American named Heman Sweatt to attend the University of Texas Law School. The caveat of providing an “equal” education proved challenging for segregated states.

Those searching for civil rights needed to confront segregation. If the southern states wanted to remain segregated, it would place a financial burden on them. They would have to provide two of every government facility, including but not limited to: post offices, schools, restrooms, drinking fountains, including the staffing of all additional facilities. One court case truly demonstrates the changing tides of integration and illustrates the extent to which some states went, in order to prevent black incorporation. The Supreme Court’s reversal of a Texas Superior Court ruling in *Sweatt v. Painter* in 1950 was a prelude to the monumental decision of *Brown v. Board of*
Education that finally overturned Plessy v. Ferguson. The perception that Brown v. Board of Education overrode all other decisions from the Supreme Court, thus negating the importance of Sweatt v. Painter is false. Sweatt v. Painter still remained a relevant precedent for future Supreme Court decisions. This paper will argue that in 2003 the High Court employed to the legal meaning prescribed in Sweatt v. Painter in upholding the University of Michigan Law School’s affirmative action program, in Grutter v. Bollinger. Moreover, Sweatt v. Painter will be used as a study case to show its legal implications and to tell a detailed story of the battle to prevent integration. Evidence used to weave this story will include Supreme Court dissents, previous scholarly works, and oral histories.

To fully understand the birth of Sweatt v. Painter and its impact on the legal evolution of segregation/desegregation, this paper will use a time-line of pertinent court cases. The primary focus of attention will be the reasoning behind court cases that instituted and justified school segregation. This essay will then examine the crucial cases that began to remove the legal barriers to integration. From that point on Sweatt v. Painter will be investigated in depth, using court documents and oral histories to reveal specific details about the case. This pivotal case highlights the many details and dimensions of Jim Crow segregation, especially through the use of the oral histories of key players in this lawsuit. The lawsuit contains the motives for integration as well as Southern methods employed to prevent black inclusion in the public school system. Additionally, Sweatt v. Painter influenced the monumental High Court’s decision of Brown v. Board of Education, ending the era of Jim Crow segregation. Finally, this essay will discuss the lasting effect of Sweatt v. Painter on future Supreme Court decisions.

**Chronological Outline of Segregation Cases**

The legal battles to end the Supreme Court’s stand of permissible segregation proved to be quite a challenge. Before Justice John Marshall Harlan handed down the pernicious doctrine of separate but equal, school teacher H. J. Buntin used
the Fourteenth Amendment in 1882 as a defense for separate but equal educational privileges for blacks in the case of United States v. Buntin. Fortunately for Buntin, the U.S Circuit Court ruled that the state not the federal government granted educational privileges. Moreover, the court allowed segregation to continue as a discretionary matter for the state, as long as those separate schools were “substantially equal” to the white schools.\textsuperscript{16} In 1896, the Supreme Court legitimized segregation for the first time. A Louisiana black man named Homer Plessy purchased a first-class passenger train car ticket. When he attempted to take his seat in that car, he was promptly ushered to the “Negro passenger car” where he refused to sit, since that car did not provide first-class amenities purchased by Plessy. Subsequently, Plessy was arrested for violating a Louisiana statute that forced blacks to sit in segregated railroad cars.\textsuperscript{17} Eventually, the case reached the Supreme Court who then decided the fate of equal protection under the law. Referring to precedents like United States v. Buntin, the court ruled that the separation of races was not a violation of the Fourteenth Amendment as long as equal facilities were provided.\textsuperscript{18} The reason behind separation of the races for that time period lay in “scientific racism.”

“Scientific racism” refers to the use of science to justify a link between race and intelligence. Popular belief in such pseudo sciences (as it is known today) perpetuated the perceptions of black inferiority in the nineteenth and the first half of the twentieth centuries. As an example, the Encyclopedia Britannica eleventh through thirteenth editions (covering the years 1910-1926) claimed that “Negroes” were on “a lower evolutionary plane” than white or yellow races.\textsuperscript{19} The

case of Plessy v. Ferguson exemplified the notions of scientific racism. The Supreme Court’s dissent by Justice Harlan states, “The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power.” These pseudo-scientific notions, that blacks inherently possessed little intelligence, would not be dispelled until the 1930’s and 1940’s.

Journalist Earl Conrad, in a satirical sense, wrote in 1947 that anthropologists plowed their way into Harlem, examining Negroes’ faces, nose, skulls, and color in order “to answer those questions, when the answer lay historically within the white man’s back pockets, in one of which he kept his revolver and in the other his purse.” In 1949, the United Nations Educational, Scientific and Cultural Organizations (UNESCO) held a conference with leading international anthropologists, psychologists and sociologists in Paris to define the scientific meaning of race. The UNESCO conference concluded,

Scientists have reached general agreement in recognizing that mankind is one: that all men belong to the same species, Homo sapiens... according to present knowledge there is no proof that the groups of mankind differ in their innate mental characteristics, whether in respect of intelligence or temperament. The scientific evidence indicates that the range of mental capacities in all ethnic groups is much the same.

Pubic dissemination of the achievements of African Americans contradicted the popular belief that blacks were inherently unequal and intellectually incapable, as compared to whites.

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21 Earl Conrad, Jim Crow America (New York: Duell, Sloan and Pearce, 1947), 126.
African American service in World War II illustrated the equality of intelligence and skills between the two races. The Tuskegee airmen undoubtedly demonstrated the ability of African Americans to fly a plane under combat conditions, with precision. Blacks continued to fill or search out roles coveted by whites, such as doctors, lawyers, scholars, and skilled labor. Increasingly, blacks began demanding acceptance into post-graduate degree programs granted by schools open only to whites. Segregation stood in the way of young black professionals obtaining an equal education.

As previously mentioned the question of separate schools was first upheld in the U.S. Circuit Court case of *Buntin v. United States* in 1882. The issue of segregated schools did not appear again in Supreme Court cases until 1927. In the case of *Gong Lum v. Rice* the Supreme Court’s decision held that the state of Mississippi could segregate its schools without violating the Fourteenth Amendment moreover, the dissent clearly vindicated the belief of whites in pseudo-science. The High Court ruled that, “The white, or Caucasian race, which makes the laws and construes and enforces them, thinks that in order to protect itself against the infusion of the blood of other races its children must be kept in schools from which other races are excluded.” The notion that the white race was superior to all others certainly struck a nerve among African Americans, especially those who were already educated professionals and those who aspired to an advanced graduate degree.

The tides turned for African Americans in 1936 when the Maryland Court of Appeals ruled in favor of graduate school applicant Donald Murray in the case of *Pearson, et al v. Murray*. The National Association for the Advancement of Colored People (NAACP) used the caveat stated previously in *Plessy v. Ferguson*, to fight for universal integration. The University of Maryland could not provide a separate and equal education for Murray; therefore they were forced to admit him to the school. The judgment brought cheers from African Americans.

24 Ibid.
Americans and provided a wake-up call for segregationists who wanted to prevent further integration. The Court ruled that the University of Maryland, “has omitted students of one race from the only adequate provision made for it, and omitted them solely because of their color. If those students are to be offered equal treatment in the performance of the function, they must, at present, be admitted to the one school provided.”25 After this victory, the NAACP continually attacked states’ inability to provide equal educational facilities for African American students. This strategy was first devised in 1934 by the NAACP’s new generation of lawyers, namely Charles Hamilton Houston and Thurgood Marshall.26

The first major case opposing school segregation came to the Supreme Court in 1938, when Lloyd Gaines was denied admission to the Law School of the University of Missouri. In Missouri Ex Rel. Gains v. Canada, the University of Missouri defended their action by collaborating with adjacent states that already had “Negro” schools in place or allowed integration. The University’s remedy was to provide Gaines with a scholarship to attend any separate but equal or integrated law school in an adjacent state.27 Gaines rejected the offer and again was denied admission, this time by the Missouri Supreme Court. With the help of the NAACP, Gaines took the case to the U.S. Supreme Court. The court decided that since the State of Missouri could not provide Gaines with an equal education they had denied equal protection under the law to him. Moreover, a law school outside the boundaries of Gaines’ home state of Missouri, does not teach the practice of “Missouri Law.”28 Therefore, Missouri needed to provide Gaines with an


equal law school or admit him to the University of Missouri. With a clear victory, the NAACP hastened to have Gaines reapply to the Law School. The NAACP knew that once Gaines reapplied, the state would appropriate $200,000 to create a Negro School of Law just for him and that the NAACP could then fight it on grounds of inequality. The NAACP had a larger goal in mind. Their ultimate goal was to turn over Plessy v. Ferguson and have universal equality. Tragically, Gaines was nowhere to be found. He simply vanished in Chicago leaving his apartment on the night of March 13, 1939, to buy postage stamps. It can only be hypothesized that he fled for his life or possibly fell victim to violence, since he was neither seen nor heard from again; yet the Supreme Court decision he initiated, lives on.

Two years before the study case of Sweatt v. Painter, the Supreme Court heard a similar lawsuit involving a black female law student. In the case of Sipuel v. Board of Regents, the Supreme Court ruled in favor to admitting Ada Sipuel to the “white only” University of Oklahoma Law School or requiring the university to build an equal facility. Since the University of Oklahoma could not build a law school overnight it admitted Sipuel as a one-time exception until a new black law school was built. The new law school was built after Sipuel’s case and over an eighteen-month period only one student attended; the school subsequently closed. The economic burden placed upon maintaining Jim Crow segregation became overwhelming, but segregationists did not give-up, they had one more trick up their sleeve. Oklahoma responded by admitting Sipuel to the

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33 Ibid., 123.
University, but continued segregating her in the classroom. An oral history from University of Texas Law School Dean W. Page Keeton, then Dean of the University of Oklahoma, describes the torment Sipuel had to endure in the classroom at the behest of the State’s Attorney General, in which Sipuel was restricted to an area sign stating, ‘For Colored Only.’” Keeton continued to blame the Attorney General’s persistence in enforcing this rule.\(^\text{34}\) The NAACP would challenge these discriminatory practices in the later case of \textit{McLaurin v. Oklahoma State Regents}.

Decided in conjunction with the case of \textit{Sweatt v. Painter} in 1950, \textit{McLaurin v. Oklahoma State Regents} fought for an integrated and non-demeaning classroom environment. Classroom separation was the last resort for segregationists. George McLaurin pursued a Doctorate in Education, and at first was denied admission, but successfully sued in the U.S. District Court of Oklahoma.\(^\text{35}\) Once admitted through, McLaurin was forced to sit outside at the classroom door, “where he could overhear.”\(^\text{36}\) “Now, that, gave the student the opportunity of being present at a law school that was no doubt superior to the separate law school.”\(^\text{37}\) McLaurin, the NAACP, and the Supreme Court disagreed in 1950 over the intent of Keeton’s statement, which in interpretation was phrased sarcastically. Nonetheless, this carefully planned legal process was eroding the walls of Jim Crow segregation. During the time of the Sipuel and McLaurin cases, Heman Sweatt applied to the University of Texas (UT) Law School and he was denied admission because of his skin color. The NAACP saw this case as the final blow for educational segregation. The Supreme Court’s positive rulings in \textit{Gaines} and \textit{Sipuel} led the NAACP to

\(^{36}\) Ibid.
\(^{37}\) Ibid.
directly challenge the *Plessy v. Ferguson* decision using the case involving Heman Sweatt.

**The Case of Sweatt v Painter**

There are several facets to the case of *Sweatt v Painter*. There is the legal side, which involved the Texas Supreme Court and the U.S. Supreme Court. This case looks into the equality of a black law school compared to UT Law School and greatly influenced the outcome of *Brown v. Board of Education* leading to the reversal of *Plessy v. Ferguson*. Another angle illustrates the immediate development of an all-black law school. For segregationists, exhausting funds to prevent integration shows the extent some were willing to go to keep the races separated. Finally, the oral histories that have been gathered by some participants involved in the case of *Sweatt* give an in-depth personal analysis of Sweatt the man, the black law school, and the case. All these dimensions surrounding the case of *Sweatt v Painter* will be intertwined into a storyline that maintains synchronization of the lawsuit’s timeline.

The story of Heman Sweatt is usually told the same simple way. He was a mail carrier and a college graduate who was qualified to attend law school. Sweatt applied to the segregated UT Law School in Austin, Texas and was denied admission based on his race. It is rarely mentioned in the literature that after enduring four and a half years of legal battles to attend the UT School of Law, Heman Sweatt dropped out due to bad grades. There were instances of ostracism that contributed to Sweatt’s academic failure at UT School of Law that will be explained later, but for now the beginning of the story may help shed light on Sweatt’s aspirations. An oral history will be used to present this information, not of Heman Sweatt (one does not exist) but of an obscure civil rights activist named Juanita Jewel Craft.

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Craft described her job in the Civil Rights Movement as a “professional volunteer.”39 She claimed, “I took the first student there and helped him try to make application. I organized a group of youth on the University of Texas campus who helped us through their contacts at the university to file the suit.”40 That “first student” referred to by Craft was Heman Sweatt. How did a professional civil rights volunteer and a postal carrier connect? Craft does not give a detailed account of her involvement in the case nor how she became involved in helping Sweatt. We are unable to answer this question, because Craft’s interviewer does not follow through with their line of questioning about how the two connected. Only one other piece of evidence could be found connecting Sweatt to the Civil Rights Movement.41 In a journal article written in 2006, author Dwonna Goldstone states that Lulu White, the Texas State director for the NAACP, contacted Thurgood Marshall on October 12, 1945 claiming they had “found their plaintiff,” referring to Sweatt.42

The NAACP had been searching for the perfect candidate to proceed in a chain of lawsuits to undermine the separate but equal doctrine.43 Sweatt had joined a group of NAACP representatives where he met White and according to Craft’s oral history, met her as well. Before applying to UT Law School on February 26, 1946, Sweatt and several members of the NAACP went to the office of university President Theophilus Painter to ask what provisions could be made for a black applicant.44 Painter replied, “...the only avenue available to African American students was the out-of-state scholarship

40 Ibid., 15.
41 While other sources proving the original connection of Sweatt to the NAACP may exist, the priority of this work is the events that transpired once that connection was made.
42 Goldstone, 90.
43 Ibid.
44 Ibid., 92.
Because of the successful suit in *Gaines v. Canada* in 1938 striking down out-of-state scholarships, the NAACP hoped Texas would build a black law school so that they could in turn challenge its equality. Sweatt proceeded with his application fully aware of the legal battles to come. He was denied admission because of his race and would have to wait nearly five years to attend graduate school because of countless delays and legal trials.

Immediately after Sweatt’s denial he filed suit against UT. On June 17, 1946 the Travis County Court ordered “that within six months from the date hereof a course for legal instruction substantially equivalent to that offered at the University of Texas is established and made available…on the 17th day of December, 1946, at 10 o’clock am.” The university was given the choice to either build an all black law school or admit Sweatt to the white school. According to the *Houston Informer*, a black newspaper from 1950, at the follow-up hearing in December the black law school still did not exist and Judge Archer still refused to force admission for Heman Sweatt. Clearly Judge Archer was biased in this case and contradicted his own order. The NAACP constructed this suit to challenge equality, and Sweatt purposely waited for the law school to be built. This differs from the case of *Sipuel v. Oklahoma*, wherein Oklahoma was forced to admit Ada Sipuel because a black school did not exist at the time she applied.

The NAACP did not force Sweatt’s immediate admittance, as it did Sipuel. Heman Sweatt knowingly was used as a pawn to desegregate graduate level schools. For him, it was not about his aspirations to become a lawyer, but to challenge the legal system and fight for equality.

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45 Ibid.
To prevent integration the State of Texas chose to build an adequate Law School for Negroes. A total of $100,000 in emergency funds suddenly became available to locate a temporary facility, the staff, and supplies for the new school. Beyond these measures, the “state legislature hastily appropriated $2.75 million to create a new institution, the Texas State University for Negroes in Houston in response of Sweatt’s lawsuit.”

An oral history provided by Joe Greenhill First Assistant to the District Attorney at the time provides a detailed account of these extraordinary efforts to create a new school: “There wasn’t a separate law school…the Legislature created one…The Legislature gave us more money that we could spend. They wanted an instant equal separate school…so after the suit had been filed, then the legislature made the appropriation for the black law school.”

Greenhill provided more details: “We needed to get a substantially equal library to the law school. So we bought up all the law books you could buy. A lot of the good law books were not available for sale…then substantially equal professors [sic] aspect was accomplished by using the same professors that taught at Texas law School.”

The new library’s equality to the UT library became a large argument in the Sweatt case. Corwin Johnson, an Assistant Professor at the temporary black law school argued that the library contained 10,000 books “carefully selected for first-year students” in an oral history interview. Compared to UT Law School’s library, which contained 65,000 volumes, the Negro school was clearly inferior.

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48 Goldstone, 93.
50 Ibid.
The inequality of the black law school library became a major argument for the NAACP. According to the Texas District Court records, the testimony provided by an expert legal witness, D.A. Simmons compared libraries and provides further insights excluded from the historical record. The dialogue between NAACP lawyer Thurgood Marshall and Simmons unraveled the State Capital’s assistance in lending the use of their Law Library to the black law students. The above oral histories describe the black library containing 10,000 “carefully selected” books. The testimony of Simmons, who helped accredit the temporary Negro Law School, claimed the school had “a law book case or two with approximately, I would say, one hundred and fifty to two hundred books.” Furthermore, the prosecution purposed this statement/question—“no library was available in the school at that date, nor at that date did the school possess any place in which it could have placed these 10,000 books; is that true? [Simmons answered] No, there was no adequate space immediately provided.”

The Texas Supreme Court Library was located 150 yards away from the temporary law school that provided the remaining books needed for accreditation, according to Simmons testimony. The oral histories above failed to mention that the temporary black law school for the first year had no library on site. Almost a year later, the Black Law School would acquire additional space on the third floor to hold a small library according to the court’s witnesses. This gap is critical to determine the equality of the temporary black law school. It illustrates the court’s flexibility in allowing UT to develop an equal black law school.

Another argument of the NAACP was the inadequacies of the building itself. The school was located in a building across from the Capitol Building. It was called the “basement

52 Ibid.
54 Ibid.
55 Ibid.
school” because half the first floor (the location of the school) was located below ground. The testimonies of Simmons and D.K. Woodward Jr. reveal the physical characteristics of the school. The rented space included four large rooms and one small room, a total of approximately 1000 square feet. There were no faculty offices or a dean’s office in the school. Lighting was another issue. Sunlight was blocked because half the building was underground and lacked windows. Joe Greenhill’s oral history compliments NAACP’s attorney Thurgood Marshall’s defense approach on the subject. “One of the brightest things Thurgood Marshall did was establish that this old building that we were using by the capitol probably wasn’t structurally sound enough to hold the weight of all those law books.” The faculty hired to teach at the Black Law School provides a slightly different perspective of the black law school.

To provide equal teaching the same professors who taught at UT Law School were brought to the Black Law School. Corwin Johnson was one of the first faculty members to teach at both facilities. “When I first arrived, I found in my mailbox, among other things, a note from Dean McCormick asking me if I would be willing to teach the same course that I was teaching here [(UT Law School)]...I agreed to do that.” He continues, “I recall it as a two or three story building, a rather large residence. And the law school part was the first floor, it has sometimes been referred to as the basement law school. I didn’t think of it at the time as the basement. I don’t recall going down steps to get in it.” In terms of the equality of education between the white and black law schools Johnson had mixed feelings. Johnson stated,

I don’t disagree at all with the Supreme Court decision in that case, *Sweatt v. Painter*, that the facilities there were much inferior to those on the main campus for many reasons. But in terms of

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56 Ibid.
57 Greenhill.
Looking back on history, Johnson’s perception may have been construed by “social interpretations” as Trevor Lummis argued in his essay, “Structure and Validity in Oral Evidence.” According to Lummis “the problem at the heart of using the interview method in history still remains that of moving from the individual account to a social interpretation.” Johnson said that he agreed in the Supreme Court’s decision of *Sweatt v. Painter*, forty-six years after the fact. Over time, the ideals of segregation have been demonized, and that may have changed Johnson’s interpretation of how he actually felt during the case of *Sweatt v. Painter*. His oral interview only states the positives and equality of the Black Law School and not the “many reasons” it was inferior. The racial attitudes of those involved in the case are absent in the oral histories and can only be postulated.

*Sweatt v. Painter* happened because of racism, yet that racism is no longer present in the oral histories. Trevor Lummis additionally argued that “Oral accounts from those who experienced the specific situation provide unsurpassed and irreplaceable evidence for actual behavior.” In a sense, Lummis is correct, but when using his own argument that

58 Johnson.
60 Ibid.
individual accounts shift to social interpretations; however in cases of racism, when the behavior is deemed socially unacceptable, oral accounts are not irreplaceable evidence for actual behavior. In that regard, Lummis, in this researcher’s opinion, is wrong. If a past attitude is labeled inexcusable in today’s standards, then the interviewee may hide their past personal feelings, thus damaging the validity of the interview. Therefore, Corwin Johnson may have hidden his true racial attitudes towards Blacks in his interview because this type of behavior is frowned upon in current times.

A long legal battle ensued in the Texas Court system. Heman Sweatt continually lost his battle to gain admission into UT Law School. November 1948 marked an end of appeals in the case of Sweatt v. Painter. By this time, the $2.75 million permanent Negro Law School was operational in Houston, Texas. The library was stocked with 16,500 volumes of law books, five full-time professors, a practice court, and a total of 23 students enrolled in the University’s first year. The cost to maintain this school with such an extraordinarily low number of students must have been quite high. But for avowed segregationists, any means necessary in preventing integration was probably worth the cost. In comparison, the UT Law School concurrently enrolled about 850 students, had 16 full-time professors, and 65,000 law books. Sweatt could no longer easily claim the Negro school was inferior. Besides, Joe Greenhill was right in saying, “there wasn’t any way we could lose that case in Austin” meaning the profound racial attitudes guaranteed segregation would be upheld in Texas. Sweatt’s legal team had to find another way to fight the inequality between the two schools. The next step in the appeals process would involve the United States Supreme Court.

After four long years, on June 5, 1950 the Supreme Court finally overturned the Texas Court and allowed Heman Sweatt to attend UT Law School. Thurgood Marshall and others argued to the High Court not only the inadequate

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62 Ibid.
63 Greenhill.
physical attributes of the Negro Law School or the number of volumes in the library, but the attendance and social make-up of the Negro School. A graduate school requires student interaction and role-play; this is especially true in law school. A student body of only 23 could not simulate a real courtroom. Furthermore, the social and cultural difference that is prevalent in society was not represented in the Negro Law School. The Court’s judgment agreed,

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, remove for the interplay of ideas and the exchange of views…it excludes from its student body members of racial groups which number 85% of the population of the State and which include most of the lawyers, witnesses, jurors, judges, and other officials with whom petitioner would deal as a member of the Texas Bar. Held: The legal education offered petitioner is not substantially equal to that which he would receive if admitted to the University of Texas Law School.64

Segregated graduate schools are inherently unequal regardless of the number of books, faculty, or physical characteristics. In addition, the honor, prestige, and connections of attending a dignified university, such as UT Law School, could not be recreated. Therefore, Texas could never provide a separate but equal law school for blacks. The overriding, divided decision in the case of Sweatt v. Painter would desegregate all graduate schools. The Court also alluded to the case of Plessy v. Ferguson, which the NAACP was ultimately fighting to have overturned. The justices decided not to extend its meaning to graduate schools because Plessy v. Ferguson did not apply to

64 Ibid.
education. On the other hand, they could not rule against it either. Yet, one bit of hope remained that bears the significance of *Sweatt* on *Brown v. Board*. This evidence lay in the last sentence of Justice Thomas Clark’s dissent, “If some say this undermines *Plessy* then let it fall, as have many Nineteenth Century oracles.”65 This decision strikes a major blow in overturning *Plessy v. Ferguson* by way of *Brown v. Board of Education* and removing the separate but equal doctrine. Its legal importance still remains relevant today.

**Aftermath of Sweatt v. Painter**

The case of *Sweatt v. Painter* illustrates the importance for people of all backgrounds to have access to a law education. To shun one group limits their ability to interact with others. Therefore, diversity is needed in a law school. The Supreme Court expressed these concerns because it believed Heman Sweatt could not obtain an education equal to whites. He could not gain access to UT Law School’s alumni or legal connections, leaving him at a disadvantage and ultimately shutting him out of the legal profession. In 2003 the Supreme Court heard the case of *Grutter v. Bollinger*. The case involved the University of Michigan Law School’s affirmative action admission program. An attempt was made to change the admission standards of the University. A point system was used as a deciding factor for admittance. Non-white applicants would receive extra points to ensure a diverse make-up in the Michigan Law School. Barbara Grutter believed this form of affirmative action was favoritism and a violation of her Fourteenth Amendment rights.66 However, a 5-4 split in favor for Bollinger upheld the University’s admission standards. Most importantly, Justice Sandra Day O’Conner cited the case of *Sweatt v. Painter* as evidence for her decision,

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In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity… As we have recognized, law schools ‘cannot be effective in isolation from the individuals and institutions with which the law interacts.’ See *Sweatt v. Painter*…diminishing… stereotypes is both crucial part of the Law School’s mission, and one that cannot accomplish with only token numbers of minority students.\(^{67}\)

Therefore, a clear distinction is made between the contemporary case of *Grutter* and *Sweatt*. The case of *Sweatt* still remains relevant in today’s legal battles and upholds the necessity for diversity in Law Schools.

*Sweatt* also influenced the Supreme Court’s decision to desegregate the public school system in *Brown v. Board of Education*.\(^{68}\) The progress made by the attorneys arguing Heman Sweatt’s lawsuit was a crucial stepping-stone for repealing the separate but equal doctrine under *Plessy v. Ferguson*. The climactic battle of *Brown v. Board of Education* was instrumental in an attempt to heal the racial wounds of America’s past. Although the effects of the High Court’s decision were not felt immediately, the remedy was now in place to obtain equality for blacks. The NAACP could have attacked violence and the perpetrators of hate crimes through legal means, but they chose to focus more on the school system especially at the elementary and secondary education level. Segregation would continue if white children were taught at a young age that separating the races was acceptable. They were exposed to this every day and the notion for segregation was exemplified in the public school system. Children would accept

\(^{67}\) Ibid.

integration overtime because of their interaction with other races.

At the end of the long, slow, legal march Heman Marion Sweatt was finally admitted into the UT Law School in September, 1950. An oral history provided by a student, Oscar Mauzy, who was concurrently enrolled with Sweatt, explained how Sweatt and other blacks were received at UT Law School. Mauzy explained that his classmates could be divided into three equally numbered categories. The first third were called “state’s right-ers, the secessionists” who were not going to attend “school with no goddammed nigger! ...The next thing you know they’re going to let Mexicans in.”69 The second group was the polar opposite of the racists. They not only welcomed integration, but believed blacks should get a free-ride through law school just to make up for all the bad things done by whites. The last group seemed a bit more rational. They believed, “It’s a good decision, it’s long overdue, this situation should never have been allowed to develop this way but it has. Now we’re in the process of correcting it. But we’re not doing these new black, ’Negro’ … any favors.”70 It is clear Sweatt must have experienced degrading racial epithets since a third of the student body (280 students) engaged in some form of racism.

UT Law School Dean W. Page Keeton’s oral history paints a less demeaning side of the story. He made a reference to one particular letter he received from a parent insisting their student’s units be transferred to a law school with no black students.71 Furthermore, a group of “rednecks” (as described by Dean Keeton) wanted segregated bathrooms. The Dean felt this was a small request and asked the six Black law students if they could refrain from using one the two bathrooms. This way everybody was happy and a “Colored Only” sign would not be

70 Ibid.
71 Keeton.
used. Moreover, Keeton stated “they didn’t have much complaint then” and racial attitudes did not persist long after the school was integrated. On the other hand, faculty member Corwin Johnson recalls that “maybe some of the senior faculty would have” supported segregation. Johnson also recalled, “some cross burnings on the lawn of the Law School.” Journal author Dwonna Goldstone stressed that on Sweatt’s first day of school the Ku Klux Klan waited for him outside the building. In addition, she claimed that some professors repeatedly turned their back to Sweatt when he asked questions, and they refrained from calling him Mr. Sweatt, though they referred to white students as “Mr. So-and-So.” Therefore, accounts differ as to the treatment Sweatt received while attending UT Law School. Because of this treatment and enduring four and a half years of his lawsuit, his ailing health and troubled marriage, Sweatt failed three classes and subsequently dropped-out of school.

Conclusion

Whether Sweatt actually wanted to become a lawyer is debatable, however, what is clear is that he put five and a half years of his life aside to break down the barriers of segregation to pave the way for those African Americans who truly wanted to obtain an equal graduate school education. The case of Sweatt v. Painter truly personifies the battle over segregation. The many aspects of this case, particularly, the legal struggle and the lengths to which segregationists would go to prevent integration, give a sobering account of America’s racial past. The history of Sweatt may not be well known, but its legal importance embodies ideals upheld to this day by the Supreme Court in such cases as Grutter v. Bollinger. Unlike the 1938 case involving Lloyd Gaines, who mysteriously disappeared,

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72 Ibid.
73 Johnson.
74 Ibid.
75 Goldstone, 96.
76 Ibid., 97.
77 Ibid.
Heman Sweatt eventually was successful in obtaining a master’s degree in social work at an all black university in Atlanta, Georgia. The walls of segregation fell slowly; no one court case is responsible for ending legal segregation. Murray, Gaines, Sipuel, McLaurin, Sweatt, and Brown among others not chronicled here played some part, whether small or large, in finally asserting the constitutional rights of African Americans under the Fourteenth Amendment. The decision in the case of Sweatt v. Painter relied on past cases, just as future cases would rely on Sweatt. For historians, a variety of sources are available from the Sweatt case. Court records, journals, oral histories, secondary sources, letters, and other primary documents help bring to life a case that has been all but forgotten. Only passages in books are devoted to Sweatt. This important case was soon overshadowed by the Supreme Court decision in Brown v. Board of Education. Accordingly, a comprehensive study is not available of the Sweatt case, a case that is critically important to the fight to end segregation. Nevertheless, multitudes of media are available and for the most part, remain untapped. This is especially true of the Texas court documents. As time passes and details become vague, the case of Sweatt will soon be summarized in a few short sentences. The valuable information stored online will be erased when maintaining the data becomes a burden. The growing need for well-researched narrative then becomes inevitable. The irreplaceable detail must not be compromised for over generalized facts.

78 Ibid.
Bibliography


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