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# Equal Facilities in Legal Education Under the Equal Protection Clause--Epps v. Carmichael

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they made such a distinction they might decide the question themselves as one of clear-cut assumption of risk, while it is properly a matter for the jury under a negligence instruction. It may be that in a popular sense one who patronizes a beauty culture school for her hairdos "assumes the risk" of certain injuries, but this means only that she takes a chance by placing herself in the hands of one held to a lower degree of skill than a licensed operator. These cases at law should hinge on the jury question of whether the student was negligent, and not on assumption of risk.

GEORGE CREEDLE

## EQUAL FACILITIES IN LEGAL EDUCATION UNDER THE EQUAL PROTECTION CLAUSE – EPPS V CARMICHAEL

Plaintiffs, who were Negro citizens and residents of North Carolina possessed of requisite qualifications for admission to the Law School at the University of North Carolina, had applied there for admission. They were refused on grounds of their race and color and because North Carolina had provided a Law School for Negroes at the North Carolina College where they also had applied and had been admitted as law students. Plaintiffs prosecuted a class action against the President of the University and others to restrain the defendants from refusing to admit them. The Federal District Court held for the defendants, deciding that the College Law School afforded the required "separate, but equal, facilities." The court found that there would be no substantial advantage to the parties to be admitted to the University Law School, and that the disadvantages at the College Law School for Negroes were more than offset by the disadvantages existing at the University Law School. *Epps* v. *Carmichael.*[1]

In *Sweatt* v. *Painter,*[2] another recent case involving the right of a Negro to enter a white law school, the United States Supreme Court held that the legal education offered the Negro petitioner in Texas was not substantially equal to that which he would receive if admitted to the University of Texas Law School; and that the Equal Protection Clause of the Fourteenth Amendment required that he be admitted to the University of Texas Law School.

In both Texas and North Carolina, the legislatures had provided for segregation and forbade the attendance of Negroes at schools for white children.[3]

The action of a state in denying a citizen the opportunity to acquire a legal education on the highest level, deprives him of the *equal protection* of the laws guaranteed by the Fourteenth Amendment.

In the *Sweatt* case[4] the trial court continued the petitioner s case for six months to allow the state to supply substantially equal facilities. A law school was then hurriedly established and the Texas trial court found that the new school satisfied the Fourteenth Amendment by offering petitioner privileges, advantages, and opportunities *substantially equivalent* to those offered by the state to white students at the University of Texas. The Supreme Court reversed the Texas decision be-

[1] 93 Fed. Supp. 327 (W.D. N.C. 1950).

[2] 339 U.S. 629 (1950).

[3] Johnson v. Board of Education, 166 N. C. 468, 82 S.E. 832 (1914). TEX. CONST. Art. VII, secs. 7, 14; TEX. REV., CIV. STAT. arts. 2643b (Supp. 1949) 2719, 2900 (Vernon, 1925).

[4] Sweatt v. Painter, *supra,* note 2 at 633.

cause it found that the Negro school was not substantially the equivalent of the University of Texas Law School.

A faculty of sixteen full-time and three part-time professors staffed the University of Texas Law School. Some of these were nationally recognized authorities in their fields. By contrast, the law school for Negroes at Texas State University had only 5 full-time professors. At the white law school there were 850 students, whereas, there were only 23 Negroes at Texas State. The libraries contained 65,000 volumes and 16,500 volumes, respectively. Among the other facilities available to the white students were a law review, a moot court, scholarship funds, and Order of the Coif affiliation. That school's alumni occupy the most distinguished positions in the private practice of law and in the state's public life. Indeed, the University of Texas is one of the nation's ranking law schools while the law school for Negroes was unaccredited, although on the road to full accreditation; and had, by way of facilities, only a practice court and legal aid association and only *one* alumnus who had become a member of the Texas bar.

In comparing the two schools, Chief Justice Vinson said in the *Sweatt* case:

> " we cannot find substantial equality in the educational opportunities offered white and Negro law students by the State. In terms of number of the faculty, variety of courses, and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the University of Texas Law School is superior."[5]

In addition to discussing the objective factors, Chief Justice Vinson placed great emphasis on the fact that the University of Texas Law School was capable of instilling those qualities which cannot be objectively measured but which make for greatness in a law school. He stated:

> "Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, tradition and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the question close."[6]

The Supreme Court did not find equality in the *Sweatt* case, taking into consideration all the aforementioned objective and subjective factors. Deciding that the Negro petitioner was not afforded Equal Protection under the Law, the Supreme Court required that he be permitted to enter the University of Texas Law School.

In the *Epps* case, the United States District Court considered the objective factors in comparing the white North Carolina University Law School and the College Law School for Negroes and stated that the disadvantages at the College Law School were more than offset by disadvantages at the University Law School.

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[5] *Id.* at 634. It will be noticed that the teacher-student ratio at the Negro school was one teacher to five students; while at the University of Texas it was one teacher for every 44 students. It is doubtful that the Negro law school was in a better position than the University of Texas law school because of the smaller number of students per professor if one realizes that most of one's legal education is not gained under immediate supervision of a law professor but by careful reading and classroom discussion and lecture. If a small ratio were advantageous, then the old legal educational system of studying law under a practicing attorney in his office should be better than our present system of class instruction.

[6] *Ibid.*

Discussing the relative merits of the two North Carolina schools, the Court found that the law school of the University of North Carolina was established by the State about the year 1900, and has a present enrollment of 280 with a faculty of 10 professors. In comparison, the law school of North Carolina College for Negroes at Durham was established in 1939, and was organized by the man who was Dean of the University Law School at that time. The curricula, teaching methods and facilities were patterned after those at the University and the original faculty was composed of the professors from the University and the Duke University Law Schools on detached service. In 1941 the present dean was employed as a teacher and assistant dean and a well-qualified, full-time Negro faculty of five men was secured. In addition, Professor McCall of the law faculty of the University and Professor Bryson of the Duke University Law School continued as part-time teachers. The enrollment at the College Law School during the past year was 28 students.[7]

The Court compared the objective factors in every respect. It found that housing facilities at both schools were inadequate, although plans were being executed for radical changes at both institutions. Furthermore, it was shown that the Law Building at the University was severely overcrowded, whereas at the College Law School class rooms were large enough to accommodate far more students than the school had enrolled.

Comparing the respective law libraries the Court said:

> "While the library at the University Law School contains approximately 64,000 volumes, two-thirds of these are crated up and not available for use. Many of them are duplicate sets. There are 17 complete sets of the North Carolina Reports, not to mention the broken sets. The library at the Negro College Law School contains 30,000 volumes and contains a variety of books which makes it a first rate library."[8]

The Court further found that while the University Law School had a law review and a Chapter of the Order of the Coif, the College Law School had neither of these. The LL.B. degree, of course, was conferred by both institutions; however, in addition to this the University Law School conferred the S.J.D. degree. As concerns accreditation, the Law School at the University of North Carolina was approved by the American Bar Association and the Association of American Law Schools, while the College Law School was approved by the American Bar Association and was on the verge of admittance to the Association of American Law Schools, having met the requirements of the latter. The North Carolina Board of Examiners approved both of the law schools.

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[7] The student-teacher ratios in the North Carolina schools were one professor to 28 pupils at the white law school and one professor to three pupils at the Negro school.

Although it was stated in the opinion of the *Epps* case that the curricula at the Negro law school was patterned after that of the white law school, it will be found on examination of their respective school bulletins that the University of North Carolina Law School offers 31 second and third year subjects totalling 83 credit hours while the North Carolina College at Durham offers only 17 second and third year courses totalling 55 credit hours.

[8] *Supra*, note 1, at 329. The University of North Carolina Law Library is in not quite as bad a condition as the Court made it appear. By the time of publication of this note about 20,000 of the stored volumes will be out of storage and available for use while the remainder will be uncrated sometime in the future.

Men with experience in the organization and administration of law schools testified as to the inferiorities of the College Law School, while others, equally qualified, testified as to the equality of opportunity for a legal education there. However, in spite of a split on the part of these who testified, it can be seen that the Law School for Negroes was more nearly equal to the University Law School than was the Negro school in Texas to the University of Texas Law School.

Although a case for *equal but separate facilities* might be made out if only the strictly objective factors are considered, we must further consider some factors that are equally important although not as tangible—the factors that were considered by the Supreme Court in the *Sweatt* case.

In this important case Chief Justice Vinson placed emphasis on the fact that barring the petitioner from the University Law School would require him to attend a college which excludes from its student body members of the racial groups which number 85 per cent of the population of the state and which include most of the lawyers, witnesses, jurors, judges and other officials with whom petitioner would inevitably be dealing upon becoming a member of the Texas Bar. In the words of the Court:

> "With such a substantial and significant segment of society excluded, *we cannot conclude that the education offered to the petitioner is substantially equal to that which he would receive if admitted to the University of Texas Law School.*"[9] [Italics our own]

But in the *Epps* case the court in North Carolina said:

> "There is no evidence before the Court to show that a Negro lawyer attending the University of North Carolina would enjoy a higher standing with the Judges, and lawyers, and litigants, and jurors, and witnesses than he would enjoy if he attended the College Law School. I would not think that it would make the slightest difference with a judge who is fit to sit on the bench, nor should it have any appreciable effect on the jurors who are sworn to do their duty according to the evidence in the case."[10]

Perhaps this declaration of the North Carolina federal court overlooks certain practical realities, when one considers that the legal profession is one that places great emphasis on tradition and precedent. Furthermore, even if a judge or jury is impartial as to where a lawyer obtained his education, how can they avoid being partial to the lawyer who presents his case better as a result of more adequate legal training. It seems apparent that a legal education in a segregated law school is not as adequate as it would be if it were given on a non-segregated basis. This same idea appears to underlie the decision in the *Sweatt* case, if one reads between the lines; while in the *Epps case* the Court declares:

> " and the courts throughout the country have very generally held that equality of opportunity in education *can* exist where segregation is practiced."[11] [Italics our own]

It is interesting, then, to speculate on how the Supreme Court would handle the principal case. Chief Justice Vinson's language in the *Sweatt* case seems to suggest, at least, that equality in legal education cannot exist where segregation

[9] Sweatt v. Painter, *supra,* note 2, at 634.
[10] Epps v. Carmichael, *supra,* note 1, at 330.
[11] *Ibid.*
[12] Sweatt v. Painter, *supra,* note 2, at 634.

is practiced. Despite the fact that in other fields of educational endeavor the Equal Protection Clause seems to be satisfied by duplication of educational facilities, yet as concerns legal education Vinson declares:

> "The law school, the proving ground for legal learning and practice, *cannot be effective in isolation* from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned."[12] [Italics our own]

This language implies that the separation of Negro law students from white law students and from the association with the major racial group will be detrimental to their fullest accomplishment in their study of the law, because of the intrinsic and peculiar nature of the law. If the above excerpt is more than mere dictim it may well be said that the United States Supreme Court will reverse the North Carolina District Court's decision in the *Epps* case should that case appear on appeal before the high Court. Such a reversal would be based on something deeper than a mere consideration of the plant facilities of the two schools, namely, that because of the very nature of the subject there can be no real equality in the study of the law where segregation exists.

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## RIGHT OF CHILD OF SLAYER TO INHERIT FROM SLAYER'S VICTIM – BATES V WILSON

In *Bates* v *Wilson*[1] a son killed his father and mother, the father dying first. His property was devised to his wife. She died intestate immediately thereafter leaving as possible heirs her murderer, the murderer s daughter, and another son. The slaver s daughter, by her guardian, claimed the interest in her grandparent's estate that her father would have taken had he not murdered them. *Held:* The daughter is entitled to such interest since the slayer "should be considered as though he had preceded in death the person whom he killed."[2]

Before discussing the problem presented, we must look to see whether the slayer could himself take from his benefactor. At common law, a majority of states allowed an heir who killed to take from a person who died intestate.[3] The reason for this majority view, as stated in a Kentucky case,[4] is that, since the statutes of descent and distribution make no exception for such a situation, the courts should not imply one. A few courts give as a basis for so holding the constitutional and statutory provisions against forfeitures for crime.[5] However, a strong minority even without a statute refused to allow a slaying heir to take

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[3] Owens v. Owens, 100 N. C. 240, 6 S.E. 794 (1888); Hagna v. Cone, 21 Ga. App. 416, 94 S.E. 602 (1917); Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914); McAllister v. Fair, 72 Kan. 533, 84 P. 112 (1906); Eversole v. Eversole, 169 Ky. 793, 185 S.W 487 (1916); Gillnik v. Mengel, 112 Minn. 349, 128 N.W. 292 (1910); Shellenberger v. Ransom 41 Neb. 631, 59 N.W 935 (1894).

[1] 313 Ky. 572, 232 S.W 2d 837 (1950).

[2] *Id.* at 575, 232 S.W 2d at 838.

[4] Eversole v. Eversole, 169 Ky. 793, 185 S.W 487 (1916).

[5] *See* Whitney v. Lott, 134 N. J. Eq. 586, — 36 A. 2d 888, 890 (ch. 1944).