

## Thurgood Marshall's "Broom Closet": The Structure of Segregation in *McLaurin v. Oklahoma State Regents*



*By Eric Lomazoff and Bailie Gregory\**

Between December 1938 and June 1950, the US Supreme Court decided four cases that compromised and then overruled the doctrine of separate but equal in American higher education.<sup>1</sup> Recently characterized as the “Graduate School Cases” by former US Solicitor General Drew S. Days III, this quartet included *Missouri ex rel. Gaines v. Canada* (1938), *Sipuel v. Board of Regents of the University of Oklahoma* (1948), *Sweatt v. Painter* (1950), and *McLaurin v. Oklahoma State Regents* (1950).<sup>2</sup>

This protracted episode in American constitutional history has recently been treated by historian David Levy.<sup>3</sup> In brief, the first two cases “simply insisted that blacks receive something.”<sup>4</sup> *Gaines* required that Missouri and Missouri alone furnish equal protection; the state could not satisfy the Fourteenth Amendment by paying another state to educate its black law students. In *Sipuel*, the Supreme Court gave Oklahoma two equal protection options and told it to choose quickly:

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integrate its all-white law school or establish an all-black law school. In the latter cases (*Sweatt* and *McLaurin*, decided the same day), the Supreme Court became far more aggressive; it effectively forced states to practice integration in higher education. In *Sweatt*, the court informed Texas that even if its white and black law schools enjoyed substantial material equality, intangible factors (e.g., faculty reputation and community standing) rendered them unequal. This significant wound to segregated higher education invited *McLaurin's coup de grâce*: the court ruled that Oklahoma could not segregate students within an integrated graduate program.<sup>5</sup>

This article is not designed as a challenge to Professor Levy's narrative—its purpose is far more limited. Our interest is restricted to the *McLaurin* case, and more specifically the history of the University of Oklahoma classroom where racial segregation was practiced. Though abbreviated treatments of *McLaurin* are often silent with respect to the classroom's history, those that offer claims about its construction tend to do so erroneously. Accordingly, our goal is to set the record straight. Once an accurate history is established, a disturbing possibility respecting George McLaurin's classroom experience emerges. We conclude the article by addressing the effects of racial segregation upon the University of Oklahoma's first black student.

When Ada Sipuel Fisher—a recent graduate of Langston University, formerly Oklahoma's Colored Agricultural and Normal University—applied to enter the University of Oklahoma (OU) College of Law in January 1946, she was rejected solely on account of her race.<sup>6</sup> George Lynn Cross, then president of the university, found Fisher personally “charming” and Oklahoma's law banning the admission of black students to state schools repulsive. However, President Cross was unwilling to risk a heavy (and daily) personal fine that went with the law's nonenforcement.<sup>7</sup>

Fisher sought but was unable to obtain a writ of mandamus (i.e., an order for her admission) from state courts. After the Oklahoma Supreme Court rejected this request in April 1947, her attorneys (including Thurgood Marshall) appealed to the US Supreme Court.<sup>8</sup> The court handed down a unanimous decision on January 12, 1948, less than a week after hearing oral arguments. Oklahoma was ordered to provide Fisher with legal education “in conformity with the equal protection clause of the Fourteenth Amendment,” and to do so quickly.<sup>9</sup> “Conformity” under the doctrine of separate but equal offered the state two options: it could simply admit Sipuel to the OU College of Law, or quickly establish a substantially equal all-black law school.<sup>10</sup>

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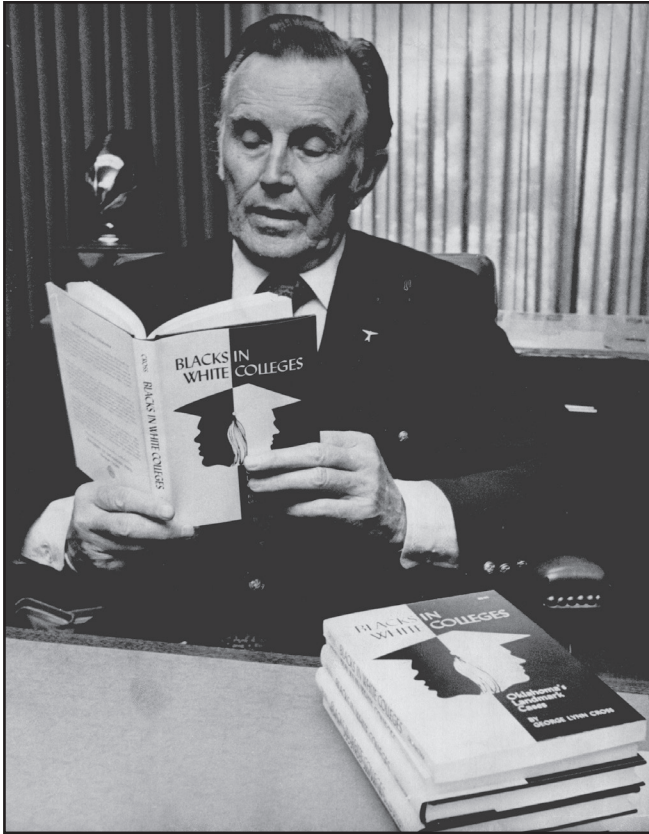


*Left to right: Amos T. Hall, Thurgood Marshall, and Ada Lois Sipuel Fisher, 1948 (2012.201.B1268.0091, Oklahoma Publishing Company Photography Collection, OHS).*

Within seventy-two hours of the court's decision, the state chose the latter option and created the all-black Langston University School of Law.<sup>11</sup> Langston Law, to which Fisher was personally invited to apply by the Oklahoma State Regents for Higher Education, would boast a faculty of three: Dean Jerome Hemry, former State Attorney General Randell Cobb, and Arthur Ellsworth.<sup>12</sup> Moreover, it would meet in several rooms on the fourth floor of the State Capitol in Oklahoma City.<sup>13</sup> Unwilling to entertain the thought of actually attending Langston, and hardly receptive to state claims that the court's mandate had now been followed, Fisher elected to pursue legal relief once again. That process began on January 30, 1948.<sup>14</sup>

Though Fisher's effort to enroll at the OU College of Law had been stymied (temporarily) by the state's creation of an all-black law school, this did not stop black students from applying to other graduate programs at the University of Oklahoma. Two days before her renewed quest for legal relief began, six black students—Mauderie Wilson, Moseal Dillon, Ivory Tatum, Helen Holmes, James Bond, and George W. McLaurin—applied for admission to six separate graduate pro-

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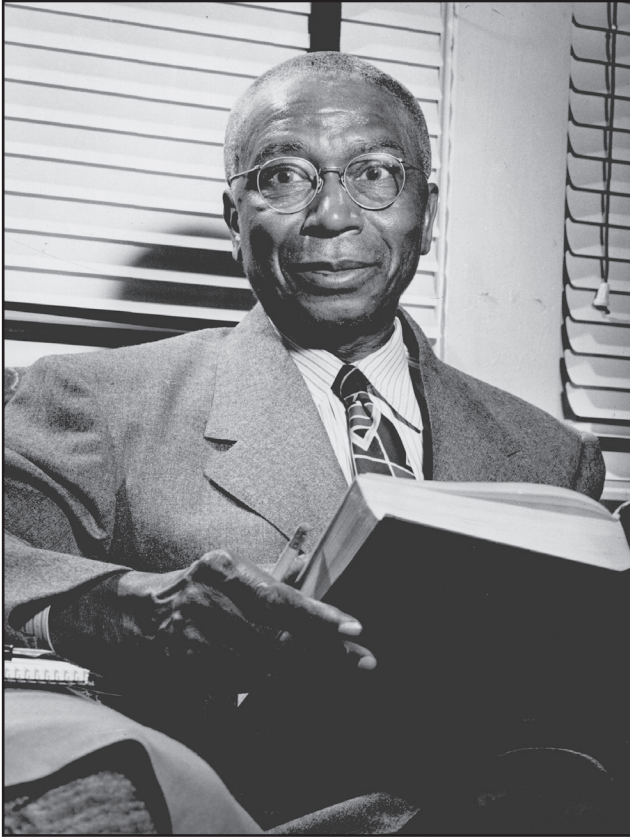


*University of Oklahoma President Dr. George Lynn Cross (2012.201.B0149.0377, Oklahoma Publishing Company Photography Collection, OHS).*

grams at the university.<sup>15</sup> All were immediately rejected on account of their race, but the *Sipuel* decision presumably outlined the result of any follow-up litigation: the state must create a substantially equal all-black graduate program, or admit academically qualified black applicants to the University of Oklahoma.<sup>16</sup>

Administrators at OU quickly concluded that it was not feasible to construct physical facilities for six graduate programs at the all-black Langston University, sixty miles north of Norman; cost estimates ran between \$10 and \$12 million.<sup>17</sup> Consequently, the enrollment of black students at OU—if only by court order—was internally treated as *fait accompli* no later than the spring of 1948. Financial vice president Roscoe Cate, for example, received a memorandum dated April 20 on

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*George W. McLaurin, 1949 (2012.201.B0391.0687, Oklahoma Publishing Company Photography Collection, OHS).*

the subject of “Negroes in University Dining Halls.” The report offered advice on that subject, but also spoke to restroom facilities and “recreational opportunities” for prospective black students.<sup>18</sup>

In July 1948 George W. McLaurin brought suit (with the legal assistance of Thurgood Marshall) against Oklahoma in federal district court, as the state had not (per *Sipuel*) admitted him to the all-white program in Norman or created a substantially equal all-black program in Langston.<sup>19</sup> On September 29, a three-judge panel—including Alfred P. Murrah—ruled that the University of Oklahoma needed to admit McLaurin to its graduate education program or close said program.<sup>20</sup> Over the next two weeks, officials at the university prepared for McLaurin’s enrollment on a segregated basis. In other words, McLau-

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*Photograph 1: George McLaurin attending his first class at the University of Oklahoma (lcn.loc.gov/00651024, New York World-Telegram and the Sun Newspaper Photograph Collection, Library of Congress, Washington, DC).*

rin would attend OU but sit apart, eat apart, and study apart from his white peers.<sup>21</sup>

The previous section largely summarized the received wisdom concerning McLaurin's enrollment at the University of Oklahoma. It certainly contained no significant departures from the established record. McLaurin was invited to enroll in the OU College of Education on Wednesday, October 13, 1948, and immediately began attending four classes the next day. All were held in Room 104 of the Carnegie Building, located on the North Oval of the Norman campus.<sup>22</sup> This is where our question of interest emerges.

It is clear from surviving photographs that McLaurin was forced to partake of what Cass Sunstein has generously called "special seating arrangements" in Room 104.<sup>23</sup> The classroom had an alcove or ante-room with a single desk and chair where McLaurin was required to sit. Thurgood Marshall derisively referred to it as a "broom closet."<sup>24</sup> The

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*Photograph 2: Room 104 used in McLaurin v. Oklahoma State Regents (image 2, US District Court for the Western District of Oklahoma, Civil Case Files, 1938–96, record group 21, National Archives and Records Administration, Fort Worth, Texas).*

most enduring image of McLaurin’s classroom experience, Photograph 1, captures the basic physical arrangement.<sup>25</sup> For a less common view of the alcove or anteroom, this time from the perspective of the instructor, see Photograph 2.<sup>26</sup>

We are interested first and foremost in the origins of this alcove or anteroom—when and why it came into existence. To be clear from the outset, many accounts of McLaurin’s classroom experience simply do not touch upon the room’s history. The authors of these narratives—we count at least six in print—simply note, as a matter of record, that McLaurin had to sit “in an alcove separate from the classroom in which whites sat” or “in an anteroom outside the regular classrooms [*sic*].”<sup>27</sup>

Scholars who speak to the room’s history tend to agree that the alcove or anteroom was specially built in preparation for McLaurin’s arrival. This notion emerged following McLaurin’s first day of class, when newspapers around the country ran a cropped version of Photograph 1 that included the caption:

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### Attends First Class After Winning Court Fight

G. W. McLaurin, 54-year-old retired professor seeking further degrees, sits in on his first class at the University of Oklahoma, after a Supreme Court ruling. Mr. McLaurin uses an anteroom especially built at the university to conform with segregation rulings. His registration broke down a 58-year ban on Negro students. (Acme)

President Cross actually received a copy of this clipping in the mail from Matilda Bognar of Buffalo, Oklahoma, in a letter dated October 16, 1948. Bognar was writing to ask “why all students are not seated according to the same plan[,] unless a student requests a certain seat for personal reasons.”<sup>28</sup>

That newspaper caption has been functionally reprinted time and again in modern scholarship. The early 1980s furnish at least three examples. In 1980 Jeanette Ford wrote that a “classroom was adapted for McLaurin’s use by building a separated alcove for him to occupy [*sic*].”<sup>29</sup> A year later, Arrell Gibson wrote that, following McLaurin’s admission, a “classroom in the Carnegie Building was adapted by constructing an alcove . . . adjoining room 104.”<sup>30</sup> One year following Gibson’s claim, Jimmie Lewis Franklin wrote that a “specially prepared area [was] set aside for [McLaurin] in a portion of one of the campus buildings.”<sup>31</sup>

More recent work has only reinforced this understanding of events. In 1998 Robert Hashway wrote that George McLaurin’s first class at the University of Oklahoma was “directed by Dr. Frank Balyeat [and viewed] from a desk contained in a specially prepared cloak room.”<sup>32</sup> Several years later, James Smallwood’s entry on *McLaurin v. Oklahoma State Regents* in the *Encyclopedia of the Great Plains* suggested that the “university made arrangements for McLaurin to take his courses in Room 104 in the Carnegie Building. Workers constructed an alcove.”<sup>33</sup> Finally, very recent work on medical education for minorities in the United States recalls that the “University of Oklahoma constructed an ‘anteroom’ complete with desk and chair to keep George McLaurin . . . separated from white students.”<sup>34</sup>

This long scholarly tradition has competition from an unlikely source: those participating in the dramatic events of 1948. At least two of the principal figures from that era—Ada Lois Sipuel Fisher and George Lynn Cross—have implicitly or explicitly suggested that Room 104 already contained an anteroom at the time McLaurin was admitted; no special construction or adaptation of the Carnegie Building was



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*The Carnegie Building at the University of Oklahoma (18827.461, Albertype Collection, OHS).*

required. In short, there could be no “workers” because *there was no work to be done*. Fisher was explicit in her 1996 memoir that “[a]ll of McLaurin’s classes were assigned to the same [room]: room 104. This scheduling was no accident. The large lecture room had a little anteroom . . . off to its north side.”<sup>35</sup> The memoir of President Cross offers support for Fisher’s point, albeit implicitly: “On the south side of the first floor of [Carnegie] was Room 104, which consisted of a main section and a little anteroom on its north side.”<sup>36</sup> If construction had been done in preparation for McLaurin’s arrival, Cross papered over that fact.

Who is correct here: a 1948 caption writer and two generations of scholars, or those who participated in the campus drama? If the alcove or anteroom was specially built for McLaurin, when was the order given and how quickly was the job completed? By contrast, if Thurgood Marshall’s “broom closet” was part of the room in October 1948, when had it been constructed? We discovered not only the answer to this question, but a disturbing possibility about the details of George McLaurin’s classroom experience.

In short, the legend of special construction is just that: a legend. The alcove or anteroom was constructed in 1934, fourteen years before McLaurin enrolled at the university. As such, it was surely not built in

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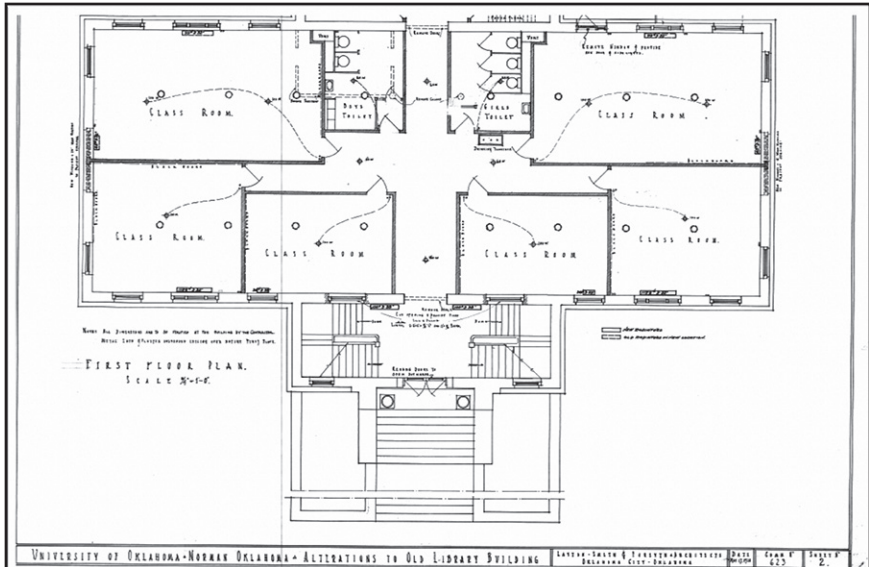


Diagram 1: 1920 floor plan for the first floor of the Carnegie Building (image courtesy of the authors).

order to facilitate student segregation. In fact, there is little surviving evidence as to why it was built at all.

We obtained floor plans for the Carnegie Building between 1920 and 1934.<sup>37</sup> For obvious reasons, our interest is restricted to the first floor of Carnegie. The first floor plan that warrants discussion is from 1920 (see Diagram 1).

In 1920 the first floor of the Carnegie Building enjoyed symmetry. The north side of the floor (on the left side of the diagram) contained three classrooms and a restroom for men. The south side of the floor (on the right side of the diagram) contained three classrooms and a restroom for women. Our space of interest is the largest classroom on the right side of the diagram—the one just to the right of the women’s restroom. That large classroom was subsequently divided, as we will see in Diagram 2.

This 1928 floor plan indicates significant remodeling, with the notable loss of symmetry between the north (left) and south (right) sides. Of particular importance is the basic division of the large 1920 classroom just discussed into Office 103 and Class Room 104. Some of the 1920 classroom space was converted into corridor space; Office 103 is the same length as the women’s restroom, and clearly shorter than Class Room 104. Note, in addition, that Office 103 and Class Room 104

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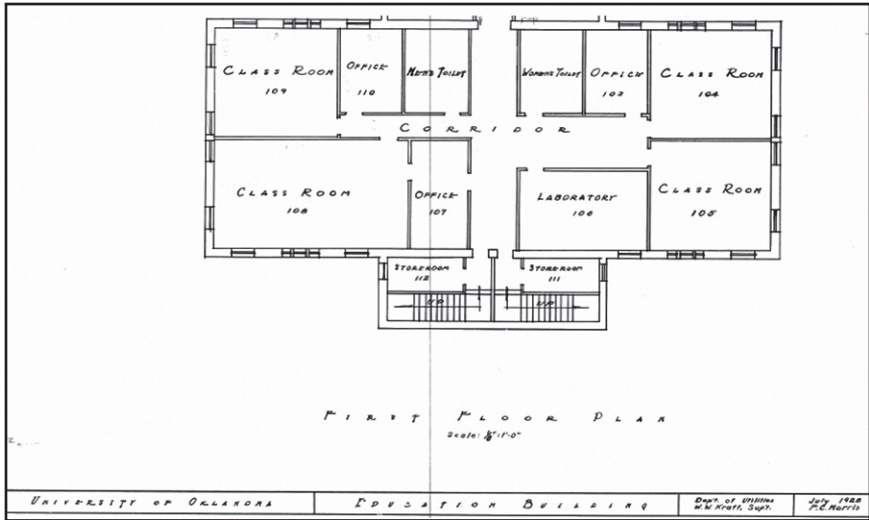


Diagram 2: 1928 floor plan for the first floor of the Carnegie Building (image courtesy of the authors).

have separate entrances. That may seem to state the obvious, but (as we will explain) it is very relevant for pondering McLaurin's classroom experience.

The first floor of Carnegie was renovated again in 1934, and this is the alteration of interest to students of school segregation. Diagram 3 depicts only Office 103 and Class Room 104, and shows alterations to the same.

The 1934 renovation effectively remade Office 103 as an anteroom to, or alcove of, Class Room 104. It knocked down a six-foot section of the wall that separated Office 103 from Class Room 104. We have been unable to determine why such a renovation was undertaken. In any event, it took place more than fourteen years in advance of McLaurin's enrollment at the University of Oklahoma. Administrators thus turned physical arrangements created for some alternate purpose into a structure for segregation.

Only one thing remains to be said with respect to those arrangements, and another uncommon view of Room 104 (see Photograph 3) furnishes the visual evidence for it.<sup>38</sup> Two things are striking about this photograph. First, given the presence of a thick column near the six-foot opening created in 1934, McLaurin had only an obstructed view of the permanent classroom blackboard. For that reason, his instructors made use of a moveable blackboard, which also appears in



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*Photograph 3: Room 104 used in McLaurin v. Oklahoma State Regents (image 1, US District Court for the Western District of Oklahoma, Civil Case Files, 1938–96, record group 21, National Archives and Records Administration, Fort Worth, Texas).*

The first can be gleaned from McLaurin’s failed effort to challenge the university’s behavior in 1949. Thurgood Marshall and Amos T. Hall brought suit on McLaurin’s behalf in federal district court, arguing that “the segregated conditions under which he was admitted, and is required to pursue his course of study, continue to deprive him of equal education facilities in conformity with the Fourteenth Amendment.”<sup>40</sup> While a three-judge panel of the District Court for the Western District of Oklahoma ultimately rejected McLaurin’s constitutional claim on November 22 of that year, in doing so they took notice of his argument for why equal protection was still not being provided:

He complains that “his required isolation from all other students, solely because of the accident of birth[,] creates a mental discomfiture, which makes concentration and study difficult, if not impossible”; that the enforcement of these regulations places upon him a “badge of inferiority which affects his relationship, both to his fellow students, and to his professors.”<sup>41</sup>

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In fact, as Richard Kluger was careful to note, “McLaurin himself [had come] before the special three-judge District Court and said that it was ‘quite strange and humiliating to be placed out in that position.’”<sup>42</sup> In short, McLaurin both resurrected the most famous of Homer Plessy’s constitutional claims from the mid-1890s—that racial segregation “stamps the colored race with a badge of inferiority”—and argued that said badge produced nefarious effects: difficulty concentrating and studying.<sup>43</sup>

When the US Supreme Court considered McLaurin’s appeal of the district court decision in early 1950, it was presented with evidence seeking to buttress the badge-of-inferiority claim. National Association for the Advancement of Colored People (NAACP) lawyers, as Professor Levy has recently noted, “introduced testimony from social scientists, teachers, and psychologists, all asserting that segregation *caused harmful effects on the performance, self-esteem, and psychological well-being of those excluded* [emphasis added].”<sup>44</sup> Chief Justice Fred Vinson’s opinion for the court in *McLaurin*, however, did not rest upon this “sociological evidence.”<sup>45</sup> By contrast, it outlined and embraced a second account of racial segregation’s deleterious effects upon George McLaurin.

This account had less to do with George McLaurin’s self-esteem than with the quality of the education he received. Vinson’s opinion suggested that segregation within the classroom had the effect of denying McLaurin the full measure of education that his white peers received. In a version of the argument that students learn as much from each other as from their teachers, Vinson argued that McLaurin was excluded from peer-to-peer learning; he alone could not “engage in discussions and exchange views with other students” and thus “learn his profession” just as they were learning it.<sup>46</sup> Moreover, the chief justice anticipated the downstream consequences of this differential treatment for George McLaurin’s own students:

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* [emphasis added].<sup>47</sup>

Claims that racial segregation (1) stamped George McLaurin with a “badge of inferiority” and thereby diminished his ability to concentrate and study, and (2) deprived him of an “equal” education by denying him the peer-to-peer learning available to other students, form essential components of the *McLaurin* case. However, they are

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also essential in a broader sense. Four years later, in *Brown v. Board of Education of Topeka* (1954), the US Supreme Court employed not one but both claims in its landmark assault upon segregated primary and secondary schooling.<sup>48</sup> With respect to the psychological effects of segregation, Chief Justice Earl Warren's opinion for the court famously cited the research of Professor Kenneth Clark in asserting that the segregation of black students "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."<sup>49</sup> In that sense, the justices in *Brown* went where their peers in *McLaurin* had been unwilling to go. As for the denial of peer-to-peer learning with white students, Chief Justice Warren quoted his predecessor's language from *McLaurin* respecting the educational importance of "engag[ing] in discussions and exchang[ing] views with other students" and then asserted that "[s]uch considerations apply with added force to children in grade and high schools."<sup>50</sup> All told, when the University of Oklahoma chose in late 1948 to repurpose a "broom closet" built fourteen years earlier, it sparked claims respecting the effects of racial segregation within educational institutions that would help to bring the practice down within the Sooner State and, ultimately, nationwide.

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### Endnotes

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<sup>1</sup> Michael Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 211, 297; Jimmie Lewis Franklin, *Journey Toward Hope: A History of Blacks in Oklahoma* (Norman: University of Oklahoma Press, 1982), 81.

<sup>2</sup> Jack M. Balkin, ed., *What Brown v. Board of Education Should Have Said: The Nation's Top Legal Experts Rewrite America's Landmark Civil Rights Decision* (New York: New York University Press, 2001), 94; *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938); *Sipuel v. Board of Regents of the University of Oklahoma*, 332 U.S. 631 (1948); *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950).

<sup>3</sup> David W. Levy, "Before *Brown*: The Racial Integration of American Higher Education," *Journal of Supreme Court History* 24, no. 3 (December 1999): 298–313.

<sup>4</sup> Klarman, *From Jim Crow to Civil Rights*, 208.

<sup>5</sup> *McLaurin*, 339 U.S. at 642.

<sup>6</sup> Levy, "Before *Brown*," 304. Ada Sipuel married Warren Fisher in 1944, but the legal case retained her maiden name. Melvin C. Hall, "Fisher, Ada Lois Sipuel (1924–1995)," *The Encyclopedia of Oklahoma History and Culture*, [www.okhistory.org/publications/enc/entry.php?entry=FI009](http://www.okhistory.org/publications/enc/entry.php?entry=FI009).

<sup>7</sup> George Lynn Cross, *Blacks in White Colleges: Oklahoma's Landmark Cases* (Norman: University of Oklahoma Press, 1975), 36–37.

<sup>8</sup> Levy, "Before *Brown*," 304.

<sup>9</sup> *Sipuel*, 332 U.S. at 633.

<sup>10</sup> Cheryl Brown Wattley, "Ada Lois Sipuel Fisher: How a 'Skinny Little Girl' Took on the University of Oklahoma and Helped Pave the Road to *Brown v. Board of Education*," *Oklahoma Law Review* 62, no. 3 (Spring 2010): 476.

<sup>11</sup> Wattley, "Ada Lois Sipuel Fisher," 477; Levy, "Before *Brown*," 305n7; Ada Lois Sipuel Fisher, with Danney Goble, *A Matter of Black and White: The Autobiography of Ada Lois Sipuel Fisher* (Norman: University of Oklahoma Press, 1996), 191.

<sup>12</sup> "Another Test Looms at OU," *Lawton (OK) Constitution*, January 25, 1948, 1; "Regents Name Trio for Negro School Faculty," *Daily Oklahoman* (Oklahoma City, OK), January 25, 1948, 1.

<sup>13</sup> Levy, "Before *Brown*," 305.

<sup>14</sup> Wattley, "Ada Lois Sipuel Fisher," 483.

<sup>15</sup> Fisher, *A Matter of Black and White*, 131, 142; George Lynn Cross, telegram to Oklahoma State Regents Chancellor M. A. Nash, January 28, 1948, George Lynn Cross Presidential Papers, folder "Negro Question #1," box 50, Western History Collections, University of Oklahoma, Norman, OK (hereafter cited as Cross Presidential Papers). The telegram read, "Six qualified negroes have applied for admission to Graduate College in programs leading to M.S. in Social Work[,] Master of Commercial Education[,] Master of Science in Architectural Engineering[,] Ph.D. in School Administration[,] Ph.D. in Zoology." The authors are grateful to Professor David Levy for advice on the proper citation of material from the Cross Presidential Papers.

<sup>16</sup> *Sipuel*, 332 U.S. at 632–33.

<sup>17</sup> Fisher, *A Matter of Black and White*, 143.



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<sup>18</sup> John B. Cheadle, office memorandum to Roscoe Cate, April 20, 1948, folder “Negro Question #2,” box 50, Cross Presidential Papers.

<sup>19</sup> Fisher, *A Matter of Black and White*, 143. On the selection of McLaurin as a “test” litigant among the six, see Levy, “Before Brown,” 313n31.

<sup>20</sup> Mark V. Tushnet, *Making Civil Rights Law: Thurgood Marshall and the Supreme Court, 1936–1961* (New York: Oxford University Press, 1994), 130. As Tushnet wrote, McLaurin “easily obtained an order directing his admission.”

<sup>21</sup> Klarman, *From Jim Crow to Civil Rights*, 208.

<sup>22</sup> Fisher, *A Matter of Black and White*, 144, 192; Cross, *Blacks in White Colleges*, 92.

<sup>23</sup> Balkin, *What Brown v. Board of Education Should Have Said*, 176.

<sup>24</sup> Gary M. Lavergne, *Before Brown: Heman Marion Sweatt, Thurgood Marshall, and the Long Road to Justice* (Austin: University of Texas Press, 2010), 225; James Smallwood, “McLaurin v. Oklahoma State Regents,” in *Encyclopedia of the Great Plains*, ed. David Wishart (Lincoln: University of Nebraska Press, 2004), 207.

<sup>25</sup> Margaret Russell has written that this “well-known photograph . . . starkly conveys the tragedy of exclusion in pre-*Brown* educational institutions: a well-dressed black student sits in forced isolation.” Margaret M. Russell, “McLaurin’s Seat: The Need for Racial Inclusion in Legal Education,” *Fordham Law Review* 70, no. 5 (April 2002): 1825.

<sup>26</sup> “George W. McLaurin v. Oklahoma Board of Regents for Higher Education, Civil Case 4039,” image 2, ARC identifier 4662498, record group 21, Records of District Courts of the United States, 1865–2004, research.archives.gov/description/4662498, National Archives and Records Administration, Fort Worth, TX.

<sup>27</sup> William M. Wiecek, *The Birth of the Modern Constitution: The United States Supreme Court, 1941–1953* (New York: Cambridge University Press, 2006), 685; Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America’s Struggle for Equality* (New York: Alfred A. Knopf, 1976), 268. For comparable treatment, see Rawn James Jr., *Root and Branch: Charles Hamilton Houston, Thurgood Marshall, and the Struggle to End Segregation* (New York: Bloomsbury Press, 2010), 211; Lavergne, *Before Brown*, 225; Tushnet, *Making Civil Rights Law*, 130. Peter Irons has incorrectly offered that McLaurin “was forced to listen to the lectures outside the classroom, sitting in a hallway seat.” Peter Irons, *Jim Crow’s Children: The Broken Promise of the Brown Decision* (New York: Penguin, 2004), 57.

<sup>28</sup> Matilda Bognar to George Lynn Cross, October 16, 1948, folder “Negro Question #2,” box 50, Cross Presidential Papers.

<sup>29</sup> Jeanette Ford, “Federal Law Comes to Indian Territory,” *The Chronicles of Oklahoma* 58, no. 4 (Winter 1980–81), 437.

<sup>30</sup> Arrell Gibson, *Oklahoma: A History of Five Centuries* (Norman: University of Oklahoma Press, 1981), 238.

<sup>31</sup> Franklin, *Journey Toward Hope*, 80.

<sup>32</sup> Robert Hashway, *Assessment and Evaluation of Developmental Learning: Qualitative Individual Assessment and Evaluation Methods* (Westport, CT: Greenwood Publishing Group, 1998), 20.

<sup>33</sup> Smallwood, “McLaurin v. Oklahoma State Regents,” 207.

<sup>34</sup> Ann Steinecke and Charles Terrell, “Progress for Whose Future? The Impact of the Flexner Report on Medical Education for Racial and Ethnic Minority Physicians in the United States,” *Academic Medicine* 85, no. 2 (2010): 238.

<sup>35</sup> Fisher, *A Matter of Black and White*, 144.

<sup>36</sup> Cross, *Blacks in White Colleges*, 93.

<sup>37</sup> We are grateful in this regard for the assistance of three individuals at the University of Oklahoma: Kristina Clark (Engineering Archives), Dan Kissinger (Facilities Management), and Megan Denney (Institute for the American Constitutional Heritage). All

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of the diagrams are on file with the authors, and available in the University of Oklahoma Engineering Archives, Norman, OK.

<sup>38</sup> “George W. McLaurin v. Oklahoma Board of Regents for Higher Education, Civil Case 4039,” image 1, ARC identifier 4662498, record group 21, Records of District Courts of the United States, 1865–2004, [research.archives.gov/description/4662498](https://research.archives.gov/description/4662498), National Archives and Records Administration, Fort Worth, TX.

<sup>39</sup> McLaurin was subsequently permitted to sit in “an unmarked row of seats” in the back of Room 104 “reserved for blacks.” Wiecek, *The Birth of the Modern Constitution*, 685.

<sup>40</sup> *McLaurin v. Oklahoma State Regents*, 87 F. Supp. 528 (W. D. Okla. 1949) at 530.

<sup>41</sup> *McLaurin*, 87 F. Supp. at 530.

<sup>42</sup> Kluger, *Simple Justice*, 267.

<sup>43</sup> *Plessy v. Ferguson*, 163 U.S. 537 (1896) at 551.

<sup>44</sup> David W. Levy, *The University of Oklahoma: A History, Volume II, 1917–1950* (Norman: University of Oklahoma Press, 2015), 365.

<sup>45</sup> Levy, *The University of Oklahoma: A History, Volume II*, 366n99 and attending text.

<sup>46</sup> *McLaurin*, 339 U.S. at 641.

<sup>47</sup> *McLaurin*, 339 U.S. at 641.

<sup>48</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

<sup>49</sup> *Brown*, 347 U.S. at 494n11.

<sup>50</sup> *Brown*, 347 U.S. at 493–94.