General Ray H. Beeler's Opinion on Segregation, to Dr. C. E. Brehm, September 26, 1950

Roy H. Beeler

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September 26, 1950

Dr. C. E. Brehm, President
University of Tennessee
Knoxville, Tennessee

Dear Dr. Brehm:

I am mailing you herewith my opinion, very reluctantly rendered, with regard to the right of negroes to be admitted to the graduate school of the University of Tennessee.

I have gone into the matter at quite some length while I had the authorities before me and I think I have covered the field insofar as graduate students are concerned.

I do not know what we are coming to in this State and in the Southland. I have been advised that some negro students have applied for admission to the high school for whites in Anderson County, claiming they have a right to attend that school because they have no negro school in the county. I am not passing upon this question. They have the same question made in the courts of the State of Georgia but it has not been decided there.

I would like to know what takes place over at Knoxville in regard to these demands for admission. I have not been in too big of a hurry about this opinion due to the fact that the Governor is out of the State and the further fact that I do not think undue haste was necessary.

Yours very truly,

Roy H. Seeler
ATTORNEY GENERAL
To the Honorables Gordon Browning, Governor, Nashville, Tennessee, and C. E. Brehm, President, University of Tennessee, Knoxville, Tennessee.

Dear Sirs:

Re: Right of negro students to attend the University of Tennessee.

This opinion is in response to your joint request submitted to me orally and also in writing by the proper authorities of the University of Tennessee for an opinion as to the right of members of the negro race to become students, along with white students, in the University of Tennessee, especially in the graduate schools of the University.

I deem it necessary to refer to the pertinent Constitutional and statutory provisions relating to this matter. The Constitution of Tennessee at Article XI, Section 12, prohibits white and negro children from being received as students together in the same school. This Constitutional provision has been in effect since the adoption of the Constitution in 1870 and prior to
that time since the State of Tennessee was formed it had been the established order of things and the way of life in the State that white and negro students should not be taught in the same schools but that segregation should apply.

The proper authorities of the State many years back realized the necessity for providing educational facilities for negro students and by Chapter 18 of the Public Acts of 1913 provided for the establishment of an Agricultural and Industrial Normal School for negroes at Nashville and the transfer of Federal funds allocated to the State for this purpose to the school so established. This Act set up the ratio of the distribution of funds between whites and negroes in the State, and this school at Nashville finally came to be known as the Tennessee Agricultural and Industrial State College.

The value of the physical plant of this institution is in excess of $8,000,000.00. The salary of the President of this institution is $8,100.00 per annum, plus maintenance; the combined salaries of instructors in this institution for the year 1950-51 will be $867,568.00; the annual State appropriation for the present biennum is $900,000.00; the total enrollment for 1949-50, including
extension students, is 3,900; payments by the State for the
year 1949-50 for instruction in medicine, dentistry, nursing,
etc., to Meharry Medical College at Nashville for State
students in that institution totals $22,959.24; out-of-
State scholarships for 1949-50 paid by the State totals
$14,858.56; contractural payments by the State with
Southern Regional Council and the State of Tennessee
amount to $27,000.00. These last three items total
$64,817.80 and are not a part of the Agricultural and
Industrial State College appropriation, but are in
addition thereto. Thus it will be seen that the State
is not engaged in an idle gesture in an effort to escape
its responsibility to members of the negro race, but is
endeavoring to provide a first-class educational in-
stitution at Nashville for this race.

It has been the purpose of the State authorities,
including the various Governors and Commissioners of
Education, to provide an A-1 educational institution at
Nashville to take care of the demands of negroes desiring
educational facilities and opportunities. To that end
appropriations have been made at all times sufficient to
carry on this work. There has recently been completed
and equipped an engineering building at this institution
second to none in the South and there are now being
completed other buildings at this institution so that the negroes may have educational opportunities comparable to those enjoyed by white students at the University of Tennessee.

In 1941 by Chapter 43 the Legislature provided that the State Board of Education and the Commissioner of Education should provide educational training and instruction for negro citizens of Tennessee equivalent to that provided at the University of Tennessee for white citizens, and that such training and instruction should be made available in a manner to be prescribed by the State Board of Education and the Commissioner of Education, but it was provided that members of the negro race and white race shall not attend the same institution or place of learning. It was provided that the cost of furnishing such facilities be paid out of appropriations made by the State to the State Board of Education or from any other available funds.

The State Board has endeavored to carry out the provisions of this Act and is continuing to pursue this endeavor and to that end the building program has materially progressed at the institution and requisite facilities have been and are being provided for the negro race.
STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL

Following the enactment of Chapter 43 of the Acts of 1941, the State has kept up appropriations, without limit, for the State Board to carry into effect the provisions of this Act. I think I can safely say that the negro citizenship of the State of Tennessee is being taken care of from an educational standpoint better than in any other State in the South. The best of relations exist between the public officials of the State and its negro citizenship. There is no race strife or turmoil of any kind or character and the Agricultural and Industrial College at Nashville is doing wonderful work for members of the negro race.

Notwithstanding these facts, it now appears that a demand is being made on the educational authorities of the State of Tennessee by a few members of the negro race to be permitted to enter the University of Tennessee as students. This demand does not seem to be confined to Tennessee alone, but in recent months it is breaking out in most of the Southern States, as will be noted later on. It no doubt is prompted by outside influences and by those who would make political capital out of it and who do not reside in Tennessee.

This is the background of the situation as it exists in the State, and I pass now to a consideration of the legal questions involved.
Those who would have negro students admitted to the University of Tennessee seize upon the provisions of the Fourteenth Amendment to the Federal Constitution which extends citizenship to all persons born or naturalized in the United States and provides in part that, "... no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; 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 equal protection of the laws."

Constructions of this Amendment to the Constitution have been as extended and varied as have constructions by the Courts of the Commerce Clause and Due Process Clause of the Federal Constitution but when these constructions have been made by the Supreme Court of the United States the opinions of that Court become the law of the land, notwithstanding any opinions to the contrary that may be entertained by any individuals, however sound such opinions may be.

One of the earlier cases touching this question is styled Missouri Ex Rel Gaines v. Canada, 305 U. S. 337, the unanimous opinion of the Court being by Chief Justice Hughes. It appears that the State of Missouri provides separate schools and universities for whites and negroes and that at the State University a law school is maintained attended by whites; that at Lincoln University,
which is maintained by the State and is a school for negroes, there is no law school but that whenever in the opinion of the curators of the Lincoln school it is necessary and practicable to establish a law school this shall be done. Pursuant to the State's policy of separating the races in its educational institutions, the curators of the State University refused to admit a negro to the law school because of his race, whereupon he instituted a mandamus proceeding in the State Courts to secure admission and this case was decided against him.

It was held that the State must provide for the petitioner in this case equal legal educational facilities to those provided for members of the white race in conformity with the Equal Protection Clause of the Fourteenth Amendment and that this must be provided as soon as provision is made for members of any other group. In the case of Sipuel v. Board of Regents, 332 U. S. 631, the opinion of the Supreme Court was to the same effect, but this case did not "present the issue whether a State might not satisfy the Equal Protection Clause of the Fourteenth Amendment by establishing a separate law school for negroes."
In the case of Shelley et ux v. Kraemer et ux, 334 U. S. 1, the Court had before it for consideration questions relating to the validity of restrictive covenants in deeds of conveyance of real estate by which it was provided that the property should never be occupied by any person except members of the Caucasian race. These covenants were challenged in this case and the Court simply held that they were valid as long as voluntarily adhered to but that they were not enforceable in the Courts of the land. In other words, the Court held that it would not lend itself to the enforcement by its mandates of covenants of this character, since they discriminated against members of the negro race.

On June 5, 1950 Mr. Chief Justice Vinson delivered the opinion of the Court in the case of Sweatt v. Painter et al, involving the question of the right of the petitioner, a negro, to be admitted as a student to the University of Texas Law School. While the petition of Sweatt was pending in the State Courts of Texas that State established a separate law school for negroes in Texas outside of the State University in which the State Court further offered petitioner "privileges, advantages and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas."
The State Court denied the award of a mandamus to the petitioner and the Court of Appeals of Texas affirmed in an opinion appearing in 210 S. W. 2d 442.

The case finally reached the Supreme Court of the United States on writ of error and it is this opinion which was announced by that Court on June 5, 1950.

The Court in passing on the question involved, observed that the University of Texas Law School from which the petitioner was excluded was staffed by a faculty of sixteen full-time and three part-time professors, some of whom were nationally recognized authorities in their field. Its student body numbered 850. The library contained over 65,000 volumes. Among other facilities available to the students were a law review, moot court facilities, scholarship funds, and Order of the Coif affiliation. The school's alumni occupied the most distinguished positions in the private practice of law and in the public life of the State; and this school may properly be considered one of the nation's ranking law schools.

The Court found that the new school for negroes which was to have been opened would have had no independent faculty or library. Teaching in this school was to be carried on by four members of the University of Texas Law
School faculty who were to maintain their offices at the University of Texas while teaching at both institutions; that few of the 10,000 volumes ordered for the library had arrived, and that there was no full-time librarian and that the school lacked accreditation. Since the trial of the case in the Supreme Court of the United States, but before opinion was rendered, the Court finds that the law school at the Texas State University for negroes had opened and that it was apparently on the road to full accreditation; that it has a faculty of five full-time professors; a student body of 23; a library of some 16,500 volumes serviced by a full-time staff, a practice Court and legal aid association; and one alumnus who has become a member of the Texas Bar.

The Court said in its opinion that it could not find substantial equality in the educational opportunities offered white and negro law students by the State and this language was used by the Court:

"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. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. 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, traditions and prestige. It is
difficult to believe that one who had a free choice between
these law schools would consider the question close."  
The Court further observed that:

"Moreover, although the law is a highly learned
profession, we are well aware that it is an intensely
practical one. 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 ex-
change of views with which the law is concerned. The
law school to which Texas is willing to admit petitioner
excludes from its student body members of the racial
groups which number 85% of the population of the State
and include most of the lawyers, witnesses, jurors,
judges and other officials with whom petitioner will
inevitably be dealing when he becomes a member of the
Texas Bar. With such a substantial and significant
segment of society excluded, we cannot conclude that
the education offered petitioner is substantially equal
to that which he would receive if admitted to the Uni-
versity of Texas Law School.

It may be argued that excluding petitioner from
that school is no different from excluding white students
from the new law school. This contention overlooks
realities. It is unlikely that a member of a group so
decisively in the majority, attending a school with rich
traditions and prestige which only a history of con-
sistently maintained excellence could command, would
claim that the opportunities afforded him for legal
education were unequal to those held open to petitioner.
That such a claim, if made, would be
dishonored by the State, is no answer. "Equal pro-
tection of the laws is not achieved through in-
discriminate imposition of inequalities." Shelley v.
Kraemer, 334 U. S. 1, 22 (1948)."

The Court, in conclusion, further observed:

"We hold that the Equal Protection Clause of the
Fourteenth Amendment requires that petitioner be ad-
mitted to the University of Texas Law School. The
judgment is reversed and the cause is remanded for
proceedings not inconsistent with this opinion."
On the same day that the Supreme Court disposed of the Sweatt case, above referred to, it also disposed of a case entitled McLaurin v. Oklahoma State Regents, etc., in an opinion by the Chief Justice.

McLaurin's application to be admitted as a student in the University of Oklahoma Law School in order to pursue studies and courses leading to a Doctorate in Education was denied solely on the ground that he was a member of the negro race. He was a citizen of Oklahoma and possessed a Master's Degree but decided to continue his studies in an effort to procure a Doctor's Degree.

He was admitted to the school but for some time the section of the classroom in which he sat was surrounded by a rail on which there was a sign reading "Reserved for Colored", but this rail and this sign were removed and he was assigned a seat in the classroom in a row specified for colored students. He was also assigned to a table in the library on the main floor and permitted to eat in the cafeteria at the same time as other students although assigned to a special table in the cafeteria. He used the same classroom, library and cafeteria as other students and there was no indication that the seats to which he had been assigned in these rooms had any disadvantage of location. He could wait in line in the
cafe teria and there stand and talk with his fellow students but while he ate he was required to remain apart. The Court held that McLaurin was handicapped in his pursuit of effective graduate instruction and that such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students and, in general, to learn his profession.

The Court observed that our society grows increasingly complex and that our need for trained leaders increases correspondingly; that McLaurin's case represents, perhaps, the epitome of that need for attempting to obtain an advanced degree in education, to become, by definition, a leader and trainer of others; that those who will come under his guidance and influence must be directly affected by the education he receives and that their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates; and that State-imposed restrictions which produce such inequalities cannot be sustained.

The Court observed further that it might be argued that McLaurin would be in no better position when these restrictions are removed, since he may still be set apart by his fellow students; but the Court thought this argument irrelevant, stating that there is a vast difference -
a Constitutional difference - between restrictions imposed by the State which prohibit the intellectual commingling of students and the refusal of individuals to commingle where the State presents no such bar. The Court cited the restrictive covenants case of Shelley v. Kraemer, 334 U. S. 1 for this proposition.

In conclusion the Court used this language:

"We conclude that the conditions under which this appellant is required to receive his education deprive him of his personal and present right to the equal protection of the laws. See Sweatt v. Painter, supra. We hold that under these circumstances the Fourteenth Amendment precludes differences in treatment by the state based upon race. Appellant, having been admitted to a state-supported graduate school, must receive the same treatment at the hands of the state as students of other races."

In the case of Henderson v. United States of America, Interstate Commerce Commission and Southern Railway Company, likewise decided on June 5, 1950, in an opinion by Mr. Justice Burton, the Court struck down as discriminatory against members of the negro race the rules and practices of the Southern Railway Company which divide each dining car so as to allot ten tables exclusively to white passengers and one table exclusively to negro passengers and which call for a curtain or partition between that table and the other ten tables.
This case is cited simply to show the trend which has been adopted by the Supreme Court of the United States with reference to the application of the Fourteenth Amendment and the rules and regulations of the Interstate Commerce Commission.

This is a sufficient citation of the cases decided by the Supreme Court of the United States which must control our present inquiry, and the cases cited are the most recent in which opinions have been handed down by the present Supreme Court. We are thus furnished the yardstick or measuring rule by which the present questions must be determined. The writer dislikes very, very much indeed to be compelled to reach the conclusion that members of the negro race shall now be admitted as students in the University of Tennessee when no other adequate educational facilities, training and instruction have been provided for them equivalent to that provided at the University for white citizens, as authorized by Chapter 43, Acts of 1941 and as now required by the provisions of the Fourteenth Amendment to the Constitution of the United States as interpreted by the present Supreme Court.

There is no law school nor a dental school provided by the State and located in the State for negro students.
Thus the State has failed so far to live up to the requirements of its own statute (Chapter 43, Acts of 1941) and to the demands of the Fourteenth Amendment to the Federal Constitution. In this connection let it be borne in mind that both the States of Texas and Oklahoma have statutory prohibitions against commingling of the races in their educational institutions and also have Constitutional prohibitions, just as Tennessee has.

I think continued segregation of the races in educational institutions is the correct way to handle these educational matters, with the State furnishing adequate educational facilities for members of the negro race. It is certainly the established order of things in our Southland and if continued as the policy of the Southern States and if these States provide adequate educational facilities for negroes, then there would be no reason for strife and turmoil between the races or for race hatred; but I am fearful that when the bars are let down and negro students, even in limited number, are admitted to our State institutions that strife and turmoil will be engendered and that the amicable feeling and relationship that now exists between the races will no longer continue to exist as it has for these many years in Tennessee.
I know of my own knowledge that at least for the past thirty years every Governor of Tennessee and every Commissioner of Education and every State Board of Education has been entirely sympathetic with the effort to provide more adequate educational facilities for negroes. To that end millions of dollars have been appropriated by the Legislature and expended in the erection and furnishing of plant and in carrying on the educational system and operating schools for negroes. Funds allotted to the various cities and counties by the State by State appropriation have been and are being distributed on a per capita ratio basis in the various counties to the whites and negroes equally.

In this connection, I hope I may be pardoned for stating that I am entirely sympathetic with the efforts of the Negroes of the State to obtain an education and to be granted educational facilities. I think I have been a member of every Building Commission for the last twenty years that has been charged with the expenditure of State appropriations for the erection of additional buildings at A. & I. College at Nashville. I am on the present Commissions and have conferred with the architects who, by the way, are negroes and are doing a good
job in carrying forward the present construction program. I have conferred frequently with President Davis, who is now head of the A. & I. College, and over a period of years conferred with President Hale, now deceased; but I am firmly convinced that a commingling of the races in the schools of the State is a mistake and I believe that segregation of the races should be continued.

It seems that the Southern States are now being besieged by a series of demands for admission of negroes to State universities. Within the past month a three-Judge Court in Virginia, composed of Justices John J. Parker and Morris A. Soper of the Fourth Circuit Court of Appeals and District Judge John Paul, directed the authorities of the University of Virginia to admit a negro attorney by the name of Gregory Swanson to its graduate school of law. The Commonwealth of Kentucky more than a year ago decided that negroes were entitled to be admitted to the University of Kentucky. The State of Arkansas has followed suit and there is pending before a three-Judge Court in Louisiana an application of a negro to be admitted to Louisiana State University. The State of Delaware recently either voluntarily or by Court action ruled in favor of negroes being admitted to the University of Delaware. The State of Georgia has
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litigation pending, not only for the negro seeking admission to the University of Georgia, but to the public schools of that State.

Just why this movement is taking form at the present time and in the last little while after the many, many years when the States of the South have been allowed to operate their own State institutions in their own way can be explained in no other way than by the drive from Washington to have the negro stand on the Fourteenth Amendment and demand that he be admitted to the State universities and schools of the South. The agitation for the enactment of the FEPC legislation has tended to encourage this demand. I am afraid that quite a lot of these demands are prompted by a desire for political preferment and advantage.

In any event, we in the South now have no other alternative. We must bow to the inevitable and go along as good citizens of the United States. It doesn't come with good grace for us to question the soundness of the opinions of the Courts, however much we feel like disagreeing with them.

Since the State of Tennessee has not provided a law school for negroes separate from the University
Law School, and has not provided a dental school, I am definitely of the opinion that negro applicants to these two schools cannot be discriminated against solely because of race. I am likewise of the opinion that the same rule will apply to graduate schools, and in this connection I note that you have an application from a student who desires to take a course leading to the Degree of Master of Science in Bio-Chemistry, including a minor in advanced Organic Chemistry.

I am not now passing on the right of students who desire to pursue courses on the lower level to be admitted as students in the University. I assume since the State is expending every effort to have A. & I. at Nashville developed into a top-flight college or university that negro students who can get the courses they would like to pursue in that school would much prefer to be admitted to A. & I. rather than at the University of Tennessee. They would be among their own people and would not be set apart by the student body which will evidently be the case in the University when a negro is admitted to that institution. This opinion applies to the graduate schools and is to the effect that negro students possessing the same qualifications, both educational and otherwise, as are
required for white students desiring to enter the University, cannot be denied admittance solely on account of color.

In conclusion, as to the graduate schools there can be no discrimination against negro applicants for admission as students solely because of race.

Yours truly,

Roy H. Beeler, Attorney General.