

Articles

UT Alumnus, Supreme Court Amicus

A TEXAS LAWYER'S LETTER ABOUT LAW SCHOOL SEGREGATION, APRIL 1950

John Q. Barrett

ON JUNE 5, 1950, the Supreme Court unanimously ended, at least formally, segregation at the University of Texas School of Law.¹ *Sweatt v. Painter*,² the case that produced this desegregation landmark, assembled an array of immensely talented lawyers, including Thurgood Marshall.³ The Supreme Court itself – Chief Justice Vinson and Associate Justices Black, Reed, Douglas, Frankfurter, Jackson, Burton, Clark and Minton – included some strong and independent minds.

Of particular relevance to the case, it also contained native southerners – including Vinson and Reed from Kentucky, and Black from Alabama – and one Justice, the newly appointed Tom C. Clark, who was not only a southerner but had earned both his undergraduate and law degrees at the University of Texas.

This article focuses principally not on these lawyers and judges, however, but on a bit player. In fact, in the litigation and Supreme Court decision making of *Sweatt v. Painter*, this

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¹ Texas's Constitution had decreed since 1876 that "[s]eparate schools shall be provided for both the white and colored children, and impartial provision shall be made for both," TEX. CONST. ART. 7, § 7 (repealed 1969), and UT's law school apparently had no "colored" students from its inception in 1883 through spring 1950.

² 339 U.S. 629 (1950).

³ Marshall and his famed NAACP LDF colleagues represented petitioner Heman Marion Sweatt, who successfully claimed constitutional protection for his right to get a UT legal education rather than an education at the skeletal Texas State University for Negroes law school that the state had set up in response to his lawsuit. The State of Texas was represented by its Attorney General (and future United States Senator, Texas Governor and Texas Supreme Court Associate Justice) Price Daniel and his assistant (and future Texas Supreme Court Associate Justice and Chief Justice) Joe Greenhill.

gentleman really was a non-player. He simply wrote a personal letter to the Court. There is no indication that the letter ever reached the hands of a Justice. It produced a perfunctory letter of acknowledgement from Court staff. (This exchange is known today only because both the incoming letter and a carbon copy of the reply are preserved in the National Archives in the Court's *Sweatt v. Painter* files. I found them there while researching another aspect of *Sweatt*.⁴)

This letter deserves this publication and comment, however, because it captures, in its candor, direct knowledge and common sense, some of the same wisdom that the Court delivered, more formally, in Chief Justice Vinson's opinion for the *Sweatt* Court.

In 1950, Archie Oscar Strother was living and working in Ballinger, Texas. Ballinger, the seat of Runnels County in west central Texas, sits alongside the Colorado River south of Abilene, midway between Austin to the southeast and Lubbock to the northwest. In April 1950, Strother, a white man, was 68 years old. He was a descendant of early American settlers and a native Texan (or Texian, as one may prefer). In his youth, after attending North Texas Teachers' College and receiving a bachelor's degree from Polytechnic College, Strother was a public school principal. A year or two later, he moved to Austin, studied jurisprudence and earned a master's degree at the University of

Texas in 1912. Strother then became a school superintendent in various Texas towns. Around 1920, without having attended law school but after having studied in the offices of practicing attorneys while continuing to work as a school superintendent, Strother took and



A.O. Strother and his spouse Cornelia Barrett Strother
(no relation to the author) in 1959

passed the Texas bar examination. He then practiced law in Winters, Texas, from 1921 until he moved to nearby Ballinger in 1945, and he continued to practice there from 1945 until 1965, a year before his death. During his years in Ballinger, Strother served as a part-time judge of the corporation court, which heard traffic violation and some misdemeanor cases.

By 1950, Strother thus knew Texas, education and the law. He also knew virulent racism.⁵ In the 1920s, the Ku Klux Klan was very active in little Winters, Texas. According to a Strother son who grew up in that town, white people there generally "were raised not to think that black people were even human beings."⁶ From the front yard of Strother's

4 See John Q. Barrett, *Teacher, Student, Ticket: John Frank, Leon Higginbotham, and One Afternoon at the Supreme Court – Not a Trifling Thing*, 20 YALE L. & POL. REV. 311 (2002).

5 See generally CHARLES C. ALEXANDER, *CRUSADE FOR CONFORMITY: THE KU KLUX KLAN IN TEXAS, 1920-1930* (TX Gulf Coast Hist. Assn., vol. VI, No. 1, Aug. 1962).

6 Joe T. Strother telephone interview with author, June 7, 2002.

home, one could see crosses burning on a hillside at night.⁷

On one occasion, Strother had a defining run-in with the local Klan. The incident began when the Klan members went to tar and feather a farmer who vocally opposed the KKK. When the Klansmen announced their purpose, the farmer fired his shotgun from his front porch into the mob, wounding several. The Klan returned fire, killing the farmer. Archie Strother then got involved, as reported in a family history:

Dad was the town lawyer and Sunday School Teacher for a men's class in the Winters Methodist Church and was fiercely opposed to the activities of the Klan. His Sunday School Lessons were often aimed at the lawless activities of the Klan. Shortly after the murder of ****, [Strother] was replaced as teacher and dismissed from the men's class. The following Sunday morning dad waited until after services had started and paraded his family of four children and grandma and sat on the front row in the center.

Dad went [from Winters] to Ballinger and convinced some of his friends that a grand jury should be called to find out who fired the shot that killed **** and identify the doctor that had treated the wounded [Klansmen] without reporting. A grand jury was called and it became common knowledge that the doctor was Dr. **** who had attended [Strother's son's] delivery and lived just two doors from us on Magnolia street. Pressure from dad and a few others to bring the matter to trial increased.

One cold winter night in January 1924, Grandma Strother was in her bedroom in the little white house at the end of the street. She saw the hooded figures armed with shotguns planting a cross in the front yard and wrapping it for the torch. She sent [her oldest grandson] to the kitchen to tell daddy [Archie Strother]. He picked up his loaded shotgun and went to the front porch. [The boy] stayed in the house and looked through a window and listened.

Mother was in the kitchen holding [the baby] and crying. [Two other children] and Grandma went back to the kitchen and left [the boy] alone in the front room watching from the window.

Dad stood alone on the front porch with his gun pointed at the hooded crowd and said:

"One barrel is loaded with buckshot and one is loaded with bird shot and I don't remember which is which. You can only get one of me, but I'll get three or four of you and any one of you may die. I know every one of you. You, you are Dr. ****, I can tell by the way you shuffle your feet. You, you are ..., I can tell by the way your shoulder droops. You, you are ..., because you are always picking at a sore on the back of your neck

"If you will take off your robes and hoods, Neil [Strother's wife Cornelia] will make some cocoa and we can sit down in the living room and discuss our problems. If not, turn around, get that cross out of my yard, leave, and don't ever come back with your hoods."

The trial was moved to south Texas but nothing ever came of it. Dr. **** moved to the Rio Grande Valley, gave up his practice and became a citrus farmer.

Dad was a candidate for the Texas Legislature a few years later. [The Strother son who witnessed this confrontation between his father and the Klansmen] says dad would have won with ease had it not been for [this] episode.⁸

In the spring of 1950, one of Strother's younger sons was a UT senior. He recalls telling his father during a visit of the excellent constitutional law class he was taking at that time, and that they discussed the pending Supreme Court case of *Sweatt v. Painter*:

After all, it was the biggest thing around the campus and the state. His feelings in the case were crystal clear and he was not afraid to express them. He may have been the only white citizen in that little town [of Ballinger] who supported the plaintiff Sweatt, and may have

⁷ Notes on A.O. Strother Family History, Apr. 12, 1991, provided to the author by Joe T. Strother.

⁸ *Id.* The ellipses are in the original document. The asterisks replace proper names that are in the original.

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ATTORNEY-AT-LAW
BALLINGER, TEXAS

SUPREME COURT

4/4

April 4, 1950.

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CHAMBERS OF THE
CHIEF JUSTICE

To the Chief Justice
and
Associate Members
United States Supreme Court
Washington, D. C.

Re- Negro- Eeman Marion
Sweett- Appeal from
Texas. Racial Segre-
gation.

TO THE HONORABLE JUSTICES OF SAID COURT:-

As one of the graduates of the University of Texas, holding an A.M. degree from said University and as a citizen of the State of Texas, I wish to be heard by the court, as a friend of the court in this case. My forebear came from England and settled in Virginia in 1651, my forebears fought for the British in the French and Indian wars, fought on the side of the colonies in the Revolutionary war and the war of 1812, ~~with~~ my father in the Civil war from Texas and living in Texas at the time, with the others of the family in World war One and Two. One of my forebears Joseph Thomas Strother sold the homestead to Augustine Washington, the father of George Washington which became the birth place of George Washington our first president at Mount Vernon. As an American citizen of 300 years background I want to plead with the Court to see to it that justice be meted out and that this negro have his rights under our Federal Constitution and the rights of an American Citizen. Every other color has attended the University of Texas, and the doors are open to the Jap, the Chinese, and feel sure that practically every nationality has attended the university and every color except the negro who is a citizen of our country and subject to all of its laws and penalties and should have all of its privileges.

The State of Texas cant furnish this negro equal advantages with the whites when he is put off to himself in a make believe set up for a University. Our library at the Main University hasbeen accumulating for nearly 70 years, since 1881, when it was established, or on or about that time. In the first place it just is not fair to be treated in that manner. He just can have an equal advantage under the present segregation. We do not have but one University and that is for every body except the negro, at Austin, Texas.

My self and 4 children are exstudents of the

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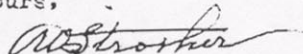
University of Texas. He could attend any of our larger and old established universities, but because he is black or has negro blood in his veins he is deprived an equal opportunity with the rest of us in our higher institutions of learning.

I am thoroughly southern by nativity and understand the negro in his habits and manners and know he has not had a dogs chance in our state for the purpose of advancement.

to
I want to urge the court-issue a mandamus to the proper authority, or authorities at the University of Texas, and all other higher institutions of learning to admit any regardless of the color, and in this particular case to the University of Texas.

With an appreciation for our Supreme Court and the Members thereof, and for the grave responsibilities resting on your shoulders,

I am fraternally yours,


A. O. Strother.

A.O. Strother's original letter is located in the National Archives @ Records Administration (NARA), Records Group 267, Box 5859, folder 5 of 6, Washington, DC.

been one of the few WASPs in Texas to proclaim to all that it was wrong to exclude that young man from the finest law school in the state. The defendants had proposed setting up a "separate but equal" law school for the plaintiff, one my father called a "make believe setup for a University."⁹

On Tuesday, April 4, 1950, *Sweatt v. Painter* was argued before the Supreme Court. While that event was occurring in Washington, D.C., Archie Strother (who had no secretary) sat down at his Underwood manual typewriter in Ballinger, Texas. Hunting and pecking, he typed out and then mailed the letter reproduced on the facing page and above.

One week later, Strother's letter was

received in the chambers of Chief Justice Fred Vinson. Later that same afternoon, the letter was sent to the office of the Court's clerk. It is doubtful that the Chief Justice ever saw it, although the one-sentence letter that an assistant clerk sent to Strother the next day does say that "[t]he Chief Justice has directed me to acknowledge receipt of your letter of the 4th, wherein you express your views in connection with" *Sweatt v. Painter*.¹⁰

We will never know, of course, exactly what caused Archie Strother to write his letter to Chief Justice Vinson and the Associate Justices. The oral argument-day timing of Strother's letter suggests that he was familiar with the Court's schedule – newspapers


⁹ John Strother letter to author, June 14, 2002.

¹⁰ E.P. Cullinan letter to A.O. Strother, Apr. 12, 1950, in NARA, Records Group 267, Box 5859, folder 5 of 6, Washington, D.C. This letter misstates Sweatt's first name as "Herman."

throughout Texas were reporting regularly on the progress of the *Sweatt* case. The content of Strother's letter explicitly conveys his personal sympathy for, but also his professional and moral expectations of, the Justices, including the southerners among them. And in framing their judicial task as a "grave responsibilit[y]" but not a difficult question, Strother seems to have been making a point of trying to be heard as a Texan. He knew, of course, that his state's legal establishment was unified and vigorous in its efforts to keep *Sweatt* out of UT. He also knew, as a lawyer, that the Supreme Court Justices probably would not give his letter much weight. Indeed, he had to know that they probably would never even see it. Yet Strother still went to the trouble to demonstrate on paper that not every white and true Texan would defend the shameful fiction that a state law school for blacks could ever match what UT gave its white law students. Strother made this statement, it seems, simply to be true to the beliefs that defined his life.

It turns out that A.O. Strother – his "A" stood for Archie, but he seems to have embodied the kind of character that Harper Lee later poured into her Atticus Finch –

was not the only white, UT-graduate lawyer who tried to, and in fact did, deliver a Texan's pro-*Sweatt* perspective to the Justices. Three days after Strother typed and mailed his letter in Ballinger, Justice Tom Clark, who was nearing the end of his first Term on the Court, circulated a memorandum to his brethren about the *Sweatt* case. Justice Clark urged them not to extend the "separate but equal" concept of *Plessy v. Ferguson* from its railroad passenger context to graduate school education – and "[i]f some say this undermines *Plessy* then let it fall as have many Nineteenth Century oracles," wrote Clark. He also counseled his colleagues that "[t]he 'horribles' following reversal of the cases pictured by the States ... are highly exaggerated. There would be no 'incidents,'" he wrote, "if the cases are limited to their facts, i.e., graduate schools."¹¹

And in the opening line of his memorandum, Justice Clark explained – just as Strother did in his letter – his particular standing to share his views: "Since these cases arise in 'my' part of the country it is proper and I hope helpful to express some views concerning them[.]"¹² 

¹¹ *Sweatt's* companion case, *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637, concerned the constitutionality of segregation and racially differentiated treatment of graduate students in that state's school of education.

¹² Justice Clark's April 7, 1950, memorandum to the Conference, which is contained in his own papers at UT and in the papers of other Justices, is published as an appendix to Dennis J. Hutchinson, *Unanimity and Desegregation: Decisionmaking in the Supreme Court, 1948-1958*, 68 *Geo. L.J.* 1, 89-90 (1979) (Appendix A).