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HISTORY OF *DE JURE* SEGREGATION IN PUBLIC HIGHER EDUCATION IN AMERICA AND THE STATE OF MARYLAND PRIOR TO 1954 AND THE EQUALIZATION STRATEGY

*John K. Pierre**

As noted by Professor Alfreda Diamond, prior to the enactment of the Fourteenth Amendment to the United States Constitution, any publicly funded education that states chose to provide to African-Americans would be in separate educational facilities. Because the provision of publicly funded education is largely within the purvey of State matters and not federal matters, the ratification of the Fourteenth threatened the separate legal regimes in place that fostered *de jure* segregation in elementary, secondary, and higher education. With respect to higher education, even before the ratification of the Fourteenth Amendment, the Morrill Act of 1862 also threatened state legal regimes that required education of African-Americans in separate facilities at publicly-funded land grant higher education institutions.

Even after the ratification of the Fourteenth Amendment and the growth of publicly funded education immediately after the Civil War, African-Americans were largely excluded from accessing publicly funded education. Racial separation in education, as well as all other aspects of American life, was eventually given official constitutional sanction when the United States Supreme Court in *Plessy v. Ferguson* established the precedent that a state could regulate the enjoyment of their citizens solely and purely on the basis of race under the doctrine of "separate but equal". *Plessy* endorsed the concept that a state could enact laws that separated people merely because they were of different races and that such laws did not violate the Fourteenth Amendment. *Plessy* essentially would lead to disenfranchisement of the rights of African Americans and subject African Americans to racial discrimination in education, housing, employment, public accommodations and all other facets of American life as an inferior caste.

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Maryland history documents the existence of separation by race in education thirty years prior to the decision announcing "separate but equal" in *Plessy*. The idea of publicly funded education and free and public education in Maryland began as early as 1825. While Maryland was an enslaving state, it was not part of the confederacy of states that fought bitterly to preserve slavery during the Civil War. Maryland remained loyal to the Union during the Civil War and officially abolished enslavement in 1864. Despite abolishing slavery prior to the end of the Civil War, the state of Maryland nonetheless sanctioned separate public education based upon race. In 1866, two years after the abolishment of slavery in Maryland and two years before the ratification of the Fourteenth Amendment, the state school board superintendant recommended that the state of Maryland provide separate publicly funded education for African-American children. In the decades following *Plessy*, Maryland followed the Supreme Court's "separate but equal" doctrine.

With respect to higher education, the state of Maryland instituted its system of publicly funded higher education in 1807 by establishing the University of Maryland at Baltimore as a whites-only institution. Maryland subsequently established four other whites-only publicly funded higher education institutions as follows: (1) The University of Maryland established in 1865; (2) Towson University established in 1866; (3) Frostburg State University established in 1898; and (4) Salisbury State University established in 1922.

Maryland's publicly-funded dual system of higher education began when it assumed control of the Baltimore Normal School in 1908. Baltimore Normal School was an all black teacher's school which is now Bowie State University. Thus, with the state assuming control of the all black teacher's school, the state of Maryland began to offer publicly-funded higher education opportunities to its African-American citizens. This practice of offering higher education opportunities to African-Americans via all black higher education institutions continued when the state of Maryland acquired Princess Anne Academy in 1919. Princess Anne Academy was acquired for establishing a land-grant institution for African-American students who were not allowed to enroll at the whites-only Maryland Agricultural College at College Park, the state's land-grant institution established under their Morrill Act of 1862. The Morrill Act of 1862 did not allow a state to discriminate against African-Americans when it established a publicly funded land grant institution. The Morrill Act was amended in 1890 to allow states to qualify for federal land-grant funds by establishing or designating all black publicly funded higher education land grant institutions in

their respective states. Maryland was one of nineteen states to establish or designate all-black publicly-funded higher education institutions as 1890 land grant institutions under the Morrill Act of 1890. Because the state of Maryland had to provide educational opportunities for African-American students to qualify for federal land-grant funds, the state acquired Princess Anne Academy with the express purpose of designating it as a land-grant institution for African-American students. Princess Anne Academy is now the University of Maryland Eastern Shore.

The state continued to expand opportunities for African-Americans in the state of Maryland in 1933 by passing legislation creating partial scholarships for African-American students who desired to take professional courses or other courses/degrees not offered to them at Princess Anne Academy, but offered by Morgan College an all-black private college located in Baltimore, Maryland. Additionally, these scholarships were eventually later offered for African-Americans to attend higher education institutions outside the state of Maryland to take professional courses or other courses or degree programs not offered at Princess Anne Academy.

As the demand for higher educational opportunities for African-Americans continued to increase the state of Maryland eventually purchased Morgan College. Maryland purchased Morgan, now Morgan State University in 1939 for the express purpose to provide more higher education opportunities for African-Americans in its segregated system of higher education.

After the acquisition of Morgan, the State of Maryland again expanded segregated higher education opportunities for African Americans in Maryland when the state assumed control of Coppin Teachers College, now Coppin State University. Coppin was originally formed by the Baltimore City School Board in 1900 to train African-American elementary school teachers. It was operated as part of the Colored High School in Baltimore until 1909 and was renamed in honor of Frances Jackson Coppin, a former slave who became the first African-American woman to earn a college degree in the U.S. In 1938, Coppin became a four year school offering a B.S. in education.

While Maryland was deeply entrenched in enforcing segregation in all aspects of public life in the decades following *Plessy*, there were activists in Maryland, and of course other states, who opposed the "separate but equal" doctrine because African-Americans were victims of deep and persistent inequalities in public accommodations and publicly funded education. African-American professionals, particularly teachers, were supportive of a strategy developed by Nathan Margold,

the first staff attorney hired by the NAACP. The NAACP, formed to fight Jim Crow in 1909, was aided by philanthropist Charles Garland through the Garland Fund to support legal action to combat discriminatory practices such as (a) racially restrictive covenants, (b) state-sanctioned white primaries, (c) residential segregation, (d) Jim Crow transportation, (e) discriminatory exclusion of African-Americans from grand juries, (f) the significant disparities in the funding of black and white schools and black and white student expenditures, and (g) the significant differences in pay between African-American and white teachers.

The NAACP used the funding it received from the Garland Fund to hire Charles Hamilton Houston and Thurgood Marshall, in addition to Margold. All three would eventually have significant roles in developing the litigation strategy that would lead to the reversal of *Plessy* and the "separate but equal" doctrine.

African-American teachers, despite having similar training and credentials, were routinely paid much less than white teachers. This was the practice in Maryland and other southern states. In Maryland, for example, despite having uniform requirements for the certification of both white and African-American teachers, the minimum salary for African-American teachers was \$280 per year in 1918, while the minimum salary for white teachers was \$600 per year at that time.

African-American teachers, who organized the State Colored Teachers Association of Maryland in 1916, opposed inequality in teacher pay. In 1918, the Association set the equalization of teacher pay as one of its principal goals. The Association was unsuccessful during the 1920's in convincing the Maryland legislature to end the dual salary scales for African-American and white teachers, and in convincing Maryland courts to equalize the pay between white and African-American teachers in a 1923 suit against the Baltimore City School Board.

The NAACP joined the movement against unequal teacher pay in Maryland in 1936. It did so following a legal strategy that Margold developed in 1931 to challenge school segregation. Based on a study conducted by the NAACP on public school financing in southern states, it was quite obvious that expenditures on black schools were quite lower on a per capita basis when compared to per capita expenditures for white schools. Hence, the strategy would have to focus on the failure of southern states to provide equal funds to black and white schools. This strategy would force southern states to comply with *Plessy* by focusing on the equal part of the "separate but equal" doctrine. Therefore, southern states would have to significantly increase

the funding of black schools which would greatly increase the burden on state budgets in southern states.

In 1933, Margold was appointed solicitor to the Department of Interior by the newly inaugurated administration of President Franklin Delano Roosevelt. That year, Charles Hamilton Houston succeeded Margold as the chief attorney for the NAACP. Houston, who was a native of Washington, D.C., graduated first from Amherst College and then from Harvard Law School in the top five percent of his class. He was the first African-American student on the Harvard Law Review. Hamilton would eventually become dean of the Howard University Law School and change the course of civil rights history and law in the United States.

The actions of courageous African-American teachers in Maryland who agreed to act as plaintiffs in teacher pay equalization complaints were extraordinary; any teacher who agreed to act as plaintiff in such suits ran a serious risk of being fired in the 1930's. Because of their courage, the NAACP would be successful in its efforts to equalize pay for African-American and white teachers in Maryland between 1936 and 1940 through lawsuits and negotiated settlements. Principal among the successfully litigated cases in Maryland were cases filed by Thurgood Marshall in Montgomery County Maryland in 1936, and in Calvert County Maryland in 1937. *Williams B. Gibbs, Jr. v. Bromme* and *Elizabeth Brown v. Board of Education of Calvert County* were equalization suits that were settled out of court with the establishment of plans to equalize teacher pay in Montgomery and Calvert counties over time.

The most significant victory was garnered in *Mills v. Board of Education of Anne Arundel County*, a case filed by Marshall, Leon Ransom, and Williams Hastie on behalf of Walter Mills, an African-American teacher hired by the Anne Arundel Country Board of Education who was certified as a teacher and principal by the Maryland State Board of Education. In *Mills*, the federal district court held that the Anne Arundel County School Board had discriminated against Mills in the practice of his profession solely on the basis of race. The ruling in *Mills* prompted the Maryland legislature in 1941 to establish a single salary schedule for all teachers. Hence, the victory in *Mills* proved beneficial to all African-American teachers throughout the state of Maryland. Additionally, African-American teachers in other southern states would over time benefit from the decision as they attacked discriminatory teacher pay practices in their efforts to equalize pay.

The equalization strategy employed in teacher pay cases was also employed simultaneously to attack segregation in higher education. As noted by Professors Robert J. Coltrane, Raymond T. Diamond, and Leland Ware, while segregation in higher education, specifically graduate and professional education, was as common as segregation in elementary and secondary education in southern states, there were fewer graduate and professional programs. Hence, because there were fewer such programs, concentrated litigation could be focused on those programs that would produce much greater and dramatic results.

Hamilton and a young Marshall, as a special counsel to the NAACP, favored graduate and professional school cases because they believed that the disparities in graduate and professional schools would resonate more easily with judges. They believed that it was easier to litigate such cases because (a) it was less difficult to prove that discrimination was occurring in professional schools; (b) attacking segregation in professional schools would not raise the same level of emotional and/or political reaction that would occur in elementary and secondary school settings; and (c) fewer individuals attended professional schools.

With respect to attacking segregation in professional schools, as with the teacher equalization cases, Maryland again proved to provide fertile soil to plow. The University of Maryland's law school was only open to whites and there was no publicly funded law school in Maryland that trained African-American lawyers.

Like a ram in the bush, the right plaintiff appeared to the NAACP in their pursuit to attack segregation in professional schools. Donald Gaines Murray, a young African-American from Baltimore sought admission to the University of Maryland Law School in 1935. Murray was denied admission because of his race. Neither Maryland nor the University had laws or rules mandating that the University of Maryland be segregated. African-Americans were excluded from the University of Maryland as a matter of policy. Donald Gaines Murray was a graduate of Amherst College who came from a widely respected Baltimore family. Hamilton, a graduate of Amherst himself, felt that Murray was eminently qualified to attend the University of Maryland Law School. Marshall, who also was denied admission into the University of Maryland Law School, relished the opportunity to file and win a case against the University and its racist policies.

Houston and Marshall filed a mandamus proceeding in Baltimore City Court to compel the University of Maryland Law School to admit Murray as a student. In their pleading, Houston and Marshall asserted that the refusal of the University of Maryland Law School to

admit Murray as a student was not supported by the law or constitution of Maryland and violated the Fourteenth Amendment of the United States Constitution. At trial, the state of Maryland stipulated for the record that, but for his race, Murray was qualified to be admitted to the law school. The stipulation was an important one, because Murray's qualification for admission to the law school was a question of fact and if the court found that he was not qualified, his case would be moot. It was also revealed through the testimony of Dr. Raymond Pearson, President of the University of Maryland, that (a) Murray had applied through the proper channels and submitted all necessary paperwork for admission to the law school, (b) if Murray had been a white applicant, he would have been admitted, (c) Mexicans, Japanese, Filipinos, and Indians were eligible for admission (d) African-Americans were not admitted as a matter of state policy, and (e) the state had created out-of-state scholarships for African Americans to attend out-of-state institutions after Murray's application had been rejected.

After eliciting testimony from Roger Howell, Dean of the University of Maryland Law School, and other state officials who detailed the inequalities in the education the State of Maryland provided to African-American residents versus white residents, Houston, using the wide latitude granted by Judge Eugene O'Dunne who presided over the case as trial judge, turned his attention to other racial inequalities which existed in Maryland. For example, Houston was able to elicit testimony regarding race-based differences in teachers' salaries, gross inequalities in the size and conditions of educational facilities, and the fact that the school year for African-American students was at least one month shorter than white students.

After the conclusion of testimony, Houston and Marshall shared the closing argument. Marshall began by reminding Judge O'Dunne that the state of Maryland had an obligation to provide equal educational opportunities to African-American students. He carefully crafted his argument to stay within the confines of *Plessy*, asserting that because the State of Maryland established a law school for its white residents, it incurred a constitutional responsibility to provide a separate and equal legal education for its African-American residents.

Houston continued Marshall's line of argument by pointing out that Maryland's refusal to admit African-American applicants to its law school without providing a separate and equal law school for African Americans to attend violated *Plessy's* well-settled constitutional demands. Houston emphasized that *Plessy* obligated the State of Maryland to make equal educational opportunities available to students of all races, and the fact that the State of Maryland had created out-of-

state scholarships for African-Americans to attend out-of-state institutions did not satisfy the state's legal obligations under *Plessy*, because the scholarships did not exist until after Murray's application was rejected and the number of the scholarships funded by the state could not satisfy the demand for such scholarships.

After hearing the closing arguments from the Assistant Attorney General for the State of Maryland, Judge O'Dunne issued a ruling from the bench. Judge O'Dunne ruled that the University of Maryland had a legal obligation to offer the same educational opportunities for African-American students as those offered to whites and that the obligation had not been fulfilled. Hence, the judge issued a writ of mandamus ordering and compelling the University of Maryland to admit Murray into the incoming fall law school class.

The University of Maryland filed an appeal soon after being ordered to admit Murray into law school. The points of appeal raised by Maryland included the following: (1) the University of Maryland was a private entity rather than a state agency, and as a private entity was not obligated to comply with the Fourteenth Amendment to the United States Constitution; (2) Murray had no right to sue in mandamus to compel the University to admit him, and that his remedy, if any, is to require the state to supply a law school for African-American residents of Maryland; (3) even if the University of Maryland were deemed to be a governmental unit, the state had satisfied its legal obligations under *Plessy* by establishing a separate school for African-American students; and (4) to the extent that the state was required to provide graduate educational opportunities for African-American students, its obligations had been legally met by establishing a scholarship fund, which African-Americans could use to attend schools outside of Maryland.

With respect to the argument that the University was a private entity and that the law school was not a governmental agency, the court found that the University of Maryland Law School was a private institution only until 1920, when a state statute consolidated the law school with the Maryland State College of Agriculture, an institution of the state government. The Maryland Supreme Court concluded that the law school was a branch or agency of state government. When the court turned its attention to whether the educational facilities maintained for African-American students were equal to those provided for to whites, the *Plessy* decision stated that "separation of the races must nevertheless furnish equal treatment." The court also addressed the issue of scholarships available to African-American students for out-of-state institutions as a substitute for providing those students with the facilities substantially equal to those furnished to the whites at the

University of Maryland Law School. The court determined that because Maryland did not provide a law school for African-American students, the main question in the case was whether African-American students could be excluded from the University of Maryland Law School because the state furnished African-American students scholarships to study outside the state at law schools willing to admit such students. The court found that the scholarships could not provide the state with a defense because they were not available at the time Murray's application for admission was denied. Moreover, funds that were subsequently appropriated were inadequate to satisfy the demands of African-American students who had applied for aid, and even if an African-American student received a scholarship, it would not have covered the costs of attending law school in another state because the scholarship only covered tuition differentials. Hence, the court held that since there was a slender chance for an African-American to attend a law school outside the state at an increased expense, the state was not providing African-American students facilities substantially equal to those provided whites at the law school. Finally, in considering the kind of remedy to fashion for Murray who had been denied equal protection under the Fourteenth Amendment, the court determined that the erection of a separate school for African-American students was not available as an alternative remedy. The court consequently affirmed Judge O'Dunne's order requiring Murray's admission into the University of Maryland Law School.

Murray represented the first major victory for Houston, Marshall and the NAACP in a higher education case. Houston and Marshall had garnered a judgment that challenged *Plessy* indirectly at its flanks. The racial barriers erected by *Plessy* were being shaved at their sides, because the rulings in *Murray* by a Maryland state court did not contravene any precedent that supported the "separate but equal" doctrine. The ruling to admit Murray into the University of Maryland Law School was required by *Plessy* primarily because the state of Maryland provided no other law school for him to attend. The fact that the court ordered Murray's admission was noteworthy because the court could have ordered the state of Maryland to establish a separate law school for African American students and given it a period of time to comply with the order. Alternately, the court could have required the state of Maryland to modify its out-of-state scholarships for African-American students by increasing the amount of the scholarships to cover all the actual cost of attending schools in other states that permitted African-American students to attend.

Interestingly, as the *Murray* case was being litigated, the State of Maryland took steps to fulfill previously unmet obligations under the second Morrill Act passed by Congress in 1890 to ensure that states provided land-grant education to African-Americans. The 1890 Land Grant Act expressly denied federal funding to institutions of higher education "where a distinction of race or color is made in the admissions of students." Conversely, however the Act stated that "the establishment and maintenance of such colleges separately for white and colored students shall be held to be in compliance with the provision of [this Act] if the funds be . . . equitably divided." In response to the 1890 Land Grant Act, the State of Maryland entered into a peculiar arrangement to allegedly satisfy its obligations under Act.

In 1892, the State of Maryland discovered that it would not be able to participate in the distribution of federal funds for education in agriculture and mechanical arts under the Morrill Act if it did not make provisions for African-Americans. The state employed a clever strategy designed to ensure that it could receive land grant funds. The state designated Princess Anne Academy an institutional branch of Morgan College (now Morgan State University) which provided secondary and industrial education for African-Americans who lived along the eastern shore of Maryland. The state, in 1892, created a contract between Morgan College and Maryland Agricultural College (now University of Maryland at College Park) whereby Morgan would essentially serve as an agent or conduit for providing land-grant education to African Americans. Consequently, the State of Maryland was able to receive federal land grant funding and then allocate and allot eighty percent to Maryland Agricultural College for white students and twenty percent to Morgan College for African-American students at Princess Anne Academy.

Under the arrangement concocted by the State of Maryland, it was not until 1914 that the state actually made any grant directly to Princess Anne Academy. The federal government objected to the arrangement concocted in Maryland because (1) Princess Anne Academy was under the control of Morgan College, which was at that time, a private college, and thus not a state-funded institution of higher education and (2) the scholastic level or academic level of Princess Anne Academy was too low to meet the academic level training requirements established under the Morrill Act.

The objection by the federal government relating to low scholastic or academic level offerings at Princess Anne Academy was well founded because the Academy served as a high school from grades eight through twelve exclusively until 1927. In 1927, it dropped grades

eight through ten and added two years of college work, and later in 1929, it dropped grades eleven and twelve, and thus provided a junior college education at the time that the *Murray* case was being litigated.

In an effort to quell federal government complaints raised in 1915, the state created a contract executed in 1919 by the University of Maryland and Morgan College which transferred administrative control of Princess Anne Academy to the University of Maryland, and it became known as the Eastern Branch of the University of Maryland. This was merely a slight of hand arrangement because the property upon which Princess Anne was situated was not transferred or paid for by the State of Maryland. There was a tacit understanding between the University of Maryland and Morgan College which would allow the state to purchase the property upon which Princess Anne was situated at a price to be agreed upon or fixed by arbitration if, at any time, either party found the arrangement unsatisfactory. In 1928, after federal officials made further objections to the arrangement, Morgan asked for payment under the contract. Despite making several demands for payment, Morgan was finally paid \$100,000 in four annual installments after the Maryland legislature passes legislation in 1935 to purchase Princess Anne Academy.

In addition to purchasing Princess Anne Academy, the Maryland Legislature in 1935 authorized a state budget appropriation to study higher education interests and needs of African-Americans in Maryland, and to study the interests and needs of Morgan College. The results of the study, officially entitled the "Report of the Commission on Higher Education of Negroes to the Governor and Legislature of Maryland," were issued on January 15, 1937. The report clearly acknowledged the significance of the *Murray* decision, by observing that a crisis had arisen with respect to the obligations the State of Maryland were required to meet in providing adequate higher education opportunities for African-Americans. The 1937 report concluded that while the State of Maryland had generously supported higher education of its white population, it had severely neglected the higher education needs of its African-American population. The report also concluded that a large investment would have to be made in HBCU institutions in order to satisfy the "equal" component of the "separate but equal" doctrine. This investment needed to maintain segregation would require the outlay of large sums of money to provide educational facilities for African-Americans which would be equivalent to the facilities provided to whites. The report ultimately recommended that Maryland purchase Morgan College, an option which represented the "least public expense" required to provide higher educational opportu-

nities for African-Americans. Hence, the *Murray* decision forced the State of Maryland to purchase Morgan College to develop a nucleus for higher education opportunity for African-Americans.

The inequality described and outlined in the 1937 report continued and was again documented a decade later in a 1947 report entitled "Higher Education in Maryland: A Report of a Survey by the American Council on Education with Recommendations of the Maryland Commission on Higher Education." The 1947 report found that the State of Maryland had consistently pursued a policy of providing higher education facilities for African-Americans which were inferior to those provided for whites. The report based the inequality finding based upon meager appropriations provided to HBCU institutions and the lower accreditation status for HBCU institutions. The report also found that the state was not meeting its obligation to provide African-American students an equal education at HBCU institutions. The report recommended that HBCU institutions needed to be supported at the same financial level as white higher education institutions for the state to meet its obligation to provide African-Americans equal education opportunities.

Houston was certain that the costs associated with maintaining separate, but actually equal higher educational facilities would be so costly to the states, that the states would not be able to afford the price tag of segregation, and thus segregation would essentially collapse under its own weight. Houston, however, miscalculated the resolve of southern states when he predicted that those states would never set up separate graduate and professional programs for African-American students. Houston firmly believed that southern states would admit African-American students rather than provide graduate and professional education for them using more expensive alternatives. However, partly in response to the *Murray* case, southern state legislatures began to establish graduate and professional educational programs at black colleges to ensure that the victory garnered in Maryland would not be adopted in their states. The pattern was fairly predictable in that an African-American student would seek admission to an all-white graduate or professional school that would summarily deny the application because of race. After the denial of admission based upon race, the state would create a separate program at a state-supported black college to preserve the all-white separated status of the institution that had denied admission to the African-American student. A clear example of this pattern is reflected in the fact that North Carolina, Louisiana, Texas, Florida, Missouri and Oklahoma all created law schools in response to attempts by African-American students to pur-

sue legal educational opportunities at all-white institutions within the borders of their home states.

Because *Murray* was decided by a state court in Maryland, it did not have nationwide applicability as binding legal precedent. That would not happen until 1938, coincidentally the same year that Donald Murray graduated from the law school at the University of Maryland. The U.S. Supreme Court addressed segregated public higher education in 1938 when Lloyd Gaines appealed a decision by the Missouri Supreme court denying Gaines the relief he sought. Lloyd Gaines, a 1935 graduate of Lincoln University in Jefferson City, Missouri applied for admission to the law school at the University of Missouri. The application submitted by Gaines in 1935 was ironically submitted the same year that Donald Murray had applied for admission to the law school at the University of Maryland. In response to the application Gaines submitted, S.W. Canada, the Registrar for the University of Missouri, requested a transcript from Gaines. After submitting a transcript to Canada, which obviously revealed that Gaines was a graduate of the state-funded black college in Missouri, he received a rejection letter advising him to either study law at Lincoln or enroll in an out-of-state public law school that admitted African-American students that the state of Missouri would pay for. Gaines' enrollment in another state, whose public law schools admitted African-American students at Missouri's expense, was the only option available to Gaines, because Lincoln University did not have a law school. Gaines was interested in a different option – attending the University Of Missouri School Of Law.

After Gaines was denied admission to the law school, the NAACP sued the Registrar of the University of Missouri in a case filed as *Missouri ex rel. Gaines v. Canada* in 1936. The trial was presided over by Judge W. M. Dinwiddie and began on July 10, 1936, and ended with the judge ruling in favor of the University without even writing an opinion.

The NAACP appealed to the Missouri Supreme Court and the issues presented were so significant that the court agreed to hear oral arguments *en banc*. The Missouri Supreme Court upheld the trial court's ruling in favor of the University. In affirming the trial court's ruling, the Missouri Supreme Court made the following findings: (1) the established public policy of Missouri was to segregate the races; (2) the state laws requiring separate schools were not forbidden by the Fourteenth Amendment of the United States; (3) that Gaines had not applied for admission to Lincoln University and that if he had done so, Lincoln would have been obligated to establish a law school or provide

him opportunity for legal training elsewhere that would have been substantially equal to the opportunity provided to white students at the University of Missouri; (4) that Gaines could have attended law schools in adjacent states that admitted African-American students which had sound, comprehensive, and valuable curriculums; and (5) that while equality was guaranteed to citizens under *Plessy*, equality did not mean that Gaines was entitled to the same education that was made available to whites.

While the Missouri Supreme Court denied Gaines the relief he sought, the court did strike down a provision in the Missouri statute that limited the funds available for Gaines to study out of state. Under the Missouri statute, Gaines would have been entitled only to the difference between the tuition charged by the University of Missouri and the cost of attending an out-of-state law school. The Missouri Supreme Court held that the state of Missouri would have to pay the full tuition of Gaines to attend a law school in an adjacent state. The holding required Missouri to pay the full tuition for Gaines to attend an out-of-state law school, and provided the state of Missouri with ammunition to shore up a weakness in the state's case. It was now easier for Missouri to distinguish its out-of-state scholarship program from the out-of-state scholarship program that existed in Maryland that prompted the Maryland Supreme Court to find the Maryland scholarship was insufficient.

The Gaines decision was appealed to the United States Supreme Court. The Supreme Court overturned the decision by the Missouri Supreme Court. In ruling for Gaines, the U.S. Supreme Court found that: (1) the federal constitution required that Missouri provide for its African-American citizens equal educational opportunities that could not be shifted to neighboring or adjacent states; (2) Missouri had to provide within the borders of the state equal educational opportunities to African Americans; and (3) because Missouri did not provide a separate but equal law school for Gaines to attend, Gaines had a personal right to a legal education, which required the state to furnish him a legal education at the University of Missouri.

The victory in the *Gaines* case again chipped away at the holding in *Plessy*. *Gaines* gave Houston and the NAACP a federal precedent that Murray had denied them a victory that had nationwide applicability. The significance of the victory in *Gaines* represented a substantial step towards dismantling *Plessy*. The "equalization" strategy had proven to be successful for a second time and was now on a solid foundation.

In a strange turn of events, subsequent to the victory in *Gaines*, Lloyd Gaines disappeared into thin air. Gaines was never heard from again and what actually happened to him has never been discovered. Soon after the Supreme Court's decision in *Gaines*, West Virginia State University began admitting African-American graduate students. African-American students earning Master's degrees in education were Kenneth James in 1941, W.O. Armstrong in 1942 and Victorine Louis-tall in 1945.

The strategy of not mounting a frontal attack on *Plessy* was surely a conservative approach to ending legal segregation. Pursuing the equalization strategy would give the southern states and border states time to begin setting up separate graduate and professional programs for African-American students. In Missouri for example, a law school was established at Lincoln University in response to the Supreme Court's decision in *Gaines*. A close reading of *Gaines* makes it clear that the state of Missouri had the following options to satisfy the *Gaines* mandate: 1) admit Gaines to the University of Missouri Law School; or 2) create a parallel law school at Lincoln University

Due to the disappearance of Lloyd Gaines, a hearing to determine whether the law school established at Lincoln University satisfied the state of Missouri's obligation, as articulated in the *Gaines* decision was cancelled. The law school established at Lincoln would eventually close because of the lack of student enrollment. Although Lloyd Gaines never studied law at the University of Missouri Law School, his portrait hangs in a prominent place in the law school. The University of Missouri would not admit an African-American student until 1950.

While having southern and border states set up separate graduate and professional programs for African-American students expanded educational opportunities, these small practical gains did not necessarily advance the overall goal of ending segregation. However, African-American leaders of these institutions welcomed these investments in Historically Black Colleges and University (HBCU) institutions, even though they probably realized that these states were more interested in preserving segregation than in promoting equal educational opportunities for African-American students. Southern and border states appeared to use these investments to create an illusion that they were actually providing something approaching equality, albeit in racially segregated and separate institutions. These states were gambling that legal segregation under the *Plessy* doctrine would be preserved by providing investments to shore up the educational offerings and programs at HBCU institutions, as well as the academic

shortcomings at HBCU institutions. The strategy of enhancing HBCU institutions after the *Gaines* case, bolstered the hopes of officials who wanted to further segregation in higher education and keep the *Plessy* doctrine alive. Hence, in the years following *Gaines*, beginning in the 1940's, officials in favor of maintaining segregation engaged in a strategy to upgrade HBCU institutions in an effort to stave off integration. Many of these upgrades were disingenuous, ill conceived, and half-hearted. These officials would use the "improvement" or "enhancement" strategy to argue that "equality" or "substantial equality" had been achieved at HBCU institutions and thus there was no need for courts to ever imbue legal rights in African-Americans to enroll in white educational institutions.

After the victory in *Gaines*, there was a lull in activity in graduate and professional school litigation by Houston and Marshall during the World War II (WWII) years. During the WWII years spanning from the early to the mid-1940s, the NAACP turned its attention to discrimination in (1) the military; (2) teacher salaries; (3) transportation facilities; (4) employment; (5) voting rights; and (6) due process afforded to African-American defendants in criminal cases.

After WWII, litigation relating to enrollment in graduate and professional schools was revitalized. Because of the return of thousands of WWII veterans armed with new government benefits that could be used to pay for higher education opportunities, the demand for higher education would increase tremendously. Consequently, there would be a need to eliminate barriers and enhance access to higher education opportunities for African-American students at segregated state-supported colleges and universities.

The first post-war cases were filed in Louisiana and Oklahoma. In Louisiana, Charles Hatfield, a veteran of WWII and a graduate of Xavier University of Louisiana, filed a lawsuit in state court seeking admission to the law school at Louisiana State University (LSU). The lawsuit was styled as a mandamus action seeking admission into LSU. Hatfield's request for relief was not granted when officials in Louisiana hastily put together plans to open a law school at Southern University, the state supported HBCU institution located in Baton Rouge, Louisiana, a mere twelve miles from the law school at LSU. The opening of the law school at Southern University ended Hatfield's litigation.

In Oklahoma, Ada Lois Sipuel, an honor student at Langston College, the separate state supported school for African-American students applied for admission to the law school at the University of Oklahoma. She was denied admission on the grounds that the school did not admit African-American students. Like Maryland and Mis-

souri, Oklahoma, which had established separate schools for African-American students, made no provisions for graduate and professional school education for African-American students.

The lawsuit was filed in state court in Oklahoma. During the trial, Marshall was able to elicit an admission from the President of the University of Oklahoma that Sipuel had an impeccable academic record and superb academic credentials. The law school denied her admission simply because of her racial identity. The trial court dismissed her case and held that the state of Oklahoma did not have to admit Sipuel. The trial court also ruled that the state of Oklahoma did not have to establish or create a law school for African-American students unless evidence was provided to show that a sufficient number of African-American students would attend the new law school.

On appeal, the Oklahoma Supreme Court affirmed the trial court's decision. The Oklahoma Supreme Court held that Ada Sipuel's failure to demand that a separate law school for African-American students be established or created prevented her from demanding admission to the law school at the University of Oklahoma. The court reasoned that there was no obligation on the state of Oklahoma to establish a law school for African-American students because there was not a demand, which justified the expenditures of funds to construct a law school. Consequently, the court found that Sipuel's Fourteenth Amendment rights had not been violated because the state of Oklahoma could not have anticipated the need to create a separate law school absent a demand from Sipuel.

Marshall appealed the decision of the Oklahoma Supreme Court to the United States Supreme Court. In the appeal brief, Marshall for the first time presented an argument that essentially confronted the *Plessy* doctrine directly. Marshall argued that even if two schools existed with comparable facilities, the racially segregated schools could not be equal because there is no such thing as separate equality.

In a strange turn of events, the Supreme Court issued a unanimous unsigned per curiam decision ordering the state to provide Sipuel a legal education in conformity with the Fourteenth Amendment's equal protection clause and to do it as soon as it does for applicants of any other group. The decision was rendered on January 12, 1948. After the Supreme Court's ruling in favor of Sipuel, the trial court in Oklahoma subsequently issued an order enjoining the state of Oklahoma from enrolling any students at the law school until a separate law school was created for African-American students.

It is interesting to note that before the end of January 1948, both the University of Arkansas and the University of Delaware announced that each would open its graduate and professional programs to African-Americans. Neither state waited for further court action after the Supreme Court had ruled in favor of Ada Sipuel. The decision to admit African-American students into its graduate and professional schools by the states of Arkansas and Delaware was probably prompted by the decision in Sipuel. State officials also had a desire to avoid costly litigation to prevent pending African-American applicants from gaining admission to graduate and professional degree programs. In Arkansas, Silas Hunt sought admission to the law school at the University of Arkansas. While the state of Arkansas had long maintained a fully segregated system of education, it had no statutory or constitutional provision that mandated exclusion of African-American students at the University of Arkansas. After the Sipuel decision, state and school officials created a policy allowing qualified African-American applicants to seek admission to graduate and professional programs not offered at Arkansas AM & N (now the University of Arkansas Pine-Bluff). Silas Hunt enrolled in the law school at the University of Arkansas in February of 1948. He became the first African-American to enroll in the twentieth century in a historically white publically funded institution of higher education anywhere in the former Confederacy. Another student of African-American descent who gained admission into the University of Arkansas Law School was Jackie L. Shropshire, who went on to graduate with a law degree in 1951. Meanwhile at the University of Arkansas Medical School, located in Little Rock, Edith Mae Irby was admitted in 1948, becoming the first African-American to be admitted into a historically white medical school anywhere in the seventeen segregated southern and border states. Irby earned her medical degree in 1952, becoming the first African-American to graduate from a historically white medical school anywhere in the seventeen segregated southern and border states.

In Delaware, state officials had to deal with the fact that three African-American students had applied for admission into the historically white University of Delaware. Two of the students applied for admission into the undergraduate engineering program and the third student applied for admission into a graduate degree program at the University of Delaware. On January 31, 1948, the Board of Trustees for the University met in a special session and made a decision to allow the admission of African-American students into the University of Delaware, if they were bona fide residents of Delaware who sought courses unavailable to them at Delaware State College (now Delaware State

University), the state's publicly funded HBCU. African-American students who took advantage of the new policy in 1948 included Catherine J. Young and Cora Berry, who both earned Master's degrees in 1951, Elbert Whisner who earned a Bachelor's degree in Electrical Engineering in 1952 and John Henry Taylor who earned a Ph.D in 1953.

While the victory in Sipuel resulted in immediate change in Arkansas and Delaware, a recalcitrant Oklahoma Board of Regents in 1948 hastily created a law school for African-American students in the state capitol. The school consisted of a roped-off section of the state capitol building and had three lawyers serving as part-time faculty. When Marshall took the extraordinary step of returning to the Supreme Court to contest the action of the state of Oklahoma in creating this seemingly fictitious and fake law school, he was shocked to learn that the Supreme Court determined the "fake" law school created by the state of Oklahoma satisfied their Fourteenth Amendment obligation to Ada Sipuel.

Sipuel refused to attend the sham law school. In yet another bizarre turn of events, Sipuel was finally admitted into the University of Oklahoma Law School pursuant to a new state law in 1949, which required her to sit in a part of the classroom that was cordoned or roped off and designated by a "colored student section" sign. Sipuel enrolled in law school in 1949, as the only African-American and the only female student in a law school with over 300 white male law students. Ada Sipuel would prove to be one of several African-American women pioneers in the desegregation of higher education in the south.

In another gradual advancement towards ending segregation in higher education, Lyman T. Johnson became the first African-American student to enroll into the University of Kentucky. He enrolled as a graduate student in 1949 after he won a lawsuit in federal court in March 1949. He was soon followed by fellow African-American students, such as Susie Jones Elster and Betty Richardson Newby who earned graduate degrees in education in 1951; Holloway Fields, an undergraduate who transferred to the University of Kentucky in January 1950 and received a Bachelor's degree in Electrical Engineering in 1951.

The willingness of the U.S. Supreme Court to accept the actions by the state officials in Oklahoma as satisfying their obligations under the Fourteenth Amendment prompted the NAACP to shift their strategy away from "equalization" and to launch an all-out frontal assault on segregation in education. Under the new all-out offensive on segregation, the NAACP took the position that the establishment of new educational offerings and programs at HBCU institutions were dupli-

cative and wasteful investments that impeded the goals of (1) ending segregation in education and (2) opening access to white universities for African-American students. Hence, new investments, improvements, and enhancements at publicly-funded HBCU institutions were viewed as attempts on the part of southern and border states to make racially segregated separate schools more equal in the hope of avoiding integration and over-turning the *Plessy* doctrine.

The new frontal attack on *Plessy* came in the form of the following arguments: (1) separate education for African-American students was necessarily unequal; (2) the very act of legalized racial segregation was offensive to the equal protection clause of the Fourteenth Amendment; and (3) African-American students could never receive a truly equal education in a segregation setting.

The new frontal assault on *Plessy* gave no consideration of the positive impact that HBCU institutions might have or had in an integrated scheme of higher education. This view was reflected in an essay published in 1949 by Hylan Lewis. Lewis argued that a system of higher education for African-American students would remain inadequate and warped as long as publicly-funded HBCU institutions continued to exist and be supported. Hence, the new legal strategy of the NAACP appeared to leave little or no room for publicly funded or state-supported HBCU institutions once the goal of obtaining legal access to white state-supported universities had been achieved.

Court cases decided in 1950 would further lay the groundwork needed to overturn *Plessy*. The first court case decided in 1950 that would set in place the momentum needed to eventually overturn *Plessy* was *McCredy v. Byrd*. In 1949, Ester McCredy applied for admission into the nursing school at the University of Maryland located in Baltimore. She was denied admission because she was African-American. McCredy met all of the educational and character requirements needed for admission. Rather than offer admission to the nursing school, the University of Maryland in August 1949 offered McCredy an opportunity to study nursing at Meharry Medical College School of Nursing, in Nashville, Tennessee. Meharry Medical School and its school of nursing provided nursing education to African-American students. McCredy declined the offer, and sued for admission into the University of Maryland.

McCredy was represented by Thurgood Marshall and Donald Murray, became the first African-American to gain admission into the law school at the University of Maryland in 1935. After the Baltimore City Court ruled against McCredy, an appeal was filed. On appeal, the state of Maryland argued that state and federal rulings in law

school cases such as *Murray*, *Gaines*, and *Sipuel* should not govern the outcome in *McCready* because nursing and law were different kinds of curricula. The state argued that the need to study law within the state where one would be practicing made it a special case. The state further argued that nursing learned in Nashville, Tennessee at Meharry would be pretty much identical to the training at the University of Maryland in Baltimore.

The Maryland Supreme Court ruled that the offer did not satisfy *McCready's* constitutional right to attend a school within the state of Maryland. The court held that if whites could attend an in-state school, African-Americans could not be constitutionally forced to go outside the state for similar training. After she won her case, *McCready* enrolled in the University of Maryland and graduated in 1953.

The second case essentially involved an opportunity for Thurgood Marshall to engage in a rematch with officials from the state of Oklahoma. As result of the admission of *Ada Sipuel*, other African-American students in Oklahoma could enroll in graduate and professional schools in Oklahoma. However, none could sit next to their white classmates and they were either condoned or roped off to the side or back of the classroom. Marshall took the state of Oklahoma back to court to determine if the state of Oklahoma could admit African-American students and thereafter segregate them within a classroom.

The client Marshall represented in the rematch with the state of Oklahoma was George W. McLaurin, an African-American professor at Langston University. Professor McLaurin, who applied for admission to the graduate school of education, was denied admission. A suit was filed in federal court before a three-judge panel pursuant to a procedure created by the Judiciary Act of 1937 that allowed constitutional challenges to state statutes to be heard by special three-judge panels in U.S. District Courts. Judgments entered by the panels could be appealed directly to the U.S. Supreme Court without having to go through the normal appellate process. The decision to file suit in federal district court represented a change in strategy from filing lawsuits in state court.

During the pendency of the suit, Professor McLaurin was eventually admitted into the graduate education program at the University of Oklahoma. McLaurin was allowed to sit in the same classes as whites but was segregated from white students in a manner similar to the way *Ada Sipuel* was segregated from her classmates at the law school. McLaurin was required to: (a) sit apart at a designated desk in an outer room adjoining the classroom; (b) sit at a designated desk on the mezzanine floor of the library; (c) avoid using the desks in the regu-

lar reading room; and (d) sit at a designated table and to dine at a different time from the other students in the school cafeteria.

During the pendency of the litigation, the following modifications were made: (a) the rail surrounding the section of the classroom in which McLaurin sat was removed; (b) the sign stating "reserved for colored" was removed; (c) McLaurin was assigned to a seat in the classroom in the row specified for "colored" students; (d) McLaurin was allowed to dine at the same time as white students at his own special table.

The three-judge panel had to consider whether McLaurin, as an admitted student at the University of Oklahoma, was accorded equal protection under the Fourteenth Amendment in a University where he was isolated from white students in the classroom, library, and dining facility.

The three-judge panel ruled that McLaurin's constitutional rights had not been violated. After the trial court entered a judgment in favor of the University of Oklahoma, an appeal to the U.S. Supreme Court was filed.

The McLaurin appeal was argued on April 3 and 4, 1950. The U.S. Supreme Court on June 5, 1950 overruled the three-judge panel. The court ruled that the segregation McLaurin endured within the University of Oklahoma violated his Fourteenth Amendment right to equal protection. The court found that the actions of the University of Oklahoma to segregate McLaurin from white students within the university handicapped him in his pursuit to effective graduate instruction. The court reasoned that the restrictions imposed upon McLaurin impaired and inhibited his ability to study, engage in discussions and exchange views with other students, and to learn his profession.

The actions by the state of Oklahoma in McLaurin helped to dramatically illustrate the stigmatizing impact of segregation on African-Americans. Because the Supreme Court ruled that segregation within the classroom, library or cafeteria violated the equal protection clause of the Fourteenth Amendment, Ada Sipuel, who filed the first lawsuit challenging the practices of state officials in Oklahoma, was able to take her place in a front-row seat at the law school.

At the same time that Marshall and the NAACP were engaged in a battle royale with the state of Oklahoma, another battle was contemporaneously being waged in Texas against the University of Texas School of Law on behalf of Hemon Marion Sweatt. Marshall thought that a lawsuit against the University of Texas School of Law was an even better case than the case he was litigating on behalf of Ada Sipuel

in Oklahoma. Sweatt was a WWII veteran who held a Bachelor's degree in Biology. The only work Sweatt could find was in the U.S. Postal Service. Sweatt, who was denied a promotion to a desk job, decided that he wanted to become a lawyer, in part, to sue the Postal Service.

On February 26, 1946, Sweatt applied for admission to the University of Texas School of Law. Sweatt was denied admission because he was African-American. Sweatt was otherwise qualified for admission into the University of Texas School of Law. Denial of admission to Sweatt by the University of Texas presented a monumental problem for Texas state officials because there was no other state supported law school in Texas that African-American students could attend. The state of Texas was clearly not adhering to its constitutional obligation as articulated in the *Murray* and *Gaines* cases. Sweatt filed a lawsuit in May 1946, approximately one month after Ada Sipuel had filed her lawsuit against the state of Oklahoma.

Sweatt's lawsuit was filed in Texas state court. A hearing was held in June 1946 and was presided over by Judge Roy C. Archer. Judge Archer ruled that the state of Texas violated the United States Constitution because it did not provide access to law school for African-American students while simultaneously denying them admission to the University of Texas.

Texas state officials, unlike their counterparts in Maryland, Missouri, or Oklahoma, began a frantic scramble to establish and open a law school for African-American residents who would seek a legal education. The state initially responded by renting a few rooms in Houston, Texas and hiring two attorneys to serve as faculty for the new law school. At a status conference in December 1946, Judge Archer found that the facilities in Houston were "substantially equal" to the University of Texas School of Law located in Austin, Texas.

Marshall appealed the ruling of Judge Archer. Ironically, as the lawsuit progressed and the appeal was pending, the state of Texas took several steps in an attempt to bolster the finding of "substantial equality" made by Judge Archer. The location of the law school established for African-American students was transferred to Austin, pending the construction of a permanent facility in Houston. The new law school opened temporarily in the basement quarters of the Texas State Capitol building with three university of Texas law professors assigned to the staff of the new law school.

After much debate and prodding, the state legislature appropriated three million dollars to create the Texas State University for Negroes (now Texas Southern University) and designated one hundred thousand dollars for the creation of a law school. With the appropria-

tion, Texas State University was evolving from a hastily contrived law school operating out of a basement in Austin to a growing university that was adding a liberal arts college, a graduate school, a school of pharmacy, and a law school with new facilities and a law library. These developments weakened the Sweatt case on the issue of physical inequality and put the plaintiff in a somewhat uncomfortable position of opposing remedial measures that would have the impact of enhancing and improving the quality of HBCU institutions that were criticized for academic shortcomings attributable to woeful funding from state legislatures. Because of the change in circumstances attributable to the finding appropriated by the state legislature for the African-Americans, the case was remanded to Judge Archer for a full evidentiary hearing.

At the hearing, Marshall worked diligently to develop a more precise record for appeal. He assembled an array of experts to testify at the hearing. Those experts included professors and deans from some of the most prestigious law schools in the country, including Rudy Rendenfield, the only person known to hold doctorate degrees in both anthropology and law. The experts testified that segregation had no scientific basis in public schools and that there was no scientific basis for the general assumption concerning the inherent intellectual inferiority of African-American students.

The university's legal team, led by Price Daniel, attempted to undermine the testimony of the expert witnesses presented by Marshall on cross-examination. The legal team also on cross-examination attempted to paint Sweatt as simply a pawn for the NAACP. A month after the conclusion of the hearing, Judge Archer ruled in the favor of the University of Texas. The case was appealed to the Texas Court of Civil Appeals. On February 25, 1948, the Texas Court of Civil Appeals affirmed the ruling of Judge Archer. Over the next two years, as the case labored through the appellate courts to the U.S. Supreme Court, state officials in Texas redoubled their efforts to buttress their contention that the new university for African-American students was in fact a credible higher education institution. The university had grown to enrollment of 2,300 between 1947 and 1950. Oral arguments in the appeal filed in the Sweatt case were heard on April 4, 1950, one day after oral arguments were made in the *McLaurin* case. The decision in the *Sweatt* case was announced on June 5, 1950, the same day as the decision was announced in *McLaurin*. In a unanimous decision, the U.S. Supreme Court ordered Heman Sweatt to be admitted into the University of Texas School of Law, despite the fact that the State of Texas had established and opened for African-Americans a law school

that arguably had state-of-the-art physical facilities. Creating a separate new law school for African-Americans failed to satisfy the state's constitutional mandate to provide equal protection for African-American residents of Texas because:

[t]he University of Texas Law School possess 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, traditions, and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the choice close.

It is also important to note that the Supreme Court in *Sweatt* found that the facilities available at the newly established law school were not equal in quantity or quality to those available at the University of Texas Law School. According to the Court, “[i]n terms of number of the faculty, variety of courses and opportunity for specialization, size of a student body, scope of library, availability of law review and similar activities, the University of Texas Law School is superior.”

The Supreme Court vindicated the NAACP's position in part when it determined that the frenetic and frantic efforts to enhance African American education under the “separate but equal” doctrine did not negate their constitutional duty to admit Heman Sweatt to the University of Texas Law School on an equal basis. While the court rejected the assertion by the state of Texas that the creation of a law school for African-Americans provided an equal opportunity to a legal education, the court refused to adopt the NAACP's position that the *Plessy vs. Ferguson* decision should be overturned. The *Sweatt* decision, however, put the NAACP closer to its goal of overturning the *Plessy* doctrine. If compelling African Americans to attend separate law schools denied African Americans certain intangible benefits that would be theirs in an integrated setting, the NAACP reasoned that the same might be true of segregation in elementary and secondary schools.

Similarly, when the U.S. Court ruled that George McLaurin was entitled to equal treatment within the classroom so that he could be involved in interactions within his white classmates, the *Plessy* doctrine surely was on shaky ground. Hence, if forcing a student, on account of his race, to sit just outside an all-white class violated that student's constitutional rights, how could forcing thousands of students on account of their race to sit in buildings separate from all-white schools not violate their rights?

With favorable decisions in *Sweatt* and *McLaurin*, the stage was finally set for a direct frontal assault on *Plessy*. Consequently, the groundwork had been laid for the groundwork for the case that would turn out to be a momentous assault on segregation in education - *Brown v. Board of Education*.

The more immediate impact of *McLaurin* and *Sweatt* was to narrow the basis on which racial discrimination in higher education could survive constitutional challenge. For example, in Missouri, a decision rendered by the Circuit Court of Cole County on June 27, 1950 ruled that Gus T. Redgel could enroll in a Master's degree program in Economics at the University of Missouri at Columbia because the University could not exclude African-American students who were residents from enrolling in programs that were unavailable to such students at Lincoln University. That court also ruled that Elmer Bell, Jr. and George Everett Horne had a right to be admitted as first-year engineering students in the School of Mines and Metallurgy of the University of Missouri at Rolla, Missouri because they could not pursue the same degree at Lincoln University as African Americans. Likewise in Delaware, a Delaware state trial court on August 9, 1950, issued a ruling allowing Brooks M. Parker and several other African-American undergraduate students to transfer from Delaware State College (Delaware State University), the state-supported HBCU, to the University of Delaware because Delaware State was "woefully inferior to the university of Delaware in the physical facilities available to and in the educational opportunities offered its undergraduates in the school of Arts and Sciences."

In Virginia, Gregory Swanson was admitted into University of Virginia in September 1950 as a result of federal court litigation. Swanson was an African American who desired admission into the law school at the University of Virginia and no HBCU in Virginia offered access to legal education to African-American students. Similarly, Virginia Polytechnic Institute (Now Virginia Tech University) admitted Irving L. Peddrew, III to study electrical engineering, because Virginia State University did not offer African-American students an opportunity to study electrical engineering. Rather than take a chance on being sued if it had denied Peddrew admission as an undergraduate student because of his race, the school admitted him in 1953. Virginia Polytechnic Institute became the first historically white undergraduate publicly funded institute in any of the states of the former Confederacy to admit an African-American undergraduate student. Peddrew was for African-American undergraduate students what Silas Hunt had been for graduate and professional students.

Unfortunately, in Maryland, despite the fact that the earliest victory to provide access to higher education opportunities for African-American students occurred in Maryland, officials in Maryland continued to engage in obstructionist tactics designed to thwart the progress of African-American students to desegregate higher education in Maryland. The University of Maryland sustained obstinacy and resistance to allowing African-American students to enroll in graduate and professional programs unavailable at an HBCU in Maryland continued for several years after losing its battle to prohibit the enrollment of Donal Murray into the University of Maryland Law School. Shortly after, the United States Supreme Court had issued rulings in *McLaurin* and *Sweatt*, Thurgood Marshall and Donald Murray scored a resounding victory on behalf of Parren J. Mitchell that led to the admission of Mitchell to the University of Maryland's main campus at College Park to pursue a Master's degree in Sociology. Mitchell, a WWII veteran, had earned an undergraduate degree at Morgan State College (now Morgan State University), a state-supported HBCU. Mitchell was denied admission because of his race. Mitchell sued the University and took his case to city court in Baltimore. In October 1950, the trial judge in Baltimore ordered the University of Maryland to admit him to the graduate program in Sociology.

Marshall and Murray also represented Hiram Whittle, another African-American resident of Baltimore, who wanted to study electrical engineering at the College Park campus of the University of Maryland. Whittle was denied admission on racial grounds. In January 1951, shortly before his trial was about to commence, the University decided to admit Whittle as the first African-American undergraduate student to be admitted at the University of Maryland. In 1951, the University of Maryland also admitted two African-American applicants to medical school - Donald Stewart and Roderick E. Charles, both residents of Baltimore.

The work of Charles Hamilton Houston, Thurgood Marshall and other attorneys who litigated higher education cases designated to provide access to higher education for African-Americans and to lay a foundation to overturn the *Plessy* doctrine was difficult and tedious. Unfortunately, Charles Hamilton Houston did not live to see the full fruit of his labor. He died in 1950, four years prior to the historic U.S. Supreme Court decision in *Brown v. Board of Education*, which overturned the *Plessy* doctrine and unanimously announced that legal segregation in public education was unconstitutional.

On the afternoon of May 17, 1954, United States Supreme Court Chief Justice Earl Warren announced the Supreme Court's deci-

sion in *Brown v. Board of Education*. History was made when Warren read the following words: "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. Warren then read the following historical words into the record: "We conclude-unanimously - that, in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

With the Supreme Court's decision in *Brown*, the NAACP had accomplished its goal of overturning *Plessy v. Ferguson*. *Plessy* was dead and no longer the law of the land. The NAACP viewed desegregation as the right of African-Americans as individuals to have legal access to white institutions on the same basis as any other citizen. In the 1955 re-arguments in the remedial phase of *Brown*, the NAACP attempted to persuade the Supreme Court to mandate specific deadlines for desegregation of schools. The Supreme Court however issued a vague ruling in what is now known as *Brown II*. The *Brown II* ruling was a vague pronouncement that lacked definite standards or timetables for desegregating education systems. Implementation related to desegregation in education was passed to lower federal courts which were given wide latitude to implement desegregation "in good faith" and "with all deliberate speed." The Court failed to elaborate on what it meant by "good faith" and "with all deliberate speed," and it failed to (1) issue any specific decrees, (2) promulgate any minimum steps required to satisfy the court's mandates, or (3) give timetables for the accomplishment of its directives. The court in *Brown II* even failed to provide specific relief to the plaintiffs.

The Court's failure to issue orders admitting the plaintiffs into all-white schools on an equal basis was clearly contrary to the approach used in graduate and professional school cases where the court issued orders to admit African-American students into all-white graduate or professional schools.

The Supreme Court's actions in *Brown II* created an opportunity for Maryland and other southern states to delay higher education desegregation efforts. In this vein, the State of Maryland engaged in foot dragging with respect to higher education desegregation.

The *Brown* decision led directly to minor policy changes in Maryland in that African-Americans could now seek admission into undergraduate degree programs in Maryland's historically white or traditionally white institutions (TWIs) of higher education. In 1954, those institutions included: the University of Maryland at College

Park; the University of Maryland at Baltimore; Towson State University; Frostburg State University; and Salisbury State University. Hence, in 1954 when *Brown I* was decided, the State of Maryland operated five TWI's and four HBCU institutions under its *de jure* segregated system of higher education. It is interesting to note that while Maryland during *Plessy de jure* era had a policy of segregated higher education, except where legal decisions required otherwise, private higher education institutions such as John Hopkins University, Loyola College, and St. John's College Annapolis began admitting African-American students in 1935. Hence, at the time of the *Brown I* decision, only a marginal number of students were admitted to publicly funded TWI's because they were only eligible for admission if the degree courses sought were not offered at one of the state's publicly funded HBCU institutions.

Following *Brown I* and *Brown II*, the State of Maryland did nothing more than merely lift the rule excluding African-American students from being admitted into and attending TWIs. Maryland officially ended *de jure* segregation in its public accommodations in response to the Civil Rights Act of 1964. While African-Americans were now able to utilize libraries, restaurants, and housing once unavailable to them because of their race and skin color, African-American enrollment in TWIs remained minimal.

In Maryland, the *de jure* era of segregation in higher education extended through 1969, when the federal government put the State of Maryland on notice that it operated an illegally segregated dual system of higher education. In fact, in a 2005 Maryland Attorney General opinion, the State of Maryland admitted that "there is no doubt that Maryland operated a *de jure* segregated public higher education system before 1969, when federal officials found the state in violation of Title VI and that some policies, such as program duplication at geographically proximate schools are traceable to the era."
