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## From Exclusion to Integration: The N.A.A.C.P.'s Legal Campaign Against Educational Segregation

By Mark Johnston

The African-American historical experience has been marked by a detrimental system of institutionalized slavery, years of demeaning legal segregation, and continued inequality in political, economic, and social opportunity. One of the most damaging and enduring forms of racial discrimination for African-Americans was the segregation of public schools. After years of legal challenges, the National Association for the Advancement of Colored People (N.A.A.C.P.) persuaded the Supreme Court to terminate this pernicious form of segregation in the case of *Brown v. Board of Education of Topeka Kansas*.

While *Brown* is almost universally viewed as a monumental victory for civil rights, scholarship from a variety of disciplines misinterprets the historical context of the decision.<sup>[1]</sup> The *Brown* case was neither novel nor isolated, but instead represented a long-standing effort by the N.A.A.C.P to terminate institutionalized segregation in the American education system. Starting in the 1920s, the N.A.A.C.P continuously challenged specific aspects of educational inequality in the courtroom. From graduate programs in Texas that refused to admit black applicants to school districts in California that forced Mexican-American students to attend school miles from their home, the N.A.A.C.P. legal team successfully targeted examples of educational segregation in the decades prior to the *Brown* decision. Though the *Brown* decision had more substantial implications than cases previously litigated by the N.A.A.C.P, the victory was one ruling in the organizations prolonged case-by-case campaign to combat racism in American schools. While the decision proved to be a monumental victory for the civil rights movement, African-Americans remain disproportionately represented in the most underachieving American schools.

### The Formation of the N.A.A.C.P. and the Legal Defense Fund

As America entered the twentieth century, issues of racial contention violently divided the nation. Race riots devastated a number of urban centers. Predominantly in the South, African-Americans became subjected to lynching and other forms of violent intimidation. While African-Americans were frequently compelled to live in fear, a class of educated, progressive, and often wealthy white and black Americans opposed this blatant racism. These progressives called for the creation of an organization that would advocate for the rights of all African-Americans and would fight the legal segregation imposed by many state and local governments.

In 1909, a group of mixed raced progressives organized a conference in New York City to discuss racism against African-Americans. Participants in the conference included such prominent African-Americans as W.E.B. Dubois and Ida B. Wells, while Florence Kelley and a number of other esteemed white social reformers also attended. After hearing hours of expert testimony on race relations, attendees of the summit passed a resolution to form the National Association for the Advancement of Colored People. They additionally voted on a constitution and

decided on a structure for the new organization. The founding objective of the N.A.A.C.P became, "to achieve equality of rights and eliminate race prejudice among the citizens of the United States."<sup>[2]</sup>

While any person could join the organization with an initial two-dollar donation, intellectually elite African-Americans and whites primarily dominated the N.A.A.C.P during its early years.<sup>[3]</sup> W.E.B. Du Bois, the first prominent African-American leader of the organization, represented the academic elite of the black community. Born into a free black family in Massachusetts, Du Bois became the first African-American to earn his Ph.D. from Harvard. Even prior to joining the N.A.A.C.P., Du Bois earned the reputation as one of the most renowned racial scholars in the country. His "talented tenth" thesis asserted that the top ten percent of African-Americans would advance the black community through their accomplishments and would concurrently catalyze civil rights reforms in the process. Du Bois also viewed expanded access to equal education as being essential to the achievement of racial equality. In an article published in 1903, Du Bois theorized, "the Negro race, like all races, is going to be saved by its exceptional men. The problem of education, then, among Negroes must first of all deal with the Talented Tenth; it is the problem of developing the Best of this race that they may guide the Mass away from the contamination and death of the Worst, in their own and other races."<sup>[4]</sup>

Du Bois's most significant contribution to the organization, however, was his formation of *The Crisis*, the monthly journal of the N.A.A.C.P. As editor-in-chief, Du Bois authored and recruited esteemed academics to submit articles about issues confronting African-Americans. The journal aimed to not only inform the American public about the horrors of racism, but also sought to report on stories and topics important to the black community. For example, in an article in the January 1920 issue of *The Crisis*, Du Bois endorsed the massive migration of African-Americans from the South to the North. He wrote, "in the south, on the other hand, the outbreaks occurring daily but reveal the seething cauldron beneath the unbending determination of the whites to subject and rule blacks, to yield no single inch of determination to keep Negroes as near slavery as possible."<sup>[5]</sup> Du Bois maintained direct control over the editorial board of the journal and his positions often clashed with other members of the N.A.A.C.P.<sup>[6]</sup> *The Crisis* became the primary avenue through which the N.A.A.C.P. communicated with their members. When the N.A.A.C.P. launched its legal campaign against segregation, *The Crisis* explained the constitutional polemic against racism to the public.

As circulation of *The Crisis* surpassed 20,000 readers by 1925, African-Americans responded to the increasing popularity of this publication by writing letters to the journal's editorial board.<sup>[7]</sup> While some of these letters expressed readers' opinions about articles published in *The Crisis*, many were personal testimonies to the racism against African-Americans. The substantial increase in the number of complaints of racial injustice persuaded the N.A.A.C.P to divert resources to the creation of a Legal Defense Fund.<sup>[8]</sup> Initially, the Legal Defense Fund was seen as achieving two goals. First, the N.A.A.C.P.'s attorneys could represent African-American plaintiffs and fight segregation through the judicial system. Second, the Legal Defense Fund provided opportunities for African-American lawyers to gain critical experience in litigation and become experts on the constitutional issues behind segregation. As the Legal Defense Fund came to fruition, the N.A.A.C.P. recruited top graduates from Howard University School of Law, the most esteemed black law school of the time. Many of these N.A.A.C.P. attorneys, including Thurgood Marshall, Charles Hamilton Houston, Spotswood Robinson, and Robert L. Carter, became landmark figures in the American legal system.

Marshall in particular demonstrated the superior legal acumen of the N.A.A.C.P. Staff. Born in Baltimore, Marshall excelled in high school and attended Lincoln University on full scholarship.<sup>[9]</sup> Determined to become a lawyer, Marshall applied to the University of Maryland School of Law. Although Marshall's academic standing made him a qualified candidate to attend the University of Maryland, he was denied admission because of his race. Marshall

was subsequently admitted to and attended Howard University School of Law. The connections he made with the N.A.A.C.P. at Howard inspired him to work for the organization.<sup>[10]</sup> Upon graduation, Marshall was litigating cases for the organization and even saw successes in his efforts to defend African-Americans convicted of crimes.<sup>[11]</sup>

Marshall's and the N.A.A.C.P.'s initial successes in the Courts were contrasted with the organization's inability to effectively lobby Congress to pass legislation. While the N.A.A.C.P. invested considerable resources in creating a lobbying network on Capitol Hill, this campaign resulted in no formative legislative achievements.<sup>[12]</sup> Throughout the twentieth century, the N.A.A.C.P. worked tirelessly to secure the passage of an anti-lynching bill. The closest the organization came was in 1922, when Representative L.C. Dyer sponsored a bill that classified lynching as a federal crime and imposed strict prison sentences on individuals convicted of racially motivated murder.<sup>[13]</sup> Although the Dyer Anti-Lynching Bill garnered the necessary support to pass the House of Representatives, a filibuster by Southern Senators prevented the legislation from earning a vote in the Senate.<sup>[14]</sup> The fate of the Dyer Bill exemplified the N.A.A.C.P.'s shortcomings in garnering Congressional support for civil rights legislation.

N.A.A.C.P. attorneys also recognized that many of the organization's positions lacked the support of the American public. Until the 1960s, a number of N.A.A.C.P. leaders admitted that the majority of white Americans supported or were indifferent to racial discrimination. In confronting educational racism through the judicial branch, the N.A.A.C.P. could nullify laws and restrictions that carried popular support among voters and their Congressional representatives.

### **The Legal Narrative of Educational Segregation**

Although the N.A.A.C.P. Legal Defense Fund was successful in many of their early attempts to defend African-Americans accused of crimes, the legal campaign to abolish educational segregation proved to be more complicated. After the N.A.A.C.P. earned their initial victories against educational segregation in the 1930s, the organization commenced a sustained effort to reverse more than half a century of legal precedent that favored segregationist policies.

The debate over the constitutionality of school segregation was indicative of a larger disagreement over the interpretation of the Fourteenth Amendment. Ratified in 1868, the Fourteenth Amendment represented an attempt by the large Republican majorities in Congress to secure the rights of newly emancipated African-Americans.<sup>[15]</sup> The Amendment guaranteed all persons born or naturalized in the United States certain privileges and immunities, extended all Americans due process protections, and called for equal protection under the law.<sup>[16]</sup> Though Congressional Republicans believed that the intentions behind the Fourteenth Amendment were apparent, Southern states blatantly refused to comply with the mandate of the federal government.

The Supreme Court first examined the Fourteenth Amendment in a case concerning the creation of state sanctioned monopolies. In response to massive public health concerns, the state legislature of Louisiana passed an ordinance that allowed for only one company to control all of the butcheries in the City of New Orleans. Facing massive layoffs, the largest union of butchers filed suit, claiming that Louisiana's actions had infringed their privileges and immunities. In *The Slaughterhouse Cases* of 1873, the Supreme Court recognized the legitimacy of the monopoly. Writing for the majority, Justice Samuel Miller stated, "The wisdom of the monopoly granted by the legislature may be open to question, but it is difficult to see a justification for the assertion that the butchers are deprived of the right to labor in their occupation."<sup>[17]</sup>

Even though *The Slaughterhouse Cases* examined the monopolization of the New Orleans meat industry, the ruling had lasting implications for civil rights. In the decision, the Court severely restricted the application of the privileges and immunities clause, thus providing a critical defeat to African-Americans. Justice Chase contended, "The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State."<sup>[18]</sup> While the privileges and immunities clause was intended as a grant of political protections for African-Americans, *The Slaughterhouse Cases* rendered this section of the Amendment extraneous.<sup>[19]</sup> Additionally, the Court considerably limited the authority of the federal government by concluding that Congress could not interfere with the policing powers of state and local governments. State governments cited this interpretation to justify their racially biased policies, arguing that segregation remained within their policing authority.

After restricting the applicability of the Fourteenth Amendment in *The Slaughterhouse Cases*, the Court next directly addressed civil rights in 1883. Along with ratifying the Thirteenth, Fourteenth, and Fifteenth Amendments, the strong Republican majorities in Congress passed supplemental legislation to promote civil rights. In 1875, Congress passed a civil rights bill that aimed to punish state and local governments that overtly segregated public accommodations. Upon President Grant's signature of the legislation, a number of Southern business owners sued the federal government. In 1883, the Court granted certiorari to five of these complaints in the *Civil Rights Cases*.<sup>[20]</sup> By an 8-1 margin, the Court struck down the Civil Rights Act of 1875. In his majority opinion, Justice Joseph Bradley questioned the legitimacy of any civil rights legislation by writing, "There were thousands of free colored people in this country before the abolition of slavery, enjoying all the essential rights of life, liberty, and property the same as white citizens; yet no one, at that time, thought that it was any invasion of their personal status as freemen because they were not admitted to all the privileges enjoyed by white citizens."<sup>[21]</sup> The *Civil Rights Cases* signified the first instance in which the Court blatantly rejected Congress's efforts to integrate public accommodations.<sup>[22]</sup>

The most devastating endorsement of segregation by the Supreme Court came in 1896. In *Plessy v. Ferguson*, the Court created a legal standard to determine the constitutionality of segregation. In the case, plaintiff Homer Plessy was arrested when he refused to vacate an all-white train car. Citing a deprivation of equal protection, Plessy appealed to the Supreme Court. By a 7-1 majority, the Court favored Louisiana's position, recognizing the ability of state governments to segregate public accommodations. In the majority opinion, Justice Henry Billings Brown asserted, "A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races."<sup>[23]</sup> Furthermore, he noted, "Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation."<sup>[24]</sup>

In permitting the State of Louisiana to segregate their train cars, the Court recognized the legal legitimacy of Jim Crow policies. Though 'separate but equal' became the law following the *Plessy* decision, Justice John Marshall Harlan's dissenting opinion proved to be critical in the development of civil rights litigation.<sup>[25]</sup> Most famously, Justice Harlan argued, "There is no caste here. Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law."<sup>[26]</sup> Justice Harlan's words later inspired the N.A.A.C.P in their campaign to counteract the detrimental consequences of school segregation.

By the end of the nineteenth century, the Court invoked the 'separate but equal' doctrine established in *Plessy* to protect the segregation policies of local school districts. In *Cummings v. Richmond Board of Education* (1899), the Court indirectly supported the constitutional legitimacy of racially separated schools. In this case, the State of

Georgia levied a property tax to fund public schools. The taxpayer money was exclusively appropriated to white schools and a number of African-Americans sued, claiming a violation of equal protection. The Court ruled in favor of the State of Georgia, finding that the federal government lacked the authority to control the allocation of local tax dollars.<sup>[27]</sup> The majority contended, "The education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."<sup>[28]</sup>

The Court further recognized the constitutionality of public school segregation when nine justices unanimously upheld a law that barred Chinese students from attending public schools in Mississippi. In the majority opinion, Chief Justice Taft put forth, "where the issue is as between white pupils and the pupils of the yellow races. The decision is within the discretion of the state in regulating its public schools, and does not conflict with the Fourteenth Amendment."<sup>[29]</sup> The Supreme Court's willingness to affirm the legality of school segregation alarmed the N.A.A.C.P. Legal Defense Fund. The palpably destructive impact of school segregation persuaded the N.A.A.C.P. Legal Defense Fund to prioritize school integration.

### **The Commencement of the Legal Campaign against Segregation**

To begin their legal campaign against educational segregation, the N.A.A.C.P. Legal Defense Fund sought to challenge a law that was palpably in violation of the Fourteenth Amendment and thus would result in almost certain legal victory.<sup>[30]</sup> N.A.A.C.P. staff members thus targeted the segregated admissions policies of a number of prominent state universities. They recognized that opposition to school integration predominantly resonated with the parents of young white children. Many of these parents believed that placing elementary age students in mixed race classrooms corrupted the psychological development of white students.<sup>[31]</sup> Since college and graduate students were older and presumably more mature, N.A.A.C.P. leaders contended that the integration of these institutions would be less controversial.<sup>[32]</sup>

N.A.A.C.P. lawyers targeted the segregation policy of the University of Missouri to commence their legal campaign. While the Legal Defense Fund was prepared to appeal their case to the Supreme Court, Missouri was more moderate than many southern states, and attorneys asserted that the circuit court could potentially rule in their favor.<sup>[33]</sup> In their inaugural school segregation case, the N.A.A.C.P. represented plaintiff Lloyd Gaines, a college educated African-American. Gaines graduated in 1935 from Lincoln University, a college funded by the State of Kansas for African-American students. Upon completion of his undergraduate degree, Gaines applied to University of Missouri School of Law, the only law school within the state. After Gaines filed suit, claiming a violation of equal protection, the State of Missouri offered to finance his legal education in a neighboring state. The N.A.A.C.P. continued to pursue the case, arguing that Missouri was legally mandated to provide some opportunity for African-Americans to gain a legal education.

The State Supreme Court ruled in favor of Missouri, citing a state constitutional provision, which read, "The state constitution provides that separate free public schools shall be established for the education of children of African descent."<sup>[34]</sup> The opinion of the State Supreme Court highlighted the achievement of Lincoln University and labeled Missouri as a leader in African-American education. The Missouri Court stated, "It is said that Missouri is a pioneer in that field and is the only State in the Union which has established a separate university for Negroes on the same basis as the state university for white students."<sup>[35]</sup> Justices on the Missouri Supreme Court recommended the development of a law school at Lincoln University, but installed no legal mandate to create the institution. The court additionally recognized the out-of-state subsidy as sufficient until Missouri developed a legal

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institution for African-Americans. The Court's ruling only briefly addressed the constitutional merits behind the legal complaint, further persuading the N.A.A.C.P. to appeal the case to the Supreme Court.

The Supreme Court heard oral arguments for *States of Missouri Ex. Rel Gaines v. Canada* in November of 1938. The N.A.A.C.P. appointed Thurgood Marshall to litigate Gaines's position before the High Court. On December 2, 1938, Chief Justice Charles Evans Hughes delivered the opinion in favor of Gaines. Writing for a 7-2 majority, Hughes denounced Missouri, declaring that the State failed to provide African-Americans essential services. He argued, "We find it impossible to conclude that what otherwise would be an unconstitutional discrimination, with respect to the legal right to the enjoyment of opportunities within the State, can be justified by requiring resort to opportunities elsewhere. That resort may mitigate the inconvenience of the discrimination but cannot serve to validate it."<sup>[36]</sup> Hughes elaborated, "It is manifest that this discrimination, if not relieved by the provisions we shall presently discuss, would constitute a denial of equal protection."<sup>[37]</sup>

The Chief Justice rejected the notion that subsidizing legal education in neighboring states was sufficient to fulfill the 'separate but equal' doctrine. He recognized that while this program was established as a temporary legislative response until the State of Missouri developed a legal institution for African-Americans, the remedy had transformed into a permanent solution. The Chief Justice alleged, "While in that sense the discrimination may be termed temporary, it may nevertheless continue for an indefinite period by reason of the discretion given to the curators of Lincoln."<sup>[38]</sup> While the *Gaines* decision was a critical legal victory for the N.A.A.C.P., the majority opinion still recognized the 'separate but equal' doctrine and refrained from addressing the constitutional merits of segregation in higher education. Additionally, southern states largely disregarded the *Gaines* ruling. Although the decision represented a clear mandate directed at segregated universities, many southern states continued to offer few opportunities for African-Americans in higher education.

The N.A.A.C.P. looked to expand on the *Gaines* decision; hoping to persuade the Court to produce a more decisive ruling on segregated university admissions policies. While the N.A.A.C.P. was active at the appellate level, another education case did not reach the Supreme Court until the late 1940s. In the 1948 case of *Sipuel v. Board of Regents of University of Oklahoma*, the Court further expanded on the *Gaines* ruling. Ada Lois Sipuel was a recent graduate of Howard University and had both professional and family ties to the N.A.A.C.P.<sup>[39]</sup> Upon graduation, Sipuel moved to Oklahoma, where she applied to University of Oklahoma School of Law. University of Oklahoma, the only law school in the state, denied Sipuel admission based on its segregation policy. The State of Oklahoma refused to extend Sipuel any opportunity for a legal education and refrained from offering her a subsidy to attend an African-American institution in another state. Both the district and appellate courts in Oklahoma ruled in favor of the State. Although the *Gaines* decision provided clear precedent, the lower courts refused to order the University of Oklahoma to admit Sipuel. The district and appeals Courts attacked the *Gaines* ruling as an infringement of states' rights and criticized the decision as a substantial intrusion by the federal government.<sup>[40]</sup>

The Supreme Court heard oral arguments on January 7, 1948. N.A.A.C.P. attorneys Thurgood Marshall and Charles Hamilton Houston argued on behalf of Sipuel. Only five days after oral argument, the Court delivered a *per curiam* opinion favoring Sipuel and upholding the *Gaines* standard.<sup>[41]</sup> The Court held, "The petitioner is entitled to secure legal education afforded by a state institution. To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the State. The State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group." In favoring the plaintiff's position, the Supreme Court emphasized the need for state governments to provide African-Americans some educational opportunity. Since the State of Oklahoma refused to even offer black students a subsidy in neighboring states, the Court promptly applied the *Gaines*



standard. The State of Oklahoma still declined to alter its admissions policies. This blatant state sponsored insubordination demonstrated the limitations of the N.A.A.C.P.'s legal campaign against segregation. Even in the infancy of the N.A.A.C.P.'s legal campaign, it became clear that the Supreme Court was limited in its ability to enforce and implement decisions.

By the end of the 1940s, the N.A.A.C.P. earned two key victories in their sustained effort to defeat educational segregation. States were now required to offer African-American students some opportunities in higher education. While black students were still compelled to sit in the back of university lecture halls and were frequently barred from studying in the library, the *Gaines* and *Sipuel* decision provided the precedent needed for the N.A.A.C.P. to challenge the disparate levels of educational quality. Concurrent to the *Gaines* and *Sipuel* decisions, the N.A.A.C.P. was litigating a number of educational discrimination cases in both state supreme courts and federal appeals courts. These decisions provided the foundation for the cases that the N.A.A.C.P. would successfully litigate in the 1950s.

### **Fighting Segregation at the Appellate Level**

The decision in *Missouri ex rel Gaines v. Canada* was the first instance where the Supreme Court restricted a state's ability to impose educational segregation. While the *Gaines* decision represented an incremental victory, the ruling gave way to future challenges by the Legal Defense Fund. Prior to the *Brown* decision, the N.A.A.C.P. earned a number of more decisive victories against educational segregation at the state and appellate levels. Since certain states and geographic regions of the country were more sympathetic to civil rights, the Legal Defense Fund was able to persuade a number of lower courts to strike down the segregation policies of local governments and individual school districts. These lower court decisions provided a legal foundation for the comprehensive victories of the N.A.A.C.P. in the 1950s, including the landmark decision in *Brown*.

The first key victory for the N.A.A.C.P. at the appellate level came in 1936, two years prior to the *Gaines* decision. N.A.A.C.P. lawyers were persuaded to take the case of Donald Gaines Murray, an African-American who maintained strong ties to the black community in Baltimore, Maryland.<sup>[42]</sup> Additionally, Murray's biography strongly resonated with Thurgood Marshall, who had become a leader within the Legal Defense Fund.<sup>[43]</sup> Murray was born in Baltimore and graduated among the top of his class from Amherst College. Upon graduation, Murray applied for admission to the University of Maryland School of Law, but was rejected because the institution forbade African-American students from matriculating. The State of Maryland offered scholarships for African-American students to attend law school in another state, but did not house a black law school. Representing Murray, the N.A.A.C.P. brought suit against the State of Maryland citing a violation of equal protection.

The district court ruled in favor of the N.A.A.C.P., finding that African-Americans had been denied an opportunity for equal education. The Court held that Maryland failed to meet the 'separate but equal' standard because of the refusal to offer black students any opportunity to receive a legal education within the state. Harry Nice, the newly elected governor of Maryland, was largely expected to accept the decision because his electoral victory was credited to strong support among African-American voters.<sup>[44]</sup> However, in what many African-Americans viewed as betrayal, Nice appealed the district court's findings. Many residents of Baltimore, including Mayor Howard Jackson, were opposed to the governor's actions and vocally supported the integration of higher education in Maryland.<sup>[45]</sup>

When *Pearson et al. v. Murray* reached the Maryland Court of Appeals, N.A.A.C.P. attorneys Marshall and Charles Hamilton Houston argued the case. Marshall and Houston did not directly attack the constitutionality of the

'separate but equal' standard, but instead contended that the University of Maryland's admissions policy failed to meet the guidelines established by the Court in the *Plessy* decision. On January 15, 1936, the Court affirmed the ruling of the district court. The Court resolved, "Separation of the races must nevertheless furnish equal treatment. The constitutional requirement cannot be dispensed with in order to maintain a school or schools for whites exclusively."<sup>[46]</sup> Furthermore, the Court rejected the argument that the University of Maryland was outside of the jurisdiction of the State Assembly by writing, "There is no escape from the conclusion that the school is now a branch or agency of the state government. The state now provides education in the law for its citizens. And in doing so it comes under the constitutional mandates applicable to the actions of the states."<sup>[47]</sup> According to the Court of Appeals decision, the subsidizing of legal education in a neighboring state did not meet the "separate but equal standard." The justices stated, "The court is clear that this rather slender chance for any one applicant at an opportunity to attend an outside law school, at increased expense, falls short of providing for students of the colored race facilities substantially equal to those furnished to the whites in the law school maintained in Baltimore."<sup>[48]</sup> The Maryland decision demonstrated to the N.A.A.C.P. the potential success of educational litigation in states that were more supportive of civil rights protections.

The N.A.A.C.P.'s second key victory at the appellate level came in California almost a decade after the Maryland case. While Maryland remained a key location for the N.A.A.C.P., the organization struggled to establish itself on the west coast.<sup>[49]</sup> By 1946, California had developed a diverse population. The State's close vicinity to the Mexican border attracted a number of Latino-American residents, while the surplus of wartime jobs caused a substantial migration of African-Americans to Los Angeles and Oakland.<sup>[50]</sup> Orange County, which was inhabited by a number of Latino-American residents who worked in the nearby orange groves, maintained a segregated elementary school system. In 1946, a group of five Latino-American parents joined together to challenge the segregation policy of the Orange County School District.

The case of *Mendez v. Westminster* was the first time in which a plaintiff directly challenged the constitutionality of segregated schools. *Gaines* and the Maryland decision were cases in which the state failed to provide African-Americans an opportunity to receive any higher education. In *Mendez*, Latino-American students were extended an opportunity to receive an education, but were required to attend segregated schools. The parents argued that while the quality of education at the two schools may appear congruent, segregation inherently generated inequality.

The group of parents initially brought their suit to the federal district court located in Los Angeles. The district court ruled in favor of Mendez, citing a deprivation in the equal protection of both the Latino-American students and their parents. Justices on the district court ruled, "it is also established by the record that the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists."<sup>[51]</sup> Members of the district court also recognized that Latino-American students would benefit from attending a racially diverse elementary institution. The opinion stated, "The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation, and that commingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals."<sup>[52]</sup> Governor Earl Warren, seen as moderate on civil rights issues, appealed the district court holding to the Ninth Circuit. The Ninth Circuit affirmed the decision of the lower court by using a much more conservative constitutional interpretation. Justices on the Ninth Circuit ruled that since the statute providing the state assembly the authority to segregate schools only called for the separation of Asian students, the legislation was unconstitutional as applied to Latino-Americans. The decision proved to be monumental and resulted in Governor Warren signing legislation that integrated all California public schools.



Although the N.A.A.C.P. did not directly represent the five Latino-American families, the organization filed a brief in favor of the parent's position. The brief asserted, "The Fourteenth Amendment to the Federal Constitution was designed primarily to benefit the newly freed Negro, but its protection has been extended to all persons within the reach of our laws. By its adoption Congress intended to create and assure full citizenship rights, privileges and immunities for this minority as well as to provide for their ultimate absorption within the cultural pattern of American life."<sup>[53]</sup> N.A.A.C.P. attorneys Marshall and Carter also testified before the Ninth Circuit on their organization's opposition to educational segregation. These arguments were very similar to the line of questioning imposed by the Supreme Court seven years later in *Brown*.

The ability of the N.A.A.C.P. to earn substantial legal victories at the appellate level demonstrated the changing view of school segregation. While local and state governments throughout the South remained determined in their opposition to integration, the decisions in California and Maryland demonstrated the shifting opinion of the nation. From 1936 to 1946, the Supreme Court declined to grant *certiorari* to cases considering the constitutionality of school segregation. However, The *Mendez* case soon compelled the Supreme Court to clarify its position on school segregation, which became a divisive domestic political issue in the 1950s.

### **The Cases of the Post War Era**

The conclusion of World War II marked a new dawn for the civil rights movement. While the War and its direct consequences consumed national attention during the 1940s, discrimination in housing, the workplace, and education started to garner the interest of the American public.<sup>[54]</sup> Although the 1954 victory in *Brown* became the crowning achievement for the N.A.A.C.P., the Legal Defense Fund successfully litigated a number of key cases in the early years of this decade. The decisions that immediately preceded *Brown* were essential to the formation of the constitutional argument that overturned the segregation of public schools in 1954. Additionally, these cases demonstrated to the N.A.A.C.P. that the Supreme Court favored equal opportunity in the classroom and that the justices were willing to extend legal protections to African-American students across the nation.

The first major case of the 1950s brought into question the segregation policy at the University of Texas School of Law. When plaintiff Heman Sweatt applied to the law school in 1949, the University of Texas denied him admission solely because of the color of his skin. Sweatt sued the State of Texas, arguing that the state must provide him some opportunity to acquire a legal education. While the case was proceeding through the lower court, the State of Texas opened a separate law school solely for African-American students. Although the institution was tailored to African-American students, there were disparities between the new law school and the University of Texas.<sup>[55]</sup> Sweatt continued to pursue the case, stating that the palpable inequalities in educational opportunity failed to meet the 'separate but equal' standard. Both the district and state appellate courts ruled in favor of Texas, asserting that since the plaintiff was provided some opportunity to receive an education, the state could continue to segregate.

Recognizing the opportunity for a critical victory, the N.A.A.C.P. appealed the case to the Supreme Court. Robert L. Carter was appointed lead attorney for the *Sweatt* case, while Thurgood Marshall provided substantial support in research and litigation.<sup>[56]</sup> Carter and Marshall attempted to prove to the Court that the considerable disparities in resources between the African-American and state institutions hindered the academic potential of African-American students.<sup>[57]</sup> Additionally, the N.A.A.C.P. contended that equality was an essential component of an effective legal education and that both black and white attorneys would benefit from exposure to other races and cultures.<sup>[58]</sup>

In 1950, the Court ruled unanimously in favor of *Sweatt*. The justices held that the evident differences in the quality of schools failed to provide African-Americans an equal opportunity in obtaining a legal education. Writing for the majority, Chief Justice Fred Vinson asserted, "Whether the University of Texas Law School is compared with the original or the new law school for Negroes, we cannot find substantial equality in the educational opportunities offered white and Negro law students by the State."<sup>[59]</sup> Vinson elaborated, "Petitioner may claim his full constitutional right: legal education equivalent to that offered by the State to students of other races. Such education is not available to him in a separate law school as offered by the State."<sup>[60]</sup> According to the *Plessy* decision, for segregation to be constitutionally valid, the State of Texas had to demonstrate that they made a substantial effort to create equal opportunities for both races. While this notion of equality in accommodations was largely disregarded throughout the Jim Crow South, the undeniable disparities in the *Sweatt* case persuaded the Court to act.

The Court also agreed with the N.A.A.C.P.'s argument that diversity was essential to an effective legal education. The opinion stated, "The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned."<sup>[61]</sup> This portion of the opinion was an essential component of the N.A.A.C.P.'s argument in *Brown*. In *Sweatt*, the justices acknowledged that segregated education had an adverse effect on students and that an integrated classroom was more beneficial to students of both races. The Court subsequently applied this interpretation in the *Brown* case.

The second key decision in the 1950s was argued as a companion case to *Sweatt*. In 1949, George McLaurin applied to a doctorate program in education at the University of Oklahoma. McLaurin had received his master's degree there and was admitted to the Ph.D. program. Upon matriculation, McLaurin faced severe segregation within the school; being forced to sit in an assigned seat, eat in a separate section of the cafeteria, and prohibited from using the library during certain hours. McLaurin sued the University, citing a deprivation of equal protection. While the state provided McLaurin an opportunity to receive an education, the plaintiff argued that the intense level of segregation present at University of Oklahoma significantly diminished its quality. As in the *Sweatt* case, the lower courts in *McLaurin* ruled against the N.A.A.C.P., finding that the 'separate but equal' standard solely mandated that states provide African-Americans some educational opportunity.

The N.A.A.C.P. invoked a similar argument in the *McLaurin* case. Attorneys Carter and Marshall asserted that the segregated opportunities at the University of Oklahoma not only provided McLaurin an inferior education, but also created a hostile psychological environment for students.<sup>[62]</sup> Additionally, N.A.A.C.P. attorneys alleged that programs teaching education should reflect a diverse and integrated student body. The Legal Defense Fund argued that since education was a critical aspect in human development, teachers should be compelled to experience and work with a variety of people.

The Court largely agreed with the N.A.A.C.P. In a unanimous opinion, the nine justices ruled in favor of McLaurin and ordered the University of Oklahoma to terminate their segregationist practices. In the majority opinion, Chief Justice Vinson wrote, "But they signify that the State, in administering the facilities it affords for professional and graduate study, sets McLaurin apart from the other students. The result is that appellant is handicapped in his pursuit of effective graduate instruction."<sup>[63]</sup> Vinson also highlighted the importance of diversity in higher education. He stated, "Our society grows increasingly complex, and our need for trained leaders increases correspondingly. Appellant's case represents, perhaps, the epitome of that need, for he is attempting to obtain an

advanced degree in education, to become, by definition, a leader and trainer of others." [64] Vinson continued, "Those who will come under his guidance and influence must be directly affected by the education he receives. Their own education and development will necessarily suffer to the extent that his training is unequal to that of his classmates. State-imposed restrictions which produce such inequalities cannot be sustained." [65] *McLaurin* further expanded the Court's limitation on educational segregation. While the University of Oklahoma initially offered the plaintiff an opportunity to receive an education, the Court ruled that since the education provided was undeniably unequal, the policy was unconstitutional. The Court's opinion in *McLaurin* was indicative of the justices' growing sympathies for civil rights and in particular, the integration of American schools.

Both the *Sweatt* and the *McLaurin* decisions represented the gradual progression of the Court's view of segregation. In 1896, the Court provided a devastating endorsement of institutionalized racism and the Jim Crowe discrimination that characterized American race relations until the 1960s. Fifty-four years later, the Supreme Court unanimously struck down segregated institutions of higher education. This transformation in interpretation of segregation resulted from the N.A.A.C.P.'s persistent determination to combat educational racism. After the two 1950 decisions, the Court retained the constitutional precedent necessary to provide a landmark defeat to segregation.

### **The Brown Decision: The Climax of the Legal Campaign**

Throughout the 1940s, the N.A.A.C.P. legal team searched for cases that would provide a decisive defeat to educational racism. Prior to *Brown*, the N.A.A.C.P.'s legal campaign against school segregation restricted the ability of states, universities, and local school districts to institute certain racially biased policies. However, many leaders within the organization viewed the continued segregation of the nation's elementary schools as detrimental to students of all races and backgrounds. [66] From the early years of the organization, the N.A.A.C.P. received numerous letters explaining the inconvenience and personal degradation caused by segregated elementary schools. [67] N.A.A.C.P. attorneys were determined to target segregation in the nation's primary schools, but acknowledged that a legal precedent needed to be established that questioned the constitutionality of this form of racism. While certain discriminatory policies lost popular support, including the segregation of the armed forces and racism in higher education, the American public remained more sympathetic to racially separated elementary schools.

In 1951, the N.A.A.C.P. agreed to represent a number of parents in Topeka, Kansas in an attempt to overturn that school district's segregation policy. Oliver Brown, whose name appeared on the legal paperwork because it was first in the alphabetized list of plaintiffs, was the parent of Linda Brown, a third-grade student in the Topeka School District. While Linda Brown resided only blocks away from the nearest white elementary school, the Topeka School District's policy compelled her to attend a black school that was more than three miles away. [68] The N.A.A.C.P. accepted the class-action suit filed by Brown and twenty other parents, and subsequently brought the case before the Federal District Court of Kansas in 1951. The official complaint of Brown became:

"The denial to infant plaintiffs, solely because of race, of educational opportunities equal to those afforded white children at schools situated in the City of Topeka, Kansas, is in contravention of the Fourteenth Amendment to the United States Constitution as being a denial of the equal protection of the law." [69]

On August 3, 1951, the three-judge panel ruled in favor of the Topeka School District. While the Federal District Court did not directly comment on the merits of segregation, the Court asserted that the school district complied

with the 'separate but equal' standard established in *Plessy v. Ferguson*. After the N.A.A.C.P. acknowledged the improbability of gaining legal victory locally, the Legal Defense Fund appealed to the Supreme Court.

When the Supreme Court granted certiorari to *Brown* in 1952, the case represented only one of five lawsuits, all of which were litigated by N.A.A.C.P. attorneys and directly challenged the constitutionality of school segregation. N.A.A.C.P. attorney Robert L. Carter represented the Topeka parents before the High Court. On December 9, 1952, oral arguments commenced. While the justices interrogated Carter about the history of the Fourteenth Amendment, relevant precedent, and proposed hypothetical legal situations, Carter was given an unusually lengthy period of time to respond and elaborate on the justices' questions.<sup>[70]</sup> Carter's polemic was precedent heavy and he utilized every opportunity to remind the justices of past instances in which the Court struck down segregation in the education system. The Legal Defense Fund litigated most of the cases cited by Carter. In response to a question posed by Chief Justice Vinson, Carter replied, "We believe that the Court below was wrong in this conclusion. We think that the rules of law applicable to *McLaurin* and *Sweatt* do apply, and that there are no decisions of this Court which require a contrary result."<sup>[71]</sup> Carter's argument reinforced some of the justices' existing skepticism of segregation. In his questioning of the Kansas Attorney General Paul Wilson, Justice Burton disputed, "Don't you recognize it as a possible that within seventy-five years the social and economic conditions and the personal relations of the nation may have changed so that what may have been a valid interpretation of them seventy-five years ago would not be a valid interpretation of them constitutionally today?"<sup>[72]</sup> While the Court questioned Carter about constitutional precedent, the justices indicated clear skepticism of the State of Kansas's argument.

From the transcript of the original oral arguments, N.A.A.C.P. attorneys detected many of the justices' skepticism regarding the legality of elementary school segregation. However, the critical nature of the constitutional issue in the case persuaded the justices to order re-argument in a special October 1953 term.<sup>[73]</sup> The justices declared that both attorneys needed to clarify their arguments on the history of the Fourteenth Amendment, the intent of its authors, and how the Court's interpretation of the text had shifted since 1868. Following the news of re-argument, N.A.A.C.P. attorneys amplified their research efforts. The organization convened a conference during the summer of 1953 to discuss the legal issues at hand in the case.<sup>[74]</sup> At the meeting, N.A.A.C.P. attorneys and members agreed to maintain their argument that the Court's past restrictions on segregation rendered the racial separation of elementary schools unconstitutional. The N.A.A.C.P. leadership additionally wanted to keep members informed about the potential implications of the *Brown* decision.

Also in the summer of 1953, the Court experienced a key change in membership. On September 8, 1953, only weeks before the scheduled re-argument of the *Brown* case, Chief Justice Vinson unexpectedly died of a heart attack. Vinson was the Supreme Court nominee of President Harry Truman and was viewed as more sympathetic to civil rights. At the time of Vinson's death, Republican President Dwight Eisenhower had only served in office for nine months and his civil rights policy remained largely undetermined. After the death of Vinson, Eisenhower quickly nominated California Governor Earl Warren to become the Chief Justice. In 1952, Warren was considered a front-runner for the Republican nomination for President. While he was nationally known as a progressive Republican, the N.A.A.C.P. expressed uncertainties about Warren's mixed record on civil rights.<sup>[75]</sup>

When the Court held re-argument with the new Chief Justice, the primary question became Congressional action. Members of the Court apparently favored the N.A.A.C.P.'s argument, but were skeptical of the Court's role in implementing school segregation. The justices looked to Section V of the Fourteenth Amendment, which delegated oversight powers to Congress for the implementation of the Equal Protection Clause. In oral arguments, Justice Jackson questioned, "Whether the Amendment, with what light you can throw on it, makes it appropriate

for judicial power, after all that has intervened, to exercise the power instead of leaving it to Congress?"<sup>[76]</sup> Thurgood Marshall, now litigating the N.A.A.C.P.'s position before the justices, contended that the Court had already regulated the practices of schools in their previous decisions. He stated, "No, sir; I only say that the *McLaurin* case does not embrace the separate but equal doctrine. I think in *Sweatt v. Painter*, the truth of the matter is that the decision was able to find that these intangibles produced inequalities."<sup>[77]</sup> Marshall affirmed that since *Fletcher v. Peck*, the Court had provided effective oversight over state and local government without the assistance of Congress.<sup>[78]</sup> The Court invoked a similar line of questioning to the State of Kansas, whose attorneys asserted that the Supreme Court and potentially Congress would be overstepping their authority in regulating the practices of local school districts. Thus, the ability of the N.A.A.C.P. attorneys to provide a line of cases supporting integration prompted the Court to disregard their reservations about overstepping Congress's authority. In other words, by 1954, the N.A.A.C.P. had created a line of cases that persuaded the Supreme Court to abandon the disparaging 'separate but equal' standard.

### **The Incomplete Aspirations of the N.A.A.C.P**

The N.A.A.C.P.'s legal campaign against educational segregation largely concluded with the *Brown* decision in 1954. While the N.A.A.C.P. continued to use the judicial system to advocate for civil rights, many local and state governments aimed to delay school integration. The effects of school segregation thus remain apparent in contemporary society. From dropout rates to college enrollment, the disparities that the N.A.A.C.P. sought to combat through the courts continue to plague the American school system today. Although the legal campaign against educational racism achieved its immediate goals of overturning *de jure* school segregation, the efforts of the N.A.A.C.P. testify to the limitations of the judicial branch and the depth of *de facto* discrimination present in America's education system. While *Brown* and the cases that preceded it were undoubtedly transformative, legal action alone could not terminate the racism ingrained in America's schools and society.

The N.A.A.C.P. Legal Defense Fund was irrefutably successful in creating a line of cases that transformed the constitutional precedent on segregation; yet, discrimination remains extremely prevalent in American schools. This demonstrated the palpable limitations of the judicial branch and more specifically, the Supreme Court. While the Legal Defense Fund may have seen their legal campaign as the ultimate remedy to educational segregation, the framers of the Constitution clearly intended for the Supreme Court to have restricted authority. In *Federalist 78*, Alexander Hamilton explained, "Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them."<sup>[79]</sup> Although Marshall and many other N.A.A.C.P. attorneys were experienced constitutional scholars, they overlooked the limitations of judicial authority. These attorneys did not foresee the political and social battle that would follow a successful legal campaign to overturn segregation. While the Supreme Court made their rulings, educational culture needed reform and the N.A.A.C.P. appeared unprepared to advocate for the necessary changes.

Along with the limitations of judicial power, the N.A.A.C.P.'s legal campaign verified the intensity of the racism in the American school system. Almost a century of legally mandated segregation created massive disparities in numerous aspects of education. For years, black students were provided outdated textbooks, forced into crowded classrooms, and were denied the resources and educational support that their white peers received. Many of the first students to enter an integrated classroom were frustrated because they found themselves multiple grade levels behind their peers.<sup>[80]</sup> While African-American achievement in schools marginally increased throughout the

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1960s and 1970s, test scores and other indicators of academic accomplishment reached a plateau in the 1980s.<sup>[81]</sup>

A multitude of educational data confirms that the racial achievement gap continues to expand in numerous school districts across the nation. For example, consistently high test scores and substantial student resources have persuaded the federal government and *Education Week* to rank Maryland schools as the best in the nation. However, in Baltimore Public Schools, the largest school district in the State and a predominantly African-American district, 80 to 85 percent of students are considered high need and test below grade level.<sup>[82]</sup> Legal remedies have thus far failed to close the achievement gap. Civil rights organizations, including the N.A.A.C.P., have attempted to combat this *de facto* discrimination by supporting a variety of public policies that have been effective in improving the performance of minority students.<sup>[83]</sup> School districts like Baltimore have persuaded many social scientists to argue that the N.A.A.C.P.'s legal campaign against educational discrimination was largely ineffective.

Additionally, decades of residential discrimination caused *de facto* segregation by neighborhood. Since African-Americans were frequently quarantined to one neighborhood or a section of town, black students were isolated to certain schools.<sup>[84]</sup> While the N.A.A.C.P. successfully challenged segregated housing initiatives, many African-American families remained hesitant to move into historically white neighborhoods and school districts.<sup>[85]</sup> Although black families may have been legally permitted to live in any neighborhood, African-Americans often faced ostracism or were physically threatened by residents of traditionally segregated neighborhoods.<sup>[86]</sup>

Although the legal campaign against school segregation failed to resolve the issue of educational racism within the American school system, it served as a major catalyst to the civil rights movement. While World War II caused some reconsideration of race in America, the legal campaign against segregation proved to black activists that the Supreme Court was sympathetic to the cause of civil rights.<sup>[87]</sup> The N.A.A.C.P. soon initiated public campaigns of civil disobedience to spread their message of integration throughout the country and to generate legal challenges to blatantly segregated policies. Only a year after the *Brown* decision, Rosa Parks, an African-American woman who served as secretary for the Montgomery Chapter of the N.A.A.C.P., refused to vacate her seat on a segregated bus. Following her arrest, the N.A.A.C.P. coordinated an effort with other civil rights organizations to launch a massive boycott of the public transportation system throughout Montgomery. On November 13, 1956, the Supreme Court upheld a lower court ruling, which ordered the desegregation of Montgomery buses. The legal campaign against educational racism created the momentum that persuaded the N.A.A.C.P. to publicly challenge segregated busing in Montgomery. Furthermore, the Montgomery bus boycotts further demonstrated the willingness of the Supreme Court to protect the civil rights of African-Americans and strike down blatantly discriminatory state and local laws.

Along with providing a catalyst to the civil rights movement, the N.A.A.C.P.'s effort to combat segregation through the Courts caused the Supreme Court to become the largest ally of the civil rights movement from 1938 to 1978.<sup>[88]</sup> Even after *Brown* and the Montgomery decision, the Court blocked attempts by state and local governments to reinforce segregationist policies. A prime example of the Court's willingness to support civil rights came in the 1967 case of *Loving v. Virginia*, where nine justices struck down anti-miscegenation laws in a number of states and recognized a right to marriage for African-Americans.<sup>[89]</sup> Additionally, when Congress eventually took decisive action and passed the Civil Rights Act of 1964 and the Voting Rights Act of 1965, the Supreme Court recognized the legislation as constitutional. In *Heart of Atlanta Motel v. United States*, the Court found that commerce clause authority allowed Congress to terminate segregation in both public and private accommodations, thus upholding the Civil Rights Act of 1964. While the Court appeared willing to act on behalf of



civil rights, the limited power of the judicial branch prevented these decisions from erasing the profound racism in American society.

With the *Brown* decision, the N.A.A.C.P. undoubtedly achieved their short-term goals of reversing the constitutional precedent on the segregation of American Schools. However, gaining a number of legal victories did not translate into the educational equality that many of the attorneys anticipated. While the N.A.A.C.P. attempted to further encourage diversity in education through their support of bussing initiatives and affirmative action policies, the organization lacked the resources and the leadership to combat the massive achievement gap that persist in contemporary schools.

After decades of preparation, a devastating legal barrier was conquered in 1954. This inspired confidence in the attorneys of the Legal Defense Fund, but furthermore installed faith in the African-American community that segregation could be defeated. *Brown* additionally initiated the civil rights movement and served as key judicial precedent in the Supreme Court's continued protection of African-Americans throughout the 1950s and 1960s. Through institutions of government, the N.A.A.C.P. provided a devastating defeat to segregation. *Brown* demonstrated to African-Americans that through litigation, a non-violent strategy, political and social reform could be achieved. Yet, the limitations of the decision must also be acknowledged. While *Brown* represented an integral victory for African-Americans, the decision failed to install equal educational opportunity for black students. The educational campaign against school segregation spanned over three decades. Thus, the movement to create equal opportunity in America's classrooms continued throughout the twentieth century and remains unfinished today. The *Brown* victory was monumental, but the mission of equality remains incomplete.

In 2009, the inauguration of Barack Obama as the first African-American President marked a significant milestones for civil rights in United States. Only 55 years prior to President Obama's election, many southern states legally prevented African-Americans from attending the same elementary schools as their Caucasian peers. Although the Court overturned this blatant form of discrimination, educational inequality has largely prevented African-Americans from accessing the same societal opportunities as their fellow citizens. Today, for example, while African-Americans make up approximately 12.6% of the American population, there are currently no African-American Senators in the 112<sup>th</sup> Congress.<sup>[90]</sup> Additionally, only ten African-Americans have ever served as CEO's of Fortune 500 companies.<sup>[91]</sup> The achievement-gap, which remains a legacy of the institutionalized segregation of the American school system, is a major contributor to the lack of African-American representation in government, business, and academia. The aim of the N.A.A.C.P. was not just to overturn segregation in American schools, but also to ensure that every student, regardless of race, was given a chance to succeed.

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[1] Robert J. Cottrol, Raymond T. Diamond, and Leland B. Ware, *Brown v. Board of Education: Caste, Culture, and the Constitution* (Kansas: University Press of Kansas, 2003); Hockett, Jeffrey. "Justice Robert H. Jackson and Segregation." In *Black, White, and Brown*, edited by Clare Cushman and Melvin Urofsky (Washington D.C.: Supreme Court Historical Society, 2004); James T. Patterson, *Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy* (New York: Oxford University Press, 2001).

Cottrol, Diamond, and Ware argued that the Supreme Court took unprecedented steps in striking down school segregation. While the victory was undoubtedly monumental, these authors overlooked much of the constitutional precedent that foreshadowed the Court's willingness to strike down segregation in state universities and in local school districts. Prior to 1954, N.A.A.C.P attorneys were very successful in their efforts to limit specific aspects of educational segregation. Hockett highlighted the impact of Justice Robert Jackson and Chief Justice Earl Warren on convincing other members of the Court to favor the N.A.A.C.P's position. While Warren and Jackson were key voices in the oral arguments and in the discussion of the case in chambers, the case was decided unanimously,

demonstrating the utmost consensus among the justices. The N.A.A.C.P.'s prior legal victories from the 1920s onward made the *Brown* decision a logical progression in the development of education case law. Patterson's text focused primarily on the aftermath of the *Brown* decision. However, in his discussion of the Supreme Court's decision, he emphasized the role that social science played in persuading the justices. While the introduction of expert testimony was an innovative strategy, the oral arguments testified to the importance of constitutional interpretation and the previous cases argued by the N.A.A.C.P. While these three examples do not reflect all of the previous historical scholarship on *Brown*, they demonstrated the failure of many scholars to analyze the decision from the perspective of N.A.A.C.P.

[2] Copy of the N.A.A.C.P Constitution, 1911. Box 138, Folder 6. National Association for the Advancement of Colored People Collection, Library of Congress.

[3] "Bylaws of the N.A.A.C.P.," <http://myloc.gov/Exhibitions/naacp/earlyyears/ExhibitObjects/ConstitutionByLawsNAACP.aspx>, October 12<sup>th</sup>, 2010.

[4] "The Talented Tenth," <http://teachingamericanhistory.org/library/index.asp?document=174>, October 15<sup>th</sup>, 2010. Dubois thesis is frequently contrasted with the arguments of Booker T. Washington. Washington was born a slave, later gained an education and eventually became the President of the Tuskegee institute. Washington asserted that in order to achieve equality, African-Americans would first have to prove to white society that they were equal. The Tuskegee institute focused largely on an agrarian-based education and was criticized by the N.A.A.C.P. as tying African-Americans to farming jobs. Dubois viewed Washington's approach of self-sufficiency as inconsiderate of the level of discrimination in American society. Dubois wanted legal equality and he wanted it immediately.

[5] W.E.B Dubois, "Opinion of W.E.B. Dubois," *The Crisis*, 111 (January 1920): 105.

[6] Patricia Sullivan, *Lift Every Voice: The N.A.A.C.P and the Making of the Civil Rights Movement* (London: The New Press, 2009), 23.

[7] *Ibid.*, 68.

[8] Financial Ledger for the N.A.A.C.P. Financial Ledger. National Association for the Advancement of Colored People Collection, Library of Congress. The financial records testified to the rising importance of the Legal Defense Fund. During the early years of the N.A.A.C.P, membership dues and donations were primarily appropriated to establishing offices across the country and hiring fulltime staff. As the Legal Defense Fund became more successful in their litigation, their caseload and budget substantially expanded.

[9] Juan Williams, *Thurgood Marshall: American Revolutionary* (New York: Crown Publishing Group, 1998), 26. Due to his work with the N.A.A.C.P, Marshall caught the attention of Democratic politicians who were attempting to increase their appeal among African-American voters. In 1961, President Kennedy appointed him to the Second Circuit. President Johnson elevated him to solicitor general, the government's advocate before the Supreme Court. In 1967, Marshall broke the color barrier when he became the first African-American appointed to the Supreme Court.

[10] *Ibid.*, 95.

[11] Letter from accused, 1923. Box D120, Folder 3. National Association for the Advancement of Colored People Collection, Library of Congress. As part of their letter writing campaign, the N.A.A.C.P received a number of pleas from African-Americans accused and convicted of crimes. These crimes ranged in severity, from breaking and entering to murder. Although it is difficult to estimate the number of African-Americans that were wrongfully accused, it is undeniable that black defendants received little due process protections in the judicial system. The most famous instances of the N.A.A.C.P assisting in defense of accused African-Americans came in the Scottsboro Boys incident of 1931. In this case nine African-American teenagers were accused of raping two white women in Scottsboro, Alabama. Within the span of 24 hours, the boys were indicted, tried, convicted, and sentenced to death. With the assistance of the N.A.A.C.P, the nine teenagers appealed to the Supreme Court. By a 7-2 majority, the Court overturned the convictions, citing an infringement of due process protections.

[12] Financial Ledger for the N.A.A.C.P, 1952. Financial Ledger. National Association for the Advancement of Colored People Collection, Library of Congress.

[13] United States. Cong. House. H.R. 7951, Anti Lynching Bill. 67th cong. 2<sup>nd</sup> st sess. 28 July 1922.

[14] Republicans, the party more sympathetic to civil rights at the time, maintained a 302-121 majority in the House of Representatives in 1922. Representatives from traditional Republican strongholds in the Northeast and Progressives from the west pushed the legislation through the House. After the House vote, President Warren Harding publicly stated that he would sign the legislation upon Senate approval. However, conservative Republicans from the Mid-West and Democrats in the South blocked the legislation in the Senate. This exemplified the role that the filibuster played in defeating civil rights legislation in the first half of the twentieth century.

[15] While the Fourteenth Amendment was undoubtedly an attempt to extend African-Americans certain legal protections, the Amendment also had significant political implications for the time. In allocating African-Americans

due process and equal protection, many members of Congress believed that back turnout on Election Day would increase thus benefiting Republican candidates. This assertion largely proved to be true. From 1865 to 1880, fifteen African-Americans were elected to the House of Representatives and two black candidates were elected to the Senate. Additionally, Republicans in Congress wanted to expand federal power over state governments. Section V of the Fourteenth Amendment gave Congress the authority to oversee and enforce the Amendment.

[16] U.S. Constitution, amend. 14, section 1.

[17] *In Re Slaughterhouse Cases*, 83 U.S. 36 (1872).

[18] *Ibid.*

[19] Stephen Breyer, *Making Our Democracy Work: A Judges View* (New York: Random House, 2010), 37-38. Breyer, a current associate Justice of the Supreme Court, suggested that privileges and immunities protects basic rights of citizenship for all citizens. The phrase "privileges and immunities" is taken directly from English common law and was seen as protecting the basic rights of the subject to free travel, land, property, etc.

[20] Immediately after the passage of the Civil Rights Act of 1875, a number of Southern citizens challenged the new law in local courts. The Civil Rights Cases encompassed all of these legal challenges.

[21] *Civil Rights Cases*, 109 U.S. 3 (1883).

[22] Although the Civil Rights Act of 1875 was nullified by the Supreme Court, much of the original language of the bill was included in the Civil Rights Act of 1964. The Civil Rights Act of 1964 was later upheld on commerce clause grounds in *Heart of Atlanta Motel v. United States*.

[23] *Plessy v. Ferguson*, 163 U.S. 537 (1896).

[24] *Ibid.*

[25] While constitutional law scholars refer to *Plessy* decision as creating the 'separate but equal' doctrine, those words do not appear in the majority opinion. The doctrine refers to the requirement of segregated facilities to be equal in quality. State governments largely disregarded this mandate.

[26] *Plessy v. Ferguson*, (1896).

Throughout his majority opinion in *Brown*, Chief Justice Earl Warren's cited Justice Harlan's dissent.

[27] *Cumming v. Board of Education of Richmond County*, 175 U.S. 528 (1899).

[28] *Ibid.*

[29] *Gong Lum v. Rice*, 275 U.S. 78 (1927).

[30] Memo from the N.A.A.C.P. Legal Defense Fund, 1938. Box 137, Folder 3. National Association for the Advancement of Colored People Collection, Library of Congress.

[31] NEA Article On Student IQ, 1945. Box 138, Folder 6. National Association for the Advancement of Colored People Collection, Library of Congress.

The N.A.A.C.P. Legal Defense Fund collected a number of scholarly articles testifying to the benefits of diversity in elementary education. During the 1940s, more progressive education journals openly published articles attacking the notion that mixed race classrooms hindered student performance or caused disruptions within the classroom. Many of these journals advocated for racially diverse classrooms to promote tolerance.

[32] Memo from the N.A.A.C.P. Legal Defense Fund, National Association for the Advancement of Colored People Collection.

[33] Correspondence Between N.A.A.C.P. Attorneys, 1938. Box 137, Folder 3. National Association for the Advancement of Colored People Collection, Library of Congress. Records from the N.A.A.C.P. suggested that attorneys also targeted states and jurisdictions where a split in decisions between the district and appellate courts would occur. N.A.A.C.P. staff believed that split decisions at the circuit level were more likely to be accepted by the Supreme Court. Even into the modern era, a number of studies conducted by political scientists have found that split decisions at the lower level increase the chances of the case being selected by the Court.

[34] *States of Missouri Ex. Rel Gaines v. Canada*, 305 U.S. 337 (1938).

[35] *Ibid.*

[36] *States of Missouri Ex. Rel Gaines v. Canada*, (1938).

[37] *Ibid.*

[38] *Sipuel v. Board of Regents of University of Oklahoma*, 332 U.S. 631 (1948).

[39] *Ibid.*

[40] At the district and appellate levels, opponents of the *Gaines* decision cited states rights as providing them the authority to dictate the segregation policies of their state's university. In a number of these opinions, Justice Louis Brandeis idea of states as a "laboratory of democracies" was cited. This phrase originated from a 1932 opinion, in which Brandeis stated, "that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." Brandeis was a firm supporter of a strong

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national government in a federalist system. While he saw a distinct role for states, he was a fervent supporter of the supremacy clause. Although many opponents of integration cited his quote to defend states rights, Brandeis was an outspoken believer in a strong national government.

[41] A *per curiam* decision is when the Supreme Court speaks as a unified Court. The justices' names, and the author of the opinion are not listed, while the ruling is considerably shorter in length. *Per curiam* decisions are primarily utilized when the Court is holding up a previously established legal standard or is considering stays on pending executions.

[42] Throughout the history of the N.A.A.C.P., Baltimore has always been a key stronghold for the organization's supporters. The Baltimore Chapter remained one of the organization's largest. Baltimore maintained a sizeable African-American community, which was largely tied to city's shipping based economy. N.A.A.C.P. attorneys felt compelled to intervene in the *Murray* case to demonstrate their support for the black community in Baltimore.

[43] Like Donald Murray, Marshall was a product of an emerging black middle class of Baltimore. Both Marshall and Murray excelled in college, but were denied admission to the University of Maryland School of Law because of their race. While the Maryland Court of Appeals compelled the law school to admit Murray, Marshall attended Howard University School of Law. At Howard, Marshall made connections with many members of the N.A.A.C.P. and began his historic career in civil rights litigation.

[44] Patricia Sullivan, *Lift Every Voice: The N.A.A.C.P. and the Making of the Civil Rights Movement* (New York: The New Press, 2009), 489.

[45] *Ibid.*

[46] *Pearson et al. v. Murray*, 182 A. 590, 169 Md. 478, 103 A.L.R. 706 No. 53, (1936).

[47] *Ibid.*

[48] *Ibid.*

[49] Patricia Sullivan, *Lift Every Voice: The N.A.A.C.P. and the Making of the Civil Rights Movement*, 495.

[50] Isabel Wilkerson, *The Warmth of Other Sons* (New York: Random House, 2010), 234.

[51] *Mendez v. Westminster School Dist. of Orange County*, 64 F.Supp. 544 D.C.CAL, (1946).

[52] *Ibid.*

[53] Brief on Behalf of Parents, 1947. Box 135 Folder 2. National Association for the Advancement of Colored People Collection, Library of Congress.

[54] Additionally, the United States had just defeated a tyrannical regime in Germany that had instituted violent segregation against European Jews. While Americans were horrified about the Holocaust and the actions of the Nazi regime, the conclusion of the war encouraged many to reconsider the treatment of African-Americans in the United States.

[55] *Sweatt v. Painter*, 339 U.S. 629 (1950).

The law school that was created in response to Herman Sweatt's law school was named Texas Southern University of Law. The black law school had one-third of the number of teachers as the University of Texas. The majority opinion also noted that the library at the African-American law school was significantly smaller than the library at the University of Texas and the new law school lacked practice court rooms.

[56] Memo from the N.A.A.C.P. Legal Defense Fund, 1950. Box 137, Folder 6. National Association for the Advancement of Colored People Collection, Library of Congress.

[57] Memo Concerning the Effects of Segregation on Education, 1950. Box 138, Folder 6. National Association for the Advancement of Colored People Collection, Library of Congress.

The N.A.A.C.P. relied on studies from a number of educational publications to prove that differences in the resources provided by schools directly correlated to academic performance of students. The organization looked at studies of the impact of class size, faculty to student ratios, and extra-curricular opportunities.

[58] The National Bar Association wrote an *amicus* brief explaining the benefits of an integrated law school. The National Bar Association was established as a counter to the larger American Bar Association (ABA) because the ABA was segregated until the 1950s. After the civil rights movement, the ABA became sympathetic towards civil rights. The organization wrote an *amicus* brief in favor of affirmative action in law schools in the 2003 case of *Grutter v. Bollinger*.

[59] *Sweatt v. Painter*, (1950).

[60] *Ibid.*

[61] *Ibid.*

[62] Memo Concerning the Effects of Segregation on Education, 1950. National Association for the Advancement of Colored People Collection.

In the *McLaurin* case, the N.A.A.C.P. relied heavily on psychological studies. The N.A.A.C.P. attorneys attempted to use social science to prove that educational segregation had a lasting negative impact on African-Americans. This strategy of argument was relied on heavily in the *Brown* decision. The Kenneth Clark study in the research for both the *McLaurin* and *Brown* cases. The Clark study was a comparative analysis of elementary students from inner-city New York and D.C. schools. Students in New York Public attended integrated schools from Kindergarten through the twelfth grade, while D.C. residents attended segregated elementary schools. When the New York students played with two sets of dolls, one black and one white, they made little distinction between the two groups. When D.C. students were asked to play with the dolls, both black and white students overwhelmingly selected to play with the white dolls. Many African-American students were interviewed about their decision and they connected the doll's race with "ugliness" and "stupidity". The N.A.A.C.P. thus used this study in a number of their cases and in much of their literature because it demonstrated that racial segregation engrained a sense of inferiority on African-American students.

[63] *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950).

[64] *Ibid.*

[65] *Ibid.*

[66] Journal of the National Education Association, 1949. Box 138, Folder 1. National Association for the Advancement of Colored People Collection, Library of Congress.

N.A.A.C.P. attorneys cited a number of academic texts about education in their briefs. Many of these studies asserted that the segregation of elementary schools engrained a sense of inferiority in African-Americans students.

[67] Letters from Students, 1923. Box D120, Folders 1 and 2. National Association for the Advancement of Colored People Collection, Library of Congress.

[68] Arrival Times for African American Students in Topeka Kansas, 1951. Box 138, Folder 2. National Association for the Advancement of Colored People Collection, Library of Congress.

During the preparation for the case, N.A.A.C.P. staff members interviewed dozens of African-American students and families about the accessibility of the school they were attending. The organization found overwhelming evidence that African-American students were compelled to attend schools far from their home. The N.A.A.C.P. also composed a spreadsheet that showed the average time and number of blocks that African-American students would have in their commute if they attended a white school. Additionally, the school district did not subsidize public transportation for African-American students. By forcing students into a longer commute; the N.A.A.C.P. argued that the school district was placing a greater financial burden on black families.

[69] Legal Complaint Against the State of Kansas, 1951. Box 137, Folder 4. National Association for the Advancement of Colored People Collection, Library of Congress.

[70] Leon Friedman, editor, *Brown v. Board: The Landmark Oral Argument Before the Supreme Court* (New York: The New Press, 1969), 17.

The logistics of Supreme Court arguments in 1952 greatly differed from the rules and procedures of the Court today. When the N.A.A.C.P. presented their case before the Court, there was no set time for oral arguments. Questioning proceeded as long as the justices deemed necessary. At one point, while Carter was answering a question, Chief Justice Warren interrupted his response to inform the chamber that the justices were breaking for lunch. In the cotemporary Supreme Court, each side is allotted thirty minutes for questioning and the plaintiff is provided the opportunity to reserve five minutes for the purpose of rebuttal.

[71] Friedman, *Brown v. Board: The Landmark Oral Argument Before the Supreme Court*, 17.

[72] *Ibid.*, 32.

[73] When the Supreme Court is faced with a contentious constitutional question they sometimes order the case to re-argument in a special session. The Supreme Court term traditionally lasts from the first month in October to the first week in July. In the Court's 2008-2009 term, the Justices ordered *Citizens United v. Federal Elections Commission* to a re-argument in a September session. The *Citizens United* decision made a lasting impact on the government's regulation of campaign finance.

[74] Conference Pamphlet. Box 138, Folder 6. National Association for the Advancement of Colored People Collection, Library of Congress.

[75] During his tenure as governor of California, Earl Warren was confronted with two major civil rights issues. Due to anti-Japanese hysteria caused by World War II, President Roosevelt signed Executive Order 9066, which authorized the relocation of Japanese-Americans living on the west coast. As governor, Warren supported the President's measure and subsequently over a hundred thousand Japanese were sent to internment camps. Later in his governorship, the issue of school segregation directly confronted Warren. In 1946, the Ninth Circuit struck down California's policy that barred Latino-American students from attending certain public schools. As governor, Warren signed a law passed by the state legislature that implemented the decision.



[76] Friedman, *Brown v. Board: The Landmark Oral Argument Before the Supreme Court*, 195.

[77] *Ibid.*, 201.

[78] In the 1810 *Fletcher v. Peck* decision, the Supreme Court struck down a state law for the first time. The case dealt with a contract dispute in which a corrupted Georgia state legislature awarded a land grant to the plaintiff. The following year, the legislature was replaced and the new assemblymen voted to nullify the original contract. The Supreme Court held that although the first law may have benefited special interests, the Georgia legislature could not terminate existing contracts.

[79] Alexander Hamilton, "Federalist #78," *The Federalist Papers*, [http://avalon.law.yale.edu/18th\\_century/fed78.asp](http://avalon.law.yale.edu/18th_century/fed78.asp).

One of the major questions arising from the early constitutional period was over the Supreme Court's authority to strike down acts of Congress. The question was decided in *Marbury v. Madison* (1803) when the Court struck down portions of the Judiciary Act of 1789. The Court would not use its judicial review authority again until the *Dred Scott Cases*.

[80] Gary Orfield, "Renewing Our Commitment," in *The Unfinished Agenda of Brown v. Board of Education*, ed. James Anderson and Dara Bryne (Hoboken, NJ: John Wiley & Sons, 2004), p. 156.

[81] "Achievement Gap," *Education Week*.

[82] "Baltimore," Teach for America, accessed December 15, 2010, [http://www.chicagomanualofstyle.org/tools\\_citationguide.html](http://www.chicagomanualofstyle.org/tools_citationguide.html).

[83] National Association for the Advancement of Colored People, "Education," accessed January 19<sup>th</sup>, 2011, <http://www.naacp.org/programs/entry/education-programs>.

The N.A.A.C.P. has recently launched a campaign to promote major education reforms. These reforms range from supporting higher pay for teachers, to limiting the tenure system in public schools. Many of these position, including the organizations support for merit-pay reforms, have put them at odds with teachers unions and other traditionally progressive education organizations. The organization remains dedicated to solutions that show results in the classroom.

[84] "Achievement Gap," *Education Week*.

[85] *Shelley v. Kramer*, 334 U.S. 1 (1948).

In the 1948 case of *Shelley v. Kramer*, the Court struck down restrictive covenants in the city of St. Louis. These laws initially prohibited African-Americans from earning property in certain neighborhoods. The plaintiff, Louis Kramer, sued the State after he was prevented from purchasing a house in a "white neighborhood". The Supreme Court of Missouri claimed that the government had no jurisdiction to rule the case, asserting that the buying of a house was a solely private endeavor. The Supreme Court rejected Missouri's argument and sided with Kramer. Writing for the majority, Chief Justice Vinson found the laws to be in violation of the equal protection clause. Additionally, the solicitor general, representing the Truman Administration, argued in favor of Kramer. The Truman Administration felt the government had a compelling interest in the integration of America's neighborhoods.

[86] Lorraine Hansberry, *A Raisin in the Sun* (New York: Random House, 1994).

Lorraine Hansberry's iconic play accurately depicted an African-American families struggle with residential segregation. Although her work is fictional, many black families were compelled to live the struggles of the Younger family.

[87] The war effort itself brought developments toward racial equality. A Phillip Randolph, the founder of the Brotherhood of Sleeping Car Porters, lobbied the Roosevelt administration to be more sympathetic to the cause of civil rights. Randolph threatened to call a massive demonstration against Roosevelt in Washington D.C. if the President did not make significant changes to his policy. On June 25<sup>th</sup>, 1941, only months before the outbreak of war, President Roosevelt signed Executive Order 8802, which called for the desegregation of the defense industry. This proved to be a monumental victory for African-Americans. During the war, African-Americans filled numerous wartime jobs, causing a significant Diaspora to urban centers.

[88] 1938 was the year of the *Gaines* decision, or the first victory for the N.A.A.C.P in their legal campaign against segregation. 1978 marked the year of *Bakke v. Regents of University of California*, in which the Court limited but upheld the legitimacy for a University's affirmative action policies. Following the *Bakke* decision and with the advent of the "Rehnquist Revolution" the Court was more hesitant to protect civil rights.

[89] *Loving v. Virginia*, 388 U.S. 1 (1967). The *Loving* case involved plaintiffs Richard and Mildred Loving, who were residents of the State of Virginia. The couple was married in Washington D.C. and was arrested when police entered their home and found them sleeping in the same bed. Citing the equal protection clause, the couple argued that Virginia's Racial Integrity Act was unconstitutional. The justices unanimously agreed with the plaintiffs. In his opinion, Chief Justice Warren claimed that the segregation lacked a compelling state interest and that marriage was a fundamental right for all Americans.



[90] Congressional Black Caucus, Accessed May 9<sup>th</sup>, 2011, <http://www.cbcfinc.org/>.

[91] "Black CEO's of Fortune 500 Companies," Black Entrepreneurs, accessed May 10<sup>th</sup>, 2011, <http://www.blackentrepreneurprofile.com/>.

