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Ada Lois Sipuel Fisher: How a “Skinny Little Girl” Took on the University of Oklahoma and Helped Pave the Road to *Brown v. Board of Education*

CHERYL BROWN WATTLEY*

I. Introduction

In January 1946, Ada Lois Sipuel Fisher applied for admission to the University of Oklahoma School of Law (OU Law). That application marked a frontal assault on the Oklahoma Constitution and the statutes that required separation of the races in educational institutions. It also represented a critical step in the National Association for the Advancement of Colored People’s (NAACP) legal crusade against segregation. This article chronicles Sipuel Fisher’s struggle for recognition of the right of African Americans to receive a legal education in the State of Oklahoma and explores the impact that her lawsuit against the University of Oklahoma had on the NAACP’s campaign to end educational segregation.

Before discussing the legal strategies and maneuvering of the litigation surrounding Sipuel Fisher’s application and admission to OU Law, the article begins by describing the historical context of that litigation so that Sipuel Fisher’s personal decision to assume the mantle of a “test plaintiff” challenging an entrenched social system might be better appreciated and honored. All too often, when historical events are recounted, when the results and outcomes are known, the individual courage, struggle, perseverance, and sacrifice that led to important achievements become diminished. With the passage of time, as events become dimmed, the progress that has been achieved can overshadow that which it has overcome. As expressed by Ada Lois Sipuel Fisher in her autobiography,

The University of Oklahoma has come a long way also. Since that very cold day when Mr. Dunjee, Dr. Bullock, and I drove on the campus and broke the law by parking illegally and trying to register for law school, thousands of African Americans have attended, graduated from, and excelled at the University of Oklahoma. They have also done that at every public college in every southern state. None of them have had to sit in “colored” chairs or eat at “colored” tables and I am glad for that.

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Outside of a few history or law classes, it is likely that not many of them know all of the things that had to happen for that to be so. Not many, even in Oklahoma, have heard of the *Sipuel* case. Perhaps through this book, they will learn something of *Sipuel*. If they do, I want it to be a lesson that includes more than a decision in a single lawsuit. I want that lesson to include some sense of how black folks lived under Jim Crow. I want to give them some awareness of the things that people both famous and obscure endured to end it. I want to leave them some perception of the way that family, community, faith, and conviction can come together to make history, even in the case of a skinny little girl born on the wrong side of the tracks in a little town like Chickasha, Oklahoma.¹

This “skinny little girl” took on the fight and agreed to be a “test case,”² committing her personal strength, nerve, and determination to the destruction of segregation in the United States.³ She gained admission to, attended, and graduated from OU Law; passed the bar; and became one of only two law-school test plaintiffs to actually graduate and become a lawyer.⁴

Often overshadowed and eclipsed by other Supreme Court decisions, Ada Lois Sipuel Fisher’s case brought attention, focus, and interest to the legal battle against segregation at a time when the NAACP campaign against segregated graduate education was in dire need of an infusion of new energy. It was a time when “fear and frustration [needed to be] replaced by boldness and hopeful eagerness.”⁵ Her steadfastness and insistence upon admission to

1. ADA LOIS SPUDEL FISHER, *A MATTER OF BLACK AND WHITE: THE AUTOBIOGRAPHY OF ADA LOIS SPUDEL FISHER* 185 (1996).

2. In her speech in New York in October 1948, Sipuel Fisher commented that she had “lost [her] identity as Ada Lois Sipuel and [had] become instead a ‘test case.’” Ada Lois Sipuel Fisher, Address at the 17th Annual New York Herald Tribune Forum (Oct. 19, 1948), in *OUR IMPERILED RESOURCES: REPORT OF THE 17TH ANNUAL NEW YORK HERALD TRIBUNE FORUM* 82, 83 (1948).

3. After the Oklahoma attorney general filed a response to Sipuel Fisher’s petition for a writ of mandamus to compel her admission to the state’s law school, the NAACP declared that “the all-out campaign against discrimination in educational facilities [was] well under way.” Press Release, NAACP, Campaign Against Jim Crow in Education Launched (May 16, 1946), *microformed on Papers of the NAACP*, pt. 3, ser. B, at Reel 14:031 (Univ. Publ’ns of Am., Inc.).

4. See SPUDEL FISHER, *supra* note 1, at 145-47, 151, 158-61. Donald Murray, the plaintiff in the University of Maryland case, see *Pearson v. Murray*, 182 A. 590, 590 (Md. 1936), became an attorney and assisted the NAACP in further litigation against the University of Maryland, see *McCready v. Byrd*, 73 A.2d 8, 8 (Md. 1950).

5. William H. Hastie, *Toward an Equalitarian Legal Order, 1930-1950*, *ANNALS AM. ACAD. POL. & SOC. SCI.*, May 1973, at 18, 26.

OU Law directly caused the desegregation of the University of Oklahoma graduate programs and the Arkansas and Delaware law schools, and her legal victory was a critical step in the march to *Brown v. Board of Education*.⁶

II. The Oklahoma Setting

In January 1946, Norman, Oklahoma, home of the University of Oklahoma, was a sundown town, an “all white town where Negroes [had] never resided.”⁷ African Americans had to be out of Norman, a “lily-white town,”⁸ before the sun set.⁹ “[T]he ‘rule’ that they leave at night [was] strictly enforced”¹⁰ and clearly announced with prominently placed signs that proclaimed, “Nigger, don’t let the sun go down on you in this berg.”¹¹

6. 347 U.S. 483 (1954). Upon her death, the *New York Times* observed that her case “had a powerful impact on the court as it picked its way” to *Brown*. Robert McG. Thomas, Jr., *Ada Fisher, 71: Broke a Law School Color Barrier*, N.Y. TIMES, Oct. 21, 1995, at 27; see also Jimmie Lewis Franklin, Book Review, 63 J.S. HIST. 444, 445 (1997) (reviewing SIPUEL FISHER, *supra* note 1, and observing that the decision in *Sipuel v. Board of Regents*, 332 U.S. 631 (1948), “helped to knock over the props that supported the *Plessy* separate-but-equal philosophy in American life”); Glenn M. Linden, Book Review, 37 HIST. EDUC. Q. 212, 213 (1997) (reviewing SIPUEL FISHER, *supra* note 1, and observing that “[t]he ruling [in *Sipuel*] was an important part of the legal precedents that resulted in the *Brown v. Board of Education* decision in 1954 ending segregated schools across the country”).

7. *Mrs. Ada Sipuel Fisher Home, Ready to Enter Law School*, ATLANTA DAILY WORLD, Jan. 20, 1948, at 1 [hereinafter *Mrs. Ada Sipuel Fisher Home*]; see also *Negro Student to Live in City, Commute to Norman Classes*, DAILY OKLAHOMAN, Jan. 14, 1948, at 1 (“[T]he university city [Norman] has been a traditional ‘all white’ city since its beginning.”); Letter from Amos T. Hall, Attorney for Sipuel Fisher, to Robert L. Carter, Assistant Special Counsel, NAACP (Aug. 26, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:408 (observing that “Norman [was] a town in which there [were] no Negroes”).

8. William E. Bittle, *The Desegregated All-White Institution . . . The University of Oklahoma*, 32 J. EDUC. SOC. 275, 281 (1959).

9. SIPUEL FISHER, *supra* note 1, at 44. Dr. George L. Cross, former president of the University of Oklahoma, recounted a story of an encounter shortly after his arrival in Norman in 1934:

The salesman in the [home appliances] store, knowing that I was new, undertook to tell me a few things that he thought would be useful to me. One thing he said that really jolted me was, “You’ll never have to worry about a nigger problem in Norman.” I looked at him inquiringly. He said, “We have an unwritten law that niggers can’t be in Norman after sundown.”

I said, “Well, just how do you enforce an unwritten law?” And he said, “Oh, we don’t have to enforce it. The niggers understand the situation and they don’t stay in Norman after sundown.”

CARL T. ROWAN, *DREAM MAKERS, DREAM BREAKERS: THE WORLD OF JUSTICE THURGOOD MARSHALL* 147 (1993).

10. *Norman Mob After Singie Smith Jazz*, BLACK DISPATCH, Feb. 9, 1922, at 1.

11. *Id.*

The racial attitudes reflected by Norman's sundown status were not unusual in Oklahoma. Oklahoma law had mandated segregated school systems since the adoption of the Territorial School Code of 1897.¹² The Oklahoma Constitution of 1907, the constitution approved at the beginning of statehood, perpetuated this segregation mandate.¹³ In short, "segregation was a well-established part of the state's public education policy."¹⁴

Six years after statehood, the NAACP established a chapter in Oklahoma City.¹⁵ By 1923, there were more than a dozen chapters,¹⁶ and in 1931, Roscoe Dunjee, editor of the *Black Dispatch*, a black newspaper in Oklahoma City, organized a "State Conference of Branches" and served as its president for sixteen years.¹⁷ Because the NAACP was viewed as a militant group, "[k]nown membership in the NAACP could, and sometimes did, spell harassment, restricted credit, unemployment, and myriad other inconveniences. . . . [I]ncredible courage [was] required to fight racial injustice at a time when many whites would employ violence in defense of a system they preferred and from which they profited."¹⁸ Sipuel Fisher's mother, an active member of the NAACP, "saw to it that [Sipuel Fisher was] exposed regularly to its magazine, *The Crisis*," and that they read black newspapers such as the *Chicago Defender* and the *Black Dispatch*.¹⁹

There was reason to fear violence and physical retaliation—racial hostility was known in the state. In May 1921, in Tulsa, an allegation that a black man, Dick Rowland, had assaulted a white woman caused a white mob to gather near the jail in an effort to lynch him.²⁰ A group of black men also gathered to protect Rowland and prevent any lynching.²¹ There was shouting and shooting, and "all hell broke loose."²² The ensuing riot resulted in murder and

12. JAMES R. SCALES & DANNEY GOBLE, *OKLAHOMA POLITICS: A HISTORY* 262 (1982). Langston University was established by the Territorial Legislature in 1897 as the institution of higher education for "colored students." See JIMMIE LEWIS FRANKLIN, *JOURNEY TOWARD HOPE* 68 (1982). Yet "[i]n 1930 . . . more than half of the black students who attended college chose an out-of-state school rather than Langston." *Id.* at 70.

13. SCALES & GOBLE, *supra* note 12, at 262.

14. Bittle, *supra* note 8, at 275. In Chickasha, Sipuel Fisher's home town, there were five elementary schools, one junior high school, and one high school for white students. SPUDEL FISHER, *supra* note 1, at 52. There was just one school, elementary through high school, for black students. *Id.* at 52-53.

15. See FRANKLIN, *supra* note 12, at 52.

16. *Id.*

17. See *id.* at 52-56.

18. *Id.* at 53.

19. SPUDEL FISHER, *supra* note 1, at 50.

20. See FRANKLIN, *supra* note 12, at 146-47.

21. *Id.* at 147.

22. *Id.*

the “wanton destruction” of over thirty-five blocks of businesses, homes, and churches²³ in the area of Tulsa known as Greenwood, “the black Wall Street.”²⁴

For Sipuel Fisher, the Tulsa Race Riot was more than a historical event; it was personal. During the riot, her father was “spirited away to a holding pen in Tulsa’s McNulty Park,”²⁵ and her mother watched their home “go up in flames.”²⁶ The riot caused her parents to leave Tulsa and all that they had achieved to start over again in Chickasha.²⁷

Lynchings were a part of Oklahoma history because they provided “an effective means of race control.”²⁸ People took photographs of burned and mutilated bodies hanging from trees and bridges, sometimes converting them into postcards.²⁹ One lynching in particular touched Sipuel Fisher’s life because she knew the person who was lynched.³⁰ In 1930, Henry Argo, a nineteen-year-old from Chickasha, was lynched by a mob estimated to be made up of two thousand white men after he had been arrested on a bogus charge of rape.³¹ Argo was the last known lynching in Oklahoma.³²

Although many aspects of segregation were imposed by custom, the state legislature also passed statutes that required racial separation in public places, including in “telephone booths, bath-houses, and mines.”³³ Municipalities also passed residential segregation ordinances restricting the purchase of property

23. *Id.* at 147-48.

24. Randall Kennedy, *Preface* to ALFRED L. BROPHY, *RECONSTRUCTING THE DREAMLAND: THE TULSA RIOT OF 1921* ix, ix (2002).

25. SIPUEL FISHER, *supra* note 1, at 12.

26. *Id.*

27. *See id.*

28. JIMMIE LEWIS FRANKLIN, *THE BLACKS IN OKLAHOMA* 29 (1980).

29. *See* JAMES ALLEN & JOHN LITTLEFIELD, *WITHOUT SANCTUARY: PHOTOGRAPHS AND POSTCARDS OF LYNCHING IN AMERICA* (2005), <http://www.withoutsanctuary.org/main.html> (follow “Photos” hyperlink). Laura Nelson and her son, L.W., were lynched in Okemah, Oklahoma, on May 25, 1911, and photographs of the incident were made into postcards. *See id.* at images 33-34 and accompanying captions (follow “more information on this photo” hyperlink associated with each image). On June 13, 1913, Bennie Simmons was soaked in coal oil before being lynched and set on fire in Anadarko, Oklahoma. *See id.* at image 4 and accompanying caption. John Lee was burned on August 13, 1911, in Durant, Oklahoma. *See id.* at image 16 and accompanying caption. A photograph of that burning was made into a postcard with the caption “Coon Cooking.” *See id.* Print versions of the foregoing photographs are available in JAMES ALLEN ET AL., *WITHOUT SANCTUARY: LYNCHING PHOTOGRAPHY IN AMERICA*, at images 4, 18, 37, 38 (2000).

30. *See* SIPUEL FISHER, *supra* note 1, at 44-47.

31. *See id.* at 45-47.

32. *Id.* at 47.

33. FRANKLIN, *supra* note 28, at 17.

by African Americans.³⁴ “Blacks met exclusion, often in callous fashion, in restaurants, parks, hotels, zoos, libraries, recreational facilities, and in other private and public accommodations.”³⁵ For Sipuel Fisher, growing up in Chickasha, such segregation was a fact of life. “[T]he city park, Shannon Springs, the municipally-owned zoo, swimming pool, and golf course had big signs that read, ‘For Whites Only.’”³⁶ To see a movie, she had to take the fire-escape stairs to the balcony.³⁷

But these bitter restrictions and painful limitations could not diminish the pride and spirit that were nurtured within Sipuel Fisher. Her family, her community, her school, and her friends and neighbors—all the “people who never for a moment let [her] think that [she was] anything but special”³⁸—created within her a reservoir of strength, courage, and faithfulness that would fuel her determined fight against the University of Oklahoma.

III. *The NAACP Crusade Against Segregated Education*

From its inception in 1909, the NAACP’s “stated goal was to secure for all people the rights guaranteed in the 13th, 14th, and 15th Amendments to the United States Constitution.”³⁹ In 1930, it began its focused “attack on the inequalities in public education.”⁴⁰ It retained Nathan Ross Margold “to prepare a comprehensive professional study of the legal status of the Negro and of possible legal strategy for constructive change.”⁴¹ The organization developed a strategy to target state-supported graduate and professional education because black access to graduate and professional programs was effectively nonexistent in the southern states, which had the highest black populations.⁴² With state constitutions and laws mandating segregation in education, southern states had developed a system that provided African American students with scholarships to attend out-of-state graduate

34. In 1935, however, the Oklahoma Supreme Court declared Oklahoma City’s restrictive residential ordinance unlawful. See *Allen v. Oklahoma City*, 1935 OK 1143, 52 P.2d 1054.

35. FRANKLIN, *supra* note 12, at 50.

36. SPUDEL FISHER, *supra* note 1, at 51.

37. *Id.*

38. *Id.* at 41.

39. NAACP, History, <http://www.naacp.org/about/history/index.htm> (last visited Apr. 7, 2010).

40. Thurgood Marshall, *An Evaluation of Recent Efforts to Achieve Racial Integration in Education Through Resort to the Courts*, 21 J. NEGRO EDUC. 316, 317 (1952).

41. Hastie, *supra* note 5, at 21; see also RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* 133-34 (1975); GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 114-16 (1983).

42. Hastie, *supra* note 5, at 25.

programs.⁴³ By eliminating such scholarship programs—and thereby forcing states to choose between literal equalization and integration—“black leaders hoped to make dual systems of segregated public schools very expensive luxuries of white prejudice.”⁴⁴

Charles Hamilton Houston led the NAACP in its “planned, deliberate prosecution of test cases to secure favorable legal precedents, and thereby lay a foundation for subsequent frontal attacks against . . . segregation.”⁴⁵ The purpose of the test cases was to force a legal recognition of a qualified African American student’s right to graduate education or professional training, which would lead to the immediate admission of African Americans to white institutions simply because no other facilities existed.⁴⁶ A court decision “could breach the state-erected wall of segregation without ruling at all on the validity of the separate but equal concept.”⁴⁷ Such test cases, however, required plaintiffs who were articulate, willing, determined, and able to be steadfast in the face of interminable delays. Not every person chosen to be a plaintiff was able to stay the course.

A. *The Early Test Cases*

In 1933, the NAACP’s crusade began when private attorneys in North Carolina launched an attack against the state’s segregated graduate program.⁴⁸ Although fear of economic reprisal and retaliation intimidated many prospective plaintiffs,⁴⁹ Thomas Hocutt, a twenty-four-year-old headwaiter, agreed to seek enrollment in a pharmacy graduate program at the University of North Carolina.⁵⁰ His request was denied, and just weeks later, the private attorneys filed a state-court mandamus action seeking an order for his admission.⁵¹ NAACP affiliate attorney William Hastie assisted with the trial, but when the president of North Carolina College for Negroes—the institution

43. See, e.g., *Mo. ex rel. Gaines v. Canada*, 305 U.S. 337, 342-43 (1938) (describing and setting forth Missouri’s statute allowing for such a program).

44. Larry Grothaus, “*The Inevitable Mr. Gaines*”: *The Long Struggle to Desegregate The University of Missouri, 1936-1950*, 26 ARIZ. & W. 21, 22 (1984).

45. MCNEIL, *supra* note 41, at 134.

46. Hastie, *supra* note 5, at 25.

47. *Id.*

48. See generally Augustus M. Burns III, *Graduate Education for Blacks in North Carolina, 1930-1951*, 46 J. S. HIST. 195 (1980); Gilbert Ware, Hocutt: *Genesis of Brown*, 52 J. NEGRO EDUC. 227 (1983).

49. See Ware, *supra* note 48, at 229. At the time, there was a serious concern about “racial violence” because North Carolina ranked fourteenth among American jurisdictions in lynchings. *Id.* at 227.

50. *Id.* at 229.

51. Burns, *supra* note 48, at 196.

where Hocutt had completed his undergraduate work—refused to certify Hocutt’s transcript, the court was able to deny the writ of mandamus because Hocutt could not establish that he was scholastically qualified for the pharmacy program.⁵²

With the defeat in *Hocutt*, the NAACP focused its efforts on challenging racial segregation at the University of Maryland law school.⁵³ In early 1935, Donald Murray, an honors graduate of Amherst College, applied for admission.⁵⁴ He was admittedly academically qualified, but his application was denied because he was African American.⁵⁵

The NAACP filed a petition for a writ of mandamus seeking to command the State of Maryland to admit Murray to the law school.⁵⁶ On June 25, 1935, the Maryland district court finalized its decision granting the writ.⁵⁷ Murray had to be admitted to the next session of the law school.⁵⁸ The Maryland Court of Appeals ultimately affirmed the issuance of the writ of mandamus.⁵⁹

Recognizing that the *Murray* victory was “only a stepping-stone in the process of gaining admission of blacks to state universities,”⁶⁰ the NAACP sought another case to file. Lloyd Gaines, a graduate of Lincoln University, Missouri’s college for “negroes,” applied for admission to the University of Missouri School of Law.⁶¹ Gaines was denied admission because of the state’s segregation laws.⁶² The Missouri Supreme Court upheld the segregation laws, ruling that Missouri had met its obligations under the Equal Protection Clause

52. See KLUGER, *supra* note 41, at 156-58.

53. See ROWAN, *supra* note 9, at 50-51 (discussing the beginnings of Donald Murray’s case). Thurgood Marshall had applied to the University of Maryland School of Law and had been denied admission because of his race. *Id.* at 45-46. Marshall’s inability to study law at the University of Maryland was a source of anger for him, an “emotional wound.” *Id.* at 51. Accordingly, taking on the University of Maryland was a mission for him. *See id.* at 50-51. *See generally* MICHAEL D. DAVIS & HUNTER R. CLARK, THURGOOD MARSHALL: WARRIOR AT THE BAR, REBEL ON THE BENCH 78-87 (1992).

54. DAVIS & CLARK, *supra* note 53, at 82-83.

55. *Pearson v. Murray*, 182 A. 590, 590 (Md. 1936).

56. ROWAN, *supra* note 9, at 51.

57. *Id.* at 53.

58. *Id.*

59. *Pearson*, 182 A. at 594.

60. MCNEIL, *supra* note 41, at 143.

61. *Mo. ex rel. Gaines v. Canada*, 305 U.S. 337, 342 (1938).

62. *Id.* at 343. This lawsuit would confront two critical issues not present in the *Murray* case: (1) statutorily mandated segregation in education, and (2) an out-of-state tuition program that existed before Gaines’s application. *See id.* at 343-44. Missouri claimed that it would be willing to build a Negro law school if only it knew that there was demand for such an institution. *See id.* at 343.

by providing an out-of-state tuition program and that Gaines had not given Missouri an opportunity to create a law school for him.⁶³

The NAACP petitioned the U.S. Supreme Court. In 1938, the Supreme Court reversed the Missouri court's decision, rejecting the out-of-state tuition program.⁶⁴ It also rejected the State's argument that the promise to provide a legal education sometime in the future was sufficient.⁶⁵ *Gaines* was a decision predicted to "revolutionize the whole educational systems of the 16 states having dual school setups."⁶⁶

Gaines was applauded as a courageous man who "sacrificed for all the people."⁶⁷ Although he was given financial assistance by the NAACP,⁶⁸ Gaines suffered during the litigation. Upon learning of the Supreme Court's decision, he quit his job, anticipating that he would soon be enrolling in law school.⁶⁹ As Missouri frenetically tried to create a "negro" law school, Gaines was forced to go work at a gas station.⁷⁰ In March of 1939, Gaines sent his mother a postcard saying, "'Goodbye. If you don't hear from me anymore, you know I'll be all right.'"⁷¹ Gaines was never seen or heard from again.⁷² The NAACP "advertised in newspapers, notified [its] branches and did everything in [its] power to find him but [was] unsuccessful."⁷³

63. *Id.* at 346.

64. *See id.* at 352.

65. *See id.* at 351-52.

66. *He Can Enter Law School*, ATLANTA DAILY WORLD, Dec. 18, 1938, at 1.

67. Bill Weaver & Oscar C. Page, *The Black Press and the Drive for Integrated Graduate and Professional Schools*, 43 PHYLON 15, 19 (1982).

68. ROWAN, *supra* note 9, at 76.

69. *See* Lucile H. Bluford, *The Lloyd Gaines Story*, 32 J. EDUC. SOC. 242, 243 (1959).

70. *See* Letter from Lloyd Gaines, Plaintiff, to Callie Gaines, Plaintiff's Mother, (Mar. 3, 1939) (on file with the University of Missouri Law Library: Lloyd L. Gaines Collection), available at <http://digital.library.umsystem.edu/cgi/t/text/text-idx?page=home;c=gnp> (follow "Family Correspondence" hyperlink; then follow "table of contents" hyperlink associated with "Letter, 1939-03-03, Lloyd Gaines to Callie Gaines" listing); *see also* ROWAN, *supra* note 9, at 77.

71. M. Zapp, *Who Was Lloyd Gaines? An Icon of the Civil Rights Movement Struggled to Find His Place*, VOX MAG., Dec. 21, 2006, at 8, 10, available at <http://digital.library.umsystem.edu/cgi/t/text/text-idx?page=home;c=grp> (follow "Related Secondary Material" hyperlink; then follow "table of contents" hyperlink associated with "Who Was Lloyd Gaines?" listing).

72. *Id.*

73. Letter from Thurgood Marshall, Special Counsel, NAACP, to Bill Hanks, OU Law Student, (Feb. 27, 1940), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:329; *see also* Robert McLaran Sawyer, *The Gaines Case: Its Background and Influence on the University of Missouri and Lincoln University, 1936-1950*, at 195 (1966) (unpublished Ph.D. dissertation, University of Missouri), available at <http://digital.library.umsystem.edu/cgi/t/text/text-idx?page=home;c=grp> (follow "Related Secondary Material" hyperlink; then follow "table

In January of 1939, only weeks after the *Gaines* decision, Lucille Bluford, a Missouri citizen with an undergraduate degree from the University of Kansas, sought admission to the University of Missouri School of Journalism.⁷⁴ Bluford was accepted because the school authorities were “unaware that she was a Negro.”⁷⁵ When she attempted to register, however, Bluford was told that, because of the separate educational system, she could not enroll.⁷⁶ In August 1939, Bluford again applied to the graduate program in journalism and was again denied admission on account of her race.⁷⁷

Finally, in October 1939, a team of attorneys including Charles Hamilton Houston filed suit on her behalf seeking her admission.⁷⁸ Although Bluford had written to Lincoln University to confirm that it did not have a graduate program in journalism,⁷⁹ the trial court held that she had not given the State reasonable time to develop a journalism school for Negroes.⁸⁰ The Missouri Supreme Court upheld that decision.⁸¹

Also in October of 1939, the NAACP filed suit against the University of Tennessee seeking the admission of six plaintiffs—W.S.E. Hardy, Homer L. Saunders, Clinton Marsh, and Ezra Totten to the graduate school; and Joseph Michael and P.L. Smith to the law school.⁸² The judge dismissed the suit, ruling that each “member of the University’s board of trustees would have to be served individually.”⁸³ Because of the time that it took to refile the lawsuit and serve each member of the board individually, and the eighteen-month

of contents” hyperlink associated with “The Gaines Case” listing). *Gaines*’s disappearance remains a mystery. *See id.* Many years later, Thurgood Marshall mused, “Someone must have killed him. I mean, what happened?” David M. Kurtz, *Lost Gaines*, *GAVEL*, Feb. 2000, at 12, 14, available at <http://digital.library.umsystem.edu/cgi/t/text/text-idx?page=home;c=grp> (follow “Related Secondary Material” hyperlink; then follow “table of contents” hyperlink associated with “Lost Gaines” listing). On another occasion, Marshall said, “I remember *Gaines* as one of our greatest victories, but I have never lost the pain of having so many people spend so much time and money on him, only to have him disappear. . . . The [man] just never ever contacted us again.” ROWAN, *supra* note 9, at 78.

74. *See Sawyer, supra* note 73, at 199-202.

75. *Id.* at 203.

76. *Id.* at 204.

77. *See id.* at 206-09.

78. *See id.* at 209-10.

79. *Id.* at 207.

80. *See id.* at 230-31.

81. *See id.* at 232-34.

82. Press Release, NAACP, Hearing June 7 on Plea of Six to Enter Tennessee U. (May 10, 1940), *microformed on Papers of the NAACP, supra* note 3, at Reel 14:861.

83. Press Release, NAACP, Judge Rules That Trustees Must Be Served Individually in University of Tennessee Case (June 14, 1940), *microformed on Papers of the NAACP, supra* note 3, at Reel 14:862.

period that the judge had the case “under advisement,” Tennessee was able to create segregated graduate programs before a ruling was issued.⁸⁴ On December 4, 1941, the chancellor dismissed the lawsuit as moot because the state legislature had passed a statute authorizing the creation of institutions providing substantially equivalent education.⁸⁵ The NAACP was optimistic that the Tennessee Supreme Court would reverse the chancellor because the defense had offered no evidence of actual creation and implementation of segregated graduate programs.⁸⁶ Such optimism ultimately proved to be misplaced; the Tennessee Supreme Court upheld the finding that the case was moot.⁸⁷ The NAACP declined to appeal this case to the U.S. Supreme Court.⁸⁸

Charles Eubanks’s efforts to attend the University of Kentucky to study civil engineering in 1941 led to a federal lawsuit.⁸⁹ On January 23, 1943, the State finally filed its answer alleging that a “course of instruction and training in civil engineering” had been instituted at the Kentucky State College for Negroes since the filing of the lawsuit.⁹⁰ Part of the State’s strategy was to delay the case “so that Eubanks [would] get disgusted” or “drop the suit for the sake of national unity, . . . good feeling between the races and all that.”⁹¹

84. See Letter from Carl A. Cowan, Attorney, to Leon A. Ransom, Acting Dean, Howard Univ. Sch. of Law, Z. Alexander Looby, Member, NAACP Nat’l Legal Comm., Thurgood Marshall, Special Counsel, NAACP, William H. Hastie, Chairman, NAACP Nat’l Legal Comm., Charles H. Houston, Member, NAACP Nat’l Legal Comm., and Walter White, Executive Dir., NAACP (Sept. 18, 1941), *microformed on Papers of the NAACP, supra* note 3, at Reel 14:955-56; see also Letter from Leon A. Ransom, Acting Dean, Howard Univ. Sch. of Law, to A. E. Mitchell, Chancellor, Chancery Court of Knox County, Tenn. (Nov. 18, 1941), *microformed on Papers of the NAACP, supra* note 3, at Reel 14:969.

85. *Tenn. ex rel. Michael vs. Witham*, No. 28,627 (Ch. Knox County, Tenn. Dec. 4, 1941), *microformed on Papers of the NAACP, supra* note 3, at Reel 14:970; Letter from Leon A. Ransom, Acting Dean, Howard Univ. Sch. of Law, to Prentice Thomas, Assistant Special Counsel, NAACP (Oct. 7, 1942), *microformed on Papers of the NAACP, supra* note 3, at Reel 14:998-99.

86. Ransom, *supra* note 85, at Reel 14:999.

87. *State ex rel. Michael v. Witham*, 165 S.W.2d 378, 382 (Tenn. 1942); Press Release, NAACP, Tennessee University Negro Ban Upheld by State Supreme Court (Nov. 13, 1942), *microformed on Papers of the NAACP, supra* note 3, at Reel 14:1007.

88. MARK V. TUSHNET, *THE NAACP’S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950*, at 55 (1987).

89. *Negro Sues U. of K. to Gain Admission*, *COURIER J.*, Oct. 4, 1941, at 1, *microformed on Papers of the NAACP, supra* note 3, at Reel 11:773.

90. See Memorandum from Prentice Thomas, Assistant Special Counsel, NAACP, to Odette Harper, Executive Officer for Publicity & Promotion, NAACP (Jan. 28, 1943), *microformed on Papers of the NAACP, supra* note 3, at Reel 11:958.

91. Letter from Prentice Thomas, Assistant Special Counsel, NAACP, to Thurgood Marshall, Special Counsel, NAACP (Apr. 15, 1942), *microformed on Papers of the NAACP, supra* note 3, at Reel 11:903.

Eubanks was desperate to pursue his education, and he became frustrated and depressed with all of the delays.⁹² Because he was “not particularly interested in further continuing the litigation,” the district court ultimately dismissed the case for lack of prosecution.⁹³

B. The Search for New Plaintiffs

As its early lawsuits dragged on, the NAACP’s “plaintiffs were vulnerable. Economic pressure or the simple desire to get on with one’s life made it hard to sustain the interest of individual plaintiffs, and in some instances lack of local support contributed to even greater disaffection.”⁹⁴ “The NAACP had not anticipated the kinds of delays that the states could successfully interpose, nor did it expect problems with plaintiffs to arise.”⁹⁵ There continued to be a need for qualified, committed individuals to serve as plaintiffs. One of the reasons that the campaign against segregated education moved slowly was because “few Negroes were interested enough to ask to be plaintiffs.”⁹⁶

By June of 1945, the NAACP wanted to launch a “unified campaign” to challenge unequal educational opportunities.⁹⁷ It therefore issued a call to the state conferences to “gather[] the necessary information” for claims of inequality in education and “map[] out a program of legal action to compel the equalization of educational opportunities.”⁹⁸ Thurgood Marshall, who would become the first African American appointed to the United States Supreme Court, concluded that the southern states were “determined not to do anything toward following [the *Murray* and *Gaines* decisions] until . . . forced to do so” and that “it [was] the job of the N.A.A.C.P. to help these states to see the light by legal action.”⁹⁹ In order to proceed, the NAACP needed a “student who

92. See *id.*; see also Letter from Charles Eubanks, Plaintiff, to Prentice Thomas, Assistant Special Counsel, NAACP (July 20, 1943), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 11:1072-75.

93. Affidavit of Charles L. Eubanks, *Eubanks v. Donovan*, No. 215 (E.D. Ky. Jan. 18, 1945), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 11:1120; TUSHNET, *supra* note 88, at 87.

94. TUSHNET, *supra* note 88, at 88.

95. *Id.* at 77.

96. Marshall, *supra* note 40, at 318 (listing “a lack of full support from the Negro community in general” and “a lack of sufficient money to finance the cases” as the other major factors contributing to the slow pace of the campaign).

97. Memorandum from Thurgood Marshall, Special Counsel, NAACP, to State Conferences of Branches, NAACP (June 29, 1945), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 1:669.

98. *Id.*

99. Letter from Thurgood Marshall, Special Counsel, NAACP, to H. Council Trenholm, President, State Teachers Coll., Montgomery, Ala. (Nov. 29, 1945), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 1:690.

[was] absolutely determined on his own initiative to obtain . . . an equal education offered by [a] State . . . to white students and denied to him.”¹⁰⁰

On October 24, 1945, Marshall expressed serious concerns that the NAACP would be hampered in its efforts to pursue its litigation strategy.¹⁰¹ The NAACP had “lawyers ready but [it did] not have the cases.”¹⁰² It needed clients who were “in the fight as a matter of principle, and people who [would] undergo serious strains for matters of principle.”¹⁰³ “[G]rassroots origins and support for specific lawsuits were [also] conditions for the success of litigation.”¹⁰⁴

Less than two weeks later, the Oklahoma NAACP convened a conference in McAlester.¹⁰⁵ The delegates decided that the organization would attempt to enroll Negroes at the University of Oklahoma and Oklahoma A&M College in Stillwater.¹⁰⁶ Thurgood Marshall appeared at the conference and declared, “This is the easiest case to beat that ever entered the courts of Oklahoma. I could win this type of case even down in Mississippi.”¹⁰⁷

The *Daily Oklahoman* carried a front-page story, “State Negroes Plan Education Equality Fight,” explaining that if the NAACP succeeded in its efforts, local colleges and universities would “open the State’s institutions of higher learning to the Negro.”¹⁰⁸ The article included Marshall’s quote.¹⁰⁹ This and other newspaper articles reporting on the McAlester convention “caused something of a furor in higher-education circles.”¹¹⁰

100. Letter from Charles H. Houston, Member, NAACP Nat’l Legal Comm., to Charles W. Anderson, Member, NAACP Nat’l Legal Comm. (Jan. 25, 1945), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 11:1121.

101. Memorandum from Thurgood Marshall, Special Counsel, NAACP, to Walter White, Executive Dir., NAACP (Oct. 24, 1945), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 1:682.

102. *Id.*

103. TUSHNET, *supra* note 88, at 149.

104. *Id.* at 35. Once an applicant’s academic qualifications and financial ability had been determined, it was then “necessary to get the backing of the branch and community for the purpose of sponsoring the action.” Letter from Edward R. Dudley, Assistant Special Counsel, NAACP, to Louis L. Redding, Member, NAACP Nat’l Legal Comm. (Jan. 28, 1948), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 11:570.

105. *State Negroes Plan Education Equality Fight: Court Action to Back Effort at Enrolment at University, A&M*, DAILY OKLAHOMAN, Nov. 4, 1945, at 1 [hereinafter *Education Equality Fight*].

106. *Id.*

107. *Id.*

108. *Id.* Roscoe Dunjee was pleased with the reaction to this news story. Letter from Roscoe Dunjee, Editor, *Black Dispatch*, to Thurgood Marshall, Special Counsel, NAACP (Nov. 4, 1945), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:341.

109. *Education Equality Fight*, *supra* note 105, at 1.

110. GEORGE LYNN CROSS, BLACKS IN WHITE COLLEGES: OKLAHOMA’S LANDMARK CASES

The University of Oklahoma Board of Regents (OU Board of Regents or OU Regents) took note of the announced plan to challenge segregation policies at the state universities and met a week earlier than their scheduled meeting.¹¹¹ Following a discussion of the newspaper reports and the relevant segregation statutes, regent William Wallace moved “[t]hat the Board of Regents instruct the President of the University to refuse to admit anyone of negro blood as a student in the University for the reason that the laws of the State of Oklahoma prohibit[ed] the enrolment of such a student in the University.”¹¹²

The NAACP national office’s outreach to the branches proved successful. In November, Marshall wrote that “[t]he campaign to equalize educational opportunities [was] progressing rapidly.”¹¹³ A lawsuit was going to be filed in Oklahoma “aimed at compelling local school officials . . . to pay for . . . their ‘luxury’ of segregation by compelling absolute equality.”¹¹⁴ The NAACP was about to bring the fight to Oklahoma.

IV. Ada Lois Sipuel Fisher’s Fight to Enter the University of Oklahoma School of Law

A. Ada Lois Sipuel Fisher Steps Forward

Oklahoma NAACP officers and members actively sought potential plaintiffs in major cities and towns throughout Oklahoma.¹¹⁵ Dr. W.A.J. Bullock, regional director of the NAACP, knew the Sipuel family.¹¹⁶ He approached Lemuel Sipuel, a graduate of Langston University who had recently returned from service in the Army during World War II.¹¹⁷ Lemuel, however, knew that he did not want to wait long before pursuing a law degree and declined to be the test applicant.¹¹⁸ But his younger sister, Ada Lois Sipuel Fisher, volunteered to serve as the plaintiff.¹¹⁹

She knew that “the person the [NAACP] sought had to have not only brains but also the willingness and ability to withstand a long and probably bitter

31 (1975).

111. *Id.* at 31-32.

112. Minutes of a Regular Meeting, Board of Regents, Univ. of Okla. 113, 132 (Nov. 7, 1945), available at <http://digital.libraries.ou.edu/regents/browse.asp?tab=1941&year=1945>.

113. Memorandum from Thurgood Marshall, Special Counsel, NAACP, to Roy Wilkins, Assistant Sec’y, NAACP (Nov. 27, 1945), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 1:687.

114. *Id.*

115. SPUEL FISHER, *supra* note 1, at 78.

116. *See id.* at 75-76.

117. *See id.* at 76-78.

118. *See id.* at 77-78.

119. *Id.* at 78.

controversy.”¹²⁰ She knew that Lloyd Gaines had mysteriously disappeared.¹²¹ She knew that the person had to be willing “to commit to successful completion of the course of study . . . in Norman, a town legendary for its territorial pogrom, a town that still did not permit African Americans within its borders after the sun went down.”¹²² She knew that Dr. Bullock could only make a recommendation and that Roscoe Dunjee, in consultation with the NAACP, would make the decision regarding who would be the test plaintiff.¹²³ Nevertheless, she also knew that “[t]he cause was so right, so just,” that she was excited about the possibility of being the test plaintiff, and she “danced around in little circles and clapped [her] hands.”¹²⁴

About ten days after volunteering to serve as the test plaintiff, Sipuel Fisher traveled to Oklahoma City to meet with Roscoe Dunjee.¹²⁵ He reviewed her high-school and college transcripts, and he talked with her about her husband and father.¹²⁶ Dunjee, obviously aware of the impact of the stresses and strains on earlier NAACP plaintiffs, asked whether she had “the necessary courage and patience[.] Could [she] remain poised under duress and pressure? Was [she] available to make speaking appearances to help raise money to carry on the litigation?”¹²⁷ To each of these questions, she firmly answered yes.¹²⁸

On January 14, 1946, Ada Lois Sipuel Fisher applied for admission to OU Law.¹²⁹ Accompanied by Dr. Bullock and Dunjee, she was “a little anxious and apprehensive” as they went to the office of Dr. George L. Cross, president of the University of Oklahoma.¹³⁰ Dunjee had called Dr. Cross the day before to tell him that “he would be down Monday morning on ‘a business matter.’”¹³¹ Dunjee took the lead in the meeting with Dr. Cross, confidently introducing Sipuel Fisher.¹³² He firmly explained their purpose: she wanted to study law in Oklahoma, and OU Law was the only state law school.¹³³ She

120. *Id.* at 77.

121. *See id.*

122. *Id.*

123. *See id.* at 78.

124. *Id.* at 78-79.

125. *Id.* at 79.

126. *Id.*

127. *Id.* at 80. Sipuel Fisher and Dunjee traveled the state, visiting churches and local branches of the NAACP to raise the money for the lawsuit. *See id.* at 94-95, 105.

128. *Id.* at 80.

129. *Id.* at 81-82.

130. *Id.* at 81.

131. *Id.* at 81-82.

132. *See id.* at 82.

133. *Id.* at 76, 82.

was an honors graduate of Langston University.¹³⁴ She was academically qualified for admission.¹³⁵

Strikingly dressed, “chic, charming, and well poised,”¹³⁶ Sipuel Fisher presented her Langston transcript and asked for the application forms.¹³⁷ Dunjee, familiar with the other NAACP cases and the legal strategy, pointedly asked Dr. Cross to explicitly state in writing that Sipuel Fisher’s admission was being denied solely on account of her race.¹³⁸

After shaking hands all around, Sipuel Fisher, Dr. Bullock, and Dunjee left Dr. Cross’s office and were greeted by a group of faculty, students, and other Norman residents.¹³⁹ Photographs were taken.¹⁴⁰ They then had a sack lunch with the YMCA-YWCA Race Relations Committee, because no restaurant in Norman would serve African Americans.¹⁴¹ The next day’s front-page article in the *Daily Oklahoman*, entitled “Negro Barred from Enrolling at University,” included a lengthy description of Sipuel Fisher’s academic record and interests.¹⁴²

134. *Id.* at 82.

135. *Id.* at 83; CROSS, *supra* note 110, at 37.

136. CROSS, *supra* note 110, at 35.

137. *Id.* at 36. Dr. Cross’s impression was that “the association had made an excellent choice of a student for the test case.” *Id.* at 35.

138. *Id.* at 37. Dr. Cross had been counseled that he could deny the application of a Langston graduate on the basis that Langston was an unaccredited institution. Cross rejected that suggestion because the university had allowed white students to transfer from unaccredited institutions in the past. *Id.* at 38-39.

139. SIPUEL FISHER, *supra* note 1, at 85; *see also* ROWAN, *supra* note 9, at 146.

140. SIPUEL FISHER, *supra* note 1, at 85.

141. *See* CROSS, *supra* note 110, at 38; SIPUEL FISHER, *supra* note 1, at 85; *see also* “Okla. NAACP Ready for Court Action”—Dunjee, ATLANTA DAILY WORLD, Jan. 18, 1946, at 1; Press Release, NAACP, Democracy and Brotherhood Discovered on O.U. Campus (Jan. 18, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:346.

142. Wesley Leatherock, *Negro Barred from Enrolling at University*, DAILY OKLAHOMAN, Jan. 15, 1946, at 1. The article reported as follows:

Ada Lois Sipuel, central figure in the NAACP test enrolment at the University of Oklahoma, is a tall, slim and pretty girl who likes to hunt rabbits with a single-shot .22 rifle and reads mystery stories on rainy days.

She’s not a bit reluctant to tell you she’s 21 years old, “although if I were older I probably would deny it” she adds.

But that seems to fit, since she just graduated last spring from Langston university, where her extra-curricular activities easily outnumbered her scholastic studies.

She played a trumpet in the band, sang in the choral club, was a member of the debate team and the women’s council, and participated in the school plays.

She also participated in many round-table and panel discussions on subjects such as race relations and religion.

The tall girl with the pretty smile is the daughter of Rev. and Mrs. T. B.

Upon returning to his office, Dunjee wrote Thurgood Marshall, the excitement apparent in his words: “Here’s your case, and I think it’s what one would call a ‘natural.’”¹⁴³ Because “the whole state [was] astir,”¹⁴⁴ Dunjee urged NAACP executive director Walter White to act immediately and dispatch Marshall “to fly down . . . right away while the water [was] hot.”¹⁴⁵ “The truth,” Dunjee confided, “is that [Dr. Cross] wishes us to have a case, and exprest [sic] the hope that we would win. You of course cannot quote him on this but that is the reason why he let down the bars and gave us an open and shut case.”¹⁴⁶

Amos Hall, a Tulsa attorney, served as local counsel for the NAACP lawyers.¹⁴⁷ Marshall, anticipating potential defenses by the State of Oklahoma,

Sipuel, Chickasha, and her father is state overseer of the Church of God in Christ.

Asked why she wanted to enrol in the University of Oklahoma law school, she replied, “It’s close to home. I spent my first year in college in Arkansas—and I didn’t like it.”

She first became interested in the legal profession through a commercial law course in the Chickasha high-school she attended. But she wants no part of a legal practice which keeps her always in an office.

“I’d rather spend most of my time in court,” she confided, and added that eventual achievement of a judge’s robes “would certainly be nice.”

She was born in Chickasha and lived there until she completed high school. In 1941 she attended the Arkansas Agricultural and Mechanical Normal college.

The next year she returned to Oklahoma to attend Langston university and remained to receive her degree in 1945.

After she gets that law degree, Oklahoma City judges might be seeing a lot of her.

“I want to open a practice in Oklahoma City,” she says.

Id. at 2 (subheadings omitted).

143. Letter from Roscoe Dunjee, Editor, *Black Dispatch*, to Thurgood Marshall, Special Counsel, NAACP (Jan. 15, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:342. Dunjee further stated, “Confidentially, I received a lot of cooperation from the president of the college. He told me in the presence of Bullock and Miss Sipuel that he was sympathetic, and wanted to cooperate with us in having just what we want to get into the federal court for relief.” *Id.*

144. Letter from Roscoe Dunjee, President, Okla. Conference of Branches, NAACP, to Thurgood Marshall, Special Counsel, NAACP (Jan. 16, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:344.

145. Letter from Roscoe Dunjee, President, Okla. Conference of Branches, NAACP, to Walter White, Executive Dir., NAACP (Jan. 17, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:345. *Editors’ Note:* The date shown on the original document appears as January 17, 1945, but the time stamp of receipt, coupled with other contextual material, indicates 1946 as the correct year.

146. *Id.*

147. See ROWAN, *supra* note 9, at 81, 145. One of Thurgood Marshall’s biographers wrote that “Marshall really admired Amos Hall as a sacrificing, life-risking black lawyer in a state

directed Hall to write the OU Board of Regents.¹⁴⁸ The letter was not a request that a segregated law school be created, but rather a preemptive move to preclude any claim that the board was not aware of Sipuel Fisher's desire to attend law school or that she had failed to exhaust her administrative remedies.¹⁴⁹

B. The Legal Proceedings Begin

On April 6, 1946, following the denial of her application by the OU Regents, Sipuel Fisher, Dunjee, and Amos Hall drove to Norman to file a petition for mandamus in Cleveland County.¹⁵⁰ The petition named the OU Board of Regents; George L. Cross; Maurice H. Merrill, dean of OU Law; George Wadsack, registrar of the university; and Roy Gittinger, dean of admissions, as defendants.¹⁵¹ The petition alleged that OU Law was the only publicly funded law school in the state;¹⁵² that Sipuel Fisher was denied admission solely on the basis of her race;¹⁵³ and that the "[d]efendants ha[d] established and [were] maintaining a policy, custom and usage of denying to qualified Negro applicants the equal protection of the laws by refusing to admit them into the law school of the University of Oklahoma solely because of race and color."¹⁵⁴

The defendants, represented by Mac Q. Williamson,¹⁵⁵ the Oklahoma attorney general, and Fred Hansen, first assistant attorney general, admitted many of the facts alleged by Sipuel Fisher.¹⁵⁶ They noted, however, that the

where racial passions were deep and volatile." *Id.* at 86.

148. Letter from Thurgood Marshall, Special Counsel, NAACP, to Amos T. Hall, Attorney for Sipuel Fisher (Jan. 24, 1946), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:350.

149. See Letter from Amos T. Hall, Attorney for Sipuel Fisher, to Board of Regents, Univ. of Okla. (Feb. 4, 1946), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:353. Mr. Hall's letter specifically requested that "the Board of Regents re-consider her application and advise her immediately as to its actions in the matter." *Id.*

150. SPUEL FISHER, *supra* note 1, at 96-97; see also Petition at 1, Sipuel v. Bd. of Regents of the Univ. of Okla., No. 14,807 (Dist. Ct. Cleveland County, Okla. Apr. 6, 1946).

151. Petition, *supra* note 150, at 1-3.

152. *Id.* at 2-3.

153. *Id.* at 5.

154. *Id.*

155. Two years later, Williamson was a candidate for the United States Senate. In a campaign speech, Williamson proclaimed that he "favored segregation and had 'stood in this [Cleveland County] courthouse and fought for those principles.'" Ray Parr, *Smith and Kerr Are Blistered by Williamson*, DAILY OKLAHOMAN, June 26, 1948, at 2.

156. See Answer at 1-4, 7, Sipuel v. Bd. of Regents of the Univ. of Okla., No. 14,807 (Dist. Ct. Cleveland County, Okla. May 14, 1946); Letter from Fred Hansen, First Assistant Attorney Gen., Okla., to Amos T. Hall, Attorney for Sipuel Fisher, and Thurgood Marshall, Special

Oklahoma Constitution and statutes not only prohibited the education of whites with “colored” children but that criminal penalties could be imposed on any persons “operat[ing] any college, school or institution of this State where persons of both white and colored races [were] received as pupils for instruction.”¹⁵⁷ Moreover, the defendants asserted that the “petitioner ha[d] not applied . . . to the Board of Regents . . . to prescribe a school of law similar to the school of law of the University of Oklahoma as a part of . . . Langston University . . . so that she [would] be able . . . to attend said school without violating the public policy of [Oklahoma].”¹⁵⁸ Finally, the defense pointed out that the State had provided for the education of “colored” residents by the appropriation of \$15,000 for an out-of-state tuition program.¹⁵⁹

On July 9, 1946, following several postponements,¹⁶⁰ the case was tried before Cleveland County judge Ben Williams.¹⁶¹ A final request for a continuance was denied on the basis that the case needed to be resolved quickly enough for Sipuel Fisher to attend law school in the fall.¹⁶² This denial led Hall to believe that the writ of mandamus was likely to be granted.¹⁶³ It led Robert Carter, NAACP assistant special counsel, to opine that Hall would “experience no difficulty in having the court grant the writ.”¹⁶⁴

On the day of the hearing, a “large number of Negroes, students, and faculty members of the University of Oklahoma packed into the courtroom.”¹⁶⁵ Hall,

Counsel, NAACP (May 13, 1946), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:381 (“From our answer you will note that we have admitted all the material allegations of fact set forth in your petition, and in this connection state that we do not at this time intend to introduce any evidence in the case.”).

157. *See Answer, supra* note 156, at 4-6 (quoting, *inter alia*, 70 OKLA. STAT. § 455 (1941)).

158. *Id.* at 6.

159. *Id.* at 5-6.

160. Roscoe Dunjee repeatedly expressed concern about delays and the schedule conflicts of the NAACP attorneys. *See, e.g.*, Letter from Roscoe Dunjee, President, Okla. Conference of Branches, NAACP, to Thurgood Marshall, Special Counsel, NAACP (Mar. 9, 1946), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:365. He feared that the “interest in the case [might] lag,” which would be most unfortunate because “[p]ersons, both black and white, all over Oklahoma and the Southwest [were] deeply interested in this suit and [he was] get[ting] letters and telephone calls every week asking questions” about the status of the case. *Id.*

161. SIPUEL FISHER, *supra* note 1, at 96-97.

162. *See Telegram from Amos T. Hall, Attorney for Sipuel Fisher, to Thurgood Marshall, Special Counsel, NAACP (July 8, 1946), microformed on Papers of the NAACP, supra* note 3, at Reel 13:402.

163. *See id.*

164. Letter from Robert L. Carter, Assistant Special Counsel, NAACP, to Roscoe Dunjee, President, Okla. Conference of Branches, NAACP (July 8, 1946), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:404.

165. CROSS, *supra* note 110, at 43.

Dunjee, and Sipuel Fisher drove to the courthouse.¹⁶⁶ Because of illness and schedule conflicts, no attorney from the NAACP was present.¹⁶⁷ Hall, the local attorney from Tulsa,¹⁶⁸ was the only counsel appearing on behalf of Sipuel Fisher.¹⁶⁹ As Sipuel Fisher entered the courtroom, “all whispers and conversation stopped and the room fell absolutely silent.”¹⁷⁰

The parties entered agreed statements of fact into evidence.¹⁷¹ It was stipulated that Sipuel Fisher had not made an application for the creation of a segregated law school.¹⁷² It was further admitted that the Oklahoma State Board of Regents for Higher Education (State Board of Regents or Regents for Higher Education) was not taking any steps or actions toward the creation of a segregated law school because it lacked the requisite funds.¹⁷³ With the

166. SIPUEL FISHER, *supra* note 1, at 96.

167. Thurgood Marshall was ill. Letter from Robert L. Carter, Assistant Special Counsel, NAACP, to Amos T. Hall, Attorney for Sipuel Fisher (July 8, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:403. Robert Carter had been active in the preparation of the petition, but was unable to attend because of his sister’s death. See Letter from Robert L. Carter, Assistant Special Counsel, NAACP, to Roscoe Dunjee, Editor, *Black Dispatch* (July 8, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:404; Letter from Roscoe Dunjee, President, Okla. Conference of Branches, NAACP, to Walter White, Executive Dir., NAACP (June 17, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:396. Spottswood Robinson, an NAACP associate attorney, was unable to attend because of an infected foot. Letter from Robert L. Carter, Assistant Special Counsel, NAACP, to Spottswood W. Robinson, Assoc. Attorney, NAACP (June 27, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:400.

168. See *supra* note 147 and accompanying text.

169. See SIPUEL FISHER, *supra* note 1, at 100-01.

170. *Id.* at 100.

171. See Transcript of Record at 22-25, *Sipuel v. Bd. of Regents of the Univ. of Okla.*, 332 U.S. 631 (1948) (No. 369). With the State’s admission of the material facts in its answer, Marshall believed that “the legal question [was raised] in such a manner as to make it unnecessary to go to trial as to the facts . . . [and] that the question [could] be disposed of as a legal matter.” Letter from Thurgood Marshall, Special Counsel, NAACP, to Amos T. Hall, Attorney for Sipuel Fisher (May 15, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:384.

172. Transcript of Record, *supra* note 171, at 24.

173. *Id.* at 24-25. Attorney General Williamson had sought additional time to prepare the answer because he needed to “consult with the Oklahoma Board of Regents for Higher Education, as well as the Board of Regents of the University of Oklahoma, [and] the Governor of the State.” Application for Time to Prepare and File Response at 1, *Sipuel v. Bd. of Regents of the Univ. of Okla.*, No. 14,807 (Dist. Ct. Cleveland County, Okla. Apr. 23, 1946). On May 13, 1946, Fred Hansen; dean John B. Cheadle, assistant to the university president; and President Cross met with the Regents for Higher Education. Minutes, Fifty-first Meeting, Oklahoma State Regents for Higher Education 389, 390 (May 13, 1946) (on file with the Oklahoma State Regents for Higher Education) [hereinafter Minutes, Fifty-first Meeting] (“Serious consideration was given many aspects of the program in a lengthy conference by

stipulations entered, Hall argued the case on behalf of Sipuel Fisher.¹⁷⁴ He advanced the proposition that educational training, regardless of cost, should be available to all students, irrespective of race.¹⁷⁵ Expressly invoking the Supreme Court decision in *Gaines*, Hall argued that the “crux of that ruling was that ‘equality of education must occur within the state’ and that compliance with the constitution cannot be deferred at the will of the state.”¹⁷⁶ In short, Hall’s position was that Oklahoma did not have any institution that provided a legal education for Negroes; consequently, Ada Lois Sipuel Fisher had to be admitted to OU Law.

Ruling from the bench, Judge Williams denied the petition and held that mandamus could not be used to force a state officer to violate the state constitution or a statute.¹⁷⁷ Judge Williams did not address the claims of denial of equal protection.¹⁷⁸ He did not even mention the U.S. Supreme Court decision in *Gaines*.¹⁷⁹ Sipuel Fisher and the NAACP appealed the decision to the Oklahoma Supreme Court.¹⁸⁰

The NAACP filed its brief in the Supreme Court of Oklahoma on December 8, 1946, presenting a “new attack on segregation, per se.”¹⁸¹ Copies of the

those present, with particular reference to the establishment of a Law School. No action was taken by the Regents at this meeting.”).

174. See SIPUEL FISHER, *supra* note 1, at 101.

175. See *id.*

176. *Ada Lois Sipuel Denied Right to Enter Law School at the University of Oklahoma*, BLACK DISPATCH, July 13, 1946, at 1.

177. See Transcript of Record, *supra* note 171, at 21-22; see also Letter from Amos T. Hall, Attorney for Sipuel Fisher, to Robert L. Carter, Assistant Special Counsel, NAACP (July 11, 1946) (reporting that “[t]he court held that a writ of mandamus would not lie to compel an administrative officer of the State to do an act which was violative of the State statutes and constitution”), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:407.

178. Transcript of Record, *supra* note 171, at 22.

179. See *id.* at 21-22.

180. See Certificate of Appeal, *Sipuel v. Bd. of Regents of the Univ. of Okla.*, No. 14,807 (Okla. Aug. 17, 1946). While the appeal was pending, Sipuel Fisher appeared before the annual NAACP conference held in Chickasha, her hometown. She gave an address entitled “Why I Desire to Enter the Law Classes at Oklahoma University.” *Official Program of the Twelfth Annual Session, Oklahoma Conference of Branches NAACP*, BLACK DISPATCH, Nov. 2, 1946, at 7. That presentation was followed by Ben Blackstock, a student at the University of Oklahoma and chairman of the university’s Race Relations Council of the YMCA and YWCA, who spoke on “Why the White Students at Norman Welcome Ada Lois Sipuel.” *Id.* Referencing World War II, Blackstock said, “We should not fight wars for one set of principles and conduct our domestic life on an altogether and contradictory plane of human relations.” *Oklahoma University Youth Makes Impassioned Address to State NAACP Conference*, BLACK DISPATCH, Nov. 16, 1946, at 1.

181. Memorandum from Legal Department, NAACP, to Oliver W. Harrington, Pub. Relations Dir., NAACP (Dec. 12, 1946), *microformed on Papers of the NAACP*, *supra* note 3,

brief were sent to editors of various newspapers so that the “exact position taken by the N.A.A.C.P. on the question of higher education for Negroes” might be known.¹⁸²

Oral argument was held on March 4, 1947.¹⁸³ Thurgood Marshall flew in from New York to make the argument on behalf of Sipuel Fisher.¹⁸⁴ Chief Justice Thurman S. Hurst extended the traditional time for argument to an hour for each side because of “the public importance of the question involved.”¹⁸⁵ In a “courtroom jampacked with white and colored spectators,” OU Law dean Maurice Merrill argued that Sipuel Fisher should have sued the Regents for Higher Education to “compel them to establish a separate law school” and then “wait[ed] until the school was established.”¹⁸⁶ Marshall argued that because Oklahoma did not have a separate law school in existence at the time when Sipuel Fisher sought acceptance, her constitutional rights had been violated.¹⁸⁷

On April 29, 1947, the Oklahoma Supreme Court upheld the denial of the petition.¹⁸⁸ The court found that *Gaines* had not struck down the segregated system of education required by the Oklahoma Constitution and statutes.¹⁸⁹ Moreover, Sipuel Fisher’s rights were protected because the State Board of Regents had full authority to establish a segregated law school.¹⁹⁰

Distinguishing *Gaines*, the Oklahoma Supreme Court stated that Lloyd Gaines had given notice of his desire to study law to Lincoln University and the Missouri Board of Higher Education, whereas Sipuel Fisher had not given such notice to the Regents for Higher Education.¹⁹¹ The court noted that the U.S. Supreme Court “opinion [did] not disclose the exact nature of [Gaines’s] communication or application to Lincoln University,” but went on to say, “[W]e assume he applied to Lincoln University for instruction there in the

at Reel 13:431.

182. See Memorandum from Thurgood Marshall, Special Counsel, NAACP, to Editors (Dec. 16, 1946), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:034.

183. Press Release, NAACP, Oklahoma Law School Under NAACP Fire (Mar. 7, 1947), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:035.

184. See *id.*

185. Letter from Fred Hansen, First Assistant Attorney Gen., Okla., to Maurice H. Merrill, Dean, Univ. of Okla. Sch. of Law (Feb. 15, 1947), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:447.

186. Press Release, NAACP, *supra* note 183.

187. *Id.*

188. *Sipuel v. Bd. of Regents of the Univ. of Okla.*, 1947 OK 142, ¶ 47, 180 P.2d 135, 144.

189. See *id.* ¶ 11, 180 P.2d at 138.

190. See *id.* ¶¶ 18-21, 180 P.2d at 139.

191. *Id.* ¶ 28, 180 P.2d at 140-41.

law.”¹⁹² The court’s distinction of the *Gaines* decision was rooted in a wholly false assumption.

The Oklahoma Supreme Court either failed to review the opinion from the Missouri Supreme Court or deliberately chose to disregard the recitation of facts included within that opinion. The Missouri court’s published opinion clearly stated that “[a]ppellant [Lloyd Gaines] made no attempt to avail himself of the opportunities afforded the negro people of the State for higher education. *He at no time applied to the management of the Lincoln University for legal training.*”¹⁹³ The Oklahoma Supreme Court so desperately sought a basis to distinguish the *Gaines* decision that it ignored the facts of that case.

The NAACP lawyers filed a petition for rehearing, candidly and frankly arguing that the Oklahoma Supreme Court’s opinion “conflict[ed] with [the] controlling decisions of the United States Supreme Court,” particularly the *Gaines* case.¹⁹⁴ Citing to the *Gaines* transcript, the NAACP made it clear that the “facts in [Sipuel Fisher’s] case and the *Gaines* case [were] exactly the same.”¹⁹⁵ Lloyd Gaines had not requested that Missouri create a separate law school. The Oklahoma Supreme Court’s assumption was simply wrong. Nonetheless, the petition for rehearing was summarily denied.¹⁹⁶ The Oklahoma Supreme Court never addressed the fact that the fundamental assumption on which it had based its distinction of *Gaines* was incorrect.¹⁹⁷ The summary denial, in light of the very clear similarities between *Gaines* and *Sipuel*, constituted a flagrant disregard for U.S. Supreme Court authority.

C. Ada Lois Sipuel Fisher Takes the Fight to the United States Supreme Court

Sipuel Fisher and the NAACP lawyers had to go to the Supreme Court. Even though Sipuel Fisher “had not really expected the state supreme court to reverse the district court’s ruling,” she had hoped for such a result.¹⁹⁸ But the affirmance made her “more determined than ever to continue with the litigation.”¹⁹⁹ She was now angry.²⁰⁰

192. *Id.* ¶ 28, 180 P.2d at 140 (emphasis added).

193. *State ex rel. Gaines v. Canada*, 113 S.W.2d 783, 789 (Mo. 1937) (emphasis added).

194. Transcript of Record, *supra* note 171, at 54-55.

195. *Id.* at 56.

196. *See id.* at 61.

197. *See id.*

198. SIPUEL FISHER, *supra* note 1, at 111.

199. *Id.*

200. *Id.*

A petition for certiorari was filed on September 24, 1947, and granted on November 10, 1947.²⁰¹ Shortly thereafter, the NAACP predicted that the “decision of the Supreme Court [would] have far-reaching significance especially since world-wide interest ha[d] been focused on the denial of equal rights for Negroes in the United States.”²⁰²

The NAACP filed its brief with the Court on December 26, 1947.²⁰³ It had concluded that an argument relying totally on the *Gaines* decision could lead to two possible results: (1) an order that Sipuel Fisher be immediately admitted to the state law school; (2) or an order that she was entitled to an equal education, at which time it would

then be up to the state to either admit her to the University of Oklahoma Law School or set up a separate law school for her. In the event that a separate law school was set up, it [could] then be attacked on the grounds that it [was] not equal and then on the ground that segregation per se is bad because there can be no separate equality.²⁰⁴

The NAACP argued that the facts in Sipuel Fisher’s case were virtually identical to the facts in the *Gaines* case.²⁰⁵ It directly attacked the credibility of the court below: “The Supreme Court of Oklahoma has shown no valid distinction between this case and the *Gaines* case. Their efforts to distinguish the two cases are shallow and without merit.”²⁰⁶ The refusal to admit Sipuel Fisher occurred, the NAACP argued, because *Gaines* could be interpreted as not fully foreclosing a state’s right “to maintain a segregated school system under the equal but separate theory even where . . . no provision other than the existing facility which [was] closed to Negroes [was] available.”²⁰⁷

With the date for oral argument set, Mac Williamson met with various state officials. He had concluded that “segregation in education of negroes and whites was likely to be broken down in Oklahoma unless the state inaugurated some plan for establishing a standard law school before the final hearing of the

201. Transcript of Record, *supra* note 171, at cover, 61.

202. Press Release, NAACP, Supreme Court to Decide on Oklahoma Univ. Jim Crow (Nov. 14, 1947), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:037.

203. See Brief for Petitioner, *Sipuel v. Bd. of Regents of the Univ. of Okla.*, 332 U.S. 631 (1948) (No. 369), 1947 WL 44231.

204. Memorandum of the NAACP, *Sipuel v. Bd. of Regents of University of Oklahoma: Possible Theories Which May Be Used in Brief and Amendment*, *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:233.

205. See Brief for Petitioner, *supra* note 203, at 9.

206. *Id.* at 18.

207. *Id.* at 9.

case before the United States Supreme Court in January.”²⁰⁸ Temporary arrangements needed to be made for a Negro law school.²⁰⁹

On December 15, 1947, Williamson advised the Regents for Higher Education of the impending oral argument before the Supreme Court and the possible “implications of the Sipuel case.”²¹⁰ “The Regents expressed a desire to do everything possible to provide adequate facilities in the program of higher education for Negroes, within existing statutes, possible future legislation and court decisions, and with such funds as might be provided by the Legislature.”²¹¹ For a second time, however, the State Board of Regents failed to take any action.²¹²

Oral argument was held on January 8, 1948, just slightly less than two years from the day that Sipuel Fisher had applied for admission.²¹³ To prepare for the argument, Thurgood Marshall and Amos Hall met with law professors and students at Howard University to practice their arguments.²¹⁴ They were preparing to advance the argument that segregation was unlawful as “far as it [could] be raised” based on the limited trial record.²¹⁵

Sipuel Fisher anticipated this day with great excitement. She wrote Marshall and told him of her plans to travel from Rhode Island to Washington to attend the argument, and she made plans to meet him.²¹⁶ Walking with

208. See Memorandum from John B. Cheadle, Dean & Assistant to the Univ. President, to George L. Cross, President, Univ. of Okla. (Dec. 4, 1947) (on file with the University of Oklahoma Library, Western History Collections: George Lynn Cross Collection).

209. *Id.*

210. Minutes, Sixty-sixth Meeting, Oklahoma State Regents for Higher Education 508, 508 (Dec. 15, 1947) (on file with the Oklahoma State Regents for Higher Education) [hereinafter Minutes, Sixty-sixth Meeting].

211. *Id.* at 508-09.

212. See *Hansen Admits Okla. Has Done Nothing for Negro Education Since Filing of Sipuel Suit*, BLACK DISPATCH, Jan. 17, 1948, at 3 [hereinafter *Hansen Admits*]. In an editorial, the *Daily Oklahoman* criticized the Regents for Higher Education for their failure to provide adequate funding for Langston University. Editorial, *Wasn't This Ordered?*, DAILY OKLAHOMAN, Jan. 10, 1948, at 4.

213. SPUUEL FISHER, *supra* note 1, at 119.

214. See Memorandum from Thurgood Marshall, Special Counsel, NAACP, to George Johnson, Dean, Howard Univ. Sch. of Law, and James Nabrit, Jr., Member, NAACP Nat'l Legal Comm. (Dec. 30, 1947), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:509. Charles Hamilton Houston first experimented with live-audience oral argument rehearsals in preparation for the *Gaines* case. See MCNEIL, *supra* note 41, at 149-50. It later became customary practice for NAACP attorneys to rehearse before Howard law students and faculty prior to Supreme Court appearances. *Id.* at 150, 182.

215. See *id.*

216. Letter from Ada Lois Sipuel Fisher, Plaintiff, to Thurgood Marshall, Special Counsel, NAACP (Dec. 23, 1947), *microformed on Papers of the NAACP, supra* note 3, at Reel 13: 507-08; see also Letter from Thurgood Marshall, Special Counsel, NAACP, to Ada Lois Sipuel

Marshall and Hall, climbing the steps of the Supreme Court Building, seeing the words “Equal Justice under Law,” and entering the courtroom, Sipuel Fisher was thrilled because the “August body was assembled that morning because of [her]—to recognize and affirm [her] rights of citizenship.”²¹⁷

The oral argument, particularly the sharp, focused questions of the Justices to the attorneys representing the State, received national attention. Assistant Attorney General Hansen admitted that Sipuel Fisher “could not get facilities equal to those of the University of Oklahoma ‘tomorrow or the next day,’ but said that the Regents for Higher Education would open a Negro law school ‘promptly’ if Sipuel Fisher asked for one.”²¹⁸ This caused Justice William O. Douglas to retort, “She might be an old lady by that time. It takes time to build an institution.”²¹⁹

The blistering questions and remarks of the Justices were not missed by the press. The *Washington Post* observed that “[c]ounsel for the State of Oklahoma took a severe hazing.”²²⁰ *Time Magazine* reported that the Justices “[o]ne by one . . . leaned forward to ask questions; and usually their questions were phrased to badger the attorneys for the State of Oklahoma.”²²¹ The *Daily Oklahoman* vividly described the oral argument: “United States supreme court justices Thursday ripped attorneys for the state of Oklahoma with a running fire of hostile questions . . . [that] had seldom been duplicated.”²²²

With astounding speed,²²³ a mere four days after the oral argument, on January 12, 1948, the Supreme Court issued a single-page, per curiam decision.²²⁴

Fisher, Plaintiff (Dec. 30, 1947), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:506. Sipuel Fisher’s husband, Warren Fisher, had moved to Rhode Island to pursue work opportunities. SIPUEL FISHER, *supra* note 1, at 114.

217. SIPUEL FISHER, *supra* note 1, at 119-20.

218. *Ada’s Day in Court*, TIME, Jan. 19, 1948, at 62-63, available at <http://www.time.com/time/printout/0,8816,779557,00.html>.

219. *Hansen Admits, supra* note 212, at 3.

220. Dillard Stokes, *Supreme Court Questions Oklahoma Counsel on Banning Negro Girl from Law College*, WASH. POST, Jan. 9, 1948, at 12.

221. *Ada’s Day in Court, supra* note 218, at 62.

222. Cullen Johnson, *High Court Caustic on OU Negro Ban, Early Rule Hinted*, DAILY OKLAHOMAN, Jan. 9, 1948, at 1.

223. W. D. Little, one of the Regents for Higher Education, remarked on the speed of the Supreme Court’s decision in a memorandum prepared to supplement the regents’ biennial report: “The Court’s opinion came fast, in a remarkably short time under court rules for an opinion to issue and particularly for a mandate to issue.” W.D. Little, A Memorandum Suggested for Consideration as a Supplemental Report to the Governor, the Legislature and the People on Problems Concerning Higher Education for Negroes in Oklahoma 10 (Jan. 1949) (on file with the Oklahoma Department of Libraries, Oklahoma State Archives Division: Governor Roy J. Turner Collection).

224. *See Sipuel v. Bd. of Regents of the Univ. of Okla.*, 332 U.S. 631 (1948).

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.²²⁵

The sole authority cited by the Supreme Court was *Missouri ex rel. Gaines v. Canada*²²⁶—the very case cited and relied on by the NAACP in advancing Sipuel Fisher's cause and the same case disingenuously distinguished by the Oklahoma Supreme Court.

The Supreme Court opinion was received with great enthusiasm. Sipuel Fisher was greeted by “a battery of news reporters and photographers” when she flew home to Oklahoma from Rhode Island.²²⁷ Her excitement and enthusiasm came across in her comments: “O, it's a wonderful Constitution;” “I'm going to be a lawyer, I'm going to learn;” “The few on the campus at the university who call me names—why, I won't even hear them;” “I don't think I'll be alone for long. Somebody had to be first. It will be hard but maybe soon there'll be other Negroes with me.”²²⁸

The NAACP hailed the decision as “the furthest advance yet reached towards the principle that there can be no equality in a segregated system”²²⁹ and said that it brought “educational equality a step nearer.”²³⁰ *Newsweek* magazine said that the Court decision “cracked down firmly . . . on discrimination against Negroes.”²³¹ *Life* magazine labeled Sipuel Fisher a “victorious student.”²³²

Newspapers also reacted to the Supreme Court decision. “Negro Law Student for OU in Prospect Under Court's Ruling: State Told to Provide Equal Facilities Before Next Semester; Time Too Short for Creation of Separate Institution,” proclaimed the headlines of the *Daily Oklahoman*.²³³ In an

225. *Id.* at 632-33.

226. *Id.* at 633.

227. *Mrs. Ada Sipuel Fisher Home*, *supra* note 7, at 1.

228. *Court Ruling 'Wonderful,' Says Negro*, CHI. DAILY TRIB., Jan. 15, 1948, at 20.

229. Telegram, NAACP (Jan. 12, 1948), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:040.

230. Press Release, NAACP, Sipuel Victory Brings Educational Equality Step Nearer, Says NAACP (undated), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:074.

231. *The Court and Color*, NEWSWEEK, Jan. 19, 1948, at 86.

232. *Victorious Student*, LIFE, Jan. 26, 1948, at 48.

233. *Negro Law Student for OU in Prospect Under Court's Ruling: State Told to Provide Equal Facilities Before Next Semester; Time Too Short for Creation of Separate Institution*,

editorial in the *Black Dispatch*, Roscoe Dunjee commented that Oklahoma could not “escape from [the Court’s] mandate unless [the state] intend[ed] to continue dilatory practices that barely skim the surface of integrity.”²³⁴ He went on to ask, “Will Oklahoma surrender to the mandate of the Supreme Court or will there be instant attempt to practice deceit or evasion . . . ?”²³⁵ According to an editorial in the *Washington Post*, there was one inescapable conclusion: Ada Lois Sipuel Fisher had to be admitted to OU Law because no other facility existed.²³⁶

The *New York Times* was more muted in its praise of the outcome. It said that the “forthright order” that Sipuel Fisher be provided a legal education was “[s]o far, so good,” but noted that “[o]ne of the privileges of equal citizenship would seem to be entry, if qualified, to any state-supported educational institution.”²³⁷ The *Defender*, a black newspaper, “cautioned that while the *Sipuel* decision was a step forward, it did not ‘sound the death knell of Jim-Crow higher education in Dixie.’”²³⁸ The *Atlanta Daily World* was more enthusiastic, stating that the decision “climaxed an uphill fight for equal educational opportunity” and predicting that it would “have [a] major effect on future educational trends involving Negroes in the United States.”²³⁹ Even the University of Oklahoma’s student newspaper, the *Oklahoma Daily*, declared, “SIPUEL WINS CASE!” in a large, all-capitals headline; however, it presciently commented, “Barring any last-minute devices on the part of the state to circumvent her entrance, Ada Lois Sipuel will enroll in OU’s law school this next semester.”²⁴⁰

D. Oklahoma’s Answer to the Supreme Court Order: Langston Law School

With midyear enrollment at OU Law scheduled to begin on January 26, 1948, there was little more than two weeks’ time between the Court’s ruling

DAILY OKLAHOMAN, Jan. 13, 1948, at 1 [hereinafter *Negro Law Student for OU*].

234. Roscoe Dunjee, Editorial, *Oklahoma Admits Segregation Too Costly*, BLACK DISPATCH, Jan. 17, 1948, at 4.

235. *Id.*

236. Editorial, *Equal Education*, WASH. POST, Jan. 15, 1948, at 8; see also Hastie, *supra* note 5, at 27 (“As a practical matter, this mandate could be obeyed only by admitting Miss Sipuel to the existing law school of the state university.”).

237. *Equal Rights in Education*, N.Y. TIMES, Jan. 15, 1948, at 22.

238. Weaver & Page, *supra* note 67, at 21-22 (citing the January 24, 1948, issue of the *Defender*).

239. Louis Lautier, *Supreme Court Bans Discrimination Against Negroes in Okla. Law Study: Unanimous Ruling Clears Road for Legal Education*, ATLANTA DAILY WORLD, Jan. 13, 1948, at 1.

240. Quinton Peters & Ed O’Brien, *SIPUEL WINS CASE!: Supreme Court Orders ‘Immediate’ State Action*, OKLAHOMA DAILY, Jan. 13, 1948, at 1.

and the commencement of classes.²⁴¹ The *Sipuel* decision caused an “uproar” in Oklahoma²⁴² because, as the *Daily Oklahoman* headline declared, time was too short for the state to set up a separate law school.²⁴³ A “source close to the attorney general’s office” opined that there was “a definite possibility” that the law school would admit *no* new students—black or white—in the upcoming semester as a means of “carrying out” the Supreme Court order.²⁴⁴

The responsibility for enforcing the U.S. Supreme Court’s mandate fell directly in the laps of the Oklahoma Supreme Court justices. Attorney General Williamson determined that the order only mandated that Oklahoma provide Sipuel Fisher with a legal education, not necessarily admission to OU Law.²⁴⁵ Maurice Merrill stated that the Oklahoma Supreme Court could direct the creation of a law school at Langston, while “allowing Miss Sipuel to enter [the University of Oklahoma] law school” in the interim.²⁴⁶

On January 15, 1948, the State Board of Regents met and decided to seek direction and instruction regarding its powers and responsibilities.²⁴⁷ “The regents [were] in a spot. If they admit[ted] [Sipuel Fisher,] . . . they [would] violate the state segregation laws If they [did not] admit her or establish a just-as-good school for her, they [would] be in contempt of the U.S. Supreme Court.”²⁴⁸

On January 16, 1948, the Oklahoma Supreme Court made the State Board of Regents a party to the litigation, and on the following day, the court provided the requested instruction when it issued its ruling.²⁴⁹ The Regents for Higher Education were directed to

241. Classes would begin on January 29, 1948. Little, *supra* note 223, at 11.

242. Letter from Roscoe Dunjee, Editor, *Black Dispatch*, to Thurgood Marshall, Special Counsel, NAACP (Jan. 14, 1948), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:532.

243. *Negro Law Student for OU*, *supra* note 233, at 1.

244. *O.U. Awaits Regents’ Decision on Enrolling Negro in Law School: Freshman Legal Courses Booked for New Term*, NORMAN TRANSCRIPT, Jan. 13, 1948, at 1.

245. See Letter from Fred Hansen, First Assistant Attorney Gen., Okla., to George L. Cross, President, Univ. of Okla. (Jan. 22, 1948) (on file with the University of Oklahoma Library, Western History Collections: George Lynn Cross Collection).

246. Letter from Maurice Merrill, Dean, Univ. of Okla. Sch. of Law, to George L. Cross, President, Univ. of Okla. (Jan. 14, 1948) (on file with the University of Oklahoma Library, Western History Collections: George Lynn Cross Collection). Dean Merrill, one of the attorneys who had argued the case before the U.S. Supreme Court, clearly did not anticipate that a separate law school could be established before registration began. See *id.*

247. Minutes, Sixty-seventh Meeting, Oklahoma State Regents for Higher Education 511, 512 (Jan. 15, 1948) (on file with the Oklahoma State Regents for Higher Education).

248. *Regents Check Negro Question to State Court*, DAILY OKLAHOMAN, Jan. 16, 1948, at 14.

249. See *Sipuel v. Bd. of Regents of Univ. of Okla.*, 1948 OK 17, ¶¶ 7-8, 190 P.2d 437, 438.

afford to plaintiff, and all others similarly situated, an opportunity to commence the study of law at a state institution as soon as citizens of other groups [were] afforded such an opportunity, in conformity with the equal protection clause of the Fourteenth Amendment of the Federal Constitution and with the provisions of the Constitution and statutes of this state requiring segregation of the races in the schools of this state.²⁵⁰

The attorneys representing Oklahoma before the U.S. Supreme Court had told those Justices, just a few days earlier, that it would take *at least two months* for a separate law school to be opened.²⁵¹ In ruling as it did, however, the Oklahoma Supreme Court effectively decreed that a new, separate law school, ostensibly equal to OU Law, be established within twelve days.²⁵²

The order was even more astonishing since the court was aware that the Regents for Higher Education had twice determined that it could not go forward with the establishment of a separate law school because of inadequate financial resources.²⁵³ With estimates that the costs of separate graduate schools would be millions of dollars,²⁵⁴ the regents had recently determined that the immediate establishment of a separate law school was impossible.²⁵⁵ The Oklahoma Supreme Court's decision left the administrative assistant to the Regents for Higher Education "stumped."²⁵⁶ But the message from the Oklahoma Supreme Court was clear: set up a separate law school for Sipuel Fisher before registration opened at OU Law.²⁵⁷

On Monday, January 19, 1948, the Regents for Higher Education met and resolved as follows: "There is hereby established as one of the functions of Langston University, a school of law to be known as the Langston University

250. *Id.* ¶ 8, 190 P.2d at 438.

251. Peters & O'Brien, *supra* note 240, at 1.

252. *See supra* note 241. Given that the existing law school had been established nearly four decades earlier in 1909, *see* University of Oklahoma College of Law, About OU Law, www.law.ou.edu/visitor/about.shtml (last visited Apr. 7, 2010), the suggestion that a new, separate law school would provide an equal education was specious.

253. In May 1946 and December 1947, the State Board of Regents had met with Attorney General Williamson to explore the creation of a law school. *See* Minutes, Fifty-first Meeting, *supra* note 173, at 390; Minutes, Sixty-sixth Meeting, *supra* note 210, at 508-09.

254. Little, *supra* note 223, at 8 (reciting figures set forth in the State Board of Regents' Fourth Biennial Report).

255. *Negro Law School Ordered by Oklahoma Supreme Court*, NORMAN TRANSCRIPT, Jan. 18, 1948, at 1.

256. *Id.*

257. *See* Sipuel v. Bd. of Regents of the Univ. of Okla., 1948 OK 17, ¶ 8, 190 P.2d 437, 438; *see also supra* text accompanying note 251. Newspapers across the country took notice. *See, e.g., Court Rules Negro Gets Own School*, L.A. TIMES, Jan. 18, 1948, at 9.

School of Law, which school shall be located in Oklahoma City”²⁵⁸ The Regents for Higher Education blatantly disregarded the fact that, because of inadequate facilities, poor funding, and other deficiencies, Langston University had been denied accreditation by the North Central Association of Colleges (NCAC).²⁵⁹ Because the undergraduate school was unaccredited, a graduate program at Langston University would not be approved.²⁶⁰ Nevertheless, despite the NCAC’s assessment that Langston could not support a graduate program, the regents created Langston University School of Law (Langston Law).²⁶¹

The Regents’ Committee on Langston, a special committee comprising five of the state regents, was immediately established to implement this resolution.²⁶² At the inaugural meeting held the same day, the Regents’ Committee on Langston was briefed by the state attorney general; was assured that the dean of OU Law would be available to the committee; was informed that space for the law school would be secured in the Capitol; secured use of the state library for the students and faculty; and sent notices of these actions to the “Governor . . . , the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, the President of Langston University, the Board of Regents of the University of Oklahoma, the President of the University of Oklahoma, and the Dean of the School of Law of the University of Oklahoma.”²⁶³ All of this was accomplished in one hour.²⁶⁴

At a special meeting of the OU Board of Regents on January 21, 1948, Dr. Cross explicitly asked for the OU Regents’ guidance about Sipuel Fisher’s status.²⁶⁵ He was instructed to deny her admission again if he received

258. Minutes, Sixty-eighth Meeting, Oklahoma State Regents for Higher Education 515, 519 (Jan. 19, 1948) (on file with the Oklahoma State Regents for Higher Education). That resolution further declared that the course of study at the Langston University School of Law should “be substantially equal to the course of study and standards now in existence at the University of Oklahoma School of Law” and that the registration period for Negroes to enroll at Langston should be identical to the registration period for enrollment at OU Law. *Id.*

259. *See* Little, *supra* note 223, at 10.

260. *See id.*

261. *Id.* at 12 (noting, however, that “[a]lthough some of the Regents felt the step to be necessary under the circumstances, some individual members felt it was wrong to set up the law school, and one asked that his statement be made of record”).

262. *See* Minutes, First Meeting, Regents’ Committee, Langston Univ. Sch. of Law (Jan. 19, 1948) (on file with the Oklahoma State Regents for Higher Education) [hereinafter Regents’ Committee, First Meeting].

263. *Id.*

264. *See id.* (indicating that the meeting ran from 4:00 to 5:00 p.m. on January 19, 1948).

265. Minutes of a Special Meeting, Board of Regents, Univ. of Okla. 61, 62 (Jan. 21, 1948), available at <http://digital.libraries.ou.edu/regents/browse.asp?tab=1941&year=1948> (follow “Minutes of a Special Meeting, January 21, 1948” hyperlink).

certification that Langston Law afforded her an “education substantially equal” to that provided at OU Law.²⁶⁶

That same day, the Regents’ Committee on Langston convened for its second meeting.²⁶⁷ A number of state officials attended.²⁶⁸ The committee was provided a copy of the OU Law bulletin and was advised about the courses, schedules, staffing, and enrollment process.²⁶⁹ The Regents’ Committee on Langston formally adopted the “standards and course of study” as described in the OU Law bulletin as the standards and course of study for Langston Law.²⁷⁰ Following this action, the committee certified that it had established a separate school of law “affording an opportunity for the study of law by qualified Negro citizens substantially equal to opportunities provided for any other race.”²⁷¹

The Regents’ Committee on Langston then addressed the issue of funding Langston Law. It unanimously decided to seek \$15,000 from governor Roy Turner.²⁷² The very next day, January 22, 1948, Governor Turner specially authorized the expenditure of \$15,000 from the Governor’s Contingency Fund “to pay the cost of establishing . . . a separate law school for negroes as one of the functions of Langston University . . . and of operating said school until June 30, 1948.”²⁷³

With space, a library, and funding secured, attention turned to securing faculty. Jerome Henry was chosen as the new dean.²⁷⁴ Harvard educated, Henry had served ten years as a law professor and practiced law for twenty years.²⁷⁵ Randell Cobb, a graduate of OU Law and former assistant attorney general of Oklahoma, was hired as a professor.²⁷⁶ Arthur Ellsworth, also a graduate of OU Law with additional graduate studies at Harvard, was the only

266. *Id.* at 63.

267. *See* Minutes, Second Meeting, Regents’ Committee, Langston Univ. Sch. of Law (Jan. 21, 1948) (on file with the Oklahoma State Regents for Higher Education).

268. *Id.* at 1.

269. *Id.*

270. *Id.*

271. *Id.* at 2.

272. *Id.*

273. Certificate of Authority No. 9: Order Authorizing the Expenditure of Funds from the Governor’s Contingency Fund, Office of the Governor, State of Okla. (Jan. 22, 1948) (on file with the Oklahoma Department of Libraries, Oklahoma State Archives Division: Governor Roy J. Turner Collection).

274. General Announcement, Oklahoma State Regents for Higher Education 1 (Jan. 26, 1948) (on file with the Oklahoma State Regents for Higher Education).

275. *Id.* at 1-2.

276. *Id.* at 2.

other professor hired.²⁷⁷ All three faculty members would retain their full-time law practices.²⁷⁸

On January 26, 1948, just seven days after the State Board of Regents issued its resolution creating Langston Law, the school opened for enrollment.²⁷⁹ Ironically, just a few days later, Governor Turner urged African Americans to be patient because, “[l]ike Rome, . . . great institutions are not built in a day, or in a year or two years.”²⁸⁰ Regent Frank Buttram, chairman of the newly appointed Regents’ Committee on Langston,²⁸¹ predicted that “the Negroes of Oklahoma [would] want to take advantage of the opportunity afforded,” adding that “the opportunities at the new school [were] *superior* in many respects.”²⁸² Despite these provisions for Langston Law, and the ready presence of the faculty and a secretary on enrollment day, no students enrolled during the regular enrollment period.²⁸³

Reaction to the Oklahoma Supreme Court’s decision and the creation of Langston Law was widespread. The law school was quickly called a “hoax” and sarcastically termed a “miracle.”²⁸⁴ *Time Magazine* cryptically observed that “[e]ven with the help of the U.S. Supreme Court, Ada Lois Sipuel . . . couldn’t get into the University of Oklahoma law school” because the Regents for Higher Education had created a new law school.²⁸⁵ Noted radio commentator Martha Deane proclaimed that “democratic principles [were] meaningless . . . if Ada Lois Sipuel [could not] enter the University of

277. *Id.*

278. *Regents Name Trio for Negro School Faculty*, DAILY OKLAHOMAN, Jan. 25, 1948, at 1 [hereinafter *Negro School Faculty*].

279. *See* Little, *supra* note 223, at 12; *see also supra* note 258 and accompanying text. At the time it opened, Langston Law had not yet been approved by the Oklahoma Board of Bar Examiners. *See* Minutes, Sixty-ninth Meeting, Oklahoma State Regents for Higher Education 528, 532 (Feb. 11, 1948) (on file with the Oklahoma State Regents for Higher Education) (indicating that the Board of Bar Examiners granted approval on February 2, 1948). It was not until after the NAACP filed its motion with the U.S. Supreme Court challenging Langston Law, *see infra* text accompanying note 296, that the Board of Bar Examiners approved the law school under the rules of the Oklahoma Supreme Court. *Id.*

280. *Turner Says Great Schools Not Built in A Day; Hopes for ‘Adequate-Equal’ Education: Supreme Court Mandate Ordering Ada Lois Fisher Enrollment “Forthwith” Seems Forgotten by State Executive*, BLACK DISPATCH, Feb. 21, 1948, at 3.

281. *See* Regents’ Committee, First Meeting, *supra* note 262.

282. *Negro School Faculty*, *supra* note 278, at 1 (emphasis added).

283. *See* Little, *supra* note 223, at 12.

284. *REGENTS’ ‘MIRACLE’ LAW SCHOOL IN STATE CAPITOL: Separate-Equal Hoax Pure Nonsense Say Negroes; Faculty of Two Suggested*, BLACK DISPATCH, Jan. 24, 1948, at 1.

285. *Sequel to Sipuel*, TIME, Jan. 26, 1948, at 68, available at <http://www.time.com/time/printout/0,8816,779656,00.html#>.

Oklahoma.”²⁸⁶ The dean of the Graduate College at the University of Oklahoma questioned, “If universities, which are supposedly the epitome of culture and learning in our society, cannot practice the principles of democracy and illustrate them by example, where in the world will they be illustrated and practiced?”²⁸⁷ “[T]wo white law forms [sic]” were willing to file an injunctive action against “the use of the governor’s contingent fund” to pay for Langston Law and another action challenging “the legal right of the Board of regents to use the capitol building for school purposes.”²⁸⁸

On the same day that Langston Law opened—January 26, 1948—Sipuel Fisher went to the University of Oklahoma to seek admission to the law school.²⁸⁹ Because of the certification that “substantially equal” legal instruction was available to her, Sipuel Fisher was again denied admission.²⁹⁰

On January 29, over one thousand university students, wearing black armbands symbolic of mourning,²⁹¹ gathered to denounce “the university

286. Press Release, NAACP, Sipuel Case Back in Supreme Court (Jan. 30, 1948), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:070.

287. *Where Else?*, TIME, Mar. 8, 1948, at 84, available at <http://www.time.com/time/magazine/article/0,9171,853297,00.html>.

288. Letter from Roscoe Dunjee, Editor, *Black Dispatch*, to Walter White, Executive Dir., NAACP (Jan. 23, 1948), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:548.

289. SPUEL FISHER, *supra* note 1, at 129.

290. On January 22, 1948, Cleveland County judge Justin Hinshaw, following a remand by the Oklahoma Supreme Court, had entered an order directing the OU Board of Regents and President Cross not to enroll Sipuel Fisher at OU Law if a separate law school had been established and was ready to function. Journal Entry at 4, *Sipuel v. Bd. of Regents of the Univ. of Okla.*, No. 14,807 (Dist. Ct. Cleveland County, Okla. Jan. 22, 1948).

Late on the afternoon of January 28, 1948, six other African Americans applied for admission to graduate programs at the University of Oklahoma. Letter from Mac Q. Williamson, Attorney Gen., Okla., to George L. Cross, President, Univ. of Okla. (Jan. 29, 1948), in Minutes of a Special Meeting, Board of Regents, Univ. of Okla. 65, 66 (Jan. 29, 1948), available at <http://digital.libraries.ou.edu/regents/browse.asp?tab=1941&year=1948> (follow “Minutes of a Special Meeting, January 29, 1948” hyperlink). They sought “master degrees in social work, commercial education, architectural engineering, and Ph.D. degrees in school administration and zoology.” *Id.*

Based on their transcripts and other required documentation, all of the candidates would have been eligible for admission if not for their race. *Id.* Furthermore, Oklahoma did not provide the graduate level of instruction sought by the applicants at Langston University. *Id.*

Dr. Cross sought the guidance of Attorney General Williamson, who advised him that the *Sipuel* decision did not govern this situation. *Id.* Williamson explained that the Supreme Court ruling in *Sipuel* was based on the fact that Oklahoma had not taken any steps to create a separate law school during the two-year pendency of the litigation. *Id.* at 68. In this situation, because no prior notice of these particular educational interests had been given, Oklahoma could not be expected to immediately provide the education. *Id.* at 71. Accordingly, Williamson recommended that the six applicants be denied admission. *See id.*

291. *Oklahoma University Students Burn Fourteenth Amendment: Stage Protest Thursday*

officials for failure to admit Negro students.”²⁹² “During the demonstration, the 14th Amendment . . . was read to the crowd, declared nullified by the action of the University officials, and burned. The ashes were then collected and a group of 100 students marched to the local post office to mail them to President Truman.”²⁹³ National media, including *Time* and *Newsweek* magazines, carried stories of this protest.²⁹⁴ Governor Turner attributed the demonstration to “agitators,” warning that “[i]t would be most detrimental to the welfare of our entire state and especially to our minorities, if agitators of minority groups were to pursue a course designed to stir strife or impede orderly progress.”²⁹⁵

E. The NAACP Challenges Langston Law

On January 30, 1948, the NAACP filed a motion for leave to file a petition for mandamus before the U.S. Supreme Court.²⁹⁶ It argued that the State of Oklahoma had violated the Court’s mandate.²⁹⁷ The Supreme Court denied the motion on the grounds that the Cleveland County District Court retained jurisdiction to determine whether the order had been obeyed.²⁹⁸ The ruling left Sipuel Fisher with no recourse but to directly challenge the creation of Langston Law. Significantly, however, the Court remarked, “*The Oklahoma Supreme Court upheld the refusal to admit petitioner on the ground that she had failed to demand establishment of a separate school and admission to*

Morning in Law School Imbroglia: ASHES OF HISTORIC DOCUMENT SENT TO TRUMAN, BLACK DISPATCH, Jan. 31, 1948, at 1 [hereinafter *Students Burn Fourteenth Amendment*].

292. Press Release, NAACP, 1,000 Univ. of Okla. Students Hold Demonstration; Denounce Failure to Admit Sipuel (Jan. 29, 1948), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:071. The protesters had originally planned to travel from Norman to Oklahoma City to picket the “jim crow law school.” *Students Burn Fourteenth Amendment*, *supra* note 291, at 1.

293. Press Release, NAACP, *supra* note 292. Later that night, university students favoring the continuation of segregated education circulated a petition; they held a rally the next morning. *Sooners Not Boiling Over Race Issue*, DAILY OKLAHOMAN, Jan. 30, 1948, at 1.

294. See, e.g., *Ashes to Truman*, NEWSWEEK, Feb. 9, 1948, at 73. The *Newsweek* column observed that “[w]hether Ada Lois Sipuel ever [received] law training or not, she ha[d] started an avalanche of test cases on segregation laws.” *Id.* As noted above, six other African American students had applied to University of Oklahoma graduate schools in the wake of the *Sipuel* decision. See *supra* note 290.

295. Press Release, Roy J. Turner, Governor of Okla. (Feb. 3, 1948) (on file with the Oklahoma Department of Libraries, Oklahoma State Archives Division: Governor Roy J. Turner Collection).

296. See *Fisher v. Hurst*, 333 U.S. 147, 147 (1948).

297. See *id.*

298. *Id.* at 150.

it. . . . [O]ur decision [held] that the equal protection clause permits no such defense."²⁹⁹

Thus, more than two years after her initial application, Sipuel Fisher filed a motion in the Cleveland County District Court asserting that Langston Law did not provide the equality of opportunity required under the Constitution.³⁰⁰ The motion directly challenged segregated education, contending that Oklahoma was violating the Fourteenth Amendment because African American applicants could only apply to Langston Law.³⁰¹ A trial was necessary to determine whether the newly created Langston Law offered a legal education "substantially equal" to that provided at OU Law.³⁰²

Before the hearing, William Ming, one of the attorneys for Sipuel Fisher and professor of law at the University of Chicago School of Law, visited Langston Law and OU Law to compare the two institutions.³⁰³ Sipuel Fisher called him as her first witness to testify about his comparison of the two schools.³⁰⁴ According to Ming, the physical facilities at Langston "abviously [sic] were not fitted for the requirements of a school of law."³⁰⁵ The Capitol law library was not a library focused on teaching, and the OU law library was "superior because of the great range of law reviews and greater range of current and modern texts."³⁰⁶ The Langston Law faculty were practicing

299. *Id.* (emphasis added). The denial of the motion derailed Sipuel Fisher's fight, but it clearly established that a state could not deny admission to any African Americans seeking enrollment to graduate programs because of a failure to make a prior demand for a particular course of instruction. Attorney General Williamson had advised the OU Regents to deny the January 1948 applications of the six students seeking graduate education because they had not given notice of their educational interests to the state. *See supra* note 290. The Court's language made clear that Williamson's advice was wrong and that the applicants should have been admitted.

300. Memorandum from Thurgood Marshall, Special Counsel, NAACP, to Henry Lee Moon, Pub. Relations Dir., NAACP (Mar. 18, 1948), *microformed on Papers of the NAACP, supra* note 3, at Reel 14:047-48.

301. Petitioner's Motion to Modify Order at 3, *Sipuel v. Bd. of Regents of the Univ. of Okla.*, No. 14,807 (Dist. Ct. Cleveland County, Okla. Mar. 15, 1948).

302. *See generally* Transcript of Record, *Sipuel v. Bd. of Regents of the Univ. of Okla.*, No. 14,807 (Dist. Ct. Cleveland County, Okla. 1948) (on file with the Oklahoma Department of Libraries, Oklahoma State Archives Division). Ruling that "a frontal assault upon the segregation laws of the State . . . [was] not to be an issue in this cause," *id.* at 245, Judge Hinshaw refused to consider any testimony about the effects of segregation. *See id.* at 243-45.

303. *See generally* Memorandum from William R. Ming, Jr., Attorney for Sipuel Fisher, to Thurgood Marshall, Special Counsel, NAACP (Feb. 9, 1948), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:566.

304. *See* Transcript of Record, *supra* note 302, at 69. *Editors' Note:* The trial transcript, including the testimony of all witnesses, begins on page 64 of the Transcript of Record.

305. *Id.* at 75.

306. *Id.* at 77.

attorneys who maintained their connections with their firms and taught on a part-time basis,³⁰⁷ whereas OU Law had a faculty with a “considerable amount of teaching resources and experience.”³⁰⁸ There was not a moot court room at Langston Law, and it was difficult to have moot court programs with only one student.³⁰⁹ OU Law was accredited, while Langston Law was not.³¹⁰ One of the most significant problems with Langston Law was the absence of a student body. In a law school with just one student, the “opportunity . . . for the articulation of . . . ideas with regard to legal problems, discussion of such problems with other law students, [and] critical examination of other students’ ideas to the legal problems, both inside . . . and outside of the class room,” simply would not be present.³¹¹

On cross-examination, Attorney General Williamson’s first question proved the very points being made by the NAACP: “It remains a practically physical impossibility to give equality to something that is recently born as compared to something that is fully grown? It is pretty hard to establish a primary?”³¹² Williamson also challenged Ming’s testimony that a law school with only one law student was not substantially equal to one with many students: “[L]awyers and judges whose names stand out throughout the history of this country, such as Abe Lincoln, studied . . . solo.”³¹³

The NAACP gathered an impressive array of expert witnesses for the hearing in addition to Professor Ming.³¹⁴ These witnesses uniformly testified that a law school with only one student not only lacked the rigorous debate and discourse critical to the Socratic method of instruction but also afforded no opportunity for the student to develop the relationships with classmates and future colleagues critical to law practice.³¹⁵ A newly created law school with faculty maintaining full-time law practices could not be called substantially

307. See Memorandum, *supra* note 303, at Reel 13:568.

308. Transcript of Record, *supra* note 302, at 81.

309. *Id.* at 75.

310. *Id.* at 82.

311. *Id.* at 84.

312. *Id.* at 86.

313. *Id.* at 101.

314. They included Max Radin, Boalt Professor of Law, University of California School of Law, *id.* at 472; Charles Bunn, Professor of Law, University of Wisconsin School of Law, *id.* at 509-10; Erwin Griswold, Dean of Harvard University School of Law, *id.* at 523; Earl Harrison, Dean of University of Pennsylvania School of Law, *id.* at 548; Walter Gellhorn, Professor of Law, Columbia University School of Law, *id.* at 574; and Malcolm Sharp, Professor of Law, University of Chicago School of Law, *see id.* at 604-05.

315. *Id. passim; see, e.g., id.* at 483-87 (testimony of Max Radin).

equal to an established law school with an experienced faculty and administration.³¹⁶

Page Keeton, dean of OU Law at the time of the trial, admitted under examination by James Nabrit, one of the NAACP attorneys, that OU Law required all of its first-year students to participate in a moot court program and all of its third-year students to take a trial practice course; he also said that the law school sponsored a law review.³¹⁷ Dean Keeton did not believe that the educational “opportunities of the student at [Langston] would be equal, or substantially equal” to those provided at the University of Oklahoma.³¹⁸ He qualified his opinion, however, because he had “never attempted to judge a school that was not in operation.”³¹⁹ The most explosive witness was unquestionably Henry Foster, a law professor from the University of Oklahoma. Foster denounced the creation of Langston Law: “It is a fake,” he declared. “[I]t is a fraud, . . . it is a deception, and to my mind is an attempt to avoid the clear-cut mandate [sic] and orders of the Supreme Court of the United States. I think it is indecent.”³²⁰

The State of Oklahoma countered with its own expert witnesses. Joseph McClain, chairman of the American Bar Association Section on Legal Education and Admissions to the Bar, testified that the entrance requirements and general scholastic standards for the two law schools appeared, based on their respective bulletins, to be substantially the same.³²¹ He deemed the qualifications and experience of the faculty at Langston superior, even though two of the Langston professors had not taught any law-school courses.³²² The issue of the lack of students was more troubling. Without students and the law school actually being in operation, McClain said that it was not possible to accurately assess the Langston Law educational standards and curriculum.³²³

The dean and faculty of Langston Law also testified on behalf of the State. They presented their credentials and experience as educators.³²⁴ Jerome

316. *See id.* at 487-90. Not coincidentally, two years later, the U.S. Supreme Court identified these very factors in ruling that the separate law school created by the State of Texas was not substantially equal. *See Sweatt v. Painter*, 339 U.S. 629, 633-34 (1950); *see also infra* note 334.

317. Transcript of Record, *supra* note 302, at 109, 118.

318. *Id.* at 123.

319. *Id.*

320. *Id.* at 141.

321. *Id.* at 261-63, 272-73.

322. *See id.* at 269-71.

323. *See id.* at 292-93.

324. *See id.* at 302-03, 322-24, 326 (testimony of Arthur Ellsworth, Wallace Robertson, and Jerome Hemry, respectively); *see also supra* text accompanying notes 274-77 (identifying Ellsworth, Robertson, and Hemry as the faculty appointed to teach at the newly created law

Hemry described the square footage of the classrooms.³²⁵ Arthur Ellsworth discussed the comparative available space for student use within the respective school libraries.³²⁶ Ellsworth also took pains to mention one particular point of difference between the two facilities: “[A] student at the Langston law school rides the elevator with heavy books, while the student in the University of Oklahoma law school walks up three flights of stairs, which . . . becomes rather monotonous.”³²⁷

On the issue of moot court, Dean Hemry testified that “a moot court can be very easily handled with one student, because that is handling appellate procedure, and questions of right of appeal and procedure, and writing out pleadings.”³²⁸ On cross-examination, Thurgood Marshall challenged Mr. Hemry on this point:

Q: Don’t you have two sides in appellate court?

A: Oh, it would be much better, of course, to have two sides.

Q: Pardon me, but can one student be on both sides?

A: Well, of course it is more difficult.

Q: It is practically impossible, isn’t it?

A: Oh no, they could write the plaintiff’s brief, and a month or two later write the defendants [sic], either in that or another case.

Q: Which side would win?

A: Is winning the object of a moot court?

Q: No, but it is a consideration.

A: It is part of it, of course.³²⁹

Despite the overwhelming evidence presented on behalf of Sipuel Fisher, on August 2, 1948, Judge Hinshaw found that at the time of her application in January of 1948, the State of Oklahoma had made available to her a law school that “offered advantages for legal education substantially equal” to the legal education afforded white students.³³⁰ In other words, he proclaimed Langston Law, newly created, without any students, substantially equal to OU Law. Hinshaw also stated that “no law school in this nation would have any apology to make for the appearance on its faculty of any of the instructors teaching at

school).

325. Transcript of Record, *supra* note 302, at 333-35 (testimony of Jerome Hemry).

326. *Id.* at 305 (testimony of Arthur Ellsworth).

327. *Id.* at 321.

328. *Id.* at 362 (testimony of Jerome Hemry).

329. *Id.* at 362-63.

330. Ray Parr, *New Applicants Also Rejected; Appeal Planned: District Court Rules Again Starts Sipuel Case to Washington*, DAILY OKLAHOMAN, Aug. 3, 1948, at 1.

either OU or [Langston].”³³¹ The testimony of law school deans and longtime law professors was ignored.³³² With that ruling, the NAACP readied another appeal for the Oklahoma Supreme Court.

Preparation of the hearing transcript and making the pleadings “case ready” necessitated considerable time. Believing that the record in the *Sipuel* case was “even better than the [*Sweatt v. Painter*] record,”³³³ Marshall was anxious for the record to be completed so that the NAACP could “get the *Sipuel* case in the Supreme Court as near as possible to the time [*Sweatt v. Painter*] [got] there.”³³⁴ He even explored the possibility of an expedited submission to the Oklahoma Supreme Court to speed up the process of getting the case before the U.S. Supreme Court.³³⁵ But despite Marshall’s urging, the petition in error and case made was not filed with the Oklahoma Supreme Court until January 6, 1949.³³⁶

331. *Id.*

332. From the record, it is clear that Judge Hinshaw reached his decision based, not on the application of the law to the evidence, but on his sense of what the Oklahoma Supreme Court wanted. The Oklahoma Supreme Court, by its order, had signaled its desire that a law school be created in less than two weeks’ time and that it be deemed substantially equal. *See supra* text accompanying notes 241, 252. The Supreme Court knew that it was requiring an institution that had not had a single day of instruction be declared substantially equal to a school that had been in existence for four decades. By refusing *Sipuel Fisher* and the NAACP the opportunity to present evidence regarding the inequality of segregation and to pursue the argument that segregation is inherently unequal, *see supra* note 302, Judge Hinshaw narrowed the inquiry and kept it limited to a decision that had already been signaled by the Oklahoma Supreme Court.

333. Letter from Thurgood Marshall, Special Counsel, NAACP, to Dr. Robert Redfield, Anthrop. Dep’t President, Univ. of Chi. (June 8, 1948), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:742.

334. Letter from Thurgood Marshall, Special Counsel, NAACP, to Amos T. Hall, Attorney for *Sipuel Fisher* (Sept. 7, 1948), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:783. In 1946, Heman Sweatt had applied for admission to the University of Texas law school. *Sweatt v. Painter*, 339 U.S. 629, 631 (1950). His application was denied on account of his race, and he filed suit. *Id.* Although the court ordered that he was entitled to relief, judgment was postponed for six months to allow Texas to establish a separate law school. *Id.* at 632. When Texas established this school, the NAACP promptly challenged it. *See id.* The state courts found that the segregated law school was equal, forcing the NAACP to appeal to the Supreme Court. *See id.*

335. Letter from Thurgood Marshall, Special Counsel, NAACP, to Amos T. Hall, Attorney for *Sipuel Fisher* (Dec. 3, 1948), *microformed on Papers of the NAACP, supra* note 3, at Reel 13:877.

336. *See* Petition in Error and Case Made, *Sipuel v. Bd. of Regents of the Univ. of Okla.*, No. 33971 (Okla. Jan. 6, 1949) (on file with the Oklahoma Department of Libraries, Oklahoma State Archives Division). After it was filed, Marshall continued to press the need for movement on the *Sipuel* case. In March 1949, he wrote Hall, stating,

Now that the McLaurin case is docketed, the Sweatt case will be filed on March 23. It seems as though we could get the *Sipuel* case disposed of in the Supreme

F. Ada Lois Sipuel Fisher Finally Gains Admission to OU Law

The Oklahoma Supreme Court never actually heard Sipuel Fisher's second appeal. While her case was being perfected, the lawsuit on behalf of George McLaurin, one of the six African Americans seeking admission to the University of Oklahoma in January 1948,³³⁷ had progressed in federal court.³³⁸ A panel of three federal judges issued a declaration in October 1948 that the State of Oklahoma must immediately provide McLaurin with the educational opportunities necessary for him to pursue a Ph.D. in educational administration.³³⁹ The U.S. Supreme Court decision in *Sipuel* required nothing less.³⁴⁰ Faced with the *McLaurin* decision, the State Board of Regents authorized the admission of McLaurin on a segregated basis. He could attend the University of Oklahoma, but he needed to be taught in separate classrooms or separate facilities.³⁴¹

Governor Roy Turner's press release announcing the decision to admit McLaurin made clear the role that the *Sipuel* decision played in forcing the State of Oklahoma to admit African Americans to the University of Oklahoma: "Litigation in the Sipuel cases brought a clear declaration from the United

Court of Oklahoma as soon as possible. I cannot too strongly urge the importance of getting that case in and if we can get a commitment from the Chief Justice that we are to get an appeal hearing on the Sipuel case, it might be possible to use it in a motion to delay the Sweatt and McLaurin Cases until the Sipuel case gets there.

Letter from Thurgood Marshall, Special Counsel, NAACP, to Amos T. Hall, Attorney for Sipuel Fisher (Mar. 3, 1949), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:942.

337. *See supra* notes 290, 294.

338. *See McLaurin v. Okla. State Regents for Higher Educ.*, 87 F. Supp. 526 (W.D. Okla. 1948).

339. *Id.* at 528 ("We refrain at this time from issuing or granting any injunctive relief, on the assumption that the law having been declared the State will comply.").

340. *See Sipuel v. Bd. of Regents of the Univ. of Okla.*, 332 U.S. 631, 632-33 (1948).

341. *See KLUGER*, *supra* note 41, at 267-68 ("In the library, [McLaurin] was assigned a segregated desk in the mezzanine behind half a carload of newspapers. In the cafeteria, he was required to eat in a dingy alcove by himself and at a different hour from the whites."). Marshall returned to court seeking modification of the order requiring McLaurin's admission, arguing that the segregated conditions deprived McLaurin of equal educational facilities. *See McLaurin*, 87 F. Supp. at 529. The panel rejected this argument, finding that the conditions were not "so odious" as to amount to a denial of equal protection. *Id.* at 531. The NAACP appealed this ruling to the U.S. Supreme Court. *See McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637 (1950). Reversing the lower court, Chief Justice Vinson, in a unanimous opinion, wrote, "Such restrictions impair and inhibit [McLaurin's] ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." *Id.* at 641; *see also supra* notes 315-16 and accompanying text.

States Supreme Court against any policy, which denies courses in higher education to one group while these courses are provided by the state for another group.³⁴² Yet even though George McLaurin was admitted to the University of Oklahoma because of the Supreme Court's ruling in *Sipuel*, the doors of OU Law remained closed to Sipuel Fisher.

In January of 1949, the Regents for Higher Education reviewed the impact of the recent court decisions on the continued viability of Oklahoma's segregation statutes.³⁴³ W.D. Little wrote that "[w]hen the Regents came to graduate work and specialized study, [they] ran into a problem [they were] not . . . able to solve inside [the] segregation laws."³⁴⁴ The significant "cost of graduate and specialized schools for Negroes would . . . cripple the entire state program of graduate and professional study," Little observed.³⁴⁵ The regents thus informed Governor Turner that "it would appear both wise and expedient" to amend the segregation statutes to provide African American students admission to graduate and specialized programs if such programs were not offered at Langston.³⁴⁶

In June of 1949, the state legislature amended the school statutes to allow the education of African Americans on a segregated basis in courses of study not available at Langston University.³⁴⁷ These amendments, however, did not apply to Sipuel Fisher's immediate situation because Langston Law still existed.³⁴⁸ Once again, others were being given the opportunity to attend the University of Oklahoma while OU Law remained closed to her.

Finally, on June 17, 1949, Dr. Cross directed that Ada Lois Sipuel Fisher be immediately admitted to OU Law even though Langston Law technically still existed.³⁴⁹ It was a criminal violation of the segregation statutes to admit her

342. Press Release, Roy J. Turner, Governor of Okla. (Oct. 11, 1948) (on file with the Oklahoma Department of Libraries, Oklahoma State Archives Division: Governor Roy J. Turner Collection).

343. Little, *supra* note 223, at 1, 13-15. The *Southern Patriot* wrote that the regents had to decide whether "additional students [should] be admitted to the School of Education and to the other graduate schools or [whether] new facilities [should] be developed at Langston." *The South Looks to Oklahoma*, S. PATRIOT, Jan. 1949, at 1.

344. Little, *supra* note 223, at 2.

345. *Id.* at 7.

346. Supplement to the Regents' Fourth Biennial Report, Oklahoma State Regents for Higher Education (Jan. 1949) (on file with the Oklahoma Department of Libraries, Oklahoma State Archives Division: Governor Roy J. Turner Collection).

347. Act of June 9, 1949, ch. 15, secs. 1-3, §§ 455-457, 1949 Okla. Sess. Laws 608 (codified at 70 OKLA. STAT. §§ 455-457 (Supp. 1949)).

348. See SPUEL FISHER, *supra* note 1, at 145.

349. *Id.* The Governor's appropriation for the law school at Langston would not end until June 30, 1949. *Id.*

while that school was still in nominal existence,³⁵⁰ but the time had come to put an end to her ordeal.³⁵¹ Dr. Cross ordered the vice president, Dr. Carl Franklin, to admit Sipuel Fisher and promptly left on a fishing trip.³⁵²

That same day, Franklin directed the dean of admissions to call Sipuel Fisher and inform her that she might be admitted to OU Law that afternoon if she so desired.³⁵³ Sipuel Fisher enrolled at the law school the very next day, two weeks after the summer term had begun.³⁵⁴ Entering Monnet Hall, walking to her first class, she made her way up the stairs in the classroom to a single wooden chair in the back row, set apart from the rest of the class, designated by “a large printed sign that said COLORED.”³⁵⁵ Her hope that the Supreme Court would strike down such indignities, because “sitting in the front or extreme rear [was] quite an ordeal,” had not yet been realized.³⁵⁶ Even after all of the battles and delays, she “was considered so different that [she had to] sit apart from [her] peers” and walk up the stairs with “all eyes on [her],” “careful not to stumble,” and determined to “show no emotion,”³⁵⁷ while “separated from white students by a rail.”³⁵⁸

While Oklahoma state officials obstinately and dogmatically defended an entrenched social system of segregation, Sipuel Fisher endured over three and a half years of uncertainty. Although she was embraced by many throughout the state, country, and world, she also confronted the ugly faces of hatred and bigotry.³⁵⁹ She traveled the state and the country, making appearances and

350. See 70 OKLA. STAT. § 455 (1941 & Supp. 1949) (preserving the misdemeanor punishment of up to \$500 per day for “any person . . . maintain[ing] or operat[ing] any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction”); see also David W. Levy, *The Week the President Went Fishing*, SOONER MAG., Winter 1998, at 27-29.

351. Levy, *supra* note 350, at 28 (quoting President Cross as saying, “[I]t is time that we stop this foolishness and admit Ada Lois Sipuel to the OU Law School”).

352. *Id.*

353. Letter of Carl Mason Franklin, Vice President, Univ. of Okla., to W. Page Keeton, Dean, Univ. of Okla. Sch. of Law (June 17, 1949) (on file with the University of Oklahoma Library, Western History Collections: George Lynn Cross Collection).

354. SIPUEL FISHER, *supra* note 1, at 145.

355. *Id.*

356. Letter from Ada Lois Sipuel Fisher, Plaintiff, to Thurgood Marshall, Special Counsel, NAACP (Feb. 14, 1949), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 13:923.

357. SIPUEL FISHER, *supra* note 1, at 148.

358. Press Release, NAACP, Ada Sipuel Fisher Begins Law Classes at Okla. U. (June 23, 1949), *microformed on Papers of the NAACP*, *supra* note 3, at Reel 14:073.

359. A state senate candidate from Pushmataha and McCurtain counties made her case “his punching bag,” attempting to incite voters through a “mud slinging campaign” appealing to bigotry. Roscoe Dunjee, Editorial, *Reaction Takes A Whipping*, BLACK DISPATCH, Aug. 7, 1948, at 4.

talking about the treatment that people should receive in a democracy³⁶⁰ at a time when her home state was engaging in tortured manipulations of constitutional principles in order to deny her the rights accorded citizens of a democracy. Even when her victory finally came, it was marred by the indignity of artificial separations and railings.

V. The Impact of the Sipuel v. Board of Regents Supreme Court Decision

A. Arkansas

While the State of Oklahoma was scampering to create the trappings of a law school, the State of Arkansas acknowledged the obvious message of the *Sipuel* decision and determined that it would admit qualified African American students to its graduate programs, albeit on a segregated basis. “The *Sipuel* decision, along with *Gaines*, helped Dean Robert Leflar of the University of Arkansas School of Law persuade the university president and Gov. Ben Laney that peaceful admission of black applicants to the Arkansas law school was the only way to avoid costly and futile legal action.”³⁶¹ On February 2, 1948, within weeks of the Supreme Court decision, Silas Hunt, accompanied by an attorney and a reporter, met with the dean of the University of Arkansas School of Law to discuss Hunt’s admission and enrollment.³⁶² Hunt was academically qualified and was admitted just a few days later.³⁶³

Later that year, the University of Arkansas again admitted an African American student, Edith Erby, to the medical school without the need for litigation.³⁶⁴ The action of the Arkansas officials was acknowledged by the *Washington Post*, which observed that what the university did “was not an easy thing to do.”³⁶⁵ Its action “ran counter to local prejudices and to a long-established tradition. At the same time, it was the only practicable course for the university to pursue in the light of the Supreme Court decisions in the *Gaines* and *Sipuel* cases.”³⁶⁶

360. *O.U. Negro Case Plaintiff Speaks at Workshop*, BLACK DISPATCH, May 15, 1948, at 3.

361. T. Harri Baker, Book Review, 55 ARK. HIST. Q. 444, 446 (1996) (reviewing SPUDEL FISHER, *supra* note 1).

362. Guerdon D. Nichols, *Breaking the Color Barrier at the University of Arkansas*, 27 ARK. HIST. Q. 3, 15-16 (1968).

363. *See id.* at 16. Tragically, Hunt died the following year from tuberculosis. *Id.* at 17.

364. *Id.* at 18.

365. *Arkansas Example*, WASH. POST, Aug. 26, 1948, at 10.

366. *Id.*

B. Delaware

On January 31, 1948, the University of Delaware Board of Trustees adopted a resolution recognizing that

the Supreme Court of the United States in the suit of *Ada Lois Sipuel (a colored person), Petitioner v. Board of Regents of The University of Oklahoma, et al., Respondents*, held on January 12, 1948 that the Petitioner was entitled to secure a legal education afforded by a State institution, and that the State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.³⁶⁷

The trustees acknowledged that the Supreme Court decision had a “binding effect” on the State of Delaware.³⁶⁸ They therefore resolved “that any colored resident of this State who [was] able to meet the established requirements for admission to the University of Delaware [might] be admitted to pursue a course of study of his choosing” if it was not furnished at the state educational institutions for “colored residents.”³⁶⁹

C. Oklahoma

The three-judge panel in *McLaurin v. Oklahoma State Regents for Higher Education* expressly relied on *Sipuel* in determining that McLaurin was entitled to a postgraduate education without delay:

We hold, in conformity with the equal protection clause of the Fourteenth Amendment, that the plaintiff is entitled to secure a postgraduate course of study in education leading to a doctor’s degree in this State in a State institution, and that he is entitled to secure it as soon as it is afforded to any other applicant.³⁷⁰

McLaurin’s immediate admission was required under the *Sipuel* decision.

367. Minutes, Board of Trustees, Univ. of Del. 2 (Jan. 31, 1948) (on file with the University of Delaware Board of Trustees).

368. *Id.* at 3.

369. *Id.*

370. 87 F. Supp. 526, 528 (W.D. Okla. 1948) (citing *Sipuel v. Bd. of Regents of the Univ. of Okla.*, 332 U.S. 631 (1948); *Mo. ex rel. Gaines v. Canada*, 305 U.S. 337 (1938)); see also *supra* notes 338-41 and accompanying text.

VI. Conclusion

While the *Gaines* decision established that African Americans had the right to graduate education in their own states, it was the *Sipuel* decision that clearly pronounced that states were constitutionally obligated to provide graduate studies to African Americans *at the same time* they were offered to white citizens. Not at some point in the future. Not after receipt of a formal demand for that study program. Not after an allowance of time for the development, funding, and implementation of that course of study. Not when it was convenient or when a state finally got around to it, but at the same time the graduate study was provided to white students.

Although the Supreme Court did not go as far as the NAACP had urged and declined to address the constitutionality of segregation in education, the decision did advance the attack on segregation. The speed with which the ruling was issued and the brevity of the per curiam opinion served as additional signs that the Supreme Court was growing impatient with states' failures to adhere to the mandate of *Gaines*. The Court may have left for another day the definition of what would constitute substantial equality, but there was no equivocation or ambiguity about the states' obligation to provide graduate education to African Americans as soon as that education was provided to whites. Moreover, the very clarity of the Court's pronouncement encouraged other African Americans to present themselves as applicants to segregated institutions, fueling a continuing onslaught that demanded that state officials take meaningful, positive action.

Sipuel Fisher's influence, however, extended well beyond the single-page Supreme Court decision rendered in her favor. Because she was articulate, gifted in public speaking, firm yet demure, she was able to become a spokesperson for the hopes and desires of African Americans pursuing the fundamental rights of citizenship.³⁷¹ Her willing embrace of the mantle of "test plaintiff" at a time when such a status had led to the mysterious disappearance of Lloyd Gaines and the nervous collapse of Charles Eubanks conveyed a determination and purpose that became inspirational and infectious and allowed her to become a very visible public symbol of this national struggle. Just days

371. Sipuel Fisher's role would later be recognized by the Smithsonian Institution, which named her one of the 150 most influential African American women in the history of the United States. Melvin C. Hall, *Breaking the Color Barrier: The Life and Legacy of Dr. Ada Lois Sipuel Fisher*, OKLAHOMA TODAY, Nov./Dec. 1998, at 28, 35, available at <http://digital.library.okstate.edu/oktoday/1990s/1998/oktdv48n7.pdf>; Kilpana Srinivasan, Ada Lois Sipuel Fisher: Her Legal Battle to Learn the Law, at Timeline 1 (Spring 2004) (unpublished seminar paper, Stanford University Law School), available at <http://www.law.stanford.edu/library/womenslegalhistory/papers04/FisherA-Srinivasan04.pdf>.

after the *Sipuel* decision, the *Philadelphia Tribune* predicted the lasting importance of Sipuel Fisher's contribution to the fight for educational equality, while simultaneously expressing a fear that her personal story would be forgotten by the general public:

Many years hence, when the silly prejudices which made the

Sipuel decision necessary have been eradicated, colored graduate students will go about their studies taking their admission to southern colleges as a matter of course. Only the historians will remember Ada Lois Sipuel who bearded the lion of prejudice in his den and wrested from him a decision which, as it is implemented by action, will be a new day in education for colored Americans.³⁷²

Ada Lois Sipuel Fisher was more than the decision that bore her name. She became the voice and face of a people oppressed by an irrational and repressive system of racial segregation. She was the female David fighting the Goliath of an entrenched, deeply rooted social system. Though she may not have slain the giant of inequity and unfairness, she so maimed the system of segregation that it would shortly succumb to the final blows.

372. Weaver & Page, *supra* note 67, at 25 (quoting the January 17, 1948, issue of the *Philadelphia Tribune*).

