

BELFORD VANCE LAWSON, JR.: LIFE OF A CIVIL RIGHTS LITIGATOR

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Organizations, like people, have identities,¹ and African American fraternities and sororities are complex organizations, defined by multiple identities.² One identity that is characteristic of these organizations is that of a commitment to racial uplift via community service,³ philanthropy,⁴ civic activism,⁵ and shaping public policy.⁶ Among the most noted of these organizations is Alpha Phi Alpha Fraternity, Inc.,⁷ whose racial uplift identity can best be described by a quote from one of its founders, Henry Arthur Callis: that Alpha Phi Alpha was “born in the shadows of slavery and on the lap of disenfranchisement. We proposed to . . . bring leadership and vision to the social problems of our communities and the nation; to fight with courage and self-sacrifice every bar to the democratic way of life.”⁸

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¹ See Y. Sekou Bermiss, *What We Mean by Organizational Identity*, in ALPHA PHI ALPHA: A LEGACY OF GREATNESS, THE DEMANDS OF TRANSCENDENCE 9, 9 (Gregory S. Parks & Stefan M. Bradley eds., 2012) [hereinafter ALPHA PHI ALPHA].

² See Gregory S. Parks, *Organizational Complexity and Civic Activism* (May 18, 2012) (unpublished manuscript) (on file with the author).

³ Marybeth Gasman et al., *Giving and Getting: Philanthropic Activity among Black Greek-letter Organizations*, in BLACK GREEK-LETTER ORGANIZATIONS IN THE TWENTY-FIRST CENTURY: OUR FIGHT HAS JUST BEGUN 187, 192 (Gregory S. Parks ed., 2008) [hereinafter OUR FIGHT HAS JUST BEGUN].

⁴ *Id.* at 187.

⁵ Jessica Harris & Vernon C. Mitchell, Jr., *A Narrative Critique of Black Greek-Letter Organizations and Social Action*, in OUR FIGHT HAS JUST BEGUN, *supra* note 3, at 143, 143.

⁶ Robert L. Harris, Jr., *Lobbying Congress for Civil Rights: The American Council on Human Rights, 1948-1963*, in AFRICAN AMERICAN FRATERNITIES AND SORORITIES: THE LEGACY AND THE VISION 211, 212 (Tamara L. Brown et al. eds., 1st ed. 2005) [hereinafter THE LEGACY AND THE VISION].

⁷ LAWRENCE OTIS GRAHAM, *OUR KIND OF PEOPLE: INSIDE AMERICA'S BLACK UPPER CLASS* 15 (1999).

⁸ See Ralph E. Johnson et al., *The Quest for Excellence: Reviewing Alpha's Legacy of Academic Achievement*, in ALPHA PHI ALPHA, *supra* note 1, at 189, 189.

Founded on December 4, 1906, by seven black men,⁹ Alpha Phi Alpha is the first, continuous collegiate African American Greek-letter organization and only such organization founded on an Ivy League campus.¹⁰ While a confluence of cultural, historical, institutional, and organizational influences gave shape and purpose to Alpha Phi Alpha's founding,¹¹ it is apparent that African Americans' desire for social equality was chief among them.¹² Indeed, Callis expressly stated that these young men were inspired to organize by efforts of those men and women who met at the Niagara Conference—the precursor to the NAACP—in the summer of 1905.¹³ Among those stalwart individuals who participated in the Niagara Conference was scholar and activist W.E.B. DuBois,¹⁴ who himself was initiated into Alpha Phi Alpha's Epsilon Chapter, as an “honorary” member, in 1909.¹⁵

Over the generations, men have been drawn to Alpha Phi Alpha—its ideals and purpose. In many respects, their names serve as a veritable who's who of race men, black men committed to uplifting the educational, social, political, economic, and civil rights of blacks. Whether they are Charles Hamilton Houston, Thurgood Marshall, William T. Coleman, Martin Luther King, Jr., Paul Robeson, Whitney Young, or others, these men and brothers exemplified what DuBois meant by the “talented tenth”¹⁶ in the best sense.

This Article explores the life of one of DuBois's fraternity and chapter brothers, a civil rights lawyer and the first African American to win a case before the United States Supreme Court, Belford Vance Lawson, Jr. Specifically, this Article is a first attempt to analyze Lawson's personal and professional life, with the latter being observed through the lens of his fraternal ideals and involvement. In Section I,

⁹ André Mckenzie, *In the Beginning: The Early History of the Divine Nine*, in *THE LEGACY AND THE VISION*, *supra* note 6, at 181, 183.

¹⁰ See CHARLES H. WESLEY, *THE HISTORY OF ALPHA PHI ALPHA: A DEVELOPMENT IN COLLEGE LIFE* 27 (1996).

¹¹ See Felix L. Armfield et al., *Defining the “Alpha” Identity*, in *ALPHA PHI ALPHA*, *supra* note 1, at 23, 23.

¹² See generally Robert E. Weems, Jr., *Alpha Phi Alpha, the Fight for Civil Rights, and the Shaping of Public Policy*, in *ALPHA PHI ALPHA*, *supra* note 1, at 233, 233–62.

¹³ CHARLES H. WESLEY, *HENRY ARTHUR CALLIS: LIFE AND LEGACY* 16 (2nd ed. 1997).

¹⁴ Felix L. Armfield et al., *supra* note 11, at 39.

¹⁵ *Id.* at 29.

¹⁶ W.E.B. DuBois, *The Talented Tenth*, in *THE NEGRO PROBLEM: A SERIES OF ARTICLES BY REPRESENTATIVE NEGROES OF TODAY* 75 (1903).

this Article explores Lawson's early, personal and professional life. Section II explores Lawson's founding of the New Negro Alliance, and an examination of its civil rights activities. Section III explores the professional tensions between Lawson and his fraternity brothers, Charles Hamilton Houston and Thurgood Marshall. Section IV explores Lawson's marriage to Marjorie McKenzie and details about her accomplishments. Section V explores Lawson's civic activism work via a number of organizations, among them being: Alpha Phi Alpha, the American Council on Human Rights, and the National Lawyers Guild. Section VI explores Lawson's activities later in life, including his involvement in Democratic politics.

I. EARLY LIFE

Belford Vance Lawson, Jr. was born in Roanoke, Virginia on July 9, 1901 as one of eleven children.¹⁷ His father, Belford Lawson, was a railroad switchman, and his mother, Sarah Hickman, was a schoolteacher.¹⁸ As might be expected of a black person growing up in the early twentieth century, Lawson experienced his share of racism. As a child, he was barred from the local YMCA, because it served whites only.¹⁹

After attending Ferris Institute in Big Rapids, Michigan,²⁰ in 1920, Lawson enrolled in the University of Michigan, where he was one of about fifty to sixty black students out of a student population of twelve to fourteen thousand.²¹ Lawson found little respite from prejudice. As a player for the Michigan football team, he garnered praise in local newspapers for his play in a preseason scrimmage game but was held off the field and out of official team pictures by a coaching staff unwilling to challenge the color barrier in college football.²² In 1922, Lawson was initiated into the Epsilon chapter of Alpha Phi Alpha.²³

¹⁷ *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, THE SPHINX, Spring 1985, at 21, 21.

¹⁸ James Tobin, *The Belford Lawson Mystery*, ARBORWEB (Oct. 30, 2009), http://arborweb.com/articles/the_belford_lawson_mystery_full_article.html.

¹⁹ *See: History*, YMCAROANOKE.ORG, <http://www.ymcarooanoke.org/history> (last visited Dec. 23, 2012).

²⁰ *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 21.

²¹ GAIL M. GRANT, AT THE ELBOWS OF MY ELDERS: ONE FAMILY'S JOURNEY TOWARD CIVIL RIGHTS 40 (2008).

²² Tobin, *supra* note 18.

²³ *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 21.

After earning his B.A. from the University of Michigan in 1924, Lawson taught social science and was director of the Teachers' Professional Department at Jackson College (now Jackson State University) in Jackson, Mississippi.²⁴ While at Jackson College, Lawson also coached football and served as the athletic director.²⁵ Lawson also, briefly, taught and coached at Morris Brown College in Atlanta, Georgia before moving on to his career in law.²⁶

After leaving the coaching ranks, Lawson attended Yale Law School for two years until his funds were exhausted.²⁷ Thereafter, he moved to Washington D.C. in 1931, taking a job with the Supreme Liberty Life Insurance Company, and then enrolling in Howard Law School.²⁸ After graduating from law school and being admitted to the District of Columbia Bar in 1933,²⁹ Lawson opened his own firm with Alpha Phi Alpha brother and Cincinnati lawyer Theodore Moody Berry.³⁰

²⁴ *JSU Football History*, JSUTIGERS.COM: THE OFFICIAL ATHLETIC SITE OF JACKSON STATE UNIV., <http://jsutigers.cstv.com/sports/m-footbl/spec-rel/081912aav.html> (last visited Dec. 19, 2012).

²⁵ *Id.*

²⁶ Tobin, *supra* note 18; *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 24.

²⁷ CATHERINE A. BARNES, *JOURNEY FROM JIM CROW: THE DESEGREGATION OF SOUTHERN TRANSIT* 66–67 (William E. Leuchtenburg, ed., 1983); *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 24.

²⁸ *Belford Lawson, Retired Lawyer, is Dead at 83*, WASH. POST, Feb. 24, 1985, at B8; *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 24.

²⁹ *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 24.

³⁰ J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF A BLACK LAWYER* 417 (1999). Theodore Berry was born on November 5, 1905 in Maysville, Kentucky. Douglas Martin, *Theodore Berry, 94, Civil Rights Pioneer, Dies*, N.Y. TIMES, Oct. 17, 2000, at B12. As an undergraduate student, Berry helped found the Columbus chapter of Alpha Phi Alpha. Laura Laugle, *T.M. Berry Project: Alpha Phi Alpha*, UNIVERSITY OF CINCINNATI LIBRARIES (May 9, 2011), <http://www.libraries.uc.edu/liblog/2011/05/09/t-m-berry-project-alpha-phi-alpha/>. He graduated from the University of Cincinnati College of Law in 1931, where he was an editor of the *University of Cincinnati Law Review*. SMITH, *supra* note 29, at 416. In his final year as an undergraduate, Berry also served as Vice President for Alpha Phi Alpha from 1928 to 1929. He further served as General Counsel for Alpha Phi Alpha from 1931 to 1937. After being admitted to the Ohio bar 1932, Berry opened his own criminal law practice in Cincinnati. See SMITH, JR., *supra* note 30, at 416. During the mid-1930's, Berry led the Cincinnati chapter of the NAACP and opened a second law office with Lawson in Washington, D.C. *Theodore M. Berry, Cincinnati's First Black Mayor, Dies at 94*, JET, Nov. 6, 2000, at 56. He also served as

II. LAWSON AND THE NEW NEGRO ALLIANCE

One of Lawson's significant achievements was his co-founding of the New Negro Alliance ("Alliance").³¹ At a time when the principal civil rights organizations (i.e., NAACP and National Urban League) employed a variety of strategies—lobbying, litigation, education, and negotiation—in their fight for civil rights, the social changes of the 1930's created a climate that fostered direct-action economic protests.³² The Alliance, adopting this new approach, was one of the largest and most successful organizations to demonstrate grassroots economic protests in the civil rights context.³³ Events from the first third of the Twentieth Century helped facilitate the evolution from traditional methods of expression to the "Alliance-type" protests including: 1) the Great Depression, which compounded the already-existing economic disparities rooted in racial discrimination; 2) the Great Migration in 1915, which saw blacks leave their southern, rural communities for large urban "ghettos" where racial discrimination persisted; 3) the 1920s Black Renaissance, where the "New Negro" ideal of improving the status of blacks through cultural and intellectual achievement infused a race-consciousness in young blacks who rejected the anti-confrontational nature of older, traditional blacks; 4) the increasing use of direct-action techniques among communist and socialist groups; and 5) the passage of the Norris-La Guardia Act in March 23, 1932, which prohibited courts from issuing injunctions against "labor disputes."³⁴

The main impetus for the Alliance protests was the pervasive employment discrimination against blacks throughout the U.S. and in particular, Washington, D.C.³⁵ Black D.C. residents accounted for 29% of the District's total population, yet "black D.C." was regarded by many as a "secret city" – seemingly invisible to whites in the city, which systematically discriminated against blacks on the basis of

General Counsel for Alpha Phi Alpha from 1934 to 1939. Langel, *supra* note 30. In 1949, Berry won a seat on the Cincinnati City Council. *Id.* Berry served as Cincinnati's first black mayor from 1972 to 1975. *Id.* Berry died on October 15, 2000 in Cincinnati, Ohio. Martin, *supra* note 30.

³¹ Michele F. Pacifico, "Don't Buy Where You Can't Work": *The Negro Alliance of Washington*, 6 WASH. HISTORY 73–74 (1994).

³² *Id.* at 68–69.

³³ NINA MJAGKIJ, ORGANIZING BLACK AMERICA: AN ENCYCLOPEDIA OF AFRICAN AMERICAN ASSOCIATIONS 447 (2001).

³⁴ Pacifico, *supra* note 31, at 69.

³⁵ MJAGKIJ, *supra* note 33, at 447.

race.³⁶ While they were among the best-educated blacks in the nation and constituted a large minority of its residents, they were largely restricted to menial jobs.³⁷ Despite the availability of a few menial jobs, 40% of black residents remained unemployed.³⁸ Several governmental entities such as the Civil Work Administration directly discriminated against blacks.³⁹

The Alliance's beginnings took root in the summer of 1933 at Hamburger Grill, a white owned restaurant located in a black D.C. neighborhood.⁴⁰ On August 28th, its manager fired three of its black employees and replaced them with three whites, despite the fact that it relied heavily on its black customer base for business.⁴¹ In retaliation, a group led by John Aubrey Davis (another D.C. activist) picketed the restaurant, causing the three terminated employees to be rehired the following day at higher wages and fewer hours.⁴² On the heels of the successful rehire at the Grill, Davis visited Belford Lawson and Franklin Thorne at Lawson's law office to discuss the Alliance's future picketing strategy.⁴³ With that, the Alliance was formed and the movement to secure black jobs and higher wages began.⁴⁴

³⁶ Pacifico, *supra* note 31, at 70.

³⁷ *Id.* at 70–71.

³⁸ GILBERT WARE, WILLIAM HASTIE: GRACE UNDER PRESSURE 66 (1984).

³⁹ MARK SOLOMON, THE CRY WAS UNITY: COMMUNISTS AND AFRICAN AMERICANS, 1917-1936 235 (1998).

⁴⁰ WARE, *supra* note 38, at 66–67.

⁴¹ Pacifico, *supra* note 31, at 67.

⁴² JONATHAN S. HOLLOWAY, CONFRONTING THE VEIL: ABRAM HARRIS JR., E. FRANKLIN FRAZIER & RALPH BUNCHE, 1919-1941 50-51 (2002); WARE, *supra* note 38, at 66-67. John Davis, a member of Omega Psi Phi Fraternity, Inc., grew up among accomplished blacks on "Striver's Row" in D.C. Pacifico, *supra* note 31, at 71. At age nine, Davis marched with the NAACP in support of an anti-lynching bill and remained active with the NAACP throughout his school years. *Id.* At Williams College, where he majored in English, Davis wrote short stories on the suffering of black laborers and studied the ideas of W.E.B. Du Bois and Booker T. Washington. *Id.* It is during these years that Davis, whose views differed from those of Du Bois and Washington, came to believe that civil rights would follow only after the economic disparities were addressed. *Id.*; Harris & Mitchell, Jr., *supra* note 5, at 163–64 (describing Davis's comments in Omega Psi Phi's national periodical, *The Oracle*, in 1938). Davis argued that "since the basis for minority persecution is chiefly economic, the remedy should likewise be economic." Pacifico, *supra* note 31, at 72.

⁴³ Pacifico, *supra* note 31, at 73. M. Franklin Thorne was a graduate of New York University and would become the manager of the District's first new deal housing project, Langston Terrace. *Id.*

⁴⁴ Pacifico, *supra* note 31, at 73.

A few days after the picket at Hamburger Grill, the Alliance held its first public meeting.⁴⁵ Attendees included the Hamburger Grill picketers along with the older, established community leaders whom Davis regarded as overly passive in their approach to fighting discrimination.⁴⁶ Lawson persuaded several other young black attorneys to join the fledgling organization, including William Hastie, Thurman Dodson, Edward Lovett, Edward Beaubian, and Thelma Ackis.⁴⁷ Ad-

⁴⁵ *Id.*

⁴⁶ *Id.* at 72–73.

⁴⁷ *Id.* at 74.

William H. Hastie was born on November 17, 1904 in Knoxville, Tennessee. A member of Omega Psi Phi Fraternity, Inc., Hastie graduated first in his class from Amherst College and later received his juris doctorate from Harvard Law School. While at Harvard, Hastie finished fourteenth among 690 students and became an editor of the *Harvard Law Review*. Hastie was admitted to the bar in 1930, and worked in private practice for three years. In the 1930s, Hastie volunteered his efforts to the New Negro Alliance, an organization that fought to end discriminatory employment practices, and the NAACP. He received honorary degrees from multiple institutions, including Rutgers, Howard, and Temple. From 1933 to 1937, Hastie served as Assistant Solicitor of the Department of the Interior, after which he was appointed by President Roosevelt to become the first African American federal judge. In 1939, Hastie resigned from the court to become the Dean of Howard University School of Law, where he had previously taught as a professor. In 1942, he became the first civilian aide to the Secretary of War. Between 1946 and 1949, he served as Governor of the Virgin Islands between 1946 and 1949. Hastie was a staunch opponentist to military racism. His support secured the black votes necessary for Truman's 1948 election, which put him in a position to order the desegregation of the military. In 1950, Hastie was appointed to the United States Court of Appeals for the Third Circuit. Hastie died on April 14 1976, in Philadelphia. *See generally* WARE, *supra* note 38.

Thurman L. Dodson was born in Washington, D.C. WASH. POST, Oct. 23, 1985, at D12. After his undergraduate education from Amherst College, he earned his law degree from Howard University School of Law. *Id.* Dodson was active in the Alpha Omega Chapter of Omega Psi Phi Fraternity, Inc., in Washington, D.C. *See* THE ORACLE, Mar. 1941, at 5. Dodson co-founded the Hughes United Memorial Methodist Church in Washington and served on its board of trustees and as its legal advisor. WASH. POST, Oct. 23, 1985, at D12. He also served as the United Methodist Union's president and as a delegate to the Washington and Baltimore United Methodist Conferences. *Id.* He was chief counsel to the Washington chapter of the NACCP and represented the organization in its allegations that the D.C. police department discriminated against black police officers. *Id.* He served as president and general counsel of the National Bar Association. *Id.* Dodson died September 26, 1985. *Id.*

Edward Lovett earned his bachelor's and law degrees from Howard University. Thereafter, he was granted a graduate fellowship from Harvard University. A member of Kappa Alpha Psi Fraternity, Inc., Lovett practiced law in Washington, D.C. at the Houston and Houston Law Firm. WILLIAM L. CRUMP, THE STORY OF

ditionally, an array of teachers and local businessmen joined the organization.⁴⁸ Despite this broad support, there were some early critics, who viewed the Alliance strategy as antagonizing and risky, carrying the potential to induce a white backlash.⁴⁹ The Alliance strategy was simple:

. . . [C]ollision with retail stores in black neighborhoods. Demanding that blacks be hired in proportion to their patronage, the Alliance conducted surveys to determine the volume of patronage and then confronted store officials with its demands. If store officials took “no definite action” within a reasonable period, the Alliance began door-to-door distribution of materials that explained the reasons for its next action, picketing. At the same time, it obtained pledges to boycott the store unless and until its demands were met.⁵⁰

The Alliance’s first project was an easy success. Lawson and Davis met with the personnel administrator of the *Evening Star*, the leading newspaper in D.C., to demand that the paper hire black paper boys, threatening a boycott otherwise.⁵¹ The paper complied within three weeks.⁵²

Following its success at Hamburger Grill and with the *Evening Star*, the Alliance shifted its gaze to the grocery store chain, Great Atlantic & Pacific Tea Company (“A&P”). The A&P had recently opened a new store in D.C, but only hired white employees.⁵³ Following two weeks of futile negotiations with A&P management, the Alliance, inspired by a successful boycott of an A&P in Columbus, Ohio, organized a picket of the D.C. store on September 27, 1933.⁵⁴ Two recent college graduates who carried signs reading “Buy Where You Can Work, No Negroes Employed Here,” were arrested for violation

KAPPA ALPHA PSI: A HISTORY OF THE BEGINNING AND DEVELOPMENT OF A COLLEGE GREEK LETTER ORGANIZATION, 1911-1991 125 (1991).

⁴⁸ Pacifico, *supra* note 31, at 74.

⁴⁹ HOLLOWAY, *supra* note 42, at 52–53.

⁵⁰ WARE, *supra* note 38, at 67.

⁵¹ Pacifico, *supra* note 31, at 74.

⁵² *Id.*

⁵³ *Id.* at 77.

⁵⁴ *Id.*

of a local ordinance that prohibited carrying a sign without a permit.⁵⁵ Lawson fought to have the charges dropped, convincing the court that the ordinance applied only to commercial advertising and that broadening its coverage would deprive persons of their constitutional rights.⁵⁶ In early October 1933, the Alliance added two more D.C. A&P locations to its boycott.⁵⁷ As a result of the successful boycott, by December 1933, A&P hired eighteen black employees, including one manager.⁵⁸

On December 16, 1933, the Alliance published its first issue of its new weekly newspaper *New Negro Opinion*.⁵⁹ The Alliance continued negotiating, but largely stopped picketing after two D.C. stores sought and were awarded injunctions against the Alliance.⁶⁰ On December 3, 1934, Lawson argued before the United States Court of Appeals for the District of Columbia Circuit on behalf of the Alliance.⁶¹ In *New Negro Alliance v. Kaufman*, the plaintiff, Harry Kaufman, Inc., owner and operator of a D.C. department store, filed a complaint against the Alliance for “unlawfully picketing and boycotting the store” and requested that the court issue a permanent injunction against the Alliance’s picketers.⁶² The district court issued a preliminary injunction, and Lawson immediately appealed.⁶³

On appeal, Lawson argued that because the dispute between the Alliance and Kaufman was a labor dispute, and the Norris-La Guardia Act prohibited courts from granting restraining orders and injunctions against such disputes, the lower court improperly granted the injunction.⁶⁴ The Court of Appeals dismissed Lawson’s appeal on the grounds that it was premature.⁶⁵ Citing the D.C. Code, the court determined that the preliminary injunction was not a “final order, judgment, or decree, nor [was] it an interlocutory order whereby the possession of property is changed or affected.”⁶⁶ As such, the court dismissed Lawson’s premature appeal without prejudice.⁶⁷

⁵⁵ WARE, *supra* note 38, at 74; Pacifico, *supra* note 31, at 77.

⁵⁶ See Pacifico, *supra* note 31, at 77.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *New Negro Alliance v. Kaufman*, 78 F.2d 415, 415 (D.C. Cir. 1935).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 415–16.

⁶⁵ *Id.* at 416.

⁶⁶ *Id.* (internal quotation marks omitted).

⁶⁷ *Kaufman*, 78 F.2d at 416.

While the court refused to examine *Kaufman* on its merits, the following year, Lawson found himself fighting another injunction on behalf of the Alliance. There, the Alliance had targeted Sanitary Grocery (“Sanitary”), another operator of a large number of grocery stores in the D.C. area.⁶⁸ In accordance with its picketing plan, the Alliance requested that Sanitary employ blacks in managerial and sales positions in a new store it had recently opened.⁶⁹ After Sanitary ignored the request, Alliance picketed.⁷⁰ Following *Kaufman*’s lead, Sanitary filed suit in federal court seeking a permanent injunction against the Alliance’s pickets.⁷¹

The United States District Court for the District of Columbia granted Sanitary’s injunction, and Alliance appealed.⁷² On appeal, Alliance again argued that the Norris-La Guardia Act protected their pickets from court injunction.⁷³ However, the United States Court of Appeals for the D.C. Circuit affirmed the lower court’s opinion, holding that the Norris-La Guardia Act did not apply because an employer-employee relationship did not exist between the picketers and Alliance.⁷⁴ In its conclusion, the court held that despite Alliance’s commendable goal of improving black opportunities, it was not “justified in ignoring the rights of the public and the property rights of the owner of the business which they attempt to boycott.”⁷⁵

Despite the setback in the *Sanitary Grocery Store* decisions, the Alliance continued to successfully picket elsewhere, using a variety of techniques, including mass mailings, petitions, and negotiations.⁷⁶ This success led to greater support from churches, the black-owned *Washington Tribune*, local and national leaders, homemakers, fraternities, and community groups.⁷⁷ Between 1937 and 1939, the local D.C. NAACP chapter had its charter revoked after a dispute with the national NAACP;⁷⁸ the Alliance was able to fill that void and increase its membership.⁷⁹ The Alliance estimated that by 1936 about

⁶⁸ *New Negro Alliance v. Sanitary Grocery Co.*, 92 F.2d 510 (D.C. Cir. 1938).

⁶⁹ *Id.* at 511.

⁷⁰ *Id.*

⁷¹ *Id.* at 510.

⁷² *Id.*

⁷³ *Id.* at 511.

⁷⁴ *Sanitary Grocery Co.*, 92 F.2d at 512.

⁷⁵ *Id.* at 513.

⁷⁶ *Pacifico*, *supra* note 31, at 78.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

\$75,000 and about 300 jobs for black clerks had been secured.⁸⁰ Furthermore, the Congress of Industrial Organizations and some white organizations began to offer support to the Alliance.⁸¹

Ultimately, the United States Supreme Court granted *certiorari* in the *Sanitary Grocery Store* case.⁸² However, William Hastie, recently appointed to the United States District Court for the District of the Virgin Islands, in 1937 by President Roosevelt, would be unavailable to argue before the Court.⁸³ Belford Lawson, five years out of law school, served as lead counsel in the case before the Court.⁸⁴ On brief attorneys for petitioner were Lawson, Thurman L. Dodson, and Edward P. Lovett. Theodore Berry, Thurgood Marshall, and James M. Nabrit, Jr., all served as Of Counsel.⁸⁵ Berry and Marshall were Law-

⁸⁰ MONROE FRIEDMAN, CONSUMER BOYCOTTS: EFFECTING CHANGE THROUGH THE MARKETPLACE AND THE MEDIA 115 (1999); Pacifico, *supra* note 31, at 79.

⁸¹ Pacifico, *supra* note 31, at 82.

⁸² *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 554 (1938).

⁸³ WARE, *supra* note 38, at 78.

⁸⁴ *Sanitary Grocery Co.*, 303 U.S. at 553.

⁸⁵ Brief for the Petitioners at cover, *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938) (No. 511), 1937 WL 41048, at *i.

For biographies of Dodson, Lovett, and Berry, *see supra* notes 30 and 47.

Thurgood Marshall was born in Baltimore, Maryland on July 2, 1908. He graduated from Lincoln University, where he was initiated into Alpha Phi Alpha, and Howard University Law School, during the era when Charles Hamilton Houston was Dean. Marshall began working for the NAACP's Baltimore branch in 1934. Marshall moved to New York City and worked as legal counsel for the NAACP in 1936. He eventually became the head of its Legal Defense and Education Fund. Marshall was chief counsel in the *Brown v. Board of Education* cases. President John F. Kennedy appointed Marshall to the United States Court of Appeals for the Second Circuit in 1961. President Lyndon B. Johnson appointed Marshall as Solicitor General. Johnson nominated Marshall for the Supreme Court in 1967. Marshall was the first African American to serve as Solicitor General, and on the Court. *See generally* JUAN WILLIAMS, THURGOOD MARSHALL: AMERICAN REVOLUTIONARY (2000).

James M. Nabrit, a member of Omega Psi Phi, graduated from Morehouse College and Northwestern University Law School. ZACHARY R. WILLIAMS, IN SEARCH OF THE TALENTED TENTH: HOWARD UNIVERSITY PUBLIC INTELLECTUALS AND THE DILEMMAS OF RACE, 1926–1970 55–56 (2009). He taught law at Howard University in 1936 and the first formal civil rights class in 1938. *James Madison Nabrit, Jr. Biography*, HOWARD UNIV., <http://www.law.howard.edu/1113> (last visited Oct. 27, 2012). He served as the dean of the law school from 1958 to 1960, and Howard University's president from 1960 to 1969, the second African American to hold this position. *Id.* He worked on civil rights cases for the NAACP Legal Defense and Education Fund in the 1940s and 1959. *Id.* He was lead counsel for *Bolling v. Sharpe*. *Id.* Lyndon B. Johnson appointed Nabrit as a deputy ambassador to the United Nations in 1966. He died in Washington, D.C. in 1997. *Id.*

son's Alpha brothers, while Dodson and Nabrit were Omega Psi Phi members, and Lovett was a Kappa Alpha Psi member.⁸⁶

Appealing to the United States Supreme Court, Lawson argued the *Sanitary* case before the Court on March 2 and 3, 1938.⁸⁷ The Court ultimately reversed the Court of Appeals's holding, remanding the case in favor of the Alliance.⁸⁸ In its landmark decision, the Court looked at the language of subsection (a) of section 13 of the Norris-La Guardia Act, and held its definitions to plainly embrace the controversy, which gave rise to the instant suit, and classified it as a labor dispute, despite the fact that Alliance was not an employee of Sanitary.⁸⁹ In clear contrast to the lower courts, the Supreme Court emphatically stated that the Act was intended to cover labor disputes between interested parties and was not limited only to those situations involving an employer and its employee:

The Act does not concern itself with the background or the motives of the dispute. The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation. There is no justification in the apparent purposes or the express terms of the Act for limiting its definition of labor disputes and cases arising therefrom by excluding those which arise with respect to discrimination in terms and conditions of employment based upon differences of race or color.⁹⁰

⁸⁶ See *supra* notes 30, 47, and 85.

⁸⁷ *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, 552 (1938).

⁸⁸ *Id.* at 563.

⁸⁹ *Id.* at 560.

⁹⁰ *Id.* at 561.

The Court further examined the Act's legislative history and determined that the purpose of the Act was, "short of fraud, breach of peace, violence, or conduct otherwise unlawful," to allow dissemination of information by those people interested in a labor dispute concerning the terms and conditions of employment.⁹¹ It noted that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute concerning terms and conditions of employment should be at liberty to advertise and disseminate facts and information, as well as peacefully persuade others to concur in their views respecting an employer's practices.⁹² *Sanitary* was thus a monumental victory: it established the right to picket by people unaffiliated with labor unions,⁹³ and it also secured Lawson's name in the annals of history as the first black lawyer to win a case before the U.S. Supreme Court.⁹⁴

III. "SIBLING" RIVALRY: LAWSON, HOUSTON, AND MARSHALL

In 1934, Lawson began to develop a case against the University of Maryland as part of an effort to realize Charles Hamilton Houston's equalization plan for fighting segregation.⁹⁵ He enlisted support from both Alpha Phi Alpha and the Washington, D.C. chapter of the NAACP.⁹⁶ In November of 1934, Lawson invited Thurgood Marshall

⁹¹ *Id.* at 562–63.

⁹² *Id.*

⁹³ WARE, *supra* note 38, at 79–80.

⁹⁴ *Rites for Belford Lawson, 1st Black Atty. in U.S. to Win Supreme Court Case*, JET, Mar. 11, 1985, at 5.

⁹⁵ RAWN JAMES, JR., *ROOT AND BRANCH: CHARLES HAMILTON HOUSTON, THURGOOD MARSHALL, AND THE STRUGGLE TO END SEGREGATION* 66, (1st ed. 2010).

⁹⁶ *Id.* Charles Hamilton Houston was born on September 3, 1895 in Washington, D.C. Houston graduated Phi Beta Kappa from Amherst College in 1915. Houston subsequently earned LL.B. and S.J.D. degrees from Harvard University in 1922 and 1923, respectively. While at Harvard, he helped found and was a charter member of the Alpha Iota Chapter of Alpha Phi Alpha fraternity in 1922. After attaining his legal degrees, Houston joined Howard University's law faculty in 1924. In 1929, Houston became resident vice-dean of Howard Law School. After two years of Houston's leadership, Howard Law School was accredited by the American Bar Association and became the sixty-ninth school admitted to the Association of American Law Schools. This period of Houston's life is also notable for the number of civil rights lawyers he mentored during his time at Howard Law, such as Thurgood Marshall and Belford Lawson. In 1932, Houston was appointed to serve in Alpha Phi Alpha's Committee on Public Policy. In 1935, Houston resigned from the vice-deanship at Howard to assume responsibility for national civil rights planning as special counsel to the NAACP. Houston spent the rest of his life coordinating legal efforts to under-

and William Gosnell to a meeting to discuss a strategy for the case against the university.⁹⁷ Marshall, whose Baltimore chapter of the NAACP was disgruntled with the inherent temerity in the D.C. chapter's intention to file a civil rights suit in Baltimore, abstained from the meeting.⁹⁸ A week after the meeting, Lawson found an appropriate plaintiff for his case: Donald Gaines Murray, a Kappa Alpha Psi Fraternity member and recent graduate of Amherst College who came from a notable black family and wished to attend the University of Maryland School of Law.⁹⁹ Soon, Houston heard that Lawson had found the perfect plaintiff for the case against the University of Maryland and decided to intervene.¹⁰⁰ With Marshall as co-counsel, Houston, armed with the resources of the national office of the NAACP, wooed Murray away from Lawson and filed the case against the University of Maryland School of Law in 1935.¹⁰¹

Marshall argued the case before the Maryland Court of Appeals in 1936.¹⁰² His client, Murray, was denied admission to the University of Maryland School of Law although he met all of its admission standards; he was denied admission solely because he was black.¹⁰³ The court noted that the Fourteenth Amendment requires a state to extend to its citizens "substantially equal treatment in facilities that provides from the public funds."¹⁰⁴ Additionally, the court noted that while segregation is lawful, "separation of the races must nevertheless furnish equal treatment."¹⁰⁵ The court held that because Maryland did not offer a separate law school for black students, "[i]f those students are to be offered equal treatment . . . they must, at present, be admitted to the one school provided."¹⁰⁶

The case went on to become a landmark victory against segregation and began Thurgood Marshall's meteoric rise within the civil

mine segregation, especially in schools across the South. Charles Hamilton Houston died on April 22, 1950. *See generally* GENNA R. MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* (1983).

⁹⁷ Leland B. Ware, *Setting the Stage for Brown: The Development and Implementation of the NAACP's School Desegregation Campaign, 1930-1950*, 52 *MERCER L. REV.* 631, 644 (2001).

⁹⁸ JAMES, JR., *supra* note 95, at 67.

⁹⁹ *Id.* at 67.

¹⁰⁰ JAMES, JR., *supra* note 95, at 68.

¹⁰¹ *Id.*

¹⁰² *Pearson v. Murray*, 182 A. 590, 590 (Md. 1936).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 592.

¹⁰⁵ *Id.* at 593.

¹⁰⁶ *Id.* at 594.

rights movement. Lawson was slow to forget this usurpation and, nearly ten years later, threatened to deny Marshall the funding he needed to file a case against the Texas Democratic Party and file a separate suit unless Marshall promised Alpha Phi Alpha some of the credit for the eventual win.¹⁰⁷ Despite any friction caused by Marshall's commandeering of Murray from Lawson and the Alliance, both men were able to continue to work together for the cause of civil rights. In 1935, for example, both men assisted the State's Attorney of Maryland in prosecuting a policeman who had maliciously gunned down an innocent black man in Bladensburg, Maryland.¹⁰⁸ Though the policeman was acquitted, merely bringing the case to trial was considered an achievement.¹⁰⁹

IV. EQUAL TO THE TASK: LAWSON WEDS

In 1939, Lawson married Alpha Kappa Alpha Sorority member Marjorie McKenzie.¹¹⁰ McKenzie, originally from Pittsburgh, attended the University of Michigan for her undergraduate degree.¹¹¹ After graduation, she moved to Washington, D.C. to attend the Robert H. Terrell School of Law, where she and Lawson first met.¹¹² After McKenzie graduated, the two married and eventually had one son—Belford V. Lawson, III.¹¹³

McKenzie was an outspoken and accomplished person in her own right. She was a prominent critic of the Federal Bar Association's policy of excluding blacks.¹¹⁴ She also had her own opinions about desegregation strategy. In deciding how to approach the legal battles over segregation, a split emerged among black equal rights activists; some preferred a more cautious approach, working within the *Plessy v. Ferguson*¹¹⁵ framework to order schools to desegregate based on inequalities; others preferred to directly challenge courts to overrule

¹⁰⁷ JAMES, JR., *supra* note 95, at 185.

¹⁰⁸ *Rural Policeman Who Slew Unarmed Motorist "Not Guilty,"* NEGRO STAR, May 17, 1935, at 1.

¹⁰⁹ *Id.*

¹¹⁰ Rosmarie Tyler, *Marjorie Lawson becomes a Judge*, AFRO-AM., Oct. 13, 1962, at 4; *Marjorie McKenzie Lawson; Judge and Lawyer*, WASH. POST, Oct. 16, 2002, at B6.

¹¹¹ *Id.*

¹¹² *See id.*

¹¹³ Sandy Fagans, *As a Judge, She's an Angel, Lawyer and Social Worker*, THE BALT. AFRO-AM., Feb. 29, 1964, at 5.

¹¹⁴ SMITH, JR. *supra* note 30, at 550.

¹¹⁵ 163 U.S. 537 (1896).

Plessy as unconstitutional.¹¹⁶ McKenzie belonged to the former group, advocating the so-called equalization strategy. Believing success could be made slowly but surely by allowing the courts to quietly erode the *Plessy* precedent, she sharply criticized Thurgood Marshall and the NAACP's direct approach.¹¹⁷ The two exchanged a series of heated publications on that issue. On July 7, 1951, McKenzie rebuked Marshall in her weekly column "Pursuit of Democracy."¹¹⁸ She noted that the equalization strategy led to victory in U.S. Supreme Court cases *Sweatt v. Painter*,¹¹⁹ *McLaurin v. Okla. State Regents for Higher Educ.*,¹²⁰ and *Henderson v. United States*.¹²¹ In contrast, McKenzie pointed out, the recent rehearing of *Briggs v. Elliot*,¹²² in which Marshall raised only the issue of whether *Plessy* ought to be upheld, was unsuccessful.¹²³ McKenzie termed that case a "serious legal setback in the civil rights fight."¹²⁴

Of course, challenging *Plessy* directly turned out to be a successful course shortly thereafter in *Brown v. Board of Education*.¹²⁵ However, McKenzie defended her cautious approach based on her perception of the court's tendencies at the time:

It seemed to me that the possibility of having a number of district courts' decisions which revived the doctrine of *Plessy v. Ferguson* and gave it a modern-day interpretation was a dangerous thing to have happen. . . . I thought that we had in the *Sweatt* and *McLaurin* decisions a formula for success and so there was no reason to change horses in midstream.¹²⁶

¹¹⁶ RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* 523–24 (Vintage Books 1977).

¹¹⁷ *Id.* at 523.

¹¹⁸ *Id.*

¹¹⁹ 339 U.S. 629 (1950).

¹²⁰ 339 U.S. 637 (1950).

¹²¹ 339 U.S. 816 (1950); KLUGER, *supra* note 116, at 523.

¹²² *Briggs v. Elliott*, 132 F. Supp. 776 (E.D.S.C. 1955).

¹²³ KLUGER, *supra* note 116, at 524.

¹²⁴ *Id.*

¹²⁵ *See Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 301 (1955).

¹²⁶ THURGOOD MARSHALL, *SUPREME JUSTICE SPEECHES AND WRITINGS: THURGOOD MARSHALL* 62 (J. Clay Smith, Jr. ed. 2003).

In 1939, at the fifteenth annual meeting of the National Bar Association (the black equivalent of the American Bar Association), McKenzie was elected assistant secretary.¹²⁷ In 1960, the Kennedy campaign selected McKenzie to serve as the civil rights director for Kennedy's presidential run.¹²⁸ Both she and her husband were influential in turning out support for Kennedy in the black community. She went on to become the first black woman nominated by a president for a judicial post that required U.S. Senate confirmation.¹²⁹ In 1962, she was appointed by President Kennedy and confirmed by the U.S. Senate to serve on the newly created Juvenile Court of the District of Columbia.¹³⁰ In 1965, McKenzie was selected to represent the United States on the Social Commission of the United Nations Economic and Social Council.¹³¹ McKenzie worked for decades in private practice in the field of real estate.¹³²

V. LAWSON'S BROADER ACTIVISM

As the thirties waned, Lawson became more active in various organizations. In 1939, Lawson attended the third annual meeting of the National Lawyers Guild, an integrated alternative to the all-white American Bar Association.¹³³ In 1940, he was appointed General Counsel of Alpha Phi Alpha, assuming the post from business partner and fraternity brother, Theodore Berry.¹³⁴

At the 1946 Alpha Phi Alpha General Convention, fraternity members elected Lawson General President of the fraternity.¹³⁵ The following year, Lawson gave a rousing keynote address that culminated in a stirring appeal to the Alpha ranks that would define the direction of the fraternity under his leadership:

The great decision of this generation of Alpha men is whether we shall, with every ounce of energy, with every dollar in our treasury, with every fiber of our mind and soul, deny the gi-

¹²⁷ SMITH, JR., *supra* note 30, at 567.

¹²⁸ Interview by Ronald J. Grele with Judge Marjorie McKenzie Lawson, in Washington, D.C. (Oct. 25, 1965), at 44 (on file with author).

¹²⁹ *Marjorie McKenzie Lawson; Judge and Lawyer*, *supra* note 110.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ SMITH, JR., *supra* note 30, at 551.

¹³⁴ See WESLEY, *supra* note 10, at 236–39.

¹³⁵ *Id.* at 276–67.

gantic conspiracy to preserve our segregated status quo, and destroy the mighty, monstrous mockery of human decency and dignity, the yoke of Jim Crow which hangs around our necks. To compromise is to evade the crucial, I call to action! Let us speak for the dawn.¹³⁶

In 1948, Alpha Phi Alpha along with several other Greek societies formed the American Council on Human Rights.¹³⁷ The organization strived to extend human rights to all Americans by mobilizing nearly one hundred thousand members of the united fraternities and sororities.¹³⁸ Lawson was instrumental in the formation of this unprecedented cooperative effort among Greek societies and continuously lobbied for support for the organization throughout his presidency.¹³⁹

In 1949, Lawson, along with the other members of the National Lawyer's Guild, drafted a letter admonishing Attorney General Tom Clark for investigating subversive influences among the law community and evaluating the fitness of certain lawyers to practice.¹⁴⁰ In the same year, Lawson reached out to his Alpha Phi Alpha brothers, requesting that they provide statements about their experiences of segregation on the United States railways as part of the ongoing case, *Henderson v. United States*.¹⁴¹ Lawson thought such statements would be effective in conveying the "brutalizing and humiliating effects of this type of public humiliation" to the court.¹⁴² Specifically, Lawson solicited the aid of Howard Hale Long, Rayford Wittingham Logan, and Antonio Maceo Smith—Alpha's seventh, fifteenth, and seventeenth General Presidents, respectively.¹⁴³

¹³⁶ *Id.* at 280.

¹³⁷ *Id.* at 283.

¹³⁸ *Id.*

¹³⁹ *See id.* at 294.

¹⁴⁰ MCNEIL, *supra* note 96, at 206.

¹⁴¹ 339 U.S. 816 (1950); WESLEY, *supra* note 10, at 309–13.

¹⁴² WESLEY, *supra* note 10, at 282.

¹⁴³ *See* Brief for Petitioner at 94–99, *Henderson v. United States*, 339 U.S. 816 (1950) (No. 25); André McKenzie, *Those Who Carried the Torch: The General Presidents of Alpha Phi Alpha*, in *ALPHA PHI ALPHA: A LEGACY OF GREATNESS, THE DEMANDS OF TRANSCENDENCE* 93, 101–02, 121–30 (Gregory S. Parks & Stefan M. Bradley eds., 2012).

Rayford Logan was born January 7, 1897, in Washington, D.C. He graduated as valedictorian of his graduating class from M Street High School, in Washington, D.C. He attended the University of Pittsburgh for a year before transferring to Williams College, where he received his bachelor's degree in 1917 and later earned a master's degree. Logan also obtained a doctor of philosophy degree from Harvard

In a letter to Lawson, dated May 25, 1949, Logan—who was, at that point, a History Professor at Howard University—stated:

Dear Brother Lawson:

I am delighted to know that definite progress is being made with respect to the validity and reasonableness of the dining car regulations of the Southern railway. In response to your re-

University. Logan served Alpha's general organization as director of education and as a member of the Committee on Public Policy before being elected as the fifteenth general president in December 1940. He was an outspoken advocate of equality and civil rights, using Alpha as an avenue for expressing his activism. Logan joined the First Separate Battalion of the District of Columbia's National Guard in 1917. He later worked as a faculty member of Howard University's Department of History, and served as its chairman until his retirement in 1964. Logan died on November 4, 1982. *Id.* at 121–24

Howard Long was born March 4, 1888, in News Ferry Virginia. He received a B.S. degree and a bachelor's diploma in education from Howard University in 1915. He earned an M.A. degree in experimental psychology at Clark University in 1916. Long served as Alpha's general organization as secretary and treasurer before being elected seventh general president in December 1915. He remained an active supporter of Alpha throughout his life, serving on the fraternity's Committee on Public Policy and chairing both its Commissions on Findings and Reorganization. Long began his career as part of the faculty at Howard's School of Liberal Arts. Later in life, he worked as assistant superintendent of schools and director of research in Washington, D.C. He also worked in various academic leadership positions at Paine College, Wilberforce University, and Central State College. Long died on February 21, 1957. *Id.* at 101–02.

Antonio Smith was born April 16, 1903, in Texarkana, Texas. He earned a bachelor's degree from Fisk University in 1924 and a master's degree in business from New York University in 1928. His graduation from Fisk was jeopardized when he joined Alpha at Meharry Medical College, due to Fisk's refusal to recognize fraternities. While studying in New York, Smith served Alpha Phi Alpha's Eta chapter as house manager and business manager of the chapter's basketball team. He later served the fraternity's general organization as western region vice president before being elected as the seventeenth general president in December 1951. Notable achievements of his administration include: streamlining the fraternity's organization and program; establishing a sound fiscal policy; acquiring a national headquarters; and organizing A-Phi-A Housing Foundation, Inc. Smith's professional life began in New York, where he worked as a redcap at Grand Central Station, and later established an advertising agency based in Harlem. He returned to Texas in 1929 to start a career in business. The Federal Housing Administration employed Smith for thirty-four years. In addition, he served as first executive secretary of the Dallas unit of the NAACP and as a member of the Texas County Council of Negro Organizations. Smith died on December 19, 1977. *Id.* at 127–29.

quest I am submitting the following statement which you may use in any way you deem best:

Dr. Rayford W. Logan, officer of the United States Army in France in World War I, head of the Department of History at Howard University, world traveler, author of several books and member of the United States, National Commission for UNESCO, states that the regulation which compels him to eat behind a curtain or partition in a dining car is the most humiliating and degrading experience in his entire life in the United States. He further states that by training and temperament it is impossible for him to be a communist but if there were any one thing in American society that would lead him to communism, it is the impact of the insult to his dignity as an individual arising from the dining car regulations.¹⁴⁴

In a letter dated June 1, 1949 to Lawson, Smith—then a Racial Relations Advisor for the Federal Housing Administration—stated:

Dear Sir:

I understand that Alpha Phi Alpha Fraternity is prosecuting the case of Elmer Henderson v. United States, et al, in an effort to eliminate the vicious practices of Southern Railroads which require Negro passengers, who seek dining car accommodations, to be served at a table set off by curtain or partition. As one who travels extensively in the interest of the Government I wish to make some comments.

I have been exposed to these conditions many, many times and have never enjoyed equality in service at any time, while seated behind this curtain. Usually these four seats behind the curtain are occupied by whites because of overflow and congestion while there may be

¹⁴⁴ Brief for Petitioner at 96, Henderson v. United States, 339 U.S. 816 (1950) (No. 25).

a single seat available elsewhere in the dining car. In the next place, the humiliating inconvenience and discomfort of such separate seats create mental anguish that often affects the gastrointestinal system. In addition, when these separate seats are not in use by whites during the early period of the meal, the dining car employees occupy them and leave them, usually, in complete disorder.

Because of the discomfiture of such separate eating facilities on most Southern Railroads, many times I deny myself the privilege of a meal, rather than to engage in controversy with the Railroad employees in search of an available seat elsewhere in the dining car.¹⁴⁵

And in a letter to Lawson dated June 11, 1949, Long—then an administrator at Central State University—wrote:

My dear Brother Lawson:

I wish to advise that I have never eaten behind the curtain provided in dining cars which separate the tables where Negroes may eat from the tables where all other human beings may eat. Several times I have had meals served in the pullman car to avoid the humiliation. At other times I have been fortunate enough not to eat at all rather than sit behind the curtain. I have talked to a goodly number of my friends and acquaintances who travel a good deal and I am advised in varying details that to them the separation by the curtain does something somewhat different from the other jim-crow experiences they have had. In the first place, it seems so senseless that white persons should be satisfied to be served, by Negro waiters, food that has been cooked and prepared by Negro cooks, but refuse to eat in the same car with other Negroes unless there is some symbol

¹⁴⁵ *Id.* at 99.

of the inferior status imposed by circumstances over which Negroes themselves do not have control.¹⁴⁶

These letters and others would ultimately be included in the petitioner's brief to the United States Supreme Court in *Henderson*.¹⁴⁷

In 1950, Lawson—along with Charlotte R. Pinkett, Aubrey E. Robinson, an Alpha Phi Alpha brother, and Marjorie McKenzie—represented Browne Junior High School Parent-Teacher Association (“PTA”) in *Carr v. Corning*.¹⁴⁸ Argued before the D.C. Circuit, *Carr* consolidated two cases seeking declaratory judgment regarding the actions of a school board pertaining to a black public school.¹⁴⁹ Lawson represented the second of two cases, an action by the PTA seeking declaratory judgment against the Superintendent of Schools and members of the Board of Education of the District of Columbia and injunctive relief, which would permit plaintiff pupils to attend junior high

¹⁴⁶ *Id.* at 94–95.

¹⁴⁷ *See id.* at 94–103.

¹⁴⁸ 182 F.2d 14, 15 (D.C. Cir. 1950).

Charlotte Pinkett was a native of Washington, D.C. and attended Howard University for both her undergraduate and law degrees. After graduating from Howard, Pinkett stayed in D.C. and practiced with the firm of Lawson, McKenzie, Williams, and Windsor through the 1940's. After marrying her second husband, Burton W. Lewis, Pinkett moved with him to Tokyo and acted as superintendent of the U.S. government-operated library. In the late 1960's, Pinkett moved back to the U.S. and became general counsel for the western region of the Office of Economic Opportunity in San Francisco. In the 1970's, Pinkett returned to Washington, D.C. and continued to work for the OEO until retiring from federal service in 1978. She died on October 8, 1991 in West Palm Beach, Florida. *Charlotte Lewis Dies; Lawyer at U.S. Agency*, WASH. POST, Oct. 10, 1991, at C5.

Aubrey Robinson, Jr. was born on March 30, 1922 in Madison, N.J. Robinson received a B.A. from Cornell in 1943. He enrolled in Cornell Law School after receiving undergraduate degree, but interrupted his legal studies to serve in the Army during World War II. After returning to the U.S., Robinson finished his legal studies and received his LL.B. from Cornell in 1947. In 1966, President Lyndon Johnson appointed Robinson to the U.S. District Court for the District of Columbia. Robinson became Chief Judge for the District of Columbia in 1982. Aubrey Eugene Robinson Jr. died on February 27, 2000 in Washington D.C.. *Robinson, Aubrey Eugene Jr., Biographical Directory of Federal Judges*, FEDERAL JUDICIALCTR., <http://www.fjc.gov/servlet/nGetInfo?jid=2028&cid=999&ctype=na&inststate=na> (last visited May 20, 2012); *see also* Adam Bernstein, *Aubrey Robinson Dies; Led U.S. District Court*, WASH. POST, Feb. 29, 2000, at B1.

¹⁴⁹ *Carr*, 182 F.2d. at 15.

school, thereby guaranteeing them educational opportunities, facilities, and equipment equal to those allegedly afforded white students.¹⁵⁰

In its complaint, the PTA alleged that the Board of Education's policies regarding the segregated schools were substantially unequal to the white schools—e.g., poor maintenance and “double shifts”—effectively reducing classroom time for all black students, and the arbitrary transfer of several students to other schools, and deprived them of due process protection.¹⁵¹ The school district attempted to transfer Browne students to vacated elementary buildings which lacked important facilities and denied proper instructions in music, art, typewriting, home economics, woodshop, print shop, metal shop, and other vocational skills provided to white students.¹⁵² Accordingly, the PTA prayed for an order of permanent injunction which would permit plaintiff students to attend the junior high school with equal facilities, equipment, and opportunities afforded to the white students.¹⁵³

Additionally, Lawson argued that segregation of the students, apart from equality analysis, was facially forbidden by the Constitution.¹⁵⁴ The court concluded that “social and economic interrelationship of two races living together is a legislative problem . . . and is not a problem solved fully, finally and unequivocally by a fiat enacted many years ago.”¹⁵⁵ Acknowledging the debates before the Civil Rights Act of 1866, the Fourteenth Amendment, and the Civil Rights Act of 1875, the court concluded that the actions of Congress to enact legislation which specifically provided for separation of the races in the schools of the District of Columbia, “conclusively support our view of the Amendment and its effect.”¹⁵⁶

The court identified that the Board of Education of the District of Columbia is appointed by the United States District Court for the District of Columbia and, thus, operates under direct mandate of the Congress.¹⁵⁷ As such, the court examined Congressional mandates regarding DC school policies and determined that Congress intended the schools to be racially segregated.¹⁵⁸ Furthermore, the court noted that the Supreme Court has “consistently held that if there be an equality of

¹⁵⁰ *Id.* at 15–16.

¹⁵¹ *Id.* at 16.

¹⁵² *Id.* at 23.

¹⁵³ *Id.* at 16.

¹⁵⁴ *Id.*

¹⁵⁵ *Carr*, 182 F.2d. at 16.

¹⁵⁶ *Id.* at 17.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 17–18.

the privileges which the laws give to the separated groups, the races may be separated.”¹⁵⁹

Having lost the argument that segregation on the basis of race is a *per se* violation of the Constitution, Lawson turned to the inequality of the facilities argument.¹⁶⁰ However, the court held that the “treatment accorded [the black plaintiffs] . . . would have been accorded them had they been white.”¹⁶¹ Furthermore, the court rationalized, “If the separation of the races in and of itself is not constitutionally invalid, such treatment, indiscriminate as to race, is not the unequal extension of privileges which violates constitutional prohibitions.”¹⁶²

The same year that the D.C. Circuit handed down the *Carr* decision, the Supreme Court of the United States handed down another decision argued before it by Lawson,¹⁶³ but the origins of the second case began eight years prior.¹⁶⁴ On May 17, 1942, Elmer Henderson, a black United States citizen, traveled to Atlanta from Washington, D.C. aboard a Southern Railway (“Southern”) train.¹⁶⁵ At 5:30 p.m., as the train proceeded through Virginia, a number of passengers waited to enter, and the car filled promptly.¹⁶⁶ At the time, Southern served meals to passengers of different races at different times.¹⁶⁷ However, the increase of passenger traffic in 1941 required the train to adopt a policy that accommodated serving both races simultaneously.¹⁶⁸ Southern issued a policy whereby each train would install a curtain in the diner to separate the black passenger tables from the white tables.¹⁶⁹ The policy further stated that in the event no black passengers arrived for service, the curtain would be pulled back and the two tables reserved for blacks would become available for white usage.¹⁷⁰ In the event that the tables became available and were occupied by whites, the next black passenger to arrive was required to wait until the black table was made available.¹⁷¹ Essentially, Southern’s policy permitted whites to be served ahead of blacks at the tables reserved for blacks if

¹⁵⁹ *Id.* at 17 (internal quotation marks omitted).

¹⁶⁰ See *id.* at 23.

¹⁶¹ *Carr*, 182 F.2d. at 22.

¹⁶² *Id.*

¹⁶³ *Henderson v. United States*, 339 U.S. 816, 816 (1950).

¹⁶⁴ *Id.* at 818.

¹⁶⁵ *Id.*

¹⁶⁶ *Henderson v. United States*, 63 F. Supp. 906, 909 (D. Md. 1945).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 910.

¹⁷¹ *Id.*

the tables had already been opened (because no blacks showed up immediately when the diner opened) and there were no seats available at white tables. This was true regardless of how long a black person stood in line. To alleviate this potential problem, Southern allowed that if one race of passengers could not eat in the diner because another race was occupying his seat, the train would serve him in his passenger seat.¹⁷²

At the opening of the diner the evening of May 17, no black passengers immediately arrived for service.¹⁷³ As such, the curtain was pulled back, and white passengers were allowed to sit at the end tables (those generally reserved for blacks).¹⁷⁴ When Henderson arrived, neither of the end tables were vacant (though seats were available among the whites sitting at the colored table), yet the steward refused to seat him among the whites.¹⁷⁵ The diner was filled continuously, with passengers from the line taking seats as soon as others vacated them, and Henderson was forced to wait.¹⁷⁶ The steward offered to serve Henderson in his seat back in the Pullman car, but Henderson declined service and waited to be seated in the dining car.¹⁷⁷ By the time the diner was removed by 9:00 pm Henderson had not been served.¹⁷⁸

The following October, Henderson filed a complaint with the Interstate Commerce Commission (“Commission”) alleging that Southern had “unjustly discriminated against him in violation of the provisions of Section 3(1) of the Interstate Commerce Act (“ICA”) and Article IV, Section 2 of the United States Constitution, by failing to furnish him with dining car service equal to that furnished white passengers.¹⁷⁹ The Commission granted Henderson a hearing and on May 13, 1944 heard oral arguments.¹⁸⁰ Relying on its examiner’s recommendations and its own factual conclusions, the Commission ultimately dismissed the complaint, finding that although Southern violated the ICA by subjecting Henderson to “undue and unreasonable prejudice,” Henderson did not sustain any compensable damages.¹⁸¹ More im-

¹⁷² *Henderson*, 63 F. Supp. 906 at 910.

¹⁷³ *Id.* at 909.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Henderson*, 63 F. Supp. 906 at 909.

¹⁷⁹ *Id.* at 908.

¹⁸⁰ *Id.* at 909.

¹⁸¹ *Id.* at 910.

portantly, it found that the prejudice was the result of a casual incident and not of the Railroad's general practice.¹⁸²

Following the Commission's decision, Lawson and Josiah F. Henry, a Kappa Alpha Psi Fraternity member, brought suit in the United States District Court for the District of Maryland on Henderson's behalf.¹⁸³ After dispensing with jurisdictional issues, the court discussed "the distinction between segregation and equality of treatment."¹⁸⁴ Citing *Plessy*, the court recognized that "it has been repeatedly declared by the Supreme Court that race segregation by State law is not per se an abridgment of any constitutional right secured to the citizen."¹⁸⁵ Further noting that by virtue of the Commerce Clause, Congress has the power to prohibit segregation in interstate travel, but has not done so; choosing rather to limit Section 3 of the ICA prohibition to "undue or unreasonable prejudice or disadvantage."¹⁸⁶ Furthermore, the court cited *Mitchell v. United States*, noting that the right to a particular accommodation does not depend upon the volume of traffic if such accommodations are provided, substantial equality cannot lawfully be withheld.¹⁸⁷ Because segregation of interstate passengers was not *per se* forbidden by the Constitution, the court directed its attention to whether ICA policy provided equal accommodations.¹⁸⁸

¹⁸² *Id.* at 911.

¹⁸³ *Id.* at 910.

Josiah Francis Henry, Jr. was born on August 2, 1896 in Cambridge, Maryland to Josiah F. Henry and Mary J. (Wheatley) Henry. Henry attended Baltimore public schools and then went on to study at Delaware State College and Howard University. He ultimately earned his B.S. and LL.B. degrees from the University of Michigan. Henry served in the United States Army during World War I. In 1934, he became the first African American to run as Democrat for House of Delegates. In 1944, Governor Herbert H. O'Connor appointed him Executive Secretary, Commission on Problems Affecting Colored People. In 1955, he ran for a seat on the Baltimore City Council. Henry served as Magistrate for the Traffic Court from 1959-1961. He remained active in numerous civic, fraternal, and professional organizations including National Negro Bar Association, Civil Liberties Union, Urban League, NAACP, Kappa Alpha Phi, and the Masons. He died in Baltimore, Maryland on March 20, 1980. *Archives of Maryland, Biographical Series: Josiah Henry*, MD. STATE ARCHIVES (Jan. 16, 2006), <http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/014400/014457/html/14457bio.html>.

¹⁸⁴ *Henderson*, 63 F. Supp. at 912.

¹⁸⁵ *Id.* at 913 (citing *Plessy v. Ferguson*, 163 U.S. 537 (1896)).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* (citing *Mitchell v. United States*, 313 U.S. 80, 97 (1941)).

¹⁸⁸ *Id.* at 914.

The court concluded that the service was not equal.¹⁸⁹ It based its decision on the fact that Southern's policy (approved of by the ICA in its previous ruling) "[did] not in fact require the setting aside of the two tables . . . *exclusively* for Negro passengers, but merely [said] that they are not to be used by white passengers until all other seats in the car have been taken."¹⁹⁰ Additionally, the court observed that the regulations failed to require the steward to take steps to ascertain whether there were any blacks on the train and that the regulations failed to consider the probability that a black passenger may not desire a meal as soon as he boards the train.¹⁹¹ Therefore, the court concluded that Southern's policy did not afford that substantial equality of treatment between the races as the ICA and *Mitchell* require.¹⁹² The court did not discuss the quality of the seats themselves—e.g., closeness of the black tables to the noisy kitchen, located behind an obvious curtain of separation, and limited to only two of the twelve tables—but relied solely on the fact that the tables were not *exclusively* reserved.¹⁹³ Accordingly, the court dismissed the Commission's order and remanded.¹⁹⁴

Following the remand, Southern adopted new regulations for its dining cars where one of the behind-the-curtain tables was reserved *exclusively* for black passengers.¹⁹⁵ Unlike the previous iteration of Southern's segregated dining experience, the "improved" policy provided for the possibility that white passengers would have to wait regardless of whether the black table was empty.¹⁹⁶ The Commission, in reviewing Southern's new policy, affirmed its prior findings in that although Henderson was subjected to undue and unreasonable prejudice, no basis for an award had been shown, and further found that the new regulations did not violate the ICA.¹⁹⁷ Accordingly, the Commission dismissed the complaint and Henderson again brought suit in federal district court to set aside the Commission's order.¹⁹⁸

¹⁸⁹ *Henderson*, 63 F. Supp. at 915.

¹⁹⁰ *Id.* (emphasis in original).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *See id.*

¹⁹⁴ *Id.* at 916.

¹⁹⁵ *Henderson v. Interstate Commerce Comm'n*, 80 F. Supp. 32, 35 (D. Md. 1948).

¹⁹⁶ *See id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

The court agreed with the Commission and dismissed Henderson's complaint on similar grounds as in *Henderson I.*¹⁹⁹ First, the court reestablished that racial segregation of interstate passengers is not forbidden by the United States Constitution, ICA, or any other Act of Congress.²⁰⁰ The court recognized a recent United States Supreme Court decision in *Morgan v. Virginia*,²⁰¹ noting that the Court held unconstitutional a Virginia statute that required separation of the races in buses.²⁰² There, the Court distinguished state action and a rule of a carrier requiring segregation of interstate passengers, holding, "When passing upon the rule of a carrier that required segregation of an interstate passenger . . . we must keep in mind that we are not dealing with the law of a state attempting a regulation of interstate commerce beyond its power to make."²⁰³ The district court distinguished *Morgan* on additional grounds because Southern's regulations apply only to service in dining cars, the regulations apply uniformly over the entire railroad system, and the regulation enforcement would not disturb the passengers by forcing them to change seats.²⁰⁴

Additionally, the court agreed with the Commission's determination that the regulation allotting only one reserved table was adequate.²⁰⁵ Based on statistical evidence, the court concluded that less than four percent of Southern's passengers were black, yet the reserved table allowed for eight percent of available seats in the diner.²⁰⁶ Although the number of black passengers increased nearly two percentage points over the course of a year and was conceivable to become greater than eight percent,²⁰⁷ the court quoted approvingly from the Commission's report that current action was unwarranted: "Should the indicated trend continue, substantial equality of treatment may require the reservation of additional accommodations for Negroes in the future."²⁰⁸ Until such time, the court agreed that the the one table poli-

¹⁹⁹ *Id.* at 39.

²⁰⁰ *Id.*

²⁰¹ 328 U.S. 373 (1946).

²⁰² *Henderson*, 80 F. Supp. at 37–38.

²⁰³ *Id.* at 38 (quoting *Morgan*, 328 U.S. at 377 n. 12).

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 36–37.

²⁰⁶ *Id.* at 36.

²⁰⁷ *Id.*

²⁰⁸ *Henderson*, 80 F. Supp. at 36 (quoting Interstate Commerce Comm'n Report, 269 I.C.C. 73, 76 (Sept. 5, 1947)).

cy provided “an equitable and reasonable division between the races of its available dining-car space.”²⁰⁹

Finally, the court observed that the principle of segregation was approved by the Supreme Court and that the curtains were merely a method of carrying it into execution and therefore for the Commission to determine.²¹⁰ Accordingly, it concluded curtains were a reasonable means to segregate.²¹¹ The court devoted four lines of the Federal Supplement to dismissing the notion that the table located near the kitchen with its heat, noise, etc. was less desirable than any other seat.²¹² Since neither the curtains nor the location of the tables were deemed inadequate or unequal, the court dismissed Henderson’s complaint.²¹³

Following the district court’s dismissal, Henderson appealed directly to the Supreme Court.²¹⁴ On brief for Henderson were six Attorneys—Belford Lawson, Jawn Sandifer, Marjorie McKenzie, Sidney A. Jones, Jr., Earl B. Dickerson, and Josiah F. Henry, Jr.²¹⁵ There were also six Of Counsels—Charlotte R. Pinkett, Aubrey Robinson, Edward W. Brooke, William M. McClain, Theodore Berry, and George H. Windsor.²¹⁶ Seven of these attorneys—Sandifer, Jones, Robinson,

²⁰⁹ *Id.* (quoting Interstate Commerce Comm’n Report, 269 I.C.C. 73, 76 (Sept. 5, 1947)).

²¹⁰ *Id.* at 37.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 39.

²¹⁴ *Henderson v. United States*, 339 U.S. 816, 816 (1950).

²¹⁵ Brief for Petitioner, *supra* note 143, at cover.

²¹⁶ *Id.* Jawn Sandifer was born on June 6, 1914, in Greensboro, N.C., to Charles and Nettie Sandifer. Sandifer graduated from Johnson C. Smith University in Charlotte, N.C., in 1935 and Howard University School of Law in 1938. In World War II, Sandifer served in the criminal investigation unit of the Army Air Corps and subsequently joined the legal staff of the NAACP, where he successfully brought suit to end *de facto* segregation in Nassau County. Sandifer was elected General Counsel for Alpha Phi Alpha in 1950, appointed to the New York Civil Court in 1964, and elected to the State Supreme Court in Manhattan in 1969, where he served on the bench until 1992. Dennis Hevesi, *Jawn Sandifer, Civil Rights Lawyer, Dies at 92*, N.Y. TIMES, Sept. 7, 2006, at C17.

Sidney Jones was born in Sandersville, Georgia. He graduated from Atlanta University in 1929 and then graduated near the top of his class from Northwestern University Law School. Jones was senior attorney for the U.S. Department of Labor’s Wage and Hours Division. He was one of Chicago’s foremost civil rights lawyers before serving as a Cook County Circuit Court judge. Jones was involved in more civil rights cases than any other attorney in Chicago, advocating for equal protection for blacks in public accommodations. He became the first black alderman of the 6th Ward and served as director of the major’s License Commission under Major

Harold Washington in the 1980s. Kenan Heise, *Judge, Rights Crusader Sidney Jones Jr.*, CHI. TRIB., Nov. 11, 1993, at N15.

Earl Dickerson was born in Canton, Mississippi on June 22, 1891. Dickerson enrolled at Northwestern University but could not pay the high tuition and transferred to the University of Illinois after three semesters. During his time at Illinois, Dickerson founded the Beta chapter of Kappa Alpha Psi and served as the chapter's first polemarch. Dickerson graduated from the University of Illinois in 1914. He enrolled at the University of Chicago School of Law in 1915. Near the end of his second year at the University of Chicago, the U.S. entered World War I and Dickerson enlisted as an officer. Dickerson was commissioned as a second lieutenant and served as a French interpreter and defense counsel in several court-martials. After returning home in the spring of 1919, Dickerson traveled to St. Louis to help draft the constitution of what would become the American Legion. In March of 1920, Earl Dickerson became the first black man to receive a law degree from the University of Chicago School of Law. Immediately out of law school, Dickerson became general counsel for the newly formed Liberty Life Insurance Company. Dickerson also opened private civil practice in 1921. From 1939 to 1943, Dickerson served as alderman for Chicago's Second Ward. In 1940, Dickerson successfully argued against racially restrictive housing covenants before the Supreme Court. Though the Court did not invalidate the practice of segregation-based housing covenants, the case, *Hansberry v. Lee*, served as important precedent for a number of cases that eroded the legal basis for segregation in America. Dickerson was elected to the national board of the NAACP in 1941 and proved instrumental in paving the way for W.E.B. Dubois to return to a position of prominence within the NAACP in 1944. The board of directors of Supreme Liberty Insurance unanimously voted Dickerson president and chief executive officer in 1955. Dickerson held the position until he retired in 1971. Earl Dickerson died in Chicago, Illinois on September 1, 1986. *See generally* ROBERT J. BLAKELY, EARL B. DICKERSON A VOICE FOR FREEDOM AND EQUALITY (2006).

Edward Brooke, III was born on October 26, 1919 in Washington, D.C. Brooke attended Howard University and, while there, served on the Executive Council of Alpha Phi Alpha fraternity. After completing his undergraduate studies at Howard University in 1941, Brooke served in the Army and won Bronze Star for his service in Italy during World War II. Upon returning to the U.S., Brooke enrolled in the Boston University School of Law and attained his law degree in 1948. Brooke served as Alpha Phi Alpha's Eastern Vice President from 1948 to 1951. In 1962, Brooke successfully ran for the position of Attorney General for the state of Massachusetts, becoming the first black Attorney General of any state in American history. In 1966, Brooke successfully ran for a seat in the U.S. Senate, becoming the first black senator to ever be elected by popular vote. He served two terms in the Senate, from 1967 to 1979. In 2004, Brooke was awarded the Presidential Medal of Freedom and in 2009 he received the Congressional Gold Medal. *See generally* EDWARD W. BROOKE, BRIDGING THE DIVIDE: MY LIFE (2006)..

William A. McClain was born in 1913 in Sandford, North Carolina. McClain attended Wittenberg University in Springfield, Ohio on a scholarship and graduated from the University of Michigan Law School in 1937. After graduating, McClain moved to Cincinnati and joined fellow Alpha Phi Alpha member, Theodore Berry, in his practice. McClain and Berry practiced together until 1958, when McClain became Cincinnati's first Black city solicitor. Julie Kemble Borths, *Retired*

Brooke, McClain, Berry, and Windsor—were Lawson’s Alpha Phi Alpha brothers. Several organizations submitted amicus briefs. Alpha Phi Alpha members, Robert L. Carter and Thurgood Marshall, submitted one for the NAACP.²¹⁷ On brief for the National Bar Association were Joseph R. Booker (President), Richard E. Westbrook (Chairman of the Civil Rights Committee), as well as George N. Leighton, Zedrick T. Braden, Lucia Theodosia Thomas, William A. Booker, Georgia Jones Ellis, Earl Dickerson, and Joseph E. Clayton, Jr., (Members of

Judge William McClain Found Path by Exceeding Expectations, CINCINNATI HERALD (Nov. 6, 2010),

http://m.thecincinnatiherald.com/news/20101106/Front_Page/Retired_Judge_William_McClain_found_path_by_exceed.html. McClain served as Hamilton County Common Pleas Court Judge from 1975 to 1976, as a Hamilton County Municipal Court judge from 1977 to 1978 and as a Hamilton County Municipal Court trial referee from 1979 to 1980. *Great Living Cincinnatians: Judge William A. McClain*, CINCINNATI U.S.A. REGIONAL CHAMBER, http://www.cincinnatiachamber.com/cham_a.aspx?menu_id=144&id=986&rid=940 (last visited Dec. 14, 2012).

George H. Windsor, an Alpha Phi Alpha member, was a native of Washington, D.C. and graduated from Harvard Law School in 1941. *In Memoriam*, HARV. L. BULL., Spring 2004, http://www.law.harvard.edu/news/bulletin/2004/spring/memoriam_main.php (last visited Dec. 14, 2012). Windsor was an attorney with Cobb Howard Hayes & Windsor in Washington, D.C. Windsor also elected to serve as general counsel to the D.C. Chamber of Commerce in 1954. *Underdown Heads C. of C.*, THE AFRO AMERICAN, Dec. 25, 1954, at 8; THE SPHINX, May 1945, at 8. He died on November 26, 2002. *In Memoriam*, *supra* note 216.

²¹⁷ Motion and Brief for the National Association for the Advancement of Colored People as Amicus Curiae, *Henderson v. United States*, 339 U.S. 816, at cover (1950) (No. 25).

Robert Carter was born on March 17, 1917 in Caryville, Florida. He earned his degrees from Lincoln University, the Howard University School of Law (J.D.), and Columbia University Law School (L.L.M.). Carter joined the army just prior to World War II, completing officer school and becoming a second lieutenant despite the army’s reluctance and hostility toward including African Americans. After leaving the service, Carter served as counsel for the Legal Defense and Educational Fund, which at the time was the legal arm of the NAACP. By 1948, Carter was Thurgood Marshall’s chief deputy, challenging school segregation in such cases as *Sweatt v. Painter* and *Brown v. Bd. of Educ. of Topeka, Kan.* He was nominated and confirmed as a United States District Judge for the Southern District of New York in 1972. Carter died on January 3, 2012. Roy Reed, *Robert L. Carter, an Architect of School Desegregation, Dies at 94*, N.Y. TIMES, Jan. 3, 2012, at A17.

the Civil Rights Committee).²¹⁸ Richard Westbrooks and George Leighton also served as Of Counsels on the brief.²¹⁹

²¹⁸ Brief Amicus Curiae on behalf of the Civil Rights Committee of the National Bar Association, *Henderson v. United States*, 339 U.S. 816 , at cover (1950) (No. 25).

²¹⁹ *Id.*

Joseph Booker was born on September 19, 1893 in Helena, Arkansas. Booker attained a B.A. from Arkansas Baptist College in 1914 and graduated from Northwestern University School of Law in 1917. Booker was a very early member of the first Arkansas branch of the NAACP and, along with other prominent Arkansas lawyers, successfully sued the Little Rock School District for discriminatory wage practices. From 1949 to 1950, Booker served as president of the National Bar Association. *Id.* Booker gave the convention address at the Thirty-Sixth General Convention of the Alpha Phi Alpha fraternity in 1950, urging the fraternity to advance its social action program. Booker died on July 31, 1960. *Joseph Robert (J.R.) Booker*, THE ARKANSAS BLACK LAWYERS, <http://arkansasblacklawyers.uark.edu/lawyers/jrbooker.html> (last visited Dec. 14, 2012).

Richard E. Westbrooks was born on October 13, 1886 in Waco, Texas. Westbrooks graduated from the John Marshall Law School in 1911. After graduation, Westbrooks entered into a partnership with George Washington Ellis and opened the firm of Ellis & Westbrooks in Chicago. In 1914, Westbrooks helped form and lead the Cook County Bar Association in response to the Chicago Bar Association's exclusion of black lawyers. In 1938, Westbrooks brought a suit with Arthur Wergs Mitchell against the Chicago and Rock Island Railroad for racial discrimination, which ultimately reached the United States Supreme Court. Hugh Gardner *Westbrooks, Noted Lawyer is Buried*, CHI. DEFENDER, Dec. 27, 1952, at 1.

George Leighton was born on October 22, 1912 in New Bedford, Massachusetts. A member of Kappa Alpha Psi, he graduated from Howard University in 1940 and Harvard Law School in 1946. He served in the United States Army from 1942-1945. *Id.* Leighton was a founding member of Moore, Ming & Leighton, which went on to be one of the largest predominantly black firms in the United States. He was selected as a circuit court judge in 1964, and an appellate court judge in 1969, and as a Justice of the Illinois Appellate Court in 1970. President Gerald Ford nominated Leighton to the United States District Court for the Northern District of Illinois in 1975, to which he was confirmed in 1976. *Id.* He retired on November 30, 1987 and returned to private practice with Earl L. Neal & Associates. *The Honorable George N. Leighton*, AMERICAN INNS OF COURT, <http://www.innsforcourt.org/Content/Default.aspx?Id=347> (last visited May 20, 2012).

Zedrick Braden graduated from Northwestern University School of Law in 1925 and opened the law office of Braden, Hall, Barnes & Moss that same year. *The Law is Tradition in Our Family*, ABA Journal, Sept. 1, 1987, at 6. During his life, Braden served as president of the Cook County Bar Association as well as polemarch of the Kappa Alpha Psi fraternity. *Id.* Braden died on January 16, 1966 in Chicago, Illinois. CRUMP, *supra* npte 47, at 77, 244.

Lucia Thomas graduated from Xavier University and received an M.A. from the University of Michigan, a law degree from Robert Terrell Law School in

The Court determined that its decision was largely controlled by its recent decision in *Mitchell v. United States*.²²⁰ In *Mitchell*, a black passenger was denied a seat in a Pullman car although he held a first-class ticket, the seat was unoccupied, and the seat would have been available had Mitchell been white.²²¹ Railroad regulations allotted a limited amount of “Pullman space” to black passengers, and because the allotment was met, Mitchell was required to ride in a second-class coach.²²² The Court held that the passenger had been subjected to an unreasonable disadvantage, as the Railroad violated section three of the ICA.²²³ Likewise, the Court observed that here, Henderson was denied a seat in the dining car that would have been available if he was white.²²⁴ As in *Mitchell*, the Court concluded that Southern’s regulation subjected passengers to undue and unreasonable prejudices in violation of the ICA.²²⁵

Washington D.C., and three masters’ degrees from John Marshall Law School. Thomas began her law practice in Chicago in 1940, was involved in numerous civil rights cases, and served as a Cook County Circuit Court judge in Chicago. She died on July 7, 2002. *Lucia Theodosia Thomas*, 85, CHI. TRIB., July 11, 2002, at N7.

William Booker was born in Arkansas in 1900. A member of Alpha Phi Alpha, he was admitted to practice law on July 13, 1925. Booker was a member of the first Arkansas branch of the NAACP in Little Rock in 1926. He practiced with his brother, attorney J.R. Booker as Booker & Booker in Pulaski County in Little Rock. The brothers were members of a group of attorneys who sued the Little Rock Democratic Association for the right to vote in Democratic Primaries in 1930. They were also members of the group who sued the Little Rock School District in 1942 for equal pay for black teachers. Booker died on August 1, 1966. *William A. Booker*, ARK. BLACK LAWYERS, <http://arkansasblacklawyers.uark.edu/lawyers/wabooker.html> (last visited Dec. 14, 2012).

Georgia Jones-Ellis graduated from John Marshall Law School in 1925. After being admitted to the Illinois bar, she became an attaché of the domestic relations branch of the municipal court, becoming the first black woman to hold a quasi-judicial position in Chicago’s courts. Ellis was admitted to practice before the United States Supreme Court in 1941. Ellis was one of two black women in Richard E. Westbrook’s Chicago law firm, one of the few that hired female attorneys, in the 1940s. Ellis was the first woman to hold the chairman position in the history of the National Bar Association. SMITH, JR., *supra* note 30, at 385, 563.

²²⁰ *Henderson v. United States*, 339 U.S. 816, 823 (1950); *see Mitchell v. United States*, 313 U.S. 80 (1941).

²²¹ *Henderson*, 339 U.S. at 823–24.

²²² *Id.* at 824.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

The Court emphasized that the right to be free from unreasonable discrimination under the ICA belongs to each particular person.²²⁶ The Court observed that denial of dining service to *any* passenger based on Southern's segregation by race regulation imposed deprivation upon white and black passengers alike.²²⁷ For instance, assuming only ten black passengers arrived, and the white section was entirely empty, six of those blacks would have to wait even though forty white seats remained available. Likewise, if forty-one whites arrived without any blacks eating, the one white would have to wait.²²⁸ Furthermore, the Court dismissed Southern's "volume of blacks" argument.²²⁹ Here, the Court cited *Mitchell*'s holding that "the comparative volume of traffic cannot justify the denial of a fundamental right of equality of treatment, a right specifically safeguarded by the provisions of the [ICA]."²³⁰ Having established that the regulation violated the ICA, the Court saved the Constitutional Arguments for another day.²³¹ Its terse holding granted life support to *Plessy* in that the Constitution still permitted segregation, but *Plessy*'s foundation was severely weakened. *Henderson* demonstrated "separate but equal" was an "undue or unreasonable prejudice,"²³² and could provide for dicta in the movement to overrule *Plessy*.

This decision, along with the *Sweatt*²³³ and *McLaurin*²³⁴ cases decided on the same day, initially cracked the legal foundation of segregation established in *Plessy*.²³⁵ This case was also an achievement for Alpha Phi Alpha, as this was the only major civil rights case of the era not funded by the NAACP Legal Defense and Educational Fund.²³⁶ Elmer Henderson singled out Lawson for praise, saying, "The major credit is due Mr. Lawson . . . for his excellent legal talent and his perseverance in toiling with the case for a period of eight years involving

²²⁶ *Id.*

²²⁷ *Henderson*, 339 U.S. at 824–25.

²²⁸ *Id.*

²²⁹ *Id.* at 825.

²³⁰ *Id.* (quoting *Mitchell v. United States*, 313 U.S. 80, 97 (1941)).

²³¹ *Id.* at 826.

²³² *Id.* at 825.

²³³ *Sweatt v. Painter*, 339 U.S. 629, 636 (1950).

²³⁴ *McLaurin v. Oklahoma State Regents for Higher Ed.*, 339 U.S. 637, 642 (1950).

²³⁵ DEREK CATSAM, *FREEDOM'S MAIN LINE: THE JOURNEY OF RECONCILIATION* 56 (2009).

²³⁶ JACK GREENBERG, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* 73 (1994).

frequent appeals and transfers and a running battle with the Southern Railway Co.—one of the country's largest corporations."²³⁷

In 1951, A. Maceo Smith replaced Lawson as General President of Alpha Phi Alpha.²³⁸ That same year, Lawson settled a case against the Hotel Phillips in Kansas City, Missouri after the hotel refused to accommodate black guests who had made their reservations over the phone.²³⁹

VI. LAWSON, LATE LIFE AND DEMOCRATIC POLITICS

In 1954, Marjorie McKenzie sought a divorce from Belford Lawson.²⁴⁰ However, within two years they were remarried.²⁴¹ Two years later, in 1956, Lawson became the first black man to address the Democratic National Convention.²⁴²

Soon thereafter, the Lawsons became involved with John F. Kennedy's bid to become president. Lawson first met Senator Kennedy at the Democratic National Convention in 1952.²⁴³ Lawson and Kennedy, however, had little contact until the Democratic National Convention of 1956.²⁴⁴ There, Lawson expressed admiration for Kennedy's voting record in the Senate, and the two became well acquainted.²⁴⁵ Soon after the convention, Lawson met Kennedy in Kennedy's office, where Kennedy asked Lawson for help with his 1958 Senatorial campaign.²⁴⁶ Lawson agreed and introduced Kennedy to numerous black leaders and influential members of the civil rights movement.²⁴⁷ Though Lawson never joined the Kennedy staff, his wife Marjorie served as the director of the civil rights section of Kennedy's presidential campaign in 1960.²⁴⁸ Both Lawson and McKenzie were instrumen-

²³⁷ WESLEY, *supra* note 10, at 309–13.

²³⁸ *Id.* at 327.

²³⁹ *Carl Johnson Announces Hotel Settlement in Mo*, PLAINDEALER, Nov. 23, 1951, at 8.

²⁴⁰ *Marjorie McKenzie Lawson To Get Divorce*, JET MAGAZINE, Apr. 15, 1954, at 22.

²⁴¹ See Rosmarie Tyler, *Marjorie Lawson becomes a Judge*, AFRO-AM., Oct. 13, 1962, at 4.

²⁴² Tobin, *supra* note 18.

²⁴³ Interview by Ronald J. Grele with Belford Lawson in Washington, D.C. (Jan. 11, 1966) at 1 (on file with the author).

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 2.

²⁴⁶ *Id.*

²⁴⁷ *Id.* 3–13.

²⁴⁸ Interview by Ronald J. Grele with Judge Marjorie McKenzie Lawson, in Washington, D.C. (Oct. 25, 1965), at 44 (on file with the author).

tal in introducing Kennedy to the black community and galvanizing the black vote for him. The Lawsons did such a good job connecting Kennedy to the black community that in McKenzie's opinion, "[Kennedy] was better known on an individual basis and had more friends among Negro leaders than any presidential candidate had ever had. By the time 1960 rolled around, he knew everybody who was anybody."²⁴⁹

In 1977, Lawson retired.²⁵⁰ On February 23, 1985, Belford Lawson succumbed to Alzheimer's and cancer at the age of 83 at Southern Maryland Hospital.²⁵¹ Alpha Phi Alpha Omega Chapter Rites were held on February 26, 1985 at Howard University's Andrew Rankin Memorial Chapel.²⁵² Father Jerry Hargrove, Alpha Phi Alpha's Mu Lambda—Washington alumni—Chapter presided at the memorial ritual.²⁵³ Lawson's funeral services were held the following day, February 27, at Rankin Chapel where Alpha Phi Alpha brother and Dean of the Chapel, Evans E. Crawford, served as officiant.²⁵⁴

CONCLUSION

While this article is the first attempt to chronicle Belford Lawson's life and to situate the life of a civil rights activist within the black fraternal movement, it likely raises more questions than it answers. Indeed, Lawson's personal and professional lives were intertwined with his fraternal involvement, but can more be said about those interconnections—especially with regard to his civil rights activism? More precisely, did Lawson's personal, race-conscious ideals influence his activism within and through Alpha Phi Alpha, or did the fraternity's ideals shape and motivate Lawson's civil rights activism? Maybe there is a third perspective: the cultural milieu of the time simply created a set of race-conscious ideals mutually shared by Lawson and the fraternity. As such, these questions raise a broader question about the extent to which Alpha Phi Alpha can be construed as a civil rights organiza-

²⁴⁹ *Id.* at 9.

²⁵⁰ *Belford Lawson, Retired Lawyer, is Dead at 83*, *supra* note 28, at B8.

²⁵¹ *Id.*; *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 21.

²⁵² *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 21. Omega Chapter was designated for deceased members of Alpha Phi Alpha. WESLEY, *supra* note 10, at 122.

²⁵³ *A Relentless Foe of Racial and Social Injustice: Frater Extraordinaire*, *supra* note 17, at 21.

²⁵⁴ *Id.*

tion as opposed to a fraternity that happened to have a number of civil rights activists who were members. If it is the former, how does it compare to other black fraternal organizations in this regard? Is Alpha Phi Alpha singular or distinct with respect to the race consciousness of its members and the extent of its racial uplift activism?