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BROWN AND THE DESEGREGATION OF VIRGINIA LAW SCHOOLS

Carl W. Tobias *

I. INTRODUCTION

One-half century ago, the Supreme Court of the United States declared unconstitutional racially segregated public elementary and secondary schools in *Brown v. Board of Education*.¹ The pathbreaking opinion culminated a three-decade effort that the National Association for the Advancement of Colored People (“NAACP”) and the NAACP Legal Defense and Educational Fund (“LDF”), an independent litigating entity, had orchestrated. An important feature of the evolving NAACP and LDF tactical approach was to contest the segregation of government-sponsored professional and graduate education, particularly implicating law schools in jurisdictions bordering the South, namely Maryland, Missouri, Oklahoma, and Texas.² Charles Hamilton Houston and Thurgood Marshall as well as their colleagues at the LDF, including Robert Carter and Constance Baker Motley, considered professional and graduate education as a general matter, and legal training specifically, comparatively vulnerable to attack in those states.³ Moreover, these pioneering attorneys and the NAACP

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1. 347 U.S. 483 (1954). See RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1975); CHARLES T. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION* 3–14 (2004).

2. See ROBERT T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* 14–17 (2001); MARK V. TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1950*, at 42–45 (1987).

3. See PATTERSON, *supra* note 2, at 15; TUSHNET, *supra* note 2, at 42.

seemed to emphasize the desegregation of law schools for reasons intrinsic to legal education, such as preparing additional African-American practicing lawyers who would vindicate fundamental civil rights through litigation.⁴

The Supreme Court decided the Missouri,⁵ Oklahoma,⁶ and Texas⁷ challenges by ordering the government-supported law schools in those jurisdictions to admit the African-American plaintiffs, while the Justices' resolution of the Texas appeal most directly fostered the determination which the Court issued in *Brown*.⁸ However, attempts to combat segregated government-sponsored legal education, mainly through litigation, proceeded in the overwhelming majority of the border and southern states.⁹

These propositions and the fiftieth anniversary of the Supreme Court ruling in *Brown* mean that the desegregation of Virginia law schools warrants assessment. This article undertakes that effort. The first section in the piece descriptively reviews the origins and development of the principal national challenges to segregated legal education. The second part initially evaluates how no African American matriculated at any accredited law school which operated in the Commonwealth until the mid-twentieth century. The segment then explores why and how African Americans desegregated the University of Virginia and the College of William and Mary, the two government-supported institutions that offered legal training, before the Supreme Court had rendered the landmark *Brown* decision.

The University of Virginia School of Law admitted Gregory H. Swanson in September 1950 after his attorneys, including Oliver W. Hill, Sr., Spottswood W. Robinson, III, and Thurgood Marshall, persuaded a three-judge federal court to mandate his enrollment.¹⁰ This successful litigation, especially the panel finding that denial of Swanson's application violated the United States Constitution, apparently convinced the Marshall-Wythe School of

4. See TUSHNET, *supra* note 2, at 42.

5. Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).

6. Sipuel v. Board of Regents, 332 U.S. 631 (1948).

7. Sweatt v. Painter, 339 U.S. 629 (1950).

8. See Jonathan L. Entin, Sweatt v. Painter, *the End of Segregation, and the Transformation of Education Law*, 5 REV. LITIG. 3, 69 (1986).

9. See OGLETREE, *supra* note 1, at 120.

10. See Swanson v. Rector of Visitors of the Univ. of Va., No. 30 (W.D. Va. Sept. 5, 1950) (order granting preliminary injunction); see also Brief for Plaintiff, Swanson, No. 30.

Law at the College of William and Mary to accept Edward Travis the following year.¹¹

The section next canvasses the slow pace at which legal education's integration proceeded in the Old Dominion after the University of Virginia and the Marshall-Wythe Schools of Law had admitted their first African-American students and even once the Justices had published the *Brown* opinion. The survey ascertains that the public institutions, as well as the University of Richmond and Washington and Lee University, the Commonwealth's two mid-century private schools, acted with considerably more deliberation than speed. The essay concludes by proffering several lessons which can be extracted from the desegregation of legal education in the Old Dominion.

II. THE NATIONAL CAMPAIGN

During the early 1930s, the NAACP and the LDF decided that the organizations would commit significant litigation resources to challenging segregated government-sponsored professional and graduate education in numerous jurisdictions which bordered the South as well as to contesting the unequal nature of separate primary and secondary schools located in the states of the old Confederacy, rather than frontally attacking the constitutionality of segregated primary and secondary education in the South.¹² Both the law school litigation and the cases that aimed at increasing and ostensibly equalizing public resources budgeted for schools which African-American children attended were generally easier to win, albeit difficult to enforce.¹³ Those forms of lawsuits seemed to threaten white, majority interests less and the defendants were apparently not as committed to preserving the status quo, while most judges, who had secured their legal training in law schools, could appreciate how separate institutions for African Americans would rarely be equal.¹⁴

The first litigation which the LDF, Charles Hamilton Houston, and Thurgood Marshall pursued challenging racially segregated

11. See PETER WALLENSTEIN, *BLUE LAWS AND BLACK CODES: CONFLICT, COURTS, AND CHANGE IN TWENTIETH-CENTURY VIRGINIA* 107–08 (2004).

12. See OGLETREE, *supra* note 1, at 113, 117–23; TUSHNET, *supra* note 2, at 42–45.

13. See OGLETREE, *supra* note 1, at 113.

14. See *id.* at 118–19.

legal education involved Donald Murray, an African-American resident of Baltimore who wanted to enroll at the University of Maryland School of Law.¹⁵ The Maryland Court of Appeals found insufficient the defendant's provision of a "scholarship" to acquire legal training outside Maryland or the eventual creation of a separate law school for African Americans, because the former would not constitute equal treatment and the latter would not be immediate, while the judges ordered the institution to admit the plaintiff.¹⁶ However, this 1936 ruling's application was narrowly confined to a single jurisdiction, although the Maryland state court case disposition influenced the next major piece of litigation which attacked segregated legal education that the LDF filed.¹⁷

During the mid-1930s, the NAACP and the LDF began planning a challenge to the University of Missouri School of Law initiative that denied African-American residents entry but would pay their tuition to undertake legal education in jurisdictions apart from Missouri.¹⁸ In 1938, the decision of the Supreme Court of the United States invalidating the Missouri endeavor depended substantially on the legal reasoning enunciated in the Maryland precedent, and required the law school to accept Lloyd Gaines.¹⁹ However, the Justices did not overturn the separate but equal doctrine,²⁰ which the Court had articulated in the 1896 case of *Plessy v. Ferguson*.²¹

Throughout the Second World War, the NAACP and the LDF suspended their efforts to desegregate public law schools out of concern that the groups' suits which vindicated civil rights might

15. *Pearson v. Murray*, 182 A. 590 (Md. 1936); see CARL T. ROWAN, *DREAM MAKERS, DREAM BREAKERS: THE WORLD OF JUSTICE THURGOOD MARSHALL* 50–57 (1993); J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844–1944*, at 148 (1993).

16. *Pearson*, 182 A. at 593–94; see also SHERYLL CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 209–10 (2004); JACK GREENBERG, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* 63 (1994); TUSHNET, *supra* note 2, at 56–58.

17. See PETER IRONS, *JIM CROW'S CHILDREN: THE BROKEN PROMISE OF THE BROWN DECISION* 55 (2002).

18. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 342–43 (1938); see also KLUGER, *supra* note 1, at 202. This initiative resembled programs developed by a plethora of additional jurisdictions. See *infra* notes 30, 35, 40, 63, 64.

19. *Gaines*, 305 U.S. at 345–52.

20. *Id.* at 344–52.

21. 163 U.S. 537 (1896); see also GREENBERG, *supra* note 16, at 57–58, 70–71; OGLETREE, *supra* note 1, at 108–11.

seem unpatriotic, while the NAACP and the LDF concentrated their activities on the integration of the United States armed forces deploying political means.²² After the wartime hiatus, the two entities resumed the litigation campaign against segregated government-supported legal education.

In 1948, the NAACP and the LDF convinced the Supreme Court of the United States that the University of Oklahoma School of Law's failure to enroll Ada Louise Sipuel, an African-American female applicant whom the institution had excluded solely on the basis of her race, violated the Fourteenth Amendment's Equal Protection Clause.²³ In 1950, the Justices concomitantly found unacceptable the insulting separate program which the same university's graduate education school had created for George McLaurin, an African-American college professor, by barring him from classrooms and cafeterias that white students populated, and ordered the institution to admit McLaurin fully in its education department.²⁴

The identical year, the NAACP and the LDF persuaded the Supreme Court of the United States to hold deficient a separate law school for African Americans which the Texas state government had hastily assembled and to mandate that the University of Texas enroll Heman Sweatt.²⁵ The Justices' opinion was replete with signals on which the LDF attorneys would capitalize when framing the arguments that the LDF tendered in *Brown*.²⁶ For example, the Court's *Sweatt v. Painter* ruling intimated that separate educational facilities could not be equal due to numerous specific considerations, such as physical facilities, law journal and networking opportunities, as well as professors' abilities and reputations.²⁷

22. See IRONS, *supra* note 17, at 55; see also CONSTANCE BAKER MOTLEY, *EQUAL JUSTICE UNDER LAW* 62 (1998).

23. See *Sipuel v. Bd. of Regents*, 332 U.S. 631 (1948); see also ROWAN, *supra* note 15, at 145-49, 153-55; TUSHNET, *supra* note 2, at 120-23.

24. *McLaurin v. Okla. State Regents for Higher Educ.*, 339 U.S. 637 (1950); see also GREENBERG, *supra* note 16, at 66-78; OGLETREE, *supra* note 1, at 122; MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW* 130 (1994).

25. *Sweatt v. Painter*, 339 U.S. 629 (1950); see also Entin, *supra* note 8, at 3. Some states belatedly created separate schools.

26. TUSHNET, *supra* note 2, at 135.

27. *Sweatt*, 339 U.S. at 633-35; see also GREENBERG, *supra* note 16, at 69-73; PATTERSON, *supra* note 2, at 16-17.

These signposts, which Thurgood Marshall and his LDF colleagues perceived when reading the law school cases, especially the determination that implicated Texas, in part encouraged the NAACP and the LDF to modify their litigation strategy.²⁸ Rather than continue challenging segregated government-sponsored professional and graduate education furnished by the border states and the provision of unequal primary and secondary schools, the organizations decided to attack frontally segregation in the old Confederacy's primary and secondary educational systems and the separate prong of the *Plessy* separate but equal formulation.²⁹

In short, the national litigation campaign which sought to eliminate segregation that government-supported law schools practiced was an important constituent of the NAACP and LDF tactical approach during the 1930s and 1940s. The successes which the groups achieved when desegregating legal education in the border states did not foster particularly expeditious integration of the historically white law schools that every southern jurisdiction operated, however. For instance, all states' public law schools denied admission to African-American applicants, and numerous jurisdictions, including Virginia, offered African Americans out-of-state scholarships, while a few jurisdictions, such as North Carolina and South Carolina, established separate law schools for African Americans.³⁰ The next portion of this essay, therefore, scrutinizes the desegregation of legal education in the Commonwealth.

III. DESEGREGATION IN VIRGINIA

A. Segregated Legal Education in Virginia

Before 1950, no African American had matriculated at either

28. See KLUGER, *supra* note 1, at 474; OGLETREE, *supra* note 1, at 122. These ideas are disputed. For instance, the LDF did not follow one litigation strategy, and some NAACP and LDF leaders favored direct attacks on *Plessy's* separate prong at different times. See also OLIVER W. HILL, SR., *THE BIG BANG BROWN VS. BOARD OF EDUCATION AND BEYOND* 151-58 (Jonathan K. Stubbs, ed. 2000); TUSHNET, *supra* note 2, at 43.

29. TUSHNET, *supra* note 2, at 135.

30. The schools were located at North Carolina Central University and South Carolina State College. See SMITH, *supra* note 15, at 63; see also W. Lewis Burke & William C. Hine, *The School of Law at South Carolina State College: Its Creation* (2004) (unpublished manuscript, on file with author).

the University of Virginia School of Law or the Marshall-Wythe School of Law at the College of William and Mary, the two government-sponsored law schools that served the Commonwealth, or the University of Richmond School of Law or the Washington and Lee University School of Law, the two mid-twentieth century proprietary law schools situated in the Old Dominion.³¹ The custom or practice of segregated public education received codification in the Virginia statutes during the 1870s³² and in the Virginia Constitution of 1902,³³ while each source proscribed integrated schools at the primary and secondary levels of government-supported education. In 1922, Virginia Union University, a traditionally black institution which is located in Richmond, commenced operation of a law school; however, nine years later, the University closed that program after the school had graduated only one class of students in 1927.³⁴

Over the three decades which followed the mid-1930s, Virginia systematically provided scholarships for substantial numbers of African-American residents who were willing to pursue graduate and legal education at institutions outside the Commonwealth, while in 1948 Virginia entered a compact with numerous other southern jurisdictions that would have established separate graduate and professional schools throughout the region for African Americans.³⁵ Three major phenomena seemingly animated these initiatives: efforts to prevent the desegregation of the Old Dominion's historically white public universities, to minimize the expense of implementing new, separate programs for African Americans in Virginia, and to avoid the import of the Supreme Court mandates, which required that the government-sponsored law and graduate programs at the Universities of Missouri, Oklahoma, and Texas enroll African Americans.³⁶ The Common-

31. For a valuable historical account of legal education in Virginia, which also treats private schools that are no longer in existence, see W. HAMILTON BRYSON, *LEGAL EDUCATION IN VIRGINIA, 1779-1979*, at 1-63 (1982).

32. Act of Mar. 26, 1872, ch. 370, 1872 Va. Acts 460 (codified as amended at VA. CODE ANN. § 22-221 (Repl. Vol. 1969)), *repealed by* Act of Feb. 24, 1971, ch. 102, 1971 Va. Acts. 128.

33. VA. CONST. art. IX, § 140. *See also* HILL, *supra* note 28, at xvii-xviii.

34. *See* BRYSON, *supra* note 31, at 53-54; *see also* SMITH, *supra* note 15, at 61-62.

35. *See* Anthony B. Deel, *Virginia's Minimal Resistance: The Desegregation of Public Graduate and Professional Education, 1935-55*, at 56-57, 60-63 (1990) (unpublished M.A. thesis, Virginia Polytechnic Institute and State University, on file with author).

36. *See supra* notes 18-21, 23-27 and accompanying text.

wealth did not establish a separate law school for African-Americans, even though some border states and quite a few southern jurisdictions created those institutions.³⁷

Many African Americans residing in the Old Dominion who decided they would pursue a legal education before 1950 were forced to matriculate out of state, and numerous students concluded they would study at the Howard University School of Law.³⁸ Howard, by virtue of the University's location in Washington, D.C., was the institution nearest Virginia's larger cities which would admit African Americans for legal training, and the school had earned a strong reputation, particularly under the excellent leadership of Charles Hamilton Houston and William Henry Hastie during the 1930s and 1940s.³⁹ Indeed, Douglas Wilder, who would eventually become the first African American to serve as the governor of any United States jurisdiction, began attending Howard Law School with a tuition grant from the Commonwealth in 1956.⁴⁰

B. *The Initial Desegregation of Virginia's Law Schools*

Shortly after the Supreme Court of the United States had rendered the 1948 opinion which desegregated public legal education in Oklahoma, Gregory H. Swanson, who graduated from Howard Law School that year, applied for admission to undertake graduate study at the University of Virginia School of Law.⁴¹ The law school dean and his faculty colleagues favored admitting Swanson; however, the University Board of Visitors directed Colgate W. Darden, the institution's president and former Old Dominion Governor, to seek a formal opinion from Attorney General J. Lindsay Almond, Jr.⁴² President Darden asked the Attorney General for the Commonwealth whether the Virginia state constitutional and statutory provisions, which prohibited integrated government-supported education, imposed a legal duty on the law

37. See *supra* note 30 and accompanying text; see also *infra* note 66 and accompanying text.

38. See OGLETREE, *supra* note 1, at 114-16; see also SMITH, *supra* note 15, at 42-56.

39. See OGLETREE, *supra* note 1, at 114-16; see also SMITH, *supra* note 15, at 48-54.

40. See Deel, *supra* note 35, at 145; see also DONALD P. BAKER, WILDER: HOLD FAST TO DREAMS: A BIOGRAPHY OF L. DOUGLAS WILDER 53-62, 81 (1989).

41. See WALLENSTEIN, *supra* note 11, at 76; see also Deel, *supra* note 35, at 75-102.

42. See WALLENSTEIN, *supra* note 11, at 107.

school to refuse Swanson admission.⁴³ Almond predicted that if the University rejected the application submitted by Swanson he would challenge the exclusion before a three-judge federal court and easily win, partly because the Attorney General thought the relevant constitutional and statutory provisos were inapplicable to professional and graduate education and the Supreme Court law school precedent would clearly govern the dispute's resolution.⁴⁴

When the University apparently decided to ignore Attorney General Almond's prescient advice and to deny Swanson admission, the applicant expeditiously pursued federal court litigation in the United States District Court for the Western District of Virginia.⁴⁵ The three-judge panel hearing the suit comprised Circuit Judges John J. Parker and Morris Soper who were members of the United States Court of Appeals for the Fourth Circuit as well as District Judge John Paul who was a member of the Western District of Virginia.⁴⁶ The panel conducted a rather perfunctory hearing on Swanson's request for a preliminary injunction in which Attorney General Almond merely read the defense brief and informed the judges that the only contested matters were the final decree's form and scope.⁴⁷ The three jurists determined that the law school could not reject the plaintiff solely on the grounds of race because the Commonwealth maintained only one government-sponsored institution which provided graduate legal study.⁴⁸ The panel appeared to depend substantially on the Supreme Court of the United States opinions that implicated the law school challenges, in particular the *Sweatt v. Painter* decision which the Justices had rendered several months earlier, while the three judges found that the University had denied Swanson equal protection of the laws under the Fourteenth Amendment of the United States Constitution and enjoined the institution from rejecting the plaintiff and future applicants on the basis of race.⁴⁹

Thus, during September 1950, Swanson commenced graduate study at the University of Virginia School of Law under federal

43. See *id.*; see also *supra* notes 32-33 and accompanying text.

44. 1950-51 Op. Va. Att'y Gen. 58 (1950).

45. *Swanson v. Rector & Visitors of the Univ. of Va.*, No. 30 (W.D. Va. Sept. 5, 1950).

46. *Swanson*, No. 30, at 3.

47. See Deel, *supra* note 35, at 79.

48. *Swanson*, No. 30, at 1-2; see also Deel, *supra* note 35, at 79.

49. *Swanson*, No. 30, at 2; see also *supra* notes 25-27 and accompanying text.

court order, thereby initiating token desegregation of the Commonwealth's professional and graduate schools.⁵⁰ The determination which the three-judge panel issued seemingly contributed to the decision by the Marshall-Wythe School of Law at the College of William and Mary to accept its initial African-American law student, Edward Travis, during 1951.⁵¹

C. Desegregation After 1951

Although the University of Virginia and the College of William and Mary admitted these two African-American law students earlier than virtually all of the remaining southern jurisdictions' law schools enrolled African Americans, the pace of legal education's desegregation in the Old Dominion was not very expeditious after the mid-twentieth century breakthrough. Over the decade following the Supreme Court of the United States pronouncement in *Brown v. Board of Education*, a quite small number of African Americans annually matriculated at the two government-supported law schools and in certain years no African American enrolled.⁵² Indeed, the first African-American woman did not graduate from the University of Virginia School of Law until 1970.⁵³ Elaine Jones, who recently served as the NAACP Legal Defense Fund Director-Counsel, only matriculated after the institution surprised her by accepting her application and not offering her a scholarship to pursue a legal education outside the Commonwealth.⁵⁴ As late as 1969, African Americans constituted fewer than a dozen of the 340 students in the University of Virginia entering class.⁵⁵ The Old Dominion was clearly not alone, however. For example, North Carolina forced African Americans

50. See Deel, *supra* note 35, at 80–81; see also DAVISON M. DOUGLAS, READING, WRITING & RACE: THE DESEGREGATION OF THE CHARLOTTE SCHOOLS (1995) (suggesting that the North Carolina primary and secondary schools practiced token desegregation immediately after the Supreme Court had issued *Brown*).

51. See Deel, *supra* note 35, at 114.

52. Michael A. Fletcher, *Brown + 50: The Fight Goes On*, WASH. POST, June 23, 2003, at C1.

53. *Id.*

54. Elaine R. Jones, Public Service Law, Address Before the University of Virginia Women's Center (Sept. 24, 1998), available at <http://www.virginia.edu/uvanewsmakers> (last visited Sept. 29, 2004).

55. Statistical Information: University of Virginia (Nov. 1969) (on file with the University of Virginia Office of Institutional Analysis).

to litigate the issue of whether *Brown* had required undergraduate school desegregation,⁵⁶ while Georgia expended nearly a half-million dollars in 1963 on out-of-state tuition grants for African Americans after a federal court had ordered the University of Georgia to desegregate.⁵⁷

The proprietary educational institutions in the Old Dominion desegregated even more slowly than did the government-sponsored entities apparently because they were less vulnerable to litigation. The Washington and Lee University School of Law admitted Leslie D. Smith, Jr., the school's initial African-American graduate, in 1966.⁵⁸ The University of Richmond School of Law correspondingly accepted Thomas Nathan Payne, the school's first African-American student, in 1968.⁵⁹

IV. LESSONS FROM DESEGREGATION

Several lessons can be derived from this assessment of legal education's desegregation in the Commonwealth. First, Virginia, like nearly all southern jurisdictions and certain border states, attempted to maintain segregation as long as the Old Dominion could. For instance, the jurisdiction's two public law schools did not accept African Americans before the mid-twentieth century, while the proprietary institutions only enrolled African Americans during the 1960s.⁶⁰ Moreover, the University of Virginia did not admit Gregory Swanson until he and his counsel persuaded a federal court to so mandate.⁶¹ The institution required the African American to litigate his application's denial on the basis of race,

56. See *Frasier v. Bd. of Trs.*, 134 F. Supp. 589 (M.D.N.C. 1955), *aff'd*, 350 U.S. 979 (1956).

57. See Entin, *supra* note 8, at 67; see also CALVIN TRILLIN, *AN EDUCATION IN GEORGIA* 46–49 (Brown Thrasher Books 1991) (1963).

58. See WALLENSTEIN, *supra* note 11, at 76.

59. Email from John R. Barden, Head, Reference and Research Services, William T. Muse Law Library, University of Richmond School of Law, to Carl W. Tobias, Williams Professor of Law, University of Richmond School of Law (June 25, 2004, 11:48:00 EST) (on file with author); cf. REUBEN E. ALLEY, *HISTORY OF THE UNIVERSITY 1830–1971*, at 245 (1977) (stating that in 1964 the Board of Trustees of the University of Richmond School of Law began to enroll all qualified applicants without respect to race). *But see* Deel, *supra* note 35, at 151 (suggesting that the first African-American student was accepted in 1964).

60. See *supra* notes 31–33, 35–36, 58–59 and accompanying text.

61. *Swanson v. Rector & Visitors of the Univ. of Va.*, No. 30, at 2 (W.D. Va. Sept. 5, 1950).

even in the face of an opinion that the University would almost certainly lose a suit by the Attorney General, who was apparently rather sympathetic to the Board of Visitors' perspective.⁶² When it first appeared that the Supreme Court of the United States might overturn segregation, the Commonwealth, like numerous other southern and border jurisdictions, instituted a program which furnished African American professional and graduate students out-of-state tuition grants during the mid-1930s and seemingly continued this endeavor for more than a decade after *Brown* had declared separate but equal education unconstitutional.⁶³ Indeed, as late as the 1960s, the University of Virginia was apparently offering African-Americans scholarships to attend law schools outside the jurisdiction.⁶⁴ Once it became clear that the Justices could in fact order desegregation, the Old Dominion joined a 1948 interstate compact which would have provided separate graduate and legal education for African Americans across the South.⁶⁵ However, the Commonwealth, unlike quite a few border and southern jurisdictions, notably Maryland, Missouri, North Carolina, Oklahoma, South Carolina, and Texas, did not institute a separate law school for African Americans.⁶⁶

Second, despite these special measures to prevent the desegregation of government-supported legal education which the Old Dominion implemented, Virginia was considerably more protective of each successively lower phase in the public school hierarchy. Illustrative were the Commonwealth's willingness to undertake token integration of government-sponsored professional and graduate education if that action would forestall the desegregation of public undergraduate schooling and the Old Dominion's amenability to integrating undergraduate education if this would slow desegregation at the primary and secondary level.⁶⁷

62. Once the federal court had ordered Virginia to admit Swanson, William and Mary at least enrolled Edward Travis without requiring that he litigate the issue. *See supra* notes 40-47, 49 and accompanying text.

63. *See supra* notes 35, 40, 54 and accompanying text.

64. *See id.*

65. *See supra* note 35 and accompanying text.

66. *See supra* notes 30, 37 and accompanying text. Perhaps the most important reason for the Commonwealth's determination was the longstanding tradition of frugal support for public education in the Old Dominion.

67. *See Deel, supra* note 35, at 145-49.

Third, although the Commonwealth's two government-supported law schools did enroll African Americans before practically all other southern jurisdictions desegregated and prior to the Supreme Court resolution of *Brown v. Board of Education*, desegregation's pace after 1950 was not expeditious in Virginia public legal education and was even slower in the private institutions.⁶⁸ For the decade which followed *Brown*, desegregation could fairly be characterized as gradual in the government-sponsored schools and non-existent in the proprietary ones.

Several reasons may explain this delayed pace. First, the University of Virginia and the College of William and Mary possibly avoided much public scrutiny because those concerned about integrating the institutions were preoccupied at that time with the all-consuming effort of overcoming "Massive Resistance" to primary and secondary school desegregation.⁶⁹ Even after, the Supreme Court issued the 1955 "all deliberate speed" opinion in *Brown II*,⁷⁰ the Court essentially abandoned the field for nearly a decade by deciding a rather small number of cases.⁷¹ Perhaps, some of the identical political and related forces which opposed primary and secondary education's integration affected law schools or at least made them cautious about promptly desegregating. Higher education in general and law schools specifically also had relatively few incentives to integrate until the 1960s when the United States government threatened institutions that remained segregated with discontinuation of federal grants.⁷² Certain above ideas and others could apply to private legal education. Because the schools were not directly funded by Virginia state resources, the institutions may have thought they had less responsibility, and might have experienced limited pressure, to desegregate.

68. See *supra* notes 50–54 and accompanying text.

69. See NUMAN V. BARTLEY, *THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950S* (1997); see also ROBBINS L. GATES, *THE MAKING OF MASSIVE RESISTANCE: VIRGINIA'S POLITICS OF PUBLIC SCHOOL DESEGREGATION, 1954–1956* (1962).

70. *Brown v. Bd. of Educ.*, 349 U.S. 294, 301 (1955).

71. See PATTERSON, *supra* note 2, at 114–17; TUSHNET, *supra* note 24, at 217–56.

72. See PATTERSON, *supra* note 2.

V. CONCLUSION

The fiftieth anniversary of *Brown v. Board of Education's* issuance by the Supreme Court of the United States provides an auspicious occasion to reflect on legal education's desegregation in the Old Dominion. The University of Virginia School of Law and the Marshall-Wythe School of Law at the College of William and Mary desegregated before *Brown's* publication. This phenomenon, however, did not necessarily foster expeditious integration of the Old Dominion's law schools. Indeed, for more than a decade subsequent to *Brown*, the public schools undertook only minimal desegregation while the proprietary institutions graduated no African Americans.