



Ada Lois Sipuel Fisher: Her Legal Battle to Learn the Law

By Kalpana Srinivasan

Women in the Legal Profession

Prof. Babcock and Erika Wayne

Spring 2004

Ada Lois Sipuel Fisher
Short Bio

Kalpana Srinivasan

FISHER, Ada Lois Sipuel (Feb. 8, 1924-Oct. 18, 1995) lawyer, educator, activist, an African-American woman who came of age in the Jim Crow-era in Oklahoma, began her legal career with a legal battle of her own. Tapped by the NAACP as a “guinea pig,” Fisher challenged the legal fiction of “separate but equal” by demanding to attend University of Oklahoma’s all-white law school. Her case, which traveled to the Supreme Court and back before she eventually gained admission, set the stage for the Court’s landmark desegregation ruling in *Brown v. Board of Education*.

Born in Chickasha, Oklahoma, on Feb. 8, 1924, to a minister and a homemaker, Fisher grew up with financial security and a strong belief in racial equality. She married Warren Fisher at the age of twenty, adopted a daughter and later gave birth to a son.

Fisher possessed good looks, a smart tongue, and a love for competition—qualities that would help her endure a three-year long battle to attend the state’s law school. In the fall of 1945, prominent Oklahoma NAACP leaders asked Fisher’s older brother if he would serve as plaintiff to challenge the admissions policy of the state’s exclusively white law school. He declined, but her family volunteered Fisher, a top student at Langston University, instead. On Jan. 14, 1946, Fisher sought admission to the law school. With the race-based rejection in hand, Fisher’s attorneys, led by Thurgood Marshall, filed a lawsuit, alleging that the failure of the state to provide a law school for African-American students required that Fisher be admitted to the white school.

State officials balked, and her case eventually reached the Supreme Court. There, Marshall argued that the state law school must open its doors to Fisher, because it offered

no comparable facility and that the entire doctrine of “separate but equal” should be abandoned. On Jan. 12, 1948, the Supreme Court ruled that Fisher was entitled to a legal education provided by the state.

Oklahoma officials stonewalled efforts to admit Fisher by constructing a makeshift black law school. Before a lawsuit challenging the new school was resolved, the law school ran out of funds and the university’s president admitted Fisher. On June 18, 1949, Fisher enrolled at Oklahoma University law school.

New challenges awaited Fisher inside the classroom, including sitting in a segregated seat behind a “colored” sign. With the support of classmates, professors and family, Fisher graduated in 1951 from University of Oklahoma. After passing the bar, she began practicing law part-time in her hometown of Chickasha until 1954, when she joined a firm in Oklahoma City. In 1956, Fisher left legal practice, where she had represented clients in some segregation-related cases, to work as the public relations director of her alma mater, Langston University. Fisher returned to the University of Oklahoma in the late 1960s for a Masters Degree and then taught at Langston, eventually becoming head of the school’s social sciences department.

Fisher used her position at Langston to steer the next generation of African Americans to the legal profession, believing that the law would provide the impetus for social change. In 1992, Fisher’s life came “full circle” when she was appointed a member of the Board of Regents of the University of Oklahoma, the same institution she once challenged in court.

Ada Lois Sipuel Fisher
Historical Context

Kalpana Srinivasan

Oklahoma was both a critical and difficult place for the civil rights movement to launch an attack on segregation in higher education. On the one hand, the state-supported institution of racism permeated the daily lives of Oklahoma’s citizens. At the same time, state, national and even international events were reshaping the racial landscape so that by the time Ada Lois Sipuel Fisher arrived on Oklahoma University’s all-white campus, she received a surprisingly warm reception from her peers and professors.

Fisher grew up in an environment highly sensitized to racial injustice. Her parents moved to Tulsa, Oklahoma, in 1918, a decade after marrying. Living under Jim Crow, the Sipuels enjoyed their time in the gregarious black community of Greenwood, filled with hotels, shops, and churches. But their segregated life did not insulate them from racial tension. A few years after they moved to Tulsa, an African-American man in the town was accused of and arrested for the assault of a white woman, fueling a race riot between African-American and white townsmen. The state militia intervened and put a number of African-American men, including Fisher’s father, in a holding pen. By the time the riot ended, the Greenwood community had been decimated, and the Sipuel home destroyed. Soon after, the Sipuels left Tulsa for Chickasha.¹

In Chickasha, Fisher came of age with reminders everywhere of her segregated and subordinated status. The city park, zoo, swimming pools and other facilities were

¹ ADA LOIS SIPUEL FISHER WITH DANNY GLOBE, A MATTER OF BLACK AND WHITE: THE AUTOBIOGRAPHY OF ADA LOIS SIPUEL FISHER 10-12 (1996).

reserved for whites only. To watch a movie, black residents in Chickasha would enter the theater through a fire escape to the balcony.² At the state university she would eventually attend, school officials faced fines of \$100 to \$500 per day for allowing racial mixing in its classrooms.

She described the evolution of her town from sitting on the frontier of the Old West to becoming the heart of the New South. The stories passed among families changed: “The central characters were not righteous vigilantes and despicable horse thieves but lynch mobs and their victims—men, women, even children, whose only crimes may have been that they were black.”³ Any number of these lynchings involved allegations that an African-American man had sexually assaulted a white woman, including a story recounted by Fisher in which a mob broke into a jail cell and nearly killed a man who had been arrested for allegedly raping a white woman in the town.

The interplay of race, gender and sexuality may have explained Fisher’s own acceptance, years later, on an all-white campus in Norman, Oklahoma, where blacks were not permitted after sundown. Originally the NAACP tapped Fisher’s brother to serve as the plaintiff in a lawsuit against the University of Oklahoma’s law school. Fisher’s brother declined, deciding instead to attend Howard University’s law school. When Ada Lois took her brother’s place, she may have sensed that a female would have an easier time breaking the barriers of both state-sanctioned and individually perpetuated racism. Bruce Fisher, Ada Lois’ son, said his mother wondered if having a young black man apply and attend the university would have made a difference in the movement. “She did think that because her brother was a young man from the war, that his presence would

² FISHER at 51.

have been a lot more inflammatory than hers,” said Bruce Fisher, now of the Oklahoma Historical Society. The NAACP may not have wanted “to raise the question of black male sexuality on the white campus” especially in a state where there had been many lynchings based just on the accusation of rape.⁴ Although the NAACP may not have selected her based on her gender, being a woman may have given Fisher a decided advantage when the time came to enroll at University of Oklahoma. On the day Fisher sought admission at the Norman, Oklahoma campus, she carried herself with a grace that demanded recognition of the equal social status she sought and made clear she was not there simply to work while the sun was up: “I was all dressed up that day,” she said. “I obviously had not come to clean the bathrooms.”⁵

By the time Ada Lois Sipuel Fisher arrived on Oklahoma University’s campus as a law student in 1949, she did not expect, nor did she feel, racism from her peers or professors. In fact, her classmates shared their notes and helped Fisher to catch up when she had missed the first few weeks of the summer session. And the same instructors who had testified on behalf of the law school showed no resentment to Fisher.⁶ But it was not solely her gender that explained the welcome she received. Other forces had conspired to break down racism at the institutional and personal level.

Even as Fisher made her way through a segregated grade school and an all-black private college, the move to end the system that limited her educational choices and other opportunities for African Americans was already in force. On May 31, 1909, 300 black and white civil rights leaders came together in Cooper Union, New York, under the name

³ FISHER at 43.

⁴ Interview with Bruce Fisher, April 27, 2004.

⁵ Paula Burkes, *Black Women Look Back*, *The Daily Oklahoman*, March 18, 1987.

⁶ *Id.*

of the National Negro Conference to address the social conditions for African Americans. They focused on mechanisms used to keep African Americans in inferior positions, including the denial of voting rights and advanced educational opportunities. A year later, at the same gathering, the group took on the name the National Association for the Advancement of Colored People and the trappings of a full-time organization focused on racial inequality. Within a few years, the NAACP had turned its eye to the courts as a forum in which to effectuate its goals.

During the same period, Howard University's law school produced strong civil rights leaders, committed to using the Constitution to change the status of African Americans. Among them was Thurgood Marshall, who graduated in 1933. By 1940, Marshall was spearheading litigation campaigns for NAACP, chartering the group's Legal Defense and Education Fund.

The group already had achieved at least some success in making a stand against segregation in education in the South. Responding to an NAACP challenge, the Supreme Court ruled in 1938 in *Gaines v. Missouri* that African-American students must be admitted to a law school within and supported by the state of Missouri, where no equivalent law school exists in the state. But Gaines disappeared before he could matriculate, and this early victory did little to change the landscape for African Americans seeking professional degrees: Nearly a decade later, there was one accredited law school for African-American students in the South, while there were forty for white students.⁷

⁷ RICHARD KLUGER, *SIMPLE JUSTICE* 257 (1975).

In the early 1940s, the NAACP shifted its focus to disenfranchisement, battling white primaries and other practices that kept African Americans out of the voting booths. But by the middle of the decade, the group renewed its efforts to pursue civil rights in education. The NAACP's legal department set out a litigation strategy: It would force southern states to give meaning to the "separate but equal" mandate by requiring that they build equivalent segregated schools for African Americans. The organization still opposed segregation as unconstitutional but believed the economic pressures of requiring states to construct equal but separate schools would eventually cause the system to collapse. In September of 1945, Thurgood Marshall presented this legal tactic to the Oklahoma NAACP, seeking an African-American student plaintiff to challenge the all-white law school at the University of Oklahoma. The NAACP eventually would select Ada Lois Sipuel Fisher for the job.

As the legal battle raged on, social pressures mounted for Oklahoma and other states to lower the racial barriers to education as well. When Fisher went to apply for admission, student members of the race relations committee of the YWCA and YMCA greeted her warmly. In December of 1947, a group of University of Oklahoma students visited Langston University for a firsthand look at the inequities in funding at the all-black school. During the visit, the Oklahoma University students participated in a discussion forum in which they expressed support for Fisher's case.⁸ A few weeks later, 1,000 University of Oklahoma white students held a demonstration where the 14th Amendment was read to the crowd, declared nullified and burned. The ashes were collected and mailed to President Truman. In January of 1948, a survey of law students

⁸ Ray Parr, 13 OU Students Visit Langston for Discussion, *The Daily Oklahoman*, Dec. 4, 1947.

revealed that 83 percent supported Fisher entering the school, while 43.6 percent of the broader university student body supported her admission.⁹ In response to questions from Thurgood Marshall about student support, Roscoe Dunjee wrote: “I can say without reservation that it is the most stimulating and inspiring aspect of the whole situation. I did not know until this case became red hot that there was so much social decency hiding around in the Sooner Hills of Oklahoma.”¹⁰

Fisher had supporters outside of the university as well, where some Americans felt that the exclusion of an African-American student from a public school could not be reconciled with the policy of the United States in fighting racism abroad. “When our own educational institutions are governed by a prejudice and nazi-like tradition, how can we expect them to give a full, liberal, broad-minded education to students in attendance?” wrote 19-year-old Winston Weathers to Oklahoma Gov. Robert S. Kerr on Jan. 15, 1946. Weathers said he had planned to attend the University of Oklahoma but the Fisher case suggested the school’s “incapability to give a modern, American education.”¹¹

A letter by an African-American veteran, who had served three-and-half years in World War II, chastised the state and the nation for its hypocrisy in failing to end discrimination within its borders, while fighting a war against religious oppression abroad. “I, among millions of other Americans, had sincerely hoped that the end of hostilities between Nations would mark the beginning of the REAL DEMOCRACY for

⁹ Students at OU Equally Divided on Court Ruling, *The Daily Oklahoman*, Jan. 13, 1948, 20.

¹⁰ Letters from Roscoe Dunjee to Thurgood Marshall, Jan. 23, 1948. NAACP Papers.

¹¹ Letter from Winston Weathers of Bartlesville Oklahoma to Gov. Robert S. Kerr, dated Jan. 15, 1946. Available at the Carl Albert Congressional Research and Studies Center.

ALL AMERICANS about which thousands of American statesmen talked and promised through World War II, and of which America is in such great need.”¹²

In the wake of the Supreme Court’s decision that Oklahoma had to provide education for Fisher, the state’s major daily newspaper said it had received a number of letters addressing the Court’s decision and the balance was heavily in favor of the admitting Fisher to the state university. “Wake up, Oklahoma. The United States Supreme Court gave us a gentle shove in the direction of racial equality. Their next ruling may not be so gentle. The Jim Crow law is morally wrong any way we look at it.”¹³

During her case, Fisher also was exposed to some of the uglier sides of human nature: letters from enraged citizens telling her to stay in her place and even threatening her with physical violence. One letter arrived to her addressed simply: “Ada Lois Sipuel, nigger, Oklahoma.” Fisher tried to insulate herself from these messages but found herself frustrated and angry. Her mom destroyed all of the hateful letters, refusing to keep them around even as a historical recording.¹⁴

The activism and support from citizens of both races did not escape the attention of the state’s governor, who recognized that some African Americans and white activists would no longer complacently tolerate the state’s system for the secondhand treatment of some of its citizens. “Agitators, composed of radicals in minority groups, both white and Negro, are placing the rank and file of minority groups at a definitely public disadvantage

¹² Letter from J. Alexander Byrd of W. Philadelphia, Pa. to Gov. Robert S. Kerr, dated Jan. 19, 1946.

¹³ The People Speak, The Sipuel Case, The Daily Oklahoman, Letters to the Editor, Jan. 25, 1948. Letter by Kent Ruth, Geary, Okla.

¹⁴ FISHER at 114.

and are being of disservice to their own people,” Governor Turner said following the Supreme Court’s decision in Fisher’s case.¹⁵

But Oklahoma officials could not stop rising public sentiment against their policy of segregation. By the summer of 1949, Oklahoma University President George L. Cross recognized that the makeshift law school, hastily assembled for black law students, would soon close its doors because of lack of funding. Cross ordered Fisher admitted to the state’s law school. Shortly after her enrollment, Oklahoma amended its laws to permit African Americans to attend white professional and graduate programs on a segregated basis. By the time Fisher graduated from law school, Fisher would be permitted to sit among her white classmates, without any barriers of segregation. And a few years after her graduation, in 1954, the Court would decide *Brown v. Board of Education*, renouncing its previous finding that the Constitution could be satisfied by “separate but equal” institutions.

Fisher, who grew up accepting Jim Crow segregation as a way of life, witnessed firsthand the combination of legal and social forces that would slowly chip away at the policy aimed at keeping African Americans in an inferior position. She continued to dedicate her life to this aim, first as a practicing attorney and later as an educator, encouraging young African-American students to pursue careers in the legal profession so that they could continue the process of change.

But her own observations over a lifetime revealed that the path to racial integration and acceptance was not always straightforward. In 1990, when an anonymous donor set up a \$100,000 minority fund in her name, Fisher expressed hope that the

¹⁵ Turner Raps Radical Agitators Stirring Both Negroes, Whites, *The Daily Oklahoman*, Feb 4, 1948.

scholarship would help to ease the growing racial tensions she witnessed. “There seems to be a resurgence of racism in society as a whole and especially on college campuses,” Fisher said.¹⁶ A few years later, when she was appointed to the University of Oklahoma’s Board of Regents, she pledged to try and increase the number of black professors and black students on campus. “I hope that having experienced raw racism associated with [my] case, I can bring a new sensitivity to the board.”¹⁷

Her legacy has served to remind generations of lawyers, Americans, and Oklahomans in particular about the hurdles that African Americans faced and the important role of the law as an impetus for social change. When her son, Bruce Fisher was growing up, Fisher’s story remained unknown. “In Oklahoma, it was easy not to know the historical significant of it at the time,” Fisher said.¹⁸

Now, Fisher’s case and its influence on Oklahoma education and social culture are woven into the fabric of the state. For example, every University of Oklahoma undergraduate learns about Fisher as part of orientation. “Only in the last twenty years, it has really become part of everyday life,” Fisher said.¹⁹

Fisher would be proud that her story is now part of Oklahoma’s story and the story of the progress of civil rights in the United States. For her, remembering the past, painful as it may have been, is critical to building a new future for America. “History provides a mental standing ground so that we can understand our society today. If there is no history worth knowing, there is no humanity worth respecting.”²⁰

¹⁶ Chip Minty, Donation Honors Black OU Law Graduate, Nov. 14, 1990.

¹⁷ Paul English, New OU Regent Appointment Ends 45-Year Cycle, *The Daily Oklahoman*, Apr. 28, 1992.

¹⁸ Interview with Bruce Fisher, April 27, 2004.

¹⁹ *Id.*

²⁰ Paula Burkes, *Black Women Look Back*, Mar. 18, 1987.

Ada Lois Sipuel Fisher

**A “Guinea Pig” in the Experiment to End Segregation:
Sipuel v. Board of Regents of University of Oklahoma
Legal Issue Paper**

Kalpana Srinivasan

“Here’s your case, and I think it’s what one could call a ‘natural,’” wrote a pleased Roscoe Dunjee, head of the Oklahoma NAACP, in a 1946 letter to Thurgood Marshall.¹ The case was a challenge on behalf of an African-American woman, Ada Lois Sipuel Fisher, seeking admission to Oklahoma’s all-white state law school, and it was a “natural” for exposing the practical infeasibility of “separate but equal” institutions of higher education. By the time Fisher’s case reached the Supreme Court, the NAACP lawyers used the lawsuit as a vehicle to attack, for the first time, the constitutional validity of the doctrine established under *Plessy v. Ferguson*, declaring emphatically their brief that “[t]here can be no separate equality.”²

The NAACP, the nation’s leading organization for battling racial inequities in court, had scored a series of early but limited victories in its efforts to force open segregated schools, particularly at the graduate and professional school level. One of Marshall’s early wins as a lawyer, in 1936, involved an action against the state of Maryland for excluding an African-American applicant. The Maryland Court of Appeals ordered the applicant admitted to the law school, after finding that the state in setting up only one law school could not now limit its education to white students and simply send black students to other states for legal education.³

¹ Letter from Roscoe Dunjee to Thurgood Marshall, Jan. 15, 1946. NAACP Papers.

² Brief for Petitioners, p. 37.

³ *Pearson v. Murray*, 169 Md. 478, 594 (1936).

In a similar case, *Gaines v. Canada*, the NAACP sought admission for an African-American plaintiff to Missouri’s law school.⁴ Under Missouri law, the state’s black university could send students to other states for courses of study, like law, not offered at the school.⁵ The state also noted that officials of the black university could respond to an application by creating a separate law school. The Supreme Court, in 1938, found the state had failed to meet the requirements of the Equal Protection Clause. It did not matter that other state law schools admitted black students; instead, the legal issue centered around “what opportunities Missouri itself furnishes to white students and denies to Negroes solely upon the ground of color,” the Court wrote.⁶

But the Court rested its decision that the state must admit Gaines on a narrow ground, namely that he was entitled to attend the school “in the absence of other and proper provision for his legal training within the State.”⁷ In the course of its decision, the Court restated the validity of states’ “furnishing equal facilities in separate schools” to provide higher education to African Americans.⁸ Thus, the Court’s ruling suggested that had Missouri offered separate legal education to African Americans, the state would meet the equal protection requirements, regardless of the quality of instruction or experience provided by a segregated school. Before Gaines could matriculate to the law school, he mysteriously disappeared. Soon after, Missouri opened a black law school to avoid further challenge.

When the NAACP resumed its focus on education in the mid-1940s, it developed a strategy to work within the confines of *Gaines* and other decisions. Namely, the

⁴ Missouri ex rel. *Gaines v. Canada*, 305 U.S. 337 (1938).

⁵ Id. at 343.

⁶ Id. at 349.

⁷ Id. at 352.

organization’s legal department reaffirmed its opposition to segregation but decided also to force southern states to give meaning to the “equal” in separate but equal. The theory was that if the states had to provide education for black students on par, both in quality and availability, with the education it provided white students in all fields, they would capitulate and integrate their schools or face financial ruin.

The association sent word out to its branches in segregated states, seeking plaintiffs for cases against professional and graduate schools. In Oklahoma, the state NAACP representatives approached the Sipuels about having their son apply to the state’s all-white law school. Instead, their daughter, Ada Lois, signed on for the job. Whether it occurred to the NAACP officials at the time, Fisher (Sipuel’s eventual married name) later recognized that the choice of a female plaintiff likely eased the road to her eventually becoming a student on an all-white campus in an all-white town. “She did think that because her brother was a young man from the war, that his presence would have been a lot more inflammatory than hers,” said her son Bruce Fisher, who works at the Oklahoma Historical Society. Any number of lynchings in the South had resulted from the mere allegation that a black man had been sexually involved with or had assaulted a white woman. With that backdrop, the NAACP may not have wanted “to raise the question of black male sexuality on the white campus...because the allegations could have been enough to destroy the movement.”⁹

On Jan. 14, 1946, Ada Lois Sipuel Fisher applied for admission to the University of Oklahoma law school and as expected was denied by the school’s president, George Lynn Cross. In a written statement, Cross made clear that while Fisher was

⁸ Id. at 344.

⁹ Interview with Bruce Fisher, April 27, 2004.

“scholastically qualified” to attend the school, the state’s segregation laws prevented her admission. In fact, the school would be subject to fines of up to \$500 a day if it permitted a black student to sit in class with white students.¹⁰ Cross’ statement paved the way for the first legal challenge of the case: a writ filed in the Cleveland County District Court on April 6 to compel the Board of Regents of Oklahoma to admit Fisher to the law school. The writ was denied.

Fisher’s lawyers appealed to the Oklahoma Supreme Court, which affirmed the lower court’s decision a year later. In doing so, the court also voiced its confusion about the NAACP’s strategy. The association had sought Fisher’s admission to the existing Oklahoma law school, but the court questioned whether the plaintiff wanted to “overturn the complete separate school policy of the state, or sought to compel equal facilities for the races by obtaining an extension of such facilities to include a separate law school for Negroes. The point is made uncertain by the pleadings and brief of petitioner and by the stipulation.”¹¹ In his opening statement at oral argument, Fisher’s lawyer Amos T. Hall had argued that the state could only segregate students where it provided equal facilities. In the absence of a separate school, Fisher should be admitted to the University of Oklahoma, asserted Hall, noting that Fisher had already waited a year to start her studies.¹²

Through this process, Fisher who had just recently lost her father, came to the court hearings alone and looked to her legal team for personal guidance and leadership. They gave her the confidence to approach the struggle with composure and security. Fisher’s son described her as “kind of like a duck in water—feet paddling underneath but

¹⁰ 70 O.S. 1914 § 455.

¹¹ 199 Okla. 36, 38 (April 29, 1947).

above completely calm. She was a very confident person.”¹³ Trying to probe beneath Fisher’s tranquil surface was like pulling teeth, her son admits. She also did her part to keep the case afloat by touring the state and other parts of the country on speaking engagements. She became so proficient that at the culmination of her case, her local attorney Amos T. Hall recommended that the NAACP hire her to tour more broadly “because of the popularity with which she is accepted wherever she appears.”¹⁴

Fisher’s fundraising efforts would be critical as the litigation dragged along. In the state action, the Supreme Court of Oklahoma presumed that Fisher was not attacking segregation, because such an approach would be invalid in light of Supreme Court precedent, and that instead she was seeking separate equal educational facilities.¹⁵ Nonetheless, the court rejected the claim of discrimination by the state because Fisher had not shown that any African-American students, including herself, had made a formal demand or given notice to school officials about a need for a law school.¹⁶ The court went on to suggest that not only had Fisher failed to show discrimination by the state, the record indicated that an African-American applicant “is favored” by the state because he or she can receive legal training outside the state, while white students can only do so “at their own expense.”¹⁷

The Oklahoma court was not alone in its uncertainty about the position of the NAACP with regard to segregation per se. Tensions surfaced elsewhere in the organization. In a memo to an NAACP colleague, Thurgood Marshall expressed

¹² Oklahoma Law School Under NAACP Fire, Press Release by NAACP, March 7, 1947. NAACP Papers.

¹³ Interview with Bruce Fisher, April 27, 2004.

¹⁴ Letter from Amos T. Hall to national NAACP office, 1948. NAACP Papers.

¹⁵ 199 Okla. 36, 38 (April 29, 1947).

¹⁶ Id. at 39.

¹⁷ Id. at 41.

frustration that branch officers and other members were not on the same page when it came to the NAACP's view of segregation: that it was intolerable, and the group should not participate in any legal proceeding seeking to enforce segregation statutes. "I had assumed that the NAACP really meant business about an all-out attack against segregation, especially in the public school system. I had assumed we not only realized that segregation was an evil but had come to the conclusion that nothing can be gained under the doctrine of 'separate but equal.'"¹⁸ Marshall recommended an education campaign to assure that members shared the same view on the end goal of the NAACP's litigation.

By the time the Fisher case reached the Supreme Court, Marshall and other NAACP counsel had to brainstorm about how best to reconcile their ultimate goal—the invalidation of segregation—with the more modest aim of making separate but equal institutions so expensive that integration became the default result. Handicapped by Supreme Court precedent affirming the practice of segregation, the lawyers toyed with a number of theories to guide their brief.¹⁹ One potential option was to rely on the Court's decision in *Gaines* to claim that Fisher should be admitted to the only law school maintained by the state.²⁰ Another was to insist on equality from the beginning, so that every time a state built a school for white students it had to build one for black students regardless of whether any sought education at the school. "In other words, making

¹⁸ Memo from Thurgood Marshall to Roy Wilkins, October 28, 1947. NAACP Papers.

¹⁹ *Sipuel v. Board of Regents University of Oklahoma et al*, Possible Theories Which May Be Used in Brief and Amendment, Undated, NAACP Papers.

²⁰ *Id.*

segregation as great a financial burden as possible so that eventually it will fall under its own weight.”²¹

The most controversial proposition pondered by the NAACP was to launch a direct attack on segregation by arguing that in the education context, separate but equal would damage young people of both races psychologically and sociologically.²² Under this claim, the NAACP would call on the Court to determine for the first time that segregation in education violated the Fourteenth Amendment and that inequality and discrimination are inherent in separating students.²³

Fisher’s was not necessarily Marshall’s ideal case for pushing the claim that the Court should abandon the farcical theory of separate but equal. “We are stuck with the University of Oklahoma case since certiorari was granted. . . . As you know, we have practically no record in this case and we had hoped that we would get to the Texas case first, but conditions are such that this one will come up first.”²⁴ Even without the ideal record, Marshall remained committed to moving beyond the limited holding of *Gaines*, which allowed separate educational facilities.²⁵

The brief that ultimately resulted encompassed both arguments. First, the NAACP argued that the state court, and other lower courts, had misconstrued the precedent set by *Gaines* as only requiring that states provide an alternative law school for black students.²⁶ The NAACP sought to demonstrate that this holding was too narrow and further rebuked the state’s claim that Fisher should shown that African-American students were interested

²¹ Id.

²² Id.

²³ Id.

²⁴ Letter from Thurgood Marshall to William R. (Bob) Ming Jr. Dec 15, 1947. NAACP Papers.

²⁵ Id.

²⁶ Brief for Petitioners, p. 17.

in a law school. “The full extent of the evil inherent in this premise is present in this case where the ‘separate but equal’ doctrine is urged as a complete defense where the state has not even made the pretense of establishing a separate law school.”²⁷ By requiring an African-American applicant to seek a separate school at some time in the future, the state had placed a burden on one class, in violation of the equal protection laws.²⁸

The brief also relied on statistical evidence to show the impact of segregation and the failure to provide equal facilities for African-American students. For example:

- There was one white lawyer for every 643 white people versus one black lawyer for every 6,754 black people in the country.²⁹

- In 1940, there were 176, 475 white lawyers compared with 1052 black lawyers in the United States.³⁰

- There were 18 times as many white lawyers as black lawyers in the country and 45 times as many white lawyers as black lawyers in the South.³¹

The NAACP also articulated the cultural relevance of eliminating barriers for African Americans in higher education. Black professionals provide leadership to African-American communities and represent their interests, the brief noted.³²

But the most striking rhetoric of the brief came in its denunciation of *Plessy* and the doctrine of “separate but equal” established in the case. The NAACP exposed the fallacy that separate in the context of race could ever be anything but implicit discrimination against non-whites. “The only premise on which racial separation can be

²⁷ Brief for Petitioners, p. 19.

²⁸ Id. at p. 27.

²⁹ Id. at p. 40.

³⁰ Id. at p. 41.

³¹ Id.

³² Brief for Petitioners, p. 45.

based is that the inferiority and the undesirability of the race set apart make its segregation mandatory in the interest of the well-being of society as a whole.”³³ In the context of education, segregation helped to preserve a caste system based on race and color, the brief asserted.³⁴

The NAACP critiqued the foundation of the *Plessy* decision, arguing that the case was based solely on the pleadings with no evidence of the reasonableness of the claim. Lacking in any factual or legal analysis, the *Plessy* holding reflected an unfounded presumption of equality by state courts, the brief argued.³⁵ Subsequent courts had uncritically relied on *Plessy* without properly examining its validity. “The separate but equal doctrine is basically unsound and unrealistic and in the light of the history of its application should now be repudiated,” asserted the NAACP.³⁶ As such, the doctrine should not apply in the Fisher case and undermines any claim that Oklahoma has as to the legitimacy of its segregation laws.³⁷

Despite the powerful polemics of the NAACP’s argument, the Court did not even touch the claim that the doctrine of “separate but equal” should be overturned. Its per curiam decision of Jan. 12, 1948, just days after Marshall had argued before the Court, stated summarily that Fisher was “entitled to secure legal education afforded by a state institution.”³⁸ Oklahoma was required to provide this education to Fisher in conformity with the Equal Protection Clause and at the same time as it provided the education to

³³ Brief for Petitioners, p. 36.

³⁴ *Id.*

³⁵ *Id.* at p. 34.

³⁶ *Id.* at p. 10.

³⁷ *Id.* at p. 51-52.

³⁸ 332 U.S. 631, 632 (1948)

applicants of other groups, the Court ruled in remanding the case back to the lower courts.³⁹

Some, like Roscoe Dunjee, reveled in the victory. “The Monday decision is thrilling, and I do now know how to express myself I am so delighted over the results. Our entire state is in an uproar.”⁴⁰ Fisher also felt that her road to becoming a lawyer was drawing close. “Oh, it’s a wonderful Constitution. I’m going to be a lawyer. I’m going to learn,” she declared.⁴¹ In fact, it would be more than a year before she set foot on Oklahoma University’s campus. The Supreme Court had handed down only a partial victory for her and the NAACP team. The Court had not renounced “separate but equal” or even declared that Fisher had to be admitted to the Oklahoma law school. In fact, the Court’s decision provided a huge window for Oklahoma officials to entrench the very doctrine that the NAACP had sought to overthrow.

Five days after the Supreme Court decision, the Oklahoma Supreme Court ruled that the state must either close its law school to white students or provide Fisher and other African-American students with equal educational opportunities. One week later, on July 24, 1948, the Oklahoma Board of Regents announced the creation of a “new” black law school. The next day, Fisher’s legal team asked the district judge that she be admitted to the state school, after she had refused to register at the ad hoc black law school, but the request was denied. Marshall unsuccessfully repeated his request in a petition to the Supreme Court.⁴²

³⁹ Id. at 633.

⁴⁰ Letter to Thurgood Marshall, Jan. 14, 1948. NAACP letters.

⁴¹ It’s a Wonderful Constitution, Ada Says on Return to State, *The Daily Oklahoman*, Jan. 15, 1948.

⁴² 333 U.S. 147

Despite the stonewalling by the courts and by Oklahoma in building a separate law school, Marshall vowed to eventually succeed in his battle. “They can do everything they want to try to bolster the Jim Crow law school but that will not help that at all. We are going to hit segregation head on so they can scuffle around as much as they want to and it won’t help them.”⁴³ Marshall began amassing evidence to undertake the difficult task of mounting a new fact-heavy case, showing that the hastily assembled black school paled in comparison to the University of Oklahoma’s law school. By March of 1948, Fisher’s team had filed a second suit objecting to the new law school in state court.

In August of 1948, a state court judge, despite evidence to the contrary, ruled that the new black law school was substantially equal to the state university’s law school. But by the end of that academic year, the black law school was on the brink of shutting down because of lack of money. Two weeks before the school officially closed its doors, the Oklahoma University president on June 17, 1949 ordered the office of admissions to accept Fisher for the law school’s summer session. The next day Fisher enrolled in the state law school.

The legal wrangling by the two parties could have embittered Fisher to the law altogether. But instead she enjoyed the courtroom jousting. Fisher, who had always played and enjoyed competitive sports, “believed the Constitution stated the goal and saw those that were fighting the case as the opposition.” Her ability to cast the litigation struggle this way enabled Fisher not to turn her courtroom foes into lifelong enemies. “She didn’t harbor any resentment. I think she saw it more as competition, and she wanted to win.”⁴⁴

⁴³ Letter from Thurgood Marshall to Roscoe Dunjee, April 20, 1948. NAACP Letters.

⁴⁴ Interview with Bruce Fisher, April 27, 2004.

Fisher was ecstatic about finally being able to enroll but recognized that her personal struggle to become a lawyer was starting anew. “I will spend the rest of my life trying to prove to Oklahoma that a mistake was made in the attempt to keep me from entering the OU law school,” Fisher declared after matriculating at the school.⁴⁵ And already her detractors had lined up to watch her fail, questioning her wherewithal to endure the process, as typified by this letter to editor of *The Daily Oklahoman*: “The only thing she cares about is to force her way into a school where Negroes have never gone. If she were sincere about wanting to enter law school, why did she have to bring four Negro men with her when she made her appearance at the office of dean of admissions?”⁴⁶

The first step in proving Oklahoma and its naysayers wrong was taking on the rigors of law school. “She took the mission of completing the course of study as the most important part of the process that only she could accomplish,” her son said.⁴⁷ And this process presented its own challenges: she had to sit separately, in a roped off section of the classroom marked “colored,” and she had enrolled late in the summer session, so that she was behind in her coursework already.

Fisher had long recognized the challenges that would come with blazing a trail for other African Americans at the law school. “Somebody had to be first. It will be hard, but maybe soon there’ll be other Negroes with me,” she said as her case wound through the courts.⁴⁸ She also hoped she would make friends and prepared to insulate herself from

⁴⁵ Ada Lois is Thrilled, *Daily Oklahoman*, June 19, 1949.

⁴⁶ The Real Reason? Eunice Nolen, *The Daily Oklahoman*, Letters to the Editor, Jan. 25, 1948.

⁴⁷ Interview with Bruce Fisher, April 27, 2004.

⁴⁸ It’s a Wonderful Constitution, Ada Says on Return to State, *The Daily Oklahoman*, Jan. 15, 1948.

those who did not want her there. “The few on the campus who might call me names— why, I won’t even hear them.”⁴⁹

Perhaps it was her gender or the changing social tide at the time, but Fisher had little trouble in making friends and avoiding those who harbored ill will toward her. She found her classmates immediately embraced her, sharing their notes and even tutoring her outside the classroom. Her success in part can be credited to the men in her class, who especially helped her to keep up with her coursework.⁵⁰ Even the professors who had represented the state in the lawsuit displayed no animosity toward her. Aside from the state imposed segregation, Fisher did not experience prejudice from those around her.

Fisher may have benefited from a warmer reception than her male counterparts. George McLaurin, an African-American man, who had been admitted to the graduate school, described the conditions there as “humiliating.” He was forced to sit in an anteroom to observe class from a distance and complained of having to eat and study in unfavorable, segregated locations.⁵¹ McLaurin ultimately filed suit about the conditions in his classroom, which led the Supreme Court a year later to declare that segregating students in professional schools handicapped their ability to learn. “Such restrictions impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and in general, to learn his profession.”⁵² The next day, Fisher moved to the front of the class to sit among her white peers.

Fisher graduated from law school in 1951, passed the bar, and practiced in Oklahoma for several years. She carried with her the belief, instilled by Marshall, that the

⁴⁹ Id.

⁵⁰ Interview with Bruce Fisher, April 27, 2004.

⁵¹ *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637, 640 (1950).

⁵² Id. at 641.

law could serve as an impetus for social change. This was somewhat visible in her own practice, where her cases included an action filed on behalf of a black plaintiff to stop the state from its proposed plan to use \$7.2 million to build a segregated area for blacks in Sequoyah State park, apart from the main facilities reserved for whites.⁵³ Fisher's suit challenged the plan on the grounds that segregation in state parks was unconstitutional. Fisher also worked on a case with NAACP lawyers seeking to admit an African-American woman to the Oklahoma College for Women, arguing against segregation in undergraduate residences.⁵⁴

But after the excitement of working with the nation's leading civil rights attorneys on an issue of such constitutional significance, the everyday grind of contracts and divorce cases could not match up.⁵⁵ Fisher left the practice of law, driven also by the economic and personal demands of having to raise two children. Fisher also discovered a better way to live out the early lessons she had learned. As an administrator and later professor at Langston University, Fisher encouraged young African-American undergraduates to pursue legal training and become the next generation of lawyers to fight for social change and progress. "I recently considered going to one of the larger white institutions in the state, but I don't know if the experience would be as rewarding and meaningful. These people (at Langston) are coming out of the kind of background I did," she told *The Daily Oklahoman* in 1981.

Fisher also would see the legacy of her case as the Supreme Court handed down its landmark desegregation ruling in *Brown v. Board of Education*, relying on some of the

⁵³ *In re Oklahoma Planning & Resources Bd.*, 1954 OK 226; *Negro Contests State Park Ban*. *The Daily Oklahoman*, July 29, 1954.

⁵⁴ *OCW is Named in Negro's Suit*, *The Daily Oklahoman*, Oct. 9, 1954.

⁵⁵ Interview with Bruce Fisher, April 27, 2004.

rhetoric put forward by Marshall first in Fisher’s case. Reflecting years later on the pivotal legal battle that started her professional life and led to the dismantling of segregation, Fisher expressed no regrets: “The experience was good for me and I think it was good for Oklahoma.”

Ada Lois Sipuel Fisher:
Her Friends and Allies

Kalpana Srinivasan

Thurgood Marshall

Ada Lois Sipuel Fisher first saw Thurgood Marshall while attending her all-black elementary school in Chickasha, Oklahoma in the 1930s. She described him as the “most handsome, articulate, brilliant, and charismatic man I had ever seen” and only the second African-American lawyer she had met in her life.¹ He had stopped by her school during a tour of local NAACP chapters, while he was still a freshly minted Howard University law school graduate. Nearly a decade later, Fisher would form an alliance with Marshall to dismantle the very system of public education that separated her from her white peers.

In Marshall, Fisher not only had a zealous advocate to take her case all the way to the nation’s highest court. She also had a role model for how a lawyer could instigate change in the face of adversity, given the right combination of a supporting family, high educational aspirations, and a pragmatic outlook on race relations.

Fisher spoke with Marshall over the phone the day she attempted to enroll at the University of Oklahoma. “I learned in that first conversation that my famous advocate was a warm and gregarious man,”² Fisher later wrote of the conversation. Not long after, she met the famed lawyer at the office of a local NAACP representative in an initial strategy session. Fisher said Marshall made her feel welcome, shaking her hand and giving her a big hug. “We were strangers no more.”³

¹ FISHER at 50.

² FISHER at 90.

³ FISHER at 95.

The affinity that developed quickly between the famous civil rights litigator and his plaintiff would come as little surprise given the common ground the two already shared. Like Fisher, Marshall grew up in a stable, nurturing family where he and his brother were encouraged to pursue their professional ambitions.⁴ His mother, an elementary school teacher, and father, a steward at a tony Baltimore club, set up a comfortable home for their family in one of the city’s middle-class areas.⁵

Marshall graduated from the all-black, all-male Lincoln University and decided to apply to law school. Although attending the University of Maryland Law School in Baltimore would have been ideal for Marshall, the state’s practice and policy of segregation, though not codified in law, made that impossible. He did not challenge the system that forced him to commute one hour each way to Howard University in Washington, D.C., rather than attend the law school in his hometown.⁶ At least not yet.

Marshall threw himself into his studies and flourished at Howard, remarking during his first week of school, “This was what I wanted to do for as long as I lived.”⁷ He graduated at the top of his class in 1933.

He set up his own practice in Baltimore and soon became general counsel for the state’s NAACP branch. Marshall’s first high-profile case came in the form of payback: He sued Maryland for excluding Donald Murray, an African-American applicant, from the law school solely based on his race.⁸ The state responded that its policy had long been segregation; that it was not a state agency covered by the Equal Protection Clause; and

⁴ RICHARD KLUGER, *SIMPLE JUSTICE* 173-75 (1975).

⁵ *Id.*

⁶ *Id.* at 178.

⁷ *Id.*

⁸ *Id.* at 179.

that it provided scholarships for African-American students to attend other institutions.⁹ The state court rejected this claim, saying that because the state only had one school set up for the study of law it could not limit education at the school to white students. The court ordered Murray admitted to Maryland's law school.¹⁰

A year later, Marshall was hired as a full-time lawyer for the NAACP. In the years that followed, Marshall fought aggressively to try to equalize the pay of African-American schoolteachers with that of white schoolteachers; end the practice of excluding African Americans from election primaries; and bring an end to racially restrictive covenants. In 1939, the leaders of the NAACP carved out of the parent organization the Legal Defense Fund and put Marshall at its helm.

By the mid-1940s, Marshall and other leaders at the NAACP focused their energies on expanding on the early victory of *Murray* by challenging the myth of "separate but equal" in the South, through lawsuits aimed at wedging open graduate school education to African-American students. And so Fisher entered the picture, when she signed on as plaintiff to pursue this strategy in Oklahoma against the state's all-white law school.

Marshall and the "dream team" of NAACP lawyers representing Fisher also played another important role during the litigation: filling the void left by the death of Fisher's father, who passed away the summer the case was filed. "They adopted her," said Ada Lois', son Bruce Fisher. Without her father, a driving force in her pursuit of

⁹ *Pearson v. Murray*, 182 A, 590, 591 (1936).

¹⁰ *Id.* at 594.

racial justice, to accompany her, Fisher typically attended the court hearings in her case alone without any family beside her.¹¹

Marshall also may have provided the inspiration that allowed Fisher to approach the task of battling the state’s machine of institutional racism with such calm. The plaintiff in an earlier Supreme Court case mandating that African-American students be admitted to the Missouri’s all-white law school had mysteriously disappeared before he could enroll.¹² Yet, Fisher did not seem unnerved by fear. Her son Bruce Fisher attributed her confidence—which even he unsuccessfully tried to probe beneath—in part to her legal team. Dunjee and Marshall “gave her so much assurance and confidence in the credibility of the Constitution.”

Marshall’s own persistence in the face of obstacle after obstacle provided plenty of guidance for Fisher. In one of their early meetings, Fisher recalls the stories of “insight, inspiration and humor” that Marshall shared with her. In one such tale, Marshall recounted how he had outrun an armed lynch mob in Tennessee in the 1930s by making his way through dusty back roads. He also told of the time he was arrested for a traffic stop violation in Georgia. The officer who booked him tried to trick Marshall into going out to get something to eat across the street. But Marshall knew better and told the officer he would have to be handcuffed out of the station because he did not want to be shot in the back for allegedly trying to escape.¹³

Marshall’s confidence and reassuring presence clearly seemed to foster the same in the young Fisher. Later she would say that she had no doubts about the successful

¹¹ Interview with Bruce Fisher, April 27, 2004.

¹² *Gaines v. Missouri*, 305 U.S. 337 (1938).

¹³ FISHER at 95.

outcome of her case: “Not one. Marshall . . . wouldn’t allow it.”¹⁴ Fisher also absorbed Marshall’s faith in the ability of the law to correct the country’s ills. “Those minds thought it would be the legal profession that would pioneer the way to segregation,” Fisher’s son remarked, noting how this shaped his mother’s own view that she did not want to “change the hearts of people, just play by the rules.”¹⁵

Roscoe Dunjee:

Roscoe Dunjee long gave voice to the frustrations and aspirations of African Americans living as second-class citizens in Oklahoma. As editor of the *Black Dispatch*, Dunjee’s columns called for an end to lynching, segregation, and other tools of oppression. It was only natural that when Fisher, and a group of other students at Langston University, wanted their concerns about the shoddy infrastructure at the school to be heard, they came to Dunjee.¹⁶

Dunjee, himself a graduate of the first class at the all-black Langston, surely listened with sympathy as the students shared their stories about the unpaved streets and sidewalks leading to an avalanche of red mud when it rained—all a result of inadequate funding for the school.¹⁷

Dunjee was well aware of the inequities faced by African Americans in his state. He came to Oklahoma in 1907 from Minnesota. By 1915, he put to print the injustice he saw around him by founding the *Black Dispatch*. His newspaper bore a banner reading: “All men up, no man down.” On those pages, Dunjee made impassioned pleas for anti-

¹⁴ Joseph J. Mays, *Integration Pioneer Now Quiet Student*

¹⁵ Interview with Bruce Fisher, April 27, 2004.

¹⁶ FISHER at 74-75.

¹⁷ Id.

lynching legislation, better funding and operation at Langston, and sit-ins to oppose segregation.

He did not confine himself to envisioning a better world only on paper. Dunjee bankrolled and masterminded lawsuits that secured for African Americans a right to a trial by a jury of their peers and that eliminated legally mandated residential segregation in Oklahoma City. “Roscoe could have been the wealthiest man in the world, but he never wanted anything for himself. He wanted it for his people,” Thurgood Marshall said of Dunjee.¹⁸

Dunjee founded and lead the NAACP chapter in the state. As early as 1940, Dunjee committed his branch to seeking the enrollment of an African-American student at the University of Oklahoma.¹⁹ In September of 1945, Thurgood Marshall spoke to the Oklahoma NAACP convention seeking a black plaintiff to challenge the University of Oklahoma’s all-white law school by applying for admission.

After Fisher was approached at her parent’s home as a potential plaintiff, she went to Dunjee’s office so he could consider her suitability. He explained that the battle would be “long, expensive, and possibly bitter” and that she would need courage and patience to endure it.²⁰ Fisher reassured him she was up to the task. He evaluated her transcript and noted her favorable family background. A week later, Fisher was selected for the job.

Dunjee accompanied Fisher when she approached the Oklahoma University president seeking admission. She marveled at how Dunjee handled the meeting.

¹⁸ Karen McKellips, Roscoe Dunjee Versus the Pill Peddler President: Politics, the Black Press, and Langston University, available at <http://members.aol.com/jophe00/mckellips.htm>.

¹⁹ Letter from Roscoe Dunjee to NAACP lawyer Walter White. March 22, 1940. NAACP Papers.

²⁰ FISHER at 80.

“Watching him in this initial action, I knew that Dunjee was the man to lead the struggle . . . The encounter reinforced my thoughts of him as a sapient and shrewd leader.”²¹

It was Dunjee also that served as the on-the-ground pointman for the NAACP, constantly drawing the attention of Marshall and other national office leaders to the developments in the state. “What I wish you to know is that I’d like Thurgod (sic) to fly down here right away while the water is hot and get this thing started,” Dunjee wrote to the NAACP just days after Fisher was rejected for admission at the school.²² Dunjee felt the time was ripe for pushing ahead with a lawsuit against the state’s school and relentlessly pursued this end, even while the NAACP’s national lawyers had competing demands for their time and resources. “Persons, both black and white, all over Oklahoma and the Southwest are deeply interested in this suit and I get letters and telephone calls every week asking questions respecting the progress of the contemplated suit,” wrote Dunjee to Marshall in March of 1946, before any legal action had been initiated against the school.²³

Dunjee also expressed his concern that any delay in filing the case could create additional pressures on their star plaintiff. He wrote to Marshall that Fisher “is being influenced already by some people...Prior to mak(ing) application for enrolment (sic), no one knew about her, but since the opposition knows where to strike I have a problem.” Dunjee wanted to ensure that the Fisher did not go the way of Lloyd Gaines, the student who disappeared before he could matriculate to the school. He suggested that while obviously brilliant, Fisher might also “trend towards the neurotic” and might be

²¹ FISHER at 87.

²² Letter from Roscoe Dunjee to NAACP lawyer Walter White. Jan. 18, 1946. NAACP Papers.

²³ Letter from Roscoe Dunjee to Thurgood Marshall. Mar. 11, 1946. NAACP Papers.

susceptible to outside pressure. “We will have to move swift and fast if we get anywhere.”²⁴

When Fisher’s case went to court, she and Dunjee made appearances around the state to raise money for her legal defense. At the same time, Dunjee’s office became the hub for strategy sessions for Fisher’s team, including Marshall. During the early part of the litigation, Dunjee remained by Fisher’s side and helped to keep her spirits up despite the repeated legal failures. “Chin up, girlie,” Dunjee said to Fisher after their defeat in the Oklahoma Supreme Court.

By 1947, Dunjee, because of health problems, had to step aside from his prominent role in the Oklahoma civil rights movement. He informed Fisher he would no longer be able to accompany her as the suit progressed. Marshall accepted Dunjee’s decision with understanding and concern. “[Y]ou should not hesitate to give up as much of your work as possible because your health is more important than even our work. However, we do not consider you as apart from our work because once it gets in your blood, you can’t get rid of it.”²⁵

And indeed, Dunjee never could get his commitment to ridding the state of racial inequalities out of his system. He continued to send missives to Marshall, providing updates of the developments in Oklahoma and serving as a barometer of the feelings of the state’s citizens, the black community, and the officials. He never renounced his job as the eyes and ears of the organization in the critical state.

²⁴ Letter from Roscoe Dunjee to Thurgood Marshall. Mar. 13, 1946. NAACP Papers.

²⁵ Letter from Thurgood Marshall to Roscoe Dunjee, Dec. 5, 1947. NAACP Papers.

George Lynn Cross

George Lynn Cross, president of the University of Oklahoma at the time Fisher challenged the institution for maintaining an all-white law school, reflected the changing tide of society at that time. On the one hand, he dutifully carried out his obligations under Oklahoma’s segregation laws, ensuring that classrooms, social functions, and even football games properly complied with the requirement that black and white students be kept separate. At the same time, in a few critical acts, Cross helped clear the way for Fisher to pursue her fight for true equality in education. Perhaps he did so because of pragmatic demands. Or perhaps he was fueled by a desire to see his state abandon a practice that subordinated certain citizens, based solely on their race.

On Jan. 14, 1946, when Fisher sought admission to the law school at Oklahoma, she and her lawyer met personally with Cross, highlighting the import of that moment both to applicant and administrator. Cross must have anticipated that this moment would come, as he had received clear guidance on how to handle the situation. The Board of Regents at the University of Oklahoma, in response to reports that African Americans would seek admission to the school, adopted a resolution months earlier ordering the university president “to refuse to admit anyone of Negro blood as a student in the University for the reason that the laws of the State of Oklahoma prohibit the enrollment of such a student in the University.”²⁶

Cross’ decision was preordained by the time Fisher visited his office. Yet he greeted Fisher and her team cordially. Then he went through certain formalities in

²⁶ From the minutes of a Nov. 7, 1945 meeting of the Regents of the University of Oklahoma. Cross Presidential Papers, University of Oklahoma library.

denying Fisher’s application that gave her and her lawyers a key tool: he made clear in a written statement that Fisher was being rejected on the basis of her race alone, per the state’s segregation laws, and that she was otherwise “scholastically qualified for admission.”²⁷ Had he tried to obfuscate, say by rejecting her because her undergraduate college was not accredited, he would have complicated their road to the courthouse. As it was, he gave them the greenlight to sue him.

In a letter to Thurgood Marshall, Roscoe Dunjee, head of the Oklahoma NAACP, confirmed that the team had an ally in Cross after their meeting about Fisher’s admission. “I received a lot of cooperation from the president of the college. He told me in the presence of Bullock and Miss Sipuel that he was sympathetic, and wanted to cooperate with us in having just what we want to get into the federal court for relief ... (He) told me openly that ‘I’ll put anything in this letter you feel will get you into court.’”²⁸

Two years later, Cross would enter the picture again, this time managing the competing dictates of the courts, the state, the school’s Board of Regents, and perhaps his own heart. On Jan. 12, 1948, the Supreme Court ruled that Fisher was entitled to a legal education provided by the state. Five days later, the Oklahoma Supreme Court held that the state had to afford Fisher, and all others similarly situated, the benefits of a state education as soon as it had granted such a benefit to other students. But the state was ordered to do so consistent with Oklahoma’s segregation laws.²⁹

Days later, the state board of regents announced the creation of a “new” law school, based at Fisher’s college, Langston University. Fisher refused to enroll there. Six months later, when it became apparent that the makeshift law school at Langston would

²⁷ FISHER at 84.

²⁸ Letter from Roscoe Dunjee to Thurgood Marshall. Jan. 15, 1946. NAACP Papers.

²⁹ Sipuel v. Board of Regents, 190 P.2d 437, 438 (1948).

close under financial constraints, Cross took action. On June 17, 1949, he ordered that the University of Oklahoma law school admit Fisher. Through his order, Cross pre-empted the state legislature, which less than two weeks later amended its laws to allow black students to attend academic institutions that had previously been all white. His decisive move could have been in frustration that the mandate of the Supreme Court had yet to be carried out. Or it could have been a pragmatic short-circuiting of the inevitable end.

Fisher enrolled on June 18, a few days after the summer session began. Per Cross' decision, Fisher was allowed to attend classes with white students although she sat in a roped off section. In part this was because the school could not accommodate her with separate teachers and a separate classroom. But once the doors were forced open, and African-American students began matriculating to the university in greater numbers, Cross faced new dilemmas about how to enforce segregation laws in classrooms, sporting events, and campus housing.

In a June 29, 1949, meeting to the university's Board of Regents, Cross reported that 25 African-American students had enrolled in 40 different classes, making it impossible to enforce the requirement that African-American students be taught in separate classrooms or classes meeting at different times than their white counterparts. In classes containing students of both races, the president had called for the use of partitions.³⁰ Athletic events posed another challenge. On July 13, 1949, Cross issued recommendations for segregating the stadium by putting students into different rows, separated by a makeshift wall. He suggested that the school "privately instruct the colored students that they should plan to arrive early and in this manner try to avoid the

³⁰ Cross Presidential Papers, University of Oklahoma Library.

surging crowds.” Cross also pressed for putting up some material to block the stadium from being photographed. He was clearly concerned about any resulting “adverse publicity to the University.”³¹ When it came to social functions, Cross noted the difficulty of segregation so he recommended that black students be informed that they could rent facilities for their own events but could not attend events with white students.³²

That Cross may have been caught between the demands of Oklahoma’s laws and his own unease with segregation revealed itself as he sought the counsel of civil rights leaders when faced with such dilemmas. For example, when an African-American student sought to play in the school band, and some white students protested, Cross asked Roscoe Dunjee for advice about how best to resolve the situation. Dunjee, relaying the incident to Marshall, said Cross felt embarrassed when traveling around the country and wanted to help NAACP officials in their efforts to invalidate segregation in the courts.³³ Dunjee advised Cross to send a letter to the student saying he could not play in the band based solely on the segregation laws, laying the groundwork should the NAACP decide to pursue a case on the student’s behalf. Thus, Cross, who would not openly defy the state’s segregation laws, instead plotted with and aided civil rights leaders to change the laws so that they would no longer compel the president to exclude black students from university life.

³¹ Id.

³² Id.

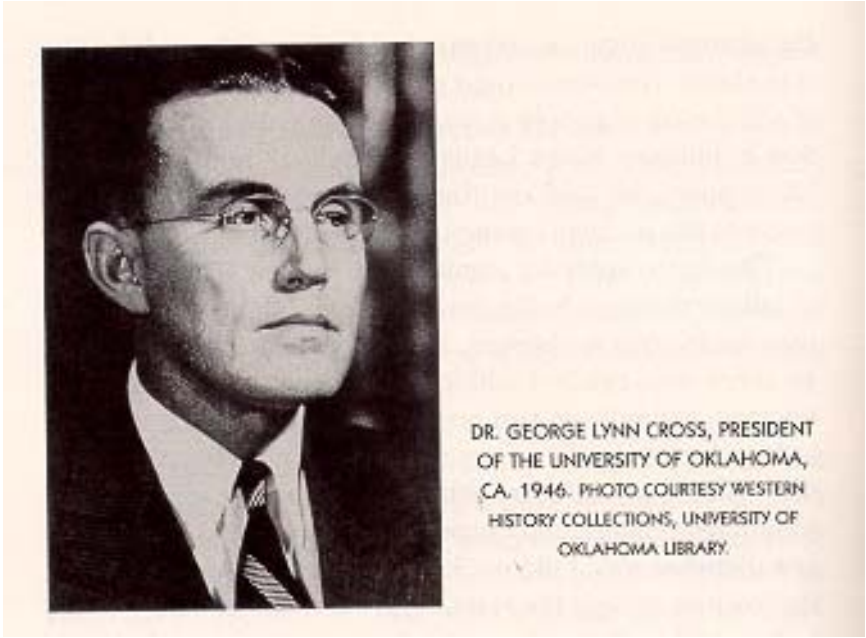
³³ Letter from Roscoe Dunjee to Thurgood Marshall, Nov. 4, 1949. NAACP Papers.



BACK IN THE OKLAHOMA COURTS, THURGOOD MARSHALL CONFERS WITH HARVARD'S LAW SCHOOL DEAN, ERWIN GRISWALD.



DR. W. A. J. BULLOCK, ADA LOIS, AND ROSCOE DUNJEE AT THE TIME OF THE FIRST ATTEMPT TO ENROLL AT THE UNIVERSITY OF OKLAHOMA



DR. GEORGE LYNN CROSS, PRESIDENT
OF THE UNIVERSITY OF OKLAHOMA,
CA, 1946. PHOTO COURTESY WESTERN
HISTORY COLLECTIONS, UNIVERSITY OF
OKLAHOMA LIBRARY.

Annotated Bibliography

Books

Ada Lois Sipuel Fisher with Danny Globe, A Matter of Black and White: The Autobiography of Ada Lois Sipuel Fisher (1996):

-Helpful in providing general biographical information and structure of the case.

Jack Greenberg, Crusaders in the Courts (1994).

-Provides useful context of the multi-front litigation strategy to demand first equality then desegregation for African American students

Richard Kluger, Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality (1977)

-Helpful in placing Fisher's case as an antecedent to *Brown*

Newspaper Articles

The Oklahoman Electronic Archives: <http://archives.oklahoman.com>: Allows users to purchase articles from this major daily dating back to the early 1900s. I relied heavily on these articles to gauge the climate at the time. A sample of some of the articles I used, which deal both with the implementation of the decision and the response, is included below:

- 4/12/47 13 OU Students Visit Langston For Discussion
- 1/13/48 Students at OU Equally Divided on Court Ruling
- 1/15/48 It's a Wonderful Constitution Ada Says on Return to State
- 1/22/48 Law Course Identical to OU's Outlined for Langston Branch
- 1/25/48 The People Speak, Letters about the Sipuel Case
- 5/19/49 Ada Lois is Thrilled
- 10/9/54 OCW is Named in Negro's Suit

Primary Source Materials

Papers of the NAACP

- Location: Green Library; MFILM N.S. 3061
- Extremely valuable in seeing firsthand the development of the NAACP's strategy in Fisher's case and in learning more about the personalities of the key players, including Marshall, Roscoe Dunjee and Fisher herself

George Lynn Cross Presidential Records, UA03/01/08: president's office: 1944-1968

- Location: Univ. of Oklahoma stacks—noncirculation; Western History Collection

- Cross denied Fisher admission, on the limited grounds of the Oklahoma segregation law, then later allowed her to enroll in summer session at the university's law school to fulfill the court's mandate.
- Cross seems to represent the position of a number of educators and students who wanted Fisher in the classroom but who were bound by segregation laws.
- I used these papers to flesh out the precarious role of Cross in trying to enforce the laws.

Carl Albert Congressional Research and Studies Center, correspondences about the Sipuel case

- Location: University of Oklahoma library; noncirculation; can order materials
- Includes letters to the governor and other some limited materials relating to the state's handling of the case

Relevant Cases

- Sipuel v. Bd of Regents of Univ. of Okla., 332 U.S. 631 (1948)
- McLaurin v. Oklahoma State Regents for Higher Education, 339 U.S. 637 (1950)
- Sweatt v. Painter, 339 U.S. 629 (1950)
- Gaines v. Missouri, 305 U.S. 337 (1938)
- Plessy v. Ferguson, 163 U.S. 537 (1896)
- In re Oklahoma Planning & Resources Bd., 1954 OK 226; Negro Contests State Park Ban.
- Pearson v. Murray, 169 Md. 478, 594 (1936).

Interviews

Bruce Fisher, son of Ada Lois Sipuel Fisher, April 27, 2004.

- by phone
- Fisher works at Oklahoma's Historical Society
- very valuable interview in learning about issues including the significance of Fisher's selection as a woman and her decision to leave law practice.

Ada Lois Sipuel Fisher:
Suggestions for Future Biographers

Kalpana Srinivasan

Further avenues of research:

-More on historical/sociological issues related to gender, sexuality and race. How did being a woman help to avoid difficult social barriers and stereotypes about black men interacting with white women? How does gender serve as a method of short-circuiting or exploiting issues related to sexuality? How has and could have the woman's movement leveraged itself in the civil rights movement? (also applicable to other subjects)

-Use of the Marshall Papers and other source material to glean more about Fisher.

-More historical research on the Tulsa riots and other unique aspects of Oklahoma's experience with race.

-Research on women lawyers within the NAACP organization. Who were they? What did they get to do? Was there conflict between the attitudes of civil rights leaders to race and gender?

Ada Lois Sipuel Fisher Timeline

Kalpana Srinivasan

1896: *Plessy v. Ferguson* establishes the “separate but equal” requirement under the law

1897: Langston University set up as a “separate but equal” college in Oklahoma; Sipuel later graduates from Langston

Feb. 8, 1924: Sipuel born in Chickasha, Okla.

Mid 1930s: While at the segregated Lincoln grade school, Sipuel hears an address by an NAACP representative—Thurgood Marshall—who years later represents her in her law school admissions case.

1936: NAACP lawyers Thurgood Marshall and Charles Houston win *Pearson v. Murray*, a Maryland state court ruling requiring the state’s all-white law school to admit a black applicant who did not want to go out of state to attend law school.

1938: Supreme Court rules in *Gaines v. Missouri* that African-American students must be admitted to a law school within and supported by the state of Missouri where no equivalent law school exists in the state. Gaines, the plaintiff, disappears before he can matriculate. Soon after that, Missouri opens a black law school in response.

Early 1940s: NAACP focuses its efforts on White Primary Cases and disenfranchisement rather than pursuing education cases.

1945: An NAACP legal department report lays out its tactic for civil rights in education: While the organization continues to believe segregation is unconstitutional, it decides to focus its efforts on forcing southern states to provide equal segregated schools, believing that the costs would eventually cause the system to collapse.

March 3, 1944: Sipuel marries Warren Fisher

May 1945: Fisher graduates from Langston University. She gets application materials for private law schools like those at Howard and Northwestern but decides to wait to apply for a year to save money.

Fall of 1945: An Oklahoma NAACP representative meets with Mr. and Mrs. Sipuel at their home and asks Ada Lois’ brother, Lemuel, to be the plaintiff in the case based on his strong academic record. Lemuel Sipuel, who had been drafted by the military for several years after college, declined the offer, because he did not want to delay his legal studies and was eager to enter Howard University’s law school. Ada Lois’ parents and brother suggest that she be considered instead as a plaintiff, as she was also an honors

student in college and valedictorian of her high school. The NAACP agrees.

Jan. 14, 1946: Fisher officially applies for admission to the University of Oklahoma law school. The university's president, George Lynn Cross, rejects her application in a written statement that declares she is "scholastically qualified" to attend but cannot be admitted because of the state's segregation laws. Cross did not try to allege that admission was denied on other grounds, such as the fact that Fisher had attended a non-accredited college. This made it possible for the NAACP team to pursue its lawsuit on the grounds of race. Fisher has her first conversation, over the phone, with Thurgood Marshall.

Early 1946: Fisher meets Marshall for the same time; she describes him as warm and friendly.

March 1946: Fisher tours the state to raise money for her legal fund.

April 6, 1946: Fisher's legal team—Marshall and attorney Amos Hall—file in Cleveland County District Court a writ of mandamus, requiring the University of Oklahoma law school dean to admit Fisher.

July 9, 1946: The court denies the writ.

November 1946: Fisher addresses the state NAACP convention, hosted at her high school.

April 29, 1947: The state supreme court upholds the district court's denial of the writ of mandamus.

May 1947: Marshall and other NAACP attorneys argue in *Sweatt* that a "new" law school opened in Texas for African Americans, in the wake of a court ruling, was not equal to the state school for white students.

Sept. 24, 1947: U.S. Supreme Court grants petition for a writ of certiorari filed by Fisher's attorneys. The petition argued that "separate but equal" required the University of Oklahoma to open its doors to African-American students, as no comparable facility was available in the state. It further argued that the separate but equal doctrine should be abandoned because it was untenable and invalid.

Jan. 8, 1948: Marshall/Amos argue the appeal before the U.S. Supreme Court. A week later, Marshall appears for oral argument in the Restrictive Covenant Cases.

Jan. 12, 1948: The Supreme Court reverses Oklahoma Supreme Court and remands case to state court. The Court finds that Fisher is entitled to a legal education provided by the state and orders Oklahoma to provide for it.

Jan. 17, 1948: The Oklahoma supreme court, responding to the Supreme Court decision, rules that the state must either close its law school to white students or provide Fisher and other African-American students with equal educational opportunities. But the court upholds the obligation of the state to follow Oklahoma segregation laws.

Jan. 24, 1948: The state board of regents announces the creation of a “new” law school, based at Fisher’s college, Langston University. She is asked to register at the new school.

Jan. 25, 1948: Fisher’s legal team asks the district judge that she be admitted to the University of Oklahoma law school, but the request is denied.

Jan. 26, 1948: Fisher reapplies to University of Oklahoma.

Jan. 28, 1948: Six African-American students seek admission to different graduate programs at the University of Oklahoma and are rejected. Among them is George McLaurin.

January 1948: One thousand University of Oklahoma students protest segregation by burning a copy of the Fourteenth Amendment and sending the ashes to President Truman.

Feb. 1948: In response to a petition from Marshall that Oklahoma be required to admit Fisher, the Supreme Court says that it only required that Fisher be treated equally and not that she be allowed to attend the state school.

March 1948: Fisher’s legal team argues that the “new” Langston University law school is not equal to the University of Oklahoma.

May 24, 1948: The second suit, objecting to the new law school, is argued in state court.

July 1948: Marshall files a lawsuit on behalf of George McLaurin, the graduate student rejected admission at the university, before a federal judicial panel.

Aug. 2, 1948: A state court judge rules that the new law school at Langston is substantially equal to the law school at the university.

Oct. 13, 1948: After a ruling by a federal district judge that McLaurin be granted admission to the University of Oklahoma’s education school, he enrolls as the first African American to attend the university. But he is required to sit in an anteroom, from which he could view the class.

June 17, 1949: Two weeks before the straw law school at Langston shuts down because of lack of money, University President Cross ordered the office of admissions to accept Fisher for the law school’s summer session.

June 18, 1949: Fisher enrolls in law school, where she is required to sit in the back row behind a rope marked “colored.”

June 29, 1949: Oklahoma amended its laws to permit African Americans to attend white professional and graduate programs on a segregated basis.

Apr. 3-4, 1950: Marshall argues *Sweatt* and *McLaurin* before the Supreme Court.

June 5, 1950: Supreme Court rules in *Sweatt* that the Texas law school set up for black students is inferior in its physical capabilities and faculty as well as in other intangible ways, like the absence of students from racial groups that compose the majority of the state’s population and bar. In *McLaurin*, the Court found that restricting the plaintiff to segregated seating in the classroom, library and cafeteria unfairly hindered his ability to learn.

June 6, 1950: Fisher is no longer required to sit in the back row and joins her white classmates in the front row of the class.

1950: NAACP adopts a resolution at its annual convention to only pursue cases seeking to end segregation.

August 1951: Fisher graduates from law school.

Spring 1952: Fisher gives birth to a son, Bruce. She and her husband had adopted a baby girl, Charlene, during the protracted litigation (still trying to track the exact date down—very interested in the fact that she adopted and raised a child during litigation and her law school education).

1952-1953: Fisher practices law part-time in her hometown of Chickasha.

1954: Supreme Court decides in *Brown v. Board of Education* to reverse *Plessy*.

1954: Fisher joins a firm in Oklahoma City.

Aug. 1956: Fisher becomes public relations director at her alma matter, Langston University.

Late 1950s: Fisher returns to Oklahoma University to receive a masters degree.

1959: Fisher begins teaching at Langston.

1981: Fisher named by Smithsonian Institute as one of “150 Black Women who have had the most impact on the course of American history.”

1987: Fisher retires from Langston.

Dec. 5, 1987: Fisher's husband dies.

May 1991: Fisher receives an honorary doctorate of law degree from the University of Oklahoma.

1991: An anonymous donor establishes a \$100,000 scholarship in her name at the University of Oklahoma.

1992: Fisher is inducted into the Order of the Coif at the University of Oklahoma law school.

April 1992: Fisher is appointed to the University of Oklahoma Board of Regents by the state's governor.

Spring 1993: Fisher, as a regent, favors granting endowed chair to Prof. Anita Hill, after the Clarence Thomas nomination hearings.

Oct. 18, 1995: Fisher dies of cancer in Oklahoma

Sept. 2000: Fisher's granddaughter, Adanma, enrolls in the University of Oklahoma.