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Charles Hamilton Houston as the father of the Civil Rights Movement

Julius A. Young Jr.
Clark Atlanta University

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ABSTRACT

CHARLES HAMILTON HOUSTON AS THE FATHER OF THE CIVIL RIGHTS MOVEMENT

Committee Chair: Charmayne Patterson, Ph.D.

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This study explores the idea of who was the first to foster a national movement to weaken Jim Crow laws. This study was based on the premise that Martin Luther King, Jr. was an important figure, but not the actual father of a movement to grant blacks equal rights, as many suggest. A case study analysis approach was used to analyze data gathered including primary sources, personal letters from Charles Hamilton Houston to his parents and friends, as well as court documents related to cases he argued in federal and state courts. In addition newspaper/magazine articles from Houston's time, articles focusing on him after his death, and sociological studies from that time were also utilized. The research found that Charles Hamilton Houston was the first black lawyer to challenge "separate but equal" with national success. Houston used empirical and scientific data of that time to show the facilities were not. The conclusion drawn from the findings suggests that the legal victories Houston achieved provided all Americans with a basis from which to challenge segregation and unequal treatment under the law in America.
CHARLES HAMILTON HOUSTON AS THE FATHER OF THE CIVIL RIGHTS MOVEMENT

A THESIS
SUBMITTED TO THE FACULTY OF CLARK ATLANTA UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTERS OF ARTS

BY
JULIUS A. YOUNG, JR.

DEPARTMENT OF HISTORY

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CHAPTER I

THE BACKGROUND OF CHARLES HAMILTON HOUSTON

During Alexis de Tocqueville’s travels, he characterized nineteenth century America as a nation of laws.¹ The Constitution is the law of the land and determines our rights as American citizens. Contrarily, the document did not apply to people of color or women when it was written. Hence, the legal system had to be used as a vehicle of change in order for full equality to occur. Equality was/is important to social progress and a strategy of using the law to gain rights was imperative. The academic field was a catalyst for how the civil rights movement started. The legal movement for civil rights had a father. That man was Charles Hamilton Houston. This research shows how Houston’s strategy sparked the civil rights movement for equality in education, labor rights, and criminal prosecution. In addition, the belief that lawyers had to engineer laws to become better is explored.

Houston taught many of the great legal minds who fought segregation in the United States. His strategies assisted Dr. Martin Luther King Jr. and others, to have more people protected with equal protection under the law. His military experience set him on a path to become a lawyer. The experience of his teaching at Howard Law School exhibited his talent as a legal mind. The influence that he had on smaller cases which led to the landmark de-segregation case, Brown vs. Topeka Board of Education, divulged the strategy that would overturn Plessy vs. Ferguson.

Houston was born on September 3, 1895 in Washington, District of Columbia(DC).²
His parents were William Lepre Houston and Mary Hamilton Houston. He was the only child produced from the marriage. William Houston was a principal for a school for blacks in Paducah, Kentucky in 1890. Later, he accepted a position as a clerk in the War Department in Washington, DC and brought Mary with him after meeting her in Paducah. When William moved to Washington, he began his legal studies at Howard University’s Evening Law Department. On July 16, 1891 William married Mary.3

William was a general practice lawyer and Mary was a hairdresser. Houston's parents lived off the modest income their occupations generated. Mary’s clients included many senators’ office staff (male and female according to research) as well as established black patrons. William’s practice led Charles toward his early understanding of law. His intellect was piqued at Amherst College and refined at Harvard Law School.4

Charles attended many cultural activities despite his parents’ budget. They often took him to the zoo, concerts, and matinees. Books were an abundant resource in the Houston household as Charles became a “bookworm.” A piano, though expensive, was provided for Charles in his pre-adolescent days. The piano and books would become much of Charles’ focus in the early part of his life.5

As an only child, Charles emulated his father's intelligence.4 William had experience as an educator before he was a lawyer. The atmosphere of black mistreatment led many blacks to have a vested interest in having at least a rudimentary understanding of their rights. William was happy to give Charles any information he felt his son could comprehend. This activity cultivated erudite behavior at an early age.

His intellect led him to move up the ranks in school very quickly. Many teachers thought that he was bored with school since it came easily to him. His parents were faced
with the challenge of stimulating Houston’s intellect in an optimal fashion. This endeavor was inconvenient since educational facilities for people of color were limited. Their solution was to enroll Charles in M Street High School in Washington, DC (currently Dunbar High School) when he was twelve years old.  

M Street was the first black high school in the country and several prominent blacks were educated there. Carter G. Woodson, the second black person to earn a PhD from Harvard University (after W.E.B. DuBois), was a graduate and taught there. Mary Church Terrell, one of the first black women to earn a college degree, also attended. M Street was very different not only because it was the first black high school but also because its curriculum was based on college entrance requirements, not vocational education like many other schools at the time.

Charles was still a young child when he entered high school; many of his classmates were older. Thus, he had periods of adolescent restlessness during which teachers commented on his defiant behavior. Whether it was through the prodding of his parents or the natural maturation process, Charles developed into an excellent student at M Street. During his senior year, Charles earned no grade lower than "G" for good (no research showed an A-F grading system at the school). The grades were impressive considering M Street’s rigorous curriculum. He received a full scholarship to attend the University of Pittsburgh, but his parents wanted him to go to a more prestigious university. Amherst College saw his records and offered a partial scholarship. A full scholarship would have been ideal; nonetheless, Charles’ parents budgeted for his education and he was on his way to Amherst on September 13, 1911.
Charles was very enthused about his days in college even though he was usually the only black student in class. He had very few friends and rarely went on or was paid social visits. He described himself as too shy or proud to visit his fellow white classmates in their fraternity houses. Hence, early at Amherst, he arranged for his mother to get him an extra room on campus strictly for his studies.\textsuperscript{14}

The experience gave him more self-confidence. In a letter to his father he wrote, "Let us... resolve to depend upon ourselves exclusively as much as possible in all walks of life."\textsuperscript{15} As an only child, Charles was accustomed to isolation and his grades did not suffer from being a social outsider. His grades were normally "A"s and "B"s and his study habits were superior to many of his white counterparts.

His social life at Amherst had a normal schedule. He would sometimes wake up at 5:40 am to play tennis with those in his dorm until 7:00 am.\textsuperscript{16} Due to his study habits, many classmates would come to study with him but the visits dissipated between exams. His good work endeared him to the faculty there. The main reason why his social life did not flourish more in his second year was because the other young men moved to various fraternity houses at the beginning of their second year while Charles stayed on campus.\textsuperscript{17} Charles was not discouraged by these realities.

Charles' grades endeared him to his white classmates. The yearbook staff of 1915 commented that he was one of the hardest workers in his class and deserved any benefits his scholarship would earn him.\textsuperscript{18} Ironically, Charles' gift later in life was public speaking but that was the only subject he received a "C" in while at Amherst. Another irony is that even though fraternities were foreign to Charles because of race, he graduated Phi Beta Kappa with a degree in English.\textsuperscript{19} The honor society was/is for those in the top ten
percent of a graduating college class. Thus, he was a member of an academic society that most students in college would only dream of joining.

Charles took a deserved vacation from academia after graduation. He traveled that summer to see his maternal grandparents in Ohio. He came back with no clear sense of where his life would take him. His passion for the piano was still great and he considered a career as a pianist. He took French, Spanish, and German in college because he thought he had the potential to be a diplomat. A certainty was that Charles’ father would use any influence possible for Charles to have a job until he found his true calling. William had already met with Howard University trustees before Charles graduated from Amherst to discuss a position.

Charles’ first job after Amherst was as a teacher of English and Black Literature at Howard University. He was appointed to that position on June 1, 1915. Charles was a substitute professor for G.D. Houston (no relation). Charles was apprehensive about the job due to his lack of experience but that was compensated by his knowledge of the subject matter as an undergraduate. He flourished in time, teaching English, and he developed his own curriculum for a course called Negro Literature in which various black authors were studied. The process of Charles finding a profession was delayed by the political environment of 1917. World War I was well underway and the United States broke its policy of neutrality and declared war on Germany that year.

Charles’ view on the war echoed the sentiment of many intellectuals, both then and in the future. The war was just another chance for blacks to fight for a country that refused to acknowledge their plight. In addition, the prospect of fighting for the liberty of foreigners was frustrating considering blacks did not have those basic rights in their own
country. Charles decided that if he were to serve, he would aim to be an officer, not an enlisted man.25

The separation of the races was still a reality in America and the military was by no means different. The president of the National Association for the Advancement of Colored People (NAACP), Joel Springarn, approved of a separate officer training program for those of color.26 Public opinion was mixed concerning Jim Crow in the military. Charles, among many other educated blacks, supported separation based on the idea that the program would be similar to the Jim Crow schools that already existed. Those who shared Houston's opinion knew the time was not right for a fight for desegregation. Charles was a founding member of the Central Committee of College Negro Men, and they pressed the War Department for a separate officer training camp. They lobbied elected officials and sponsored mass meetings of blacks to support their cause.27 On May 12, 1917 the War Department announced that the separate training camp was approved and a week later Des Moines, Iowa was selected as the site.28

Unfortunately for Charles, the officers had to be twenty-three years old or older. Charles was still twenty-one years old. He shared his father's stubbornness and wanted to be an officer. William called senators and colonels for a favor. Charles even met with an adjunct general to plead his case. A departing black soldier wanted his training to be delayed in order to be married. The marriage allowed Charles to take his place and he left for Des Moines in June 1917.29

The War department selected General Charles Ballou to command the training. The men trained for ten hours a day and were determined to attain their commissions. No complaints were ever made concerning their conduct. Their leisure activities, which
consisted of dances and casual drinking, were saved for Saturdays when they could enjoy the camaraderie with blacks in the local community.30

Ballou sent a report back to the War Department that July. The instructors all gave good reports, but Ballou’s report was not similar. Ballou doubted that the men had the mental potential and high qualities of leadership necessary to command. He reported that they would develop into officers but only with mediocre efficiency.31 Hence, the Secretary of War, Newton Baker, felt their training should be focused more on infantry status.

The black officers, including Charles, were unaware of this decision. Charles applied for engineering and artillery duty.32 A familiar routine was soldiers going to their commander’s office regularly to ask when they would receive their assignments. The newly trained black officers were so persistent that the commander finally informed them of Baker’s edict and their options. They had two choices: follow orders or resign.33

In October 1917, 629 black officers received their commissions from the Des Moines camp.34 Charles became a first lieutenant. The Washington, DC community held several parties for the nearly one hundred black officers that came back to the area. Charles was not enthused about the parties but went to one at M Street High School.35 He spent the rest of his furlough with his father, extended family, and Margaret Gladys Moran. Moran, from Virginia, had come to live with his father and mother when Charles left for camp.36 The research does not show them to be related and Moran became Mrs. Charles Houston in the future.

Charles reported to Camp Meade, Maryland in November 1917, content with his status as an infantry officer. That contentment would not last long. The army assigned the Des Moines trained black officers to an artillery unit shortly after their arrival. The
officers' predictably poor performances, considering their lack of training for artillery, confirmed the army's belief about black officers' alleged incompetence. This action caused Charles to use every avenue possible to complain to the proper authorities.\textsuperscript{37} 

Houston's public disapproval of army policy did not ingratiate him to many.\textsuperscript{38} The black officers were already housed separately from whites. To add insult to injury, the army housed conscientious objectors with the black soldiers. The objectors were seen as cowards and lowly to most in the military. His immediate superior officer was a career military man who did not appreciate Charles' unpopular views on army policy.\textsuperscript{39} Thus, Charles was assigned the most arduous and distasteful tasks for the duration of his infantry career. 

Charles was assigned as a judge advocate for two black soldiers shortly after the artillery debacle. The soldiers were accused of disorderly conduct during a Thanksgiving furlough. Charles found no sufficient evidence for their conviction.\textsuperscript{40} The two soldiers were acquitted. A young white colleague of Charles stated that Houston was "no good" because a conviction should have been rendered despite lacking evidence.\textsuperscript{41} Another case included a black noncommissioned officer on trial for disorderly conduct and insubordination. The investigation found that he was one of the best noncommissioned officers in his company and followed an officer's orders when arrested. Nevertheless, the soldier was sentenced to a year of hard labor, loss of rank, and forfeiture of two-thirds of his pay.\textsuperscript{42} 

The incident marked a paradigm shift in Charles' life. Against army policy, Charles visited the stockade and gave the man words of encouragement. He knew the man was lacking the means to mount a proper defense. Hence, Charles declared that if he lived
through the war, he would study law and work for those who could not defend
themselves.\textsuperscript{43}

Charles accepted a demotion to second lieutenant to become an artillery officer. The
job brought him closer to the enemy as artillery officers were assigned to go to France
during the war. For blacks, the war being waged was not only against the Germans, but
also against the army, as relations between white and black soldiers could be as
ideologically contentious as the physical parameters of the war. The army flew the same
flag but blacks and whites had unequal perceptions.

The white soldiers did not take wearing the same uniform as blacks as a sign of
equality. According to Charles, many of the white soldiers informed German prisoners of
war that the black soldiers were not to be respected. They warned the French women that
the black soldiers were demonic, inhumane people.\textsuperscript{44} Hotels did not let blacks in because
of those types of inane warnings.\textsuperscript{45}

These experiences were not exclusive to Charles' military career. His time at Amherst
had prepared him adversity. The injustices made him bitter toward the United States. The
reality for the time was that a black person could be well educated, serve in the military,
account for an important percentage of America's labor force, and still be disrespected by
the larger white population. Conversely, a European who just matriculated through Ellis
Island in New York would have more human rights respected in America than a black
person in many cases. Charles knew this was true, but he was stubborn. He was
determined to prove that the Constitution applied to all Americans, not just white men.

Thus, the confusion concerning what would he do in life was gone. He knew that the
law would be the only equalizing factor blacks had with which to attain equality. The
negatives in his life were something Charles often turned into positives. Being an only child, Charles became self-sufficient. As the only black at Amherst, Charles was an exceptional student. As a judge advocate in the military, he saw major differences in racial treatment.

To find the inconsistencies in life and make them strengths to succeed was a strategy Charles used to find his vocation. He would use that same approach to find loopholes through which unjust laws could be reformed. He returned from France a frustrated man because his country did not recognize the importance of blacks as equal human beings under the law. However, the frustration motivated Charles to fight for millions who could not fight for themselves.
Chapter 1


3. Ibid., 18


5. Ibid., 25.


9. Ibid.

10. Ibid.


13. Ibid., 30.


15. Linder, 2.

16. Ibid., 2.

17. McNeil, 32.

18. Ibid., 32.

19. Ibid., 33.

20. Ibid., 34.

21. Ibid., 34.


23. Ibid., 169.


27. Ibid., 37.

28. Ibid., 38.


31. Seventeenth Provisional Regiment Commanding Officer to Adjunct General’s Office, July 10, 1917, Howard University Records.


33. Ibid., 39.


35. *Welcome Reception for Officers of the 17th Provisional Training Regiment Program*, Central Committee of Negro Men file, Box 1 William Houston papers, standard diary, Howard University Records.


37. Ibid., 41.


41. Ibid.

42. McNeil, 42.


44. Ibid.

45. McNeil, 43.
CHAPTER II

HOUSTON'S TIME AT HARVARD LAW SCHOOL

The legal standing for blacks in America was tenuous for most of the first half of the twentieth century. One of the first recorded opportunities for a black lawyer to argue before the Supreme Court was Noah Parden in 1906. His case involved Chattanooga, TN police in a lynching.\(^1\) The police were found guilty of criminal contempt in not acting to stop the lynch mob in \textit{US v. Shipp}. Progress for black lawyers was slow, but considering that \textit{Plessy vs. Ferguson} occurred only 10 years earlier, the action of a black lawyer litigating in the nation's highest court was considerable. After blacks' service in WWI, the race had a larger claim for which to demand equality. Houston came back from Europe bewildered by the treatment he had received as an army officer in France. It did not stop his drive to achieve goals that were foreign for most blacks of the era.

Houston's goal after the war was clear; he would provide a defense for those who could not defend themselves. His college specialty of English improved his abilities in litigation. His family background was another influence for him since his father was a lawyer. The social climate would influence his direction toward the law as well.

Charles' father's legal practice typically focused on civil law. Events of 1919 occasionally shifted his focus at times. The summer of that year ushered in the greatest period of interracial strife the nation has ever witnessed.\(^2\) T.S. Jones was a black man engulfed by the carnage of the era in Washington, DC. On July 21, 1919, Jones was out looking for children of a friend when he found in the wrong place at the wrong time.
When attempting to return home, he was intercepted by a white mob. He ran but was caught and hit with a pipe by the group. After the assault, Jones reached for a revolver, shooting and killing a nineteen year old white man. The elder Houston took the case but could not avoid Jones’ conviction.³

Houston had already applied to Harvard and was accepted before the Jones incident. Jones’ conviction added further incentive to Houston’s sense of purpose for being there. On September 18, 1919 Houston entered Harvard Law School.⁴ Although the institution had a reputation for high academic standards, it was known for rejecting applicants based on religion and race. He knew that the prospect of having a full time job along with being a student there would be laborious. His parents pooled their resources together with Charles’ savings and veterans’ benefits to see him through school.

Even at Harvard, academics came naturally to Houston. In his first year, despite having few fellow black students to discuss scholastic issues, he earned coveted “A” grades. His second year he socialized more and moved into an apartment with Jesse Heslip, a fellow black student. Raymond Alexander was another black roommate who later became the head of the National Bar Association.⁵ Alexander would be far from the last prominent person Houston would meet at the school. Houston took part in a meeting with Black Nationalist leader Marcus Garvey while at Harvard; he always took pride in and privately espoused the virtues of Garvey-ism.⁶

Dean of Harvard Law School, Roscoe Pound was another influence for Charles. Pond wrote Houston a glowing letter of recommendation on Houston’s behalf. The letter led to Houston being on the editorial board of the Harvard Law Review.⁷ He was the first black
student to receive that honor. The accomplishment was astounding considering the review was one of the most esteemed bodies in the field of law.

Houston had success; nevertheless, those less fortunate were a focus of his while at Harvard. Black and Jewish students did not have access to law clubs as white students did due to segregationist practices in the Boston area. White Harvard Law students had constant access because many law clubs were available for them and attorney support was prevalent. Black and Jewish students did not have those favorable circumstances. Alexander and Houston spoke with other students and organized the Dunbar Law Review to provide access to resources for black and Jewish students’ alike.8

Improving the quality of legal instruction had to be a factor if the basis of equal protection under the law could be succinctly argued in court. Research on how to teach others in a more efficient way would be a field Houston would concentrate on as a lawyer. Houston expressed the goals of his postgraduate work to the Veteran’s Board when asking for funds for his Judicial Science studies after his graduation from Harvard Law School in 1922:

My reasons for desiring graduate work are both personal and civic... a deep desire for further study in the history of the law and comparative jurisprudence... and the belief that there must be Negro lawyers in every community... the community... the great majority of which come from the Negro schools where the training will be in the hands of Negro teachers. It is in the best interests of the United States... to provide the best teachers possible.9

Pound knew Houston’s talents and was excited to give him an opportunity to earn a doctorate in Juridical Science after he graduated. Houston earned a scholarship and an “A” average in his coursework. His Philosophy of Law class, which was taught by Pound, gave Houston insight into how to win court arguments. His professors were complementary of his above average work. Felix Frankfurter, who later became a
Supreme Court judge was his advisor for his dissertation on the functional study of requirements of notice and hearing in governmental action in America.\textsuperscript{10}

His doctoral studies in 1922 and 1923 while at Harvard did not deter Houston’s activist passion against marginalization of some students. He met with fellow black students when they protested racial discrimination in freshman housing. He still praised the activities of Garvey and the notion of black economic growth. Focus on cultivating the black educational experience on campus was a consistent theme of his time at Harvard.

His experience with foreign languages made traveling a significant interest to Houston. Hence, he accepted the Sheldon Traveling Fellowship and attended school in Madrid, which added to his post-doctoral studies.\textsuperscript{11} His studies were in law and he spent nine months in Madrid. The experience provided an opportunity to view how racism was seen in other parts of Europe as a civilian. The aspect of him being a student was different than being a soldier. The main difference was the Spanish citizens established the social norms without the United States Armed Forces’ influence.

The lifestyle in Madrid opened Charles eyes to new ways of thinking. The concept of time was completely opposite to what he saw at American colleges. Professors normally came late to class.\textsuperscript{12} The delays caused Houston to have more dialogue with his classmates and see how their society functioned. The professors were late but were highly qualified with well-established international reputations. The difference between Spanish and American curricula was apparent. The Spanish students possessed a broad education background and were normally steeped in liberal arts. This aspect was different from most American lawyers who were steeped more in business or scientific study. The
educational priorities showed the European penchant for the holistic nature of learning whereas the American style was more business-oriented. In addition, Houston’s color was not a significant issue in Madrid. The experience was one of the first instances for him in which a large percentage of non-black people were not bothered by color.

Houston returned to Washington, DC when Calvin Coolidge was the president of the United States in 1924. The country was still divided into two societies. Inventions and credit allowed whites to live in an era where they believed that permanent prosperity was imminent. In contrast, blacks still faced the problems of chronic unemployment, subpar education, and health care. Although mob violence and the Ku Klux Klan (KKK) were far less of a factor than in 1919, black people were normally “de facto” victims of laws that did not guarantee support in their position as equal citizens of the country.

During the 1920s, a significant change occurred in black America. It was not a change in thought, but in location. The South lost a major portion of its workforce due to the Great Migration. Between 1910 and 1930, cities such as Chicago, Detroit, New York and Cleveland saw their black populations grow by as much as forty percent. The migration patterns, along with the integration of a new work population due to WWI, caused the number of blacks in industrial jobs to swell.

The migration developed a division of labor for blacks in the South and the North. Northern blacks were in more intense competition for employment since rural blacks from the South were moving to the cities. Workplace restrictions were being eased due to a number of factors. There was an absence of a rigid color barrier to black employment, educational opportunities, and amount of income. For example, the only opportunity for blacks to obtain clerical work in the South was through black businesses/schools.
Conversely, blacks in the North were able to get jobs with the civil service, which increased black political clout.\textsuperscript{16}

The increased social mobility of blacks made class significant in the process of justice for the community. The successes of a select class of blacks caused a rift over how to promote ideas to buttress equality. Marcus Garvey felt the American social system was corrupt and that separation of the races was the best answer for black people. W.E.B. DuBois was a prominent black intellectual who felt consistent emphasis on education was the best path for blacks as citizens of America. Their viewpoints showed the double consciousness that existed in black America considering both men felt blacks still had to act as Americans but still have a focus on their color in a pronounced fashion.

Whether African Americans actually suffered a strain of double consciousness is a matter yet to be determined. Nevertheless, it is essential to point out that an altogether different and powerful source of psychic distress of the souls of black folk could be found in a process of not recognizing troubles, or disrespect encountered on a daily basis—that is, in the general refusal on the part of whites to acknowledge the humanity of blacks.

Some of the external prejudices against poor, impoverished Black Americans might even be justified, a conservative-minded Du Bois acknowledged, but the systematic humiliation black people faced on a daily basis was something else again.\textsuperscript{17}

But before that nameless prejudice that leaps beyond all this he stands helpless, dismayed, and well-nigh speechless; before that personal disrespect and mockery, the ridicule and systematic humiliation, the distortion of fact and wanton license of fancy, the cynical ignoring of the better and boisterous welcoming of the worse, the all-pervading desire to inculcate disdain for everything black, from Toussaint to the devil,—before this there rises a sickening despair that would disarm and discourage any nation save that black host to whom “discouragement” is an unwritten word.\textsuperscript{18}
One of the best vehicles to remedy pain experienced by African Americans was through education and legal acumen. DuBois’ emphasis on education being the best way to improve black society won out over Garvey’s. Houston had to fight the stigma of blacks being perceived as discouraged to learn as much as possible in the greater society. E.A. Johnson, for example, remarked upon “the danger in teaching a race or an individual to accept the estimate others may put on them.” He noted that the “American system of treating Negroes has made the Negro in many places think he was a good-for-nothing, and he has accepted that classification of himself and seeks in many instances to appear good-for-nothing.” Anticipating Carter G. Woodson’s “Miseducation of the Negro” thesis by more than a generation, Nathan B. Young singled out for criticism the scholastic training of black youth:

From a tutelage whose spirit, wittingly or unwittingly is anti-Negro, many Negro youths return from college and seminary with despair settled down upon their soul—a despair brooded in a partial, and often times, prejudicial reading and interpretation of philosophical formula and historical data. Their minds are stored with half-truths, more mischievous and misleading than bold error. With these as premises, they proceed to argue themselves into the belief that theirs is an impotent race, so conditioned and prescribed by a civilization to which it has made no contribution, that it is impossible to form to pursue any distinctive race ideal.

The legal system was one vehicle for blacks to expand their opportunities for social mobility. The opportunities, won in the court system, gave more blacks a better chance to succeed in life. Also, the opportunities emboldened blacks to ask for more access to the prosperity whites enjoyed. The push to enable blacks more protection under the law was led by the black bourgeoisie class, of which Houston’s family was a member.

Unfortunately, that class was composed chiefly of white collar workers, and its small business enterprises were insignificant to the American economy as a whole. Thus, the
political power of the group was limited. In addition, the artisans, skilled workers, and educators of the black community did not have a history of being leaders on a national level in terms of establishing public policy. Blacks in America always talked about inequalities in society but someone needed to litigate and teach other lawyers in a more formal fashion. Hence, the black lawyers of that time opened their mouths so that the civil rights leaders who followed them could shout.

Charles was one of those preeminent black lawyers. He started to practice law in Washington, DC in the summer of 1924 and took on small cases shortly thereafter. He practiced with his father and the firm Houston & Houston was born. Criminal litigation was limited and most of the cases involved civil matters. His first arguments were far from the landmark cases that would open up America for all to become active and willing participants in progress. The new job was the least of Houston’s worries though.

Charles had a distant but significant relationship with Margaret Moran. She was a family friend who stayed with the Houston family while Charles was at Harvard. She enjoyed his attention, and Charles relished the opportunity to tell her of his many exploits in college and overseas. On August 23, 1924 Charles and Margaret (Mag) Moran were married. Howard University would be the educational platform from which strategies to confront Jim Crow, the moniker for pro-segregation laws, were developed.
Chapter 2


5. Ibid., 50.


8. Ibid., 52.


13. Ibid., 54.

14. Ibid., 54.


19. Allen, 8.

20. Ibid., 8.

CHAPTER III
HOUSTON'S DAYS AT HOWARD LAW SCHOOL

Charles' first job as a lawyer was working with his father. William was comfortably established as legal counsel for middle class blacks and some whites. His first clients were sometimes maids, chauffeurs, lower echelon government workers, and general laborers. Nevertheless, he fought for their legal rights without bias. The practice was a general one, specializing in domestic relations, trusts, and estates. There was a steady flow of clients and William was always willing to give Charles advice.¹

A primary segment of advice was on how to assess legal claims. The questions that led to legal arguments had to be concise for the Houston firm to think of taking a case. In addition, the price of services were given beforehand to ensure clients were serious about their issue and payment for services. William made his oral arguments in court as succinct as possible so there would be no errors to render adverse decisions. William taught the subject matter of Legal Office Management at Howard Law School.² Thus, it was an important part of his law practice.

The budget was small and salaries for employees were low. Fees were always charged because William felt that he was a professional and should be paid like one.³ That practice was an impediment for those who might have trivial cases and others who had legitimate gripes but little money.⁴ This action ensured that clients were not being frivolous in their claims and the Houston firm was efficient in the time they worked.
Charles differed from his father in the facet of claims and clients' means. Charles would take the cases of those who had little money but legitimate grievances. His case load was normal for a novice lawyer. Contrarily, the income level of some of his clients was striking. Some would have four or more children but only make twenty dollars a week. Their inability to pay caused Charles apprehensive when bills needed to be paid. Nevertheless, a supportive father ensured Charles' credit status remained safe.

The time Charles spent as a full time employee at Houston and Houston would be short. He knew that the law needed to be taught properly. Thus, he set his sights on becoming a professor. His references from Harvard Law School were Dean Pound, Felix Frankfurter, and the law school faculty. His attributes were destined to have a profound impact on the direction of high level litigation in some capacity. Howard University's staff received the recommendations from Harvard's staff and offered Houston a full time faculty position in 1924.

The fact that the position was full time was an anomaly considering that Howard was a part time evening law school. The national accrediting agencies did not consider Howard Law School legitimate to certify even considering that a large number of black lawyers in the country graduated from the university. The number of full time teachers was a factor in accreditation denial. In addition, most part time schools operated with lower educational standards and inadequate libraries. Some students who continued their education after Howard at other schools were forced to take remedial classes since Howard did not possess the standards for normal matriculation in comparison to other universities.
The slights in standards were taken seriously by Howard’s administrators. In June 1920, university trustees had voted to take steps to improve the School of Law that it may become eligible for membership in the American Association of Law Schools (AALS). The buildings that made up the law school, its admission standards, and overall curriculum needed an overhaul. The addition of a proven intellectual such as Houston was also what Howard needed.

Houston did not start as a juggernaut. He was still a new member of the faculty and taught classes that were not his strong point, which was the Interstate Commerce Act. He did not teach that course until his second year at the school. That subject had been his focus with Frankfurter while at Harvard. Initially, Houston taught Surety of Mortgages, Jurisprudence, and Administrative Law.

Houston had a massive amount of respect for Howard as an institution and for what it had done for his family and race in general. It had produced William Hart, who while a professor at Howard, litigated Hart vs. Maryland. That case was a Jim Crow transportation case in which the court upheld Hart’s contention that forced separation of the races was unconstitutional as it affected interstate travel. The first woman admitted to practice law in Washington, DC, Charlotte Ray, was a Howard graduate as well. To bring the connection closer to home, Howard was the place in that area that gave his father an opportunity to get law school experience and become an esteemed Washington, DC lawyer.

A breakthrough happened with one of his former Harvard connections. Samuel Horovitz asked for Charles to write a brief for a Supreme Court case. Bountiful Brick Co. vs. Elizabeth Giles. It was a case involving the accidental death of Giles husband,
Nephi. Houston and Horovitz worked on behalf of Giles. The brick company was near the railroad and crossing the tracks was the shortest way to work. Nephi Giles took that way to work on June 17, 1925 and was struck by a train and killed. The Industrial Commission of Utah found Bountiful liable for Mr. Giles death and ordered financial restitution. Bountiful appealed the decision and felt that Giles was responsible for his own death since he took a short cut to work. The Court upheld the lower court’s decision and Houston experienced his first Supreme Court victory. He did not feel that writing briefs would be his main purpose in law, but Howard University would lead him to many career paths not imagined.

Nonetheless, the task of upgrading Howard was an arduous one. Many of the students those enrolled had full time jobs, but Houston did not accept excuses. That aspect infuriated some students. Houston never asked them for more than he exerted himself in terms of effort. Students were normally studying rudimentary law strategies. Houston changed that outlook. He insisted students think about the broad spectrum of societies, laws, and classes of people. His later courses emphasized the interrelationships of race, class, and law in society.

After three years of practicing as an attorney and teaching, he had the opportunity to study the shortcomings of black lawyers. To find mistakes in law study would add to the struggle for liberty and improvement of black life in the United States. Also, the study would find specific reasons why black lawyers were faltering. The additions he planned for instruction would come by eliminating faulty practices from performance.

Houston perhaps best captured the differences between the old and new generations of black lawyers – or at least the younger generation’s perception of its elders – in his 1928
survey of African American lawyers in the cities specifically augmented by migration from the South. Among the younger cohort of black lawyers, he found much to take pride in – particularly their education and willingness to practice. “On the part of the younger men there is a marked leaning toward firms, and an increasing willingness to specialize,” he noted. Younger lawyers seemed more willing to take risks in practice than the older group, Houston observed: “They are studying and accumulating experience. They bar no opponents, and no proposition is too hard for them to handle.”

Older African-American lawyers fared much worse in Houston’s study. “So far as the older lawyer is concerned he is not found at the head of any non-political movement or considered as a leader of community thought in Boston, Philadelphia, Washington, Cleveland, Toledo, and possibly Chicago.” Houston denigrated the older lawyers’ lack of education and training, arguing that:

The truth is that older Negro lawyers are not students. What practice he has does not require that he should be. The major portion of his work involves only a few, very definite, stereotyped situations. . . . As long as the cases run true to type he makes a fairly brave showing. But shunted ever so little off the beaten path, he becomes befuddled.” Criticizing the older cohort’s lack of education, practice experience, and initiative, he concluded: “the business man claims that the Negro lawyer’s disposition to sit on his diploma and consider his study at an end, is just sheer laziness. Much of this seems to be true. They do not know how to study and are too shiftless to learn.”

Houston’s observations spoke more to the aspirations of the post-World War I black lawyers than to their experience. In fact, the legal training they received at Northern law schools went only so far in the face of the many difficulties they encountered upon entry to the law profession. Black graduates of even the most prestigious law schools could expect no job offers from white firms or governmental employers, and few black firms existed to train them. Those black firms that existed were not following the partner-and-
salaried associate model that was normal in larger white firms, but rather consisted of two or more lawyers sharing office space but not the profits.22

These problems did not lead many black lawyers to think of landmark legislation to solve America's problems. A significant issue was simply arguing enough cases to support themselves and a family financially. The instability of work led many to leave the profession. Carter G. Woodson estimated that nineteen percent of black lawyers left the profession shortly after certification. Houston saw that in Washington, DC only thirty of the ninety-eight of the city's black lawyers depended on law as their main profession.23 The research does not give an exact occupation these lawyers had besides being a litigator. This activity shows that being a lawyer was more of a second job than the primary profession for most black lawyers in the city.

Another major problem that black lawyers faced in establishing their practice was not just money, but the views of other blacks. Many black lawyers would consolidate with white lawyers and the white litigants received the credit for the trials. Both the NAACP and Marcus Garvey would retain white lawyers, and as late as the 1960s, the Black Panther Party, also employed white attorneys in Huey Newton's murder trial, prompting harsh criticism from outraged black lawyers.24 The white society treated blacks as inferior and some blacks perpetuated such treatment of their own.

Unfortunately, the effects of simply being black were enough to be adverse for a black person's health. Many of the health issues that disproportionately affect blacks in the present day (hypertension/high blood pressure) existed in Houston's time. Common diseases of the 1920s were tuberculosis and polio. Houston was ignoring his wife's consistent calls to take more time to take care of himself. In June 1928, it appeared he
had tuberculosis of the left lung. In August, the diagnosis was clear. He had no energy and a small tuberculosis legion was found on his left lung. He had to sit out most of the 1928-29 school year.

The diagnosis did not stop Houston's yearning for Howard to receive accreditation. The new University president, Mordecai Johnson, faced a conundrum as well. Fenton Booth was the head of Howard's Law School. Booth was leaving Howard in 1929 to become the Chief Justice of the United States Court of Claims. It was an honor for Howard, but Booth's departure required the school to appoint a new dean of the law school. Booth stayed on as acting dean until Houston replaced him.

Houston attempted to make Howard a school of societal significance and establish its excellence in education. Close to twenty-five percent of the black lawyers in America attended Howard in 1928-29. They had to have a specific role in society. Houston developed them into social engineers. "He [black lawyers] must act as a business advisor... for the protection of the scattered resources possessed or controlled by the group... He must provide more ways to amend means for holding within the group the income now flowing through it." The message was clear. The main way to get rights was to fight for them with a quality understanding of the law.

Houston's main intention at Howard Law School was to make the law school efficient in training. The first step was to give the students more useful professional skills and give them a more access to diversity in legal studies. The application of law to more simple business relations was part of the new direction. Often, black lawyers did not have access to clerkships because of racism. Thus, the typical black lawyer needed more training in the legal aspects of black economic, social, and political life.
The day school’s enrollment and curriculum were growing as the push for full accreditation continued. Conversely, the night school’s progress was declining. Most of Howard’s law graduates, including Charles’ father, were night school graduates. To become a first rate law school, the day school had to take precedence. In the school year of 1928-29, twenty students were registered in the day program and nine in the night program. The next year, twenty students were registered in the day program and only one in the night school. The law school had to make an economically efficient choice.

Monetary concerns were not the only ones for the law school. Supreme Court Justice Brandeis was an advisor to President Johnson in many ways. Brandeis knew that the school would have to produce more legal minds versed in the United States Constitution if blacks were to ever receive equal rights. This advice meant that quality legal instruction had to be geared toward having constitutional lawyers coming to the fore. The change made the Constitution a critical social engineering tool to be studied more in depth at Howard than in previous years.

In 1930, the night school was disbanded. The students in the program could remain enrolled until graduation or transfer to the day program. The resources for the night program could be dedicated to helping in other areas of the curriculum. Houston was voted to begin his second term as vice dean. His focus on producing better lawyers received the same dedication that he displayed while defending black army soldiers in WWI. The hours were long but the work had to be done for the accreditation process to be successful.

The move to close the night school was met with resistance. Many pointed out that the school had originally opened as a night school. In addition, the school produced the best
black lawyers of its time even under the night school’s constraints. The economics of the issue were apparent because many of the attendees could not afford the school without working during the day. Some even felt that class was a factor in that those who attended the night school would be more conscious in their activities toward helping lower class blacks.  

Staff issues were another concern with the law school’s change. Alumni felt that the schedule would conflict with many of the professors’ schedules. Some white professors resigned without providing a specific reason, causing some to feel racism was being exhibited at the school. Johnson gave an interview to the Washington World stating that the resignations were unfortunate and due to the pressures of outside business. The explanation did not satisfy those upset about the situation.

Houston was subject to criticism as well. He was seen as trying to make Howard Law School similar to Harvard. The critics felt that the changes would be to Howard’s detriment. In addition, some held the view that President Johnson was being lead up a blind alley by a fortunate but insensitive Harvard graduate. The higher admission requirements, change of hours, and increased classroom expectations and curriculum caused serious concerns for Howard supporters, both black and white. 

Houston had to funnel more change down the line of Howard’s already agitated older patrons/employees. His most ardent action involved dealing with the law librarian, James Waters. Waters was known by the faculty and students for frequently being late and lacking formal training. Houston’s review found that he needed to be replaced. The faculty felt it was another attempt for a Harvard trained man to fire those who were experienced. Houston did compromise and placed Waters on a leave of absence during
the 1931-32 school year to pursue studies in law library administration. The extension of the school year to thirty-two weeks for day students along with the Waters incident further enraged Houston’s opposition.

The unrest and jeers from alumni could not have sat well with Houston, but his goal was to create a quality institution of learning, not to make friends. The American Bar Association’s (ABA) inspection was in 1930 and Houston had little time to worry about complaints. It was the first time that the ABA inspected a predominantly black law school. Only seventy-one law schools in America had been approved by the body, regardless of color. Their requirements were that students have at least two years of college attendance, adequate school facilities, including a library of over 7,500 volumes, three full time instructors, a three year daytime program and a four year night program.41

The AALS had similar standards. In addition, they increased substantially in 1932. A library system with ten thousand volumes with a portion of which a complete national register system, Supreme Court reporters, federal statues and digests, and six legal periodicals were among the many provisions AALS required.42 It took a good amount of work and foresight to meet these standards.

Nevertheless, Houston put the effort into improving the school and produced results in accordance with accreditation. By October 1930, Howard had four full time law professors, one full time librarian, a library of 10,000 volumes, part time instructors, and an adequate separate facility for law school instruction. In 1931, the ABA gave Howard Law school full accreditation.43 The higher entrance requirements permitted the ABA Council on Legal Education to approve all of Howard students’ work after April 1931.44
Houston had accomplished his secondary goal of giving the black community a quality law school in which to educate its lawyers, but the primary fight was just beginning.

The accreditation coincided with Thurgood Marshall’s first year at the law school. The young pupil was a quality student who had a Bachelor of Arts (BA) from Lincoln University in Pennsylvania. He was born in Baltimore, Maryland and came to Howard because the University of Maryland’s law school would not accept him because he was black. That excuse was suitable for denial of admission but not at achievement in Houston’s classes.

Houston’s work at this time differs from common public opinion about the civil rights movement. Most see the primary antagonist to black equality as white people. Houston’s work shows that blacks were instrumental in stopping the progress of black America as well. The trite behavior of some in positions of power caused black law standards to stand in a quagmire. That behavior was prevalent but rarely discussed by those during that time and now.
Chapter 3

1. McNeil, 60.
2. Ibid., 61.
3. Ibid., 61.
4. Ibid., 61.
5. Ibid., 61.
6. Ibid., 62.
8. Logan, 225.
9. McNeil, 64.
15. Ibid.
23. Ibid., 9.
24. Ibid., 7.


29. Ibid.


31. Ibid.

32. Logan, 267.


34. Ibid., 6-8.

35. McNeil, 71.

36. Ibid., 72.


39. Houston to Faculty and Administrative Staff of Howard Law School, June 29, 1931, William Houston files, Howard Law School Archives.


43. McNeil, 75.

44. Ibid., 75.

CHAPTER IV

THE RELATIONSHIP BETWEEN HOUSTON AND MARSHALL

Howard’s University Law School’s standards intimidated many, including Thurgood Marshall. Failure was not an option due to his family’s obligations and sacrifices. Marshall had a wife and had to make a career in order to leave his parents’ house and establish a household of his own. His mother had pawned her jewelry just to pay his tuition. By the end of his first year, half of his classmates were asked to leave. He refused to be stunted by the curriculum because law was the only career in his plans.

At the end of the first year, Marshall was at the top of his class. This accomplishment gave him confidence to believe that he could succeed as a lawyer when school was over. His performance enabled him to obtain a job as a student assistant in the university’s law library. The job did not just involve the responsibility to keep the library in order and help obtain books. The opportunity to work alongside Houston was an event that altered the course of Marshall’s life. Although Marshall’s outgoing personality was different from Houston’s serious persona, the discussions on how to mold the law in their favor was their common bond.

The lessons Houston imparted upon Marshall and his other pupils were not always law related. Much of the instruction had to deal with temperament. “Lose your temper, lose your case,” was Houston’s mantra for dealing with white judges, lawyers, and jurists who had preconceived notions of black people. The focus on how to use the law to improve lives was always the key message.
Although Houston was a quality instructor, many factors that contributed to a decline in students pursuing higher education. The Great Depression made any monetary expenditure questionable. Howard Law School’s enrollment dropped nineteen percent in 1928, but money was not the only factor in lower student enrollment. The colleges eligible to send students to Howard decreased as the university increased its standards of scholarship. Those that were meeting the standards were few in number, but Marshall and people who followed him proved to be enough to make black life in America better.

The dialogue between Houston and Marshall solidified the purpose of black lawyers for Marshall. Houston let Marshall know how blacks could achieve empowerment in this conversation, "We have got to turn this thing around. And the black man has got to do it; nobody is going to do it for you. You have got to go out and compete with the other man, and you have got to be better than he is. You might never get what you deserve but you will certainly not get what you do not deserve."7

The learning process at Howard Law School was constructed by Houston and concentrated on the Constitution. The objective was to change how judges and juries thought about black people on trial. The goal was for those whites involved in the judicial process to see black people as being subject to equal protection under the law. Learning the law was just the first step in becoming a social engineer. The main requirement was to know what the law should be. Trips to the local jail, police precincts, FBI headquarters, and the U.S. Attorney’s Office were normal. The procedures of gathering evidence, jury selection, and interrogations had to be common knowledge in order to provide proper defense.
Marshall, along with all the law students, was proud of the accreditation accomplishment. Enforcement of the stringent rules did not end once standards were met. By Marshall’s third year, only six students of the original thirty-six in his class remained. Marshall would earn his credibility by working closely with Houston from his days as a student at Howard until Houston’s death in 1950.

A murder first thrust Houston into the national spotlight. On January 1932, Paul Boeing went into the guest room of his home in Loudoun County, VA. He saw that his sister Agnes Boeing Ilsley had been beaten to death and her maid Mina Buckner’s skull had been crushed in the next room. Boeing, Ilsley, and Buckner were all white. Investigators found scratched bits of a black person’s hair and skin beneath Ilsey’s fingernails.

Immediately, the white community wanted retribution. Lynch mobs were gathered to find anyone associated with the crime. The alleged killer, George Crawford, was apprehended in Boston and extradited back to Virginia. He was a black man. The NAACP agreed to retain lawyers to defend him and knew that the task to save him from the death penalty would be tenuous at best. Walter White was the executive secretary of the organization and knew that the best lawyers would have to be assembled to aid in Crawford’s defense. One lawyer that he knew was capable of providing such a defense was Charles Hamilton Houston.

The trial was a national spectacle since the killing of two white women by a black man in any time was and is subject to immense scrutiny in America. The fact that Houston demanded an all-black legal defense team was another attention getter. One of
the major factors that Houston focused on was the process of jury selection. A person is entitled to a jury of their peers; thus, the exclusion of blacks had to be addressed.12

Originally, the judge who denied Crawford’s extradition to Virginia was James Lowell. He had serious qualms concerning how the South would handle the trial and was blunt on how he thought the situation would unfold. His legal reasoning was that since Virginia did not permit blacks to serve on juries, any conviction of George Crawford would be voided by the Supreme Court as contrary to the 14th amendment. “The only persons who would get any good out of it would be the lawyers,” he declared. “The whole thing is absolutely wrong. It goes against my Yankee common sense. . . They say justice is blind but it is not as blind as a bat.”13

Lowell’s decision started a groundswell of debate on fairness. Virginia Representative Howard Smith started impeachment proceedings against Lowell. It was a cancelled point when Lowell died weeks after his ruling. The U.S. Circuit Court overturned Lowell’s ruling. The Supreme Court did not hear the case and Crawford was bound for Virginia and his future was bleak.

Consequently, the jury would be a critical factor in determining if a harsh conviction would come for Crawford. Hence, Houston was aggressive on the process of jury selection when Judge James McLeMore was picked to try the case. Houston cross-examined Judge J.R. Alexander who drew the jury list. The questioning established that no blacks were on the list of prospective jurors and the custom was for whites only to serve on juries.14 Alexander also pointed out that there were blacks who met the requirements to be jurors but were not chosen.15 That fact did not sway McLeMore and he went along with the state.
McLemore’s decision added to Houston’s frustration but his strategy was shaped by the ruling. Houston’s statement that Loudoun County and Virginia were on trial as much as Crawford was evoked sympathy from many who advocated justice regardless of color. In addition, it was good strategy to try a case in the court of public opinion as well as the courtroom. The jury ruling gave Houston a primary tool in any appeal if Crawford was convicted of murder/homicide.

Houston developed a dignified strategy to save Crawford’s life. Charley Johnson was the man believed to have committed both murders. Crawford simply served as the lookout for the robbery. Race was not discussed by Crawford’s lawyers or the prosecution. Houston pushed the premise that killing Crawford would not absolve Johnson of the murder meaning that one more innocent person would die.

Money and color were factors in the case but not in the typical ways of that time. Many blacks could not afford lawyers when charged with crimes and the public defenders were incompetent. Thus, they did not have a good chance to defend themselves in court. Crawford did not have that problem since Houston and the team took the case for free. The NAACP had trouble raising the money for Crawford’s defense but managed to provide enough resources for Houston’s team. Furthermore, the legal team was not able them to find lodging near Leesburg, which increased defense costs. Race was accentuated when blacks in the area did not want them in their homes for fear of possible reprisal.

Howard University became the headquarters for practice and information gathering. It served in that capacity since blacks were not welcomed in facilities near the courtroom for an extended stay. Marshall was a third year student and spent hours researching the
complex issues. He cross examined some of the legal team and it built up his skills. Walter White was impressed when he came to visit during various sessions. The practice was needed as the trial started in December 1933.

The crux of the evidence in Crawford’s trial was his confession in Boston, Massachusetts. If McLemore refused the confession to be read, Crawford would have a good chance of being acquitted. Houston argued that Crawford’s confession was coerced through undue punishment. Crawford’s refusal to sign the confession showed he was indecisive. No signs of physical violence committed by Crawford were shown, but the specificity of the confession made the possibility of a jury finding Crawford innocent unlikely. Crawford admitted that he was with Charley Johnson and had stood watch as they robbed the house. Crawford even told Johnson, “You didn’t have to do that (referring to Johnson murdering the women).” After McLemore saw the photos of dead bodies, he declared the confession valid.

Although the prosecution had no other evidence that Crawford committed the murders, the case was doomed as far as Crawford’s innocence was concerned. Houston’s only strategy of defense was to ensure that the death penalty would not be used. He called three, black ex-army members that knew Crawford to rebut testimony that Crawford bragged about the murders. Houston pleaded that if Crawford was killed, the true murderer, Johnson, would not be found. The jury believed Crawford’s confession. Nevertheless, they were swayed by Houston’s argument. Crawford was found guilty and sentenced to life in prison.

The trial was not a complete failure for Houston. His primary goal was to save Crawford from going to jail at all. That action was not fulfilled, but the secondary
intention was to save Crawford's life. Saving his life was accomplished, and the people of the community benefitted. Relatively soon after the trial, the community had a some black jurors on trials.²⁴

The image of black lawyers was helped by the performance of the Houston team. Judge McLemore and the media were complimentary of their demeanor and professionalism in the courtroom. The trial gave McLemore a vision of what should be the conduct in a trial by attorneys, regardless of color.²⁵ The issue of black lawyers' incompetence was clouded as Houston demonstrated the fundamentals of what a lawyer was supposed to do. The money spent by the NAACP did not save Crawford from imprisonment, but it led to many victories for blacks in the American judicial system.

The victory led to a fact finding mission on how the law was being enforced in the South. It was chartered by the NAACP. The Crawford case garnered Marshall's interest in the subject and Houston brought him along as he toured the South. They were armed with a typewriter, asking questions of blacks. The circumstances seemed innocuous, but many blacks had been killed there for far less.

One aspect of the Southern journey was to see the social structure of the society for black people. Lynching was an integral part of the injustice many blacks faced in the south. The safety of blacks truly varied from day-to-day. A man could be the victims of a murder simply for simply questioning why the crops he raised were gone from the farm he rented from a white man. In addition, lynchings did not only persist as retribution for sex crimes as was commonly alleged. Houston's studies found that only sixteen percent of the crimes that led to lynchings dealt with sexual matters. The others "crimes" were
charges as serious as murder to more frivolous infractions against the unwritten rules of Southern etiquette.\textsuperscript{26}

Findings from Houston’s study reached the halls of Congress. They were to be used as evidence in having the Costigan-Wagner Bill to end lynching in the South pass.\textsuperscript{27} The bill did not pass due to lack of support from President Franklin Delano Roosevelt (FDR).\textsuperscript{28} Houston saw that, “the truth of the matter is that lynching is not to protect Southern women but Southern profits. It continues to exploit blacks through terror in that they will not protest because of fear.”\textsuperscript{29} The impression was entrenched in the people’s psyche that a black person did not have rights to be respected. The number of white women and children present at lynchings enforced the sentiment. Hence, both blacks who were killed and whites who began to de-value humanity, were victimized by the heinous crime. Unfortunately, these discoveries were similar to what Ida B. Wells Barnett found in her observations of the South many years before Houston.\textsuperscript{30}

The condition of schools was another aspect examined during Marshall and Houston’s trip. The doctrine of “separate but equal” was not being practiced in the South. In some schools they saw, whites had running water and bathrooms whereas blacks had to cross highways and woods to use the restroom facilities.\textsuperscript{31} Also, schools abandoned by whites that were in close proximity to black schools and still had amenities such as desks and other school equipment. Yet, many southern black schools had no desks or chairs. Nevertheless, the blacks were not allowed by local authorities to move into the abandoned buildings or utilize the remaining facilities.\textsuperscript{32} These findings were instrumental in developing a strategy to fight segregation.
The accomplishments in the courtroom and data gathered on “separate but equal” did not leave Houston out of the way of criticism. The Crawford case was not a verdict welcomed by all. Some felt that he capitulated to the prosecution. A push for full acquittal could have been made since no murder weapon was found and no eyewitness testimony was available. Nonetheless, a black man accused of brutally murdering two white women in the South was enough for a lynching in the 1930s. Hence, a defense that resulted in a black man’s life being saved gave Houston’s task perspective.

In addition, the trial and trip throughout the South caused some at Howard to voice complaints. They felt that he was neglecting his duties as the dean by spending so much time away from the school. They did not take into consideration that he was practicing what he instructed by investigating all avenues to ensure that the law served his people. The one lesson Houston constantly referenced to was that you cannot please everyone.

The criticism made Houston more willing to entertain other alternatives for a career. He had taken a school that had not been previously known as a bastion of academic excellence and made it the only accredited black law school in the country. He saved the life of a black man who was implicated in the murder of two white women. He risked his life gathering information for the foundation of other cases. The halls of academia could not confine Houston in his zeal to help the helpless.

In 1935, Walter White offered Houston the position of Special Council for the NAACP and Houston accepted the offer. He would have more resources to challenge the scourge of Jim Crow on a legal platform. Houston had done more than an admirable job of educating black people. It was time to challenge legal precedent. Houston became Special Council at the NAACP after serving out his term as Vice Dean at Howard.
Houston was not only a voice for the legal world, but also in the legislative branch of government. He gathered information that showed lynching as a tool of terrorism as well as Southern vigilante law. His anti-lynching work rarely is not as documented as his courtroom prowess but was just as daring as his Supreme Court cases. The courtroom was not his final stop on the journey for civil rights.
Chapter 4


2. Ibid., 50.

3. Ibid., 50.

4. Ibid., 50.

5. Ibid., 50.

6. Houston, Personal Observations, 3.


8. James, 53.

9. Ibid., 54.


11. Ibid.


15. James, 7.


17. James, 5.

18. Ibid., 9.

19. Ibid., 9-10.

20. Ibid., 11.


22. Ibid.


28. Ibid.


32. Ibid., 164.

CHAPTER V
KEY COURT CASES OF HOUSTON’S CAREER

You cannot win a fight without throwing a punch. Jim Crow was the consistent blow to the idea of American equality. The Plessy decision was the force that destroyed the so-called “equal plane” upon which all Americans were expected to compete in society. Separate but equal schools and buildings were constitutionally permissible. Hence, to join the proverbial fight of Jim Crow by heading straight ahead into the pugilist was risky but that was Houston’s course.¹

Walter White asked Houston to present a plan, or to be the fighter against Plessy. Houston charted a noble course; his argument was for enforcement of separate but equal.² The discourse was to be that segregation’s mandate needed to be met and if not, state and federal institutions were negligent. Segregation would end when its promise was not fulfilled.

Living apart from whites was a reality for most blacks. A fight on all fronts would have been too costly and expensive for the high profile black lawyers to fight at every level of government. Thus, Houston focused on discrimination in education and transportation.³ The strategy was to have the courts enforce the law of the land- to make “separate but equal” truly existed.

Murray vs. Maryland, although a state not federal case, was the first time in which Houston argued the position that a state did not offer “separate but equal” facilities. Donald Gaines Murray was an eminently qualified recent graduate of Amherst College as
well as a member of a highly respected Baltimore family. He wanted to attend the University of Maryland (UMD) School of Law, but UMD had a history of not accepting blacks. Murray was an impeccable candidate; hence, Houston and the NAACP took his case.

Murray applied to UMD in 1935 and the registrar promptly returned his application and accompanying fee. The only college in the state of Maryland system available for blacks was Princess Anne Academy on Maryland's Eastern Shore (currently the University of Maryland Eastern Shore). That school had no law school. Therefore, the state of Maryland had no law school for blacks which voided any "separate but equal" standard. The suit was brought against UMD's president Raymond Pearson.

Houston presented mitigating conditions to win his case. First, Murray's qualifications exceeded UMD's standards. Second, the school rejected him only for being black. Finally, UMD violated Murray's 14th amendment rights by doing so. UMD's arguments were expected to be verbose pertaining to the standards explaining why separate facilities based on race were necessary.

However, UMD's argument was not complex. Judge Eugene O'Dunne's first question swung the pendulum in Houston's favor. O'Dunne asked Assistant Attorney General of Maryland Charles T. Leviness, "Was the plaintiff's race the university's acknowledged reason for Murray's rejection?" Leviness answered, "Yes, It was a matter of public policy."

O'Dunne's question elicited a response that established race as the determining factor for which Murray was denied admission. Leviness showed that blacks had scholarships available for law school only if they attended schools out-of-state. In addition, he felt it
was not practical to have to build a graduate school every time a black person wanted to attend one. More importantly, Leviness admitted that Murray’s qualification were enough to qualify him at the school. Furthermore, Princess Anne only had one faculty member with a master’s degree and none had a doctorate.

Houston’s questioning of President Pearson reiterated the claim that the university did not enforce the Plessy standard. Houston asked questions not only to gather information but also to make inferences that “separate but equal” was not maintained. His interrogation revealed that the university had more advanced classes than Princess Anne. Also, Pearson confirmed that out-of-state scholarships were only created after Murray’s rejection and that Latinos, Indians, and Asians were eligible for admission. Contrarily, blacks were excluded.

The case was not complicated. Clearly, there were no black law schools comparable to UMD in the state. O’Dunne issued a ruling from the bench stating that Murray should be admitted to the law school and Houston won his case. UMD appealed the ruling but the state court of appeals upheld it. UMD went to the Supreme Court but gave up on their case before any arguments were heard. Murray successfully graduated from the law school in 1938.

The first Supreme Court case Houston tried was Hollins vs. Oklahoma in 1935. Jess Hollins was sentenced to death for raping a white woman on December 30, 1931, four days after the alleged attack occurred. He was illiterate and when he confessed to the crime had not seen an attorney. The judge who sentenced him to death stated that he remembered the race riots of Tulsa, Oklahoma in the 1920s and feared mob violence.
In December 1932, the Oklahoma Criminal Court of Appeals granted Hollins a new trial on the grounds that he had not voluntarily waived his right to counsel and a jury trial. Judge Will H. Chappel wrote that, "this ignorant, defenseless Negro, with the terror of the mob in his mind, did not and could not voluntarily do anything, and therefore did not waive any of his constitutional rights." At the 1934 trial, Hollins was found guilty and again sentenced to death. The jury that convicted him had no blacks on it; indeed, blacks were systematically excluded from the jury pool. Moreover, the prosecutor, Sebe Christian, used inflammatory language with the jury. In arguing for the death penalty he asked, "What are you going to do? I don't want life imprisonment in this case because that is too uncertain--would rather you would turn him loose. I think probably somebody might take care of him."

Even though the U.S. Supreme Court and Oklahoma precedent held that deliberate exclusion of blacks from juries violated the Fourteenth Amendment, the Oklahoma Criminal Court of Appeals found that Hollins failed to show sufficient evidence of exclusion "solely on account" of race. Thus, a different tactic had to be employed in order for Hollins to be adjudicated. Many lawyers may have looked to Hollins' feeble mental state as a defense but Houston looked deeper. He planned a defense based on an unequal jury. No black had served on a jury in Okmulgee County since 1907 but seventeen percent of the county was black and many met jury service requirements. The case was won in 1935 after an appeal to the Supreme Court. Conversely, Hollins was never freed. During a new trial, again with an all-white jury; he was sentenced to life in prison where he died in 1950.
Lloyd Gaines was born in Mississippi in 1911 and moved to Missouri during the Great Migration. He went to Lincoln University in Missouri and was president of his class. He graduated in three and a half years. He was rejected in a similar fashion to Murray by University of Missouri’s Law school. He was offered a scholarship to an out-of-state law school since Lincoln had no law school. The difference between Murray and Gaines was that Missouri took its case to the United States Supreme Court.

The NAACP had little support in the Missouri courtroom due to two lynchings that occurred in Boone County, Missouri less than a year before the trial. Gaines was not intimidated and testified as to why he applied to the university. He stated that his reasons were based on the merits of the education he would receive, the proximity of the school to his residence, and the need to study state law in Missouri since he would be a lawyer there. His testimony on why he wanted to attend the university was direct and clear. Nevertheless, the chances Houston and the NAACP winning their case in Missouri was small.

The law school dean, William Masterson, was far from organized. The dean contradicted himself, stating that the university did not focus on state law even as he admitted that the law review devoted at least one article per issue to Missouri state law. In addition, Masterson testified that he could not remember details concerning the law school’s admission process and was not privy to school budget information. The registrar, Silas Woodson Canada, gave credence to other minorities being accepted but not blacks.

The case clearly circumvented the Fourteenth Amendment and anger grew within Houston. Former Missouri state senator F.H. McDavid testified that the student body
would be at a detriment if the school was integrated and that Gaines could get a better education in another state. Also, Gaines would not be a “happy” student in that setting. The state court ruled in favor of University of Missouri and the appeals process toward the Supreme Court began.

The Supreme Court of 1938 had two appointments from President Franklin Delano Roosevelt (FDR). Justice Hugo Black was a former Klansman, who was known for standing with minority rights in court cases. Justice Stanley Reed was less reliable but had a reputation for being persuadable. The only judge Houston knew he would not sway was Justice James McReynolds. He was appointed by President Woodrow Wilson. In addition, he was a known Anti-Semite who refused to speak with Justices Brandeis or Benjamin Cardozo (Cardozo and Brandeis were Jewish). He did not attend Cardozo’s funeral. McReynolds decision was solidified when he stood up, turned his back, and never gave Houston the respect of facing him while he delivered his argument.

Chief Justice Charles Hughes was the key vote. He was the son of an abolitionist minister from New York and a proven consensus builder. Houston felt that if he could persuade Hughes, he could win his case. McReynolds was the only justice to disagree with Houston. By a seven to one margin (Cardozo’s death in July 1938 left only eight justices and McReynolds dissented) the court agreed with Gaines. They found that Missouri was “bound to furnish within its borders facilities for legal education substantially equal to those which the State there afforded for persons of the white race.” They declared that Gaines had to be admitted to the school.

The ruling was significant for black America. A sign that education could be integrated had hope. The case was similar to Murray but Gaines did not share his fortune.
After all the arguments, funding, and discourse, Gaines never attended law school. He had difficulties finding a job, dealt with death threats, and simply disappeared. Missouri did not accept another black student to its law school until the early 1950s.

Although the successes of Rosa Parks and Dr. Martin Luther King Jr. in the integration of transportation were immense, Houston’s contribution to these issues should not be overlooked, considering he came before King and Parks. It was part of his platform to attack *Plessy* and he accomplished that in an unorthodox way. Houston left as Special Council with the NAACP to practice in Washington, DC in 1938 and Marshall took his place and stayed until the 1960s. Houston still worked closely with the NAACP on cases and moving to private practice gave him more independence. He focused on the labor aspect of transportation rather than patronage. He had worked several cases for the Association of Colored Railway Trainmen and Locomotive Freemen but had yet to litigate a case he deemed worthy of appealing to the Supreme Court. White unions had intimidated the major carriers into eliminating black enginemen. The black enginemen’s discrimination claims were that the union was not negotiating labor terms for the benefit of all members.

The Brotherhood of Locomotive Firemen and Enginemen revised its collective bargaining agreement with the railroad carriers to add clauses stipulating that African Americans could account for no more than half of the firemen in ANY service district and should be classified as “non-promotable” firemen in 1941. Unfortunately, the brotherhood did not inform the black firemen of these negotiations. Congress passed the Railway Labor Act that designated the Brotherhood of Locomotive Firemen and
Enginemen as the exclusive bargaining representative for all members of their craft. Finalizing these negotiations without feedback from a key constituency was perplexing.

Houston was very puzzled. He felt that the organization shirked its duty of representing all members regardless of color or creed. Bester William Steele had worked the railways for thirty years in Alabama and was fired shortly after the Brotherhood's decision. Steele was a primary candidate to be defended considering his long history of work. Houston saw the case as a building block to fight segregation in the workplace and joined the group of suits taken to the state Supreme Court.

Houston argued before the Alabama Supreme Court that the Brotherhood enjoyed exclusive bargaining power with Congress. Hence, the violations compromised breaches of the fiduciary duty the union owed to members. Nevertheless, Alabama’s Chief Justice Lucien Gardner interrupted Houston’s argument by declaring that in his more than twenty-five years as a justice, it was the first time a black had argued at the highest court in the state. With that viewpoint, even after all the testimony, it was fair to say that Houston’s chances were slim. The Alabama Supreme Court felt that the Brotherhood did nothing illegal.

The case against railroads and unions could have yielded results that revolutionized the way those industries did business. Many unions excluded blacks and encouraged management to only hire their members. The businesses knew that the Steele decision would provide legal and political cover to negotiate in a free market with blacks and whites alike. The ruling would empower black domestic workers and chauffeurs to have an equal chance to find a job in the trades.

Houston stayed the course, advancing for black workers being marginalized by the
union. The state courts felt that the union had a right not to include blacks in negotiations. The setbacks did not stop Houston. He made his argument before the Supreme Court on November 14 & 15, 1944 in Steele v. Louisville & N.R. Co. The main crux of his argument was that any union had to represent white and black employees equally. Justice William Douglas felt that Houston’s effort was one of the best he had seen and his mind was as sharp as any litigator he had known.

The Supreme Court validated Houston’s opinion in a common sense decision. Chief Justice Harlan Stone wrote the majority opinion. He felt that the language of the Railway Labor Act expressed the aim of Congress to “impose on the bargaining representative of a craft or class of employees the duty to exercise fully the power conferred upon it on behalf of all those for whom it acts, without hostile discrimination against them.” The court found that there was no statutory authority granted to let craft members make rules that marginalized a minority of its members.

Justice Frank Murphy wrote his concurring opinion. It was more emphatic against the wrongs of the Brotherhood than Stone’s was:

Congress through the Railway Labor Act, has conferred upon the union selected by a majority of a craft of railway workers the power to represent the entire craft or class in all collective bargaining matters. While such a union is essentially a private organization, its power to represent and bind all members of a class or craft is derived solely from Congress... But it cannot be assumed that Congress meant to authorize the representative to act so as to ignore rights guaranteed by the Constitution. A sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal, in the light of a Constitution that abhors it, to expose and condemn it wherever it appears in the course of a statutory interpretation.

Houston met his mark in helping curtail Plessy in transportation and education, but the fight was not over for him as far as drawing down the curtains of black marginalization in America. The access to equal education, the right to negotiate fairly in labor, and quality
defense in court were all areas where blacks were the majority of those detached from the
greater society. Similarly, Houston's last Supreme Court case was for the basic rights of
all men. The main issue of *Hurd vs. Hodge* was for blacks being able to live in
neighborhoods segregated based on private prejudices and enforced by government
bodies.\(^4\)

Restrictive covenants were agreements in a municipality or part of a municipality.
They hindered blacks from purchasing homes in white neighborhoods. A black family
could buy a house in an area and if enough whites objected to the purchase, the blacks
were subjected to be removed from the property by law. In 1926, *Corrigan vs. Buckley*
set the precedent in which the law could be utilized. The effect of the judgment was to
give legal sanction to practices established by white residents of the nation's capital to
exclude from certain neighborhoods blacks and other persons whom they regarded as
undesirable.\(^4\)

Houston had so many cases that many of the young black lawyers he either taught or
mentored at Howard Law School helped him manage the load. William Hastie and
Marshall were his most talented prodigies but legal minds such as James Nabrit (he set up
the first civil rights law class in the country in 1938 at Howard Law School and argued
*Bolling vs. Sharpe* which was similar to the *Brown v. BOE* case for Washington, DC)\(^3\),
Phineas Indritz (he helped draft legislation to end segregation at colleges that accepted
federal money and worked with Houston on *Hurd vs. Hodge*)\(^4\), and Robert Carter
(southern district judge in New York State who argued twenty-two cases before the
Supreme Court losing only once)\(^4\) took the reins in many segments of legal jargon. These
lawyers would become the foundation of the Brown defense in 1954.
The Washington, DC Court of Appeals first heard arguments in the *Hurd* case in May 1947. They rejected Houston’s case based on the *Corrigan* decision. Houston was more frustrated than usual. He felt that every city and every area where the black population had any significance was encircled by an invisible wall which crowded black people into ghettos. Further, Houston noted that judicial enforcement of the private agreements throughout the nation revealed problems that proved to be not simply conspiratorial efforts of a few prejudiced individuals but a national policy.

The DC court had Judge Henry Edgerton as the lone supporter of Houston’s argument. He felt that the covenants were void because they restricted where people could move within a city based on the feelings of other members of the community. Also, Edgerton felt they were void because they were contrary to public policy. Their enforcement by injunction violated the basic civil rights of all citizens. He knew that the injunctions against both transfer and occupancy were broader than the covenants since they did not forbid use and occupancy.

The federal government felt it was proper to intervene against racism. Solicitor General Philip Pearlman was to litigate other issues to add to American equality. Unfortunately, the heart of the populace could not be trusted to ensure an equal society. Pearlman spoke in court: “They (blacks) have been told time and again by this Court that this is a government of laws and not of men and that all men are equal before the law. They wait, millions of them, outside this courtroom door, to learn whether these great maxims apply.”

The *Hurd* case did not go without questionable tactics by the NAACP lawyers. George Vaughn of St. Louis gave an aside, comparing ancient Jewish enslavement to Jim
Crow segregation. Instead of looking to a violation of the 14th amendment, Vaughn felt the covenants were akin to going against the 13th amendment which outlawed slavery. Houston responded. “And Moses looked across the river Jordan and across the Mississippi River and said, Let my people Goooooooon!” That elicited a silence throughout the courtroom. Vaughn cut the silence by saying, “As the Negro knocks at America’s door, he cries: Let me come sit by the fire! I helped build the house.”

Marshall argued that state action in these covenants began when the contract was signed, well before the force of their agreement depended on judicial enforcement of the contract. Houston discussed the legal propositions regarding constitutional and statutory violations. He documented the absence of violence and tension in neighborhoods under discussion and gave sociological data relevant to an understanding of the inequalities and illustrative of the racism inherent in the right claimed by the respondents. Indritz gave a virulent speech that stressed the senseless nature of the right to own property without the right to be free from judicially enforced discrimination. The Houston legal team referred the court to their past legal rulings and reminded them that they were not Congress and had no lawmaker credentials. Houston countered; stressing that judicial enforcement of racial discriminatory covenants was incompatible with the rationale for American participation in World War II.

The Court handed down a unanimous decision in Houston’s favor. Chief Justice Vinson declared that the courts could not be used to deny the right of occupancy or ownership on the grounds of race. In addition, the state courts’ enforcement of these codes was unconstitutional and to the detriment of private citizens who were suffering discrimination. He saw that the race and color of the petitioners was the reason they were
denied rights of ownership or occupancy enjoyed as a matter of course by other citizens
of different races. The public policy of prejudice in housing was deemed null and void.

Justice Frankfurter offered another concurring opinion in the case. Part of his opinion
read as follows:

It cannot be the exercise of sound judicial discretion by a federal court to grant
relief here asked for when the authorization of such an injunction by the states of
the Union violates the Constitution- and violates it, not for any narrow technical
decision, but for the considerations that touch rights so basic to our society that,
after the Civil War, their protection against invasion by the States was safeguarded
by the Constitution.

This series of cases showed Houston's ability to adapt to any legal situation. Many
lawyers of our era are specialty lawyers. Houston went from cases of criminal defense to
segregation which strengthened his mettle along with that of his colleagues. The
institutions of America were not equal for blacks so a fight to show that aspect was
arduous but not impossible. Statistics that put the black plight in perspective were that
there were only 487 black lawyers below the Mason-Dixon line; in Oklahoma and
Mississippi there was only one black lawyer for every 236,308 and 168,286 blacks in
those states respectively. More legal battles were needed to end the scourge of what
bothered Houston as a young lieutenant in WWI, fighting for a country that still
disrespected him while in uniform.
Chapter 5

1. James, 65.
2. Ibid., 65.
3. Ibid., 66.
4. Ibid., 67.
5. Kluger, 125.
6. James, 70.
7. Ibid., 71.
8. Ibid., 72.
9. University of Maryland Francis King Carey School of Law. “Donald Gaines Murray and the
   Integration of University of Maryland School of Law,” http://www.law.umaryland.edu/marshall/
specialcollections/murray/ (accessed April 8, 2012).
10. Alfred Brophy, Oklahoma Historical Society Encyclopedia of Oklahoma History & Culture,
11. Ibid.
12. Ibid.
14. James, 104.
16. Linder, 10.
17. James, 111.
18. Linder, 15.
19. Ibid., 16.
20. Supreme Court of the United States. “Members of the Supreme Court,”
    1984), 357.
25. James, 116.
26. Ibid., 168.
27. Ibid., 169.
28. Stout, “A Supreme Triumph Then into the Shadows.”
29. Ibid.
32. Ibid., 161.
34. James, 169.
36. James, 170.
40. Ibid.
41. McNeil, 178.

47. Ibid.


49. James, 192.


51. James, 194.

52. Ibid., 195.

53. Ibid., 196.

54. Ibid., 196.


56. Ibid

57. Ibid

The move to New York with the NAACP did not quell many of the personal problems Houston had in his life. First, the consistent travel to speak on social issues, collecting data on legal grievances, and raising money for the organization took its toll on him. He had respiratory problems years ago and the consistent stress on his body only aggravated that condition. In addition, spending massive amounts of time away from his wife made their relationship even more distant.

In many ways, Mag and Houston were not compatible from the start. She was supportive but did not take a keen interest in the affairs of the day. The intellectual gap was separating them emotionally. Also, the need for a child was important for Houston. Mag did have a pregnancy but it did not produce a child. The strain on both of them was apparent and the burden was too much for both to bear. In 1937, Houston and Mag agreed to split amicably.¹

Houston’s legal workload needed to be shared as well. The cases were coming in rapidly and Houston could not handle the caseload alone. He needed someone he could trust to share the load with him. Marshall, struggling to make ends meet with his own private practice, needed a job. At the time, he was the best choice to help Houston and both men together could help in further litigation and research.

Houston’s ultimate view was to abolish all forms of segregation in public education. It would be done not by forcing fights on any community but by exposing the conditions of
many black institutions in comparison to white institutions, considering that they were
supposed to be equal. In addition, making blacks feel that they owned and controlled their
schools was imperative. The body politic marginalized blacks for so long that more
blacks began to challenge the segregated system in the late 1940s and early 1950s. Many
social issues such as integration of the military, baseball, and blacks becoming a larger
part of the American workforce precipitated more calls for change.

Another key Supreme Court decision was handed down during Houston’s time as
Chief Counsel for the NAACP. Hale vs. Kentucky involved Joe Hale’s conviction for
murder in McCracken County, Kentucky in 1938. No black had served on a jury there
for fifty years even though over 7,000 were eligible for service. The galling proposition
of this case was that the state could not see that it was wrong. The case showed how
much human capital was wasted in many of these fights.

The Supreme Court, after a summary of the facts, said that the case was one “where
the proof might be regarded as sufficient to sustain the ground upon which the motion
was evidently made, but there is wanting in the record of sufficient statement of those
grounds to permit the introduction of that proof. The failure so pointed out is analogous,”
the court said, “to a case where there is proof without pleading, and the rule is that
pleading without proof or proof without pleading are each unavailable.” The court’s
decision was unanimous.

We are of the opinion that the affidavits, which the stipulation of the State were
to be taken as proof, and were uncontroverted, sufficed to show a systematic and
arbitrary exclusion of Negroes from the jury lists solely because of their race or
color, constituting a denial of the equal protection of the laws guaranteed to petitioner by the Fourteenth Amendment.
Fairness was always an important part of what Houston felt society should be based upon. A. Philip Randolph, another titan of the civil rights movement, fought for the rights of black sleeping car porters. His threats of strikes and marches across Washington, DC caused executive order #8802 to come to fruition under FDR, which instituted measure to combat employment discrimination. The creation of the Fair Employment Practices Commission (FEPC) soon followed. Workers were entitled to file complaints on their behalf and the commission was to look at those claims to determine validity. The FEPC was ballyhooed by many including New York mayor Fiorello La Guardia who felt that the order was one of the most important documents in the country's history and the signers the true champions of democracy.

Houston was named as Counsel to the FEPC by FDR in 1944. An issue of the Capital Transit Company discriminating against the placement of black workers caused an impasse between Houston and President Harry Truman, who succeeded Roosevelt in 1945. The dispute stopped any hopes Houston had at a federal bench position but he did not do his job for accolades. He was a lawyer intent on obtaining results and being blackballed for his activities was not his particular concern.

Capital Transit had to answer charges of blacks who accused them of unfair labor practices. The FEPC felt that the refusal to utilize all manpower resulted in inadequate transportation for the government. This suit was brought in 1945 after World War II was over. Hence, wartime controls were not as aggressively enforced and even though the FEPC found that Capital Transit did violate hiring standards, the government did not enforce a directive requiring them to enforce better hiring practices. This inactivity made Houston feel that the government was being lax in its enforcement of policy. Thus,
Houston felt it was time for his resignation. He cited the delay in action and the failure of the government to enforce democratic measures after espousing the benefits of liberty so loudly.\textsuperscript{12}

The FEPC was an organization that meant well but was not going to change employment habits overnight no matter who supported it. Legislation can only work when the laws support punishment of those who infringe basic labor rights and equality in the workplace laws were not being enforced. Hence, there were only light penalties for ignoring the FEPC guidelines. In addition, state laws could be used to establish chicanery in hiring black workers just to put them on the periphery of being full-fledged employees of the companies. For example, states could challenge federal laws with the knowledge that they would lose in court and blacks still could not work at a particular establishment until the judicial process was complete.

A racial incident in 1943 at the Alabama Dry Deck and Shipbuilding Company in Mobile, Alabama served as an example of the hurdles that the FEPC had to overcome. The FEPC called for sweeping employment regulations to integrate the workforce. Unfortunately, this did not make whites kinder but more belligerent toward blacks. The company put blacks to work on the same shift as whites without any prior notice. The War Manpower Commission warned that the predominantly white workers from Alabama and Mississippi were unintelligent people.\textsuperscript{13} Nonetheless, blacks went to work one day in June 1943 and a riot ensued between black and white workers. Blacks were furloughed until a solution could be found and safety measures were enhanced along with investigations that some of the rioters were Axis agents.\textsuperscript{14}
The Red Scare also made a mockery of some people who had no malice in their activities. DuBois, Paul Robeson, Julius, and Ethel Rosenberg were among many who were caught up in the country’s zeal to ostracize communists and communist sympathizers. Equality in the labor movement was one of the sentinel aims of the communists. Unfortunately, that trait caused union workers, who had very limited/no communist affiliations, to be looked at as either informants for government surveillance or subversives against their country.

Houston was not only a champion for black peoples’ rights but also for any group that he felt was campaigning for equality but was being marginalized by the larger society. The most notable example of this practice was his relationship with the alleged communists. Mary McCloud Bethune was one of those charged with engaging in subversive activities toward the United States that Houston defended. His efforts in conferring with Congressional Committees had him reflect on the role that communists had in relation to black people. Their goals were not just communal wealth. They were an ardent voice against lynching, poll taxes, segregation, and for the integration of the labor movement for blacks. He believed that denouncing party membership should not be necessary to prove your loyalty to the country.

Houston was a voice of support in a fractured NAACP when Du Bois was released from the organization. NAACP support for Du Bois was questionable since Walter White had an arduous relationship with Du Bois at best. In addition, Houston’s defense of Dalton Trumbo, novelist, writer of the classic movie Spartacus, and Hollywood editor, before the House Un-American activities committee was another controversy for the NAACP. The organization did not want to suffer a further microscopic investigation
from Federal Bureau of Investigation head J. Edgar Hoover. Nevertheless, Houston had a passion for defending people who were viewed with suspicion without just cause. No research has shown that he was close to being ostracized by the NAACP despite these controversial stances which is a further testament to his talents as a litigator.

Houston's litigation on the behalf Communist Party members/sympathizers did not take away from his patriotic view of America. Thus, his lack of enthusiasm for overthrowing the government stopped him from consistently being a lawyer for the party. Surveillance of Houston by American law enforcement did occur but Houston fought criticism by just stating what he felt was true. He advocated party members' right to free speech and right to assemble just as any other American had. If sufficient evidence was available to find them to be subversive, prosecution was appropriate but heresy evidence was and is not sufficient for a justice system considered one of the best in the world.

The Washington, DC school system was another local cause Houston took on to monitor equality in the schools. His father served on the school board from 1921 to 1924 and he served from 1933 to 1935.18 His position was as Chairman of Student Activities and he made improving scholarship and cultural activities for the students a mission. The drama program was emphasized to give the students an outlet to voice themselves via the visual arts.19

Segregation in the school system was something that raised Houston's ire. He called for the superintendent to investigate when black children were chased away from facilities at local white schools.20 Equal facilities built for black children were another point of emphasis for Houston, not only in the nation, but particularly in Washington, DC. The heating capacities at black schools were not comparable to white schools which
kept the black students at a disadvantage. Houston did not miss an opportunity to mention these inequalities to the proper authorities. This period was also a period to plan out other strategies to defeat Jim Crow.

The NAACP and Houston were not just concerned with blacks being employed in American society. They were concerned with their earning equal pay for equal work as well. One of Houston’s sentinel cases did not even make it to the courts but it did prompt change in urban Maryland school districts nonetheless. Filing a suit concurrent with white teachers who wanted a pay raise was groundbreaking at the time. This approach was to show the white teachers that they could not remain economically segregated from black teachers as well.21

Many of Houston’s interests in terms of fairness were similar to the Progressive Movement. That era brought whites the ability to earn better wages via a more extensive transportation system. Hazen Pingree of Detroit was the trailblazer for the trolley car system that would bring more people into town for work.22 Houston saw access to better transportation as a major tool in integrating the schools as well. Children from rural areas should have been able to get to and from school in a reasonable amount of time in order to compete with their urban counterparts. In addition, the psychological aspect of white children riding on a bus when black children were plodding along the road was tantamount to a symbol of inferiority. His lawsuit’s premise was struck down by the precedent of the 1912 Arizona case Dameron vs. Bayliss stating that walking distance was not sufficient reason for abolishing segregated schools.23 Nevertheless, he filed a lawsuit feeling that transportation at the public expense would lead to beneficial results.
Although these legal issues defined Houston as a public figure, the constant strain of long work hours and some threats to his bodily safety caused havoc in his marriage. Mag did not have the same interests as Charles and they did not move to New York together when he took the job with the NAACP in 1935. They had drifted apart and Houston took an interest in Henrietta Williams, who was his father's secretary in 1936. A romance ensued between Williams and Houston and he filed for divorce in 1937. Houston married Williams in September of that year.

Charles and Mag marriage did not produce a child and that aspect strained their relationship as well. In contrast, Williams provided Charles with the greatest gift he could imagine a son, Charles Jr. Born in 1944, he would be Charles’ only child. Charles’ Jr. further inspired Houston since he did not want his son to grow up in the same America that he had experienced. The prospect of being a social engineer meant even more since he was not just talking of himself or other associates who were grown but children who did not have a chance to determine their life’s path yet, including his son.

Charles Jr. had an experience in the early years of his life and toward the end of Charles’ that put Houston’s work into perspective. Charles and his young son went into a grocery store and Charles was being served. Charles Jr. climbed the soda fountain and the attendant reprimanded the child in a very harsh fashion. Climbing the stool was wrong but, “get down from there, you little nigger- you got no business there” was inappropriate to say least. Houston was so upset that he had to take a sedative upon his arrival at his office for work. One can wonder: would the rebuke have been so stern if the child was white?
That aspect is speculation; but Houston’s goals were very lucid. It was fine to admonish anyone of bad behavior, but the fundamental rights of any person should not be violated under the Constitution. It could not be tolerated in any realm of society, public or private. The goal of fundamental justice for all regardless of color via the established rules was what drove Houston’s scholastic and instructional career. He put pressure on institutional bodies, but also on his own physical being. He could not survive past 1950.
Chapter 6


5. Ibid.


7. “To Name Executive Secretary of FEPC,” New York Amsterdam News, August 9, 1941.


12. Ibid.


14. Ibid.


17. McNeil, 204.

18. Ibid., 123.


25. Ibid., 146.

26. Ibid., 146.

27. Ibid., 146.

28. Ibid., 167.

29. Ibid., 167.

30. Ibid., 201.
The year 1949 marked the beginning of Charles’ constant sickness. He had his first heart attack in that year which led him to consistent medical care under Dr. Edward Mazique. Mazique advocated rest but Houston listened tepidly. The stressors while Charles was at the Freedman’s Hospital caused his wife, Henrietta, to check herself into a hospital stay briefly in November 1949. Charles Jr. was moved from family member to family member much of that year but his father was released in December before Christmas.

Charles became very introspective in his final days. That Christmas he spoke at his family gathering about the international significance of the Scottsboro case involving a questionable rape of two white women by nine black men. He saw it as the galvanizing moment where the masses would come together regardless of color to enforce equal rights under the law. He was enthused by the prospects of better standing in the law but somewhat pessimistic:

So I can’t see how we avoid crisis. And we’ve seen enough in the present days to know that the first reaction of the powers that be is going to be silence and oppression, censorship, and other things. They are going to try to cut off the intellectuals from the masses. So that in this day, while there is still time, the primary task is to probe to struggle... to teach the masses to think for themselves... to know their place and to recognize their power and to apply it intelligently.

Houston recovered and developed arguments in possible education cases, but his
physical issues took their toll. He had checked into the hospital to undergo further medical tests on April 22, 1950. He was alone waiting for his father as he died of heart failure that day. The country lost a legal giant, but he helped develop many that would follow him.

His funeral was at Howard University’s Rankin Chapel. Supreme Court Justices Hugo Black and Tom Clark were on hand for Houston’s funeral ceremony. The ceremony was attended by many national figures who had worked with him. Secretary of the Interior Oscar Chapman, who Houston worked with in information gathering in labor issues, also attended. The church was filled with many who benefitted from the life of the legal scholar and litigant.

The de-segregation movement was truly Charles Hamilton Houston’s defining moment in time. Marshall carried out Houston’s hopes as a civil rights lawyer. Marshall was a willing student who always enjoyed Houston’s stories and appreciated the direct approach of Houston’s educational style. Moreover, Houston built coalitions with people such as Mordecai Johnson, Raymond Alexander, and Louis Brandeis. Frankfurter was a professor of Houston’s at Harvard and was one of the unanimous votes in the Brown decision. These alliances were influenced by Houston’s style and showed all affiliated with Houston that talent can be a bridge between the races.

Unfortunately, Houston did not live to see Marshall’s sentinel moment as lawyer. Brown vs. BOE was the 1954 case that de-segregated schools in Topeka, Kansas and paved the way to integrate all American schools. During the case, Marshall used many data gathering techniques he learned from Houston. The case was won not only by
showing right against wrong but also exhibiting several sources that proved an injustice was committed by the greater society against blacks.

Another tool used was Houston’s use of foreign precedents that could prove useful in a trial. United Nations Educational Scientific and Cultural Organization (UNESCO) was one of the first international bodies to denounce the “scientific” evidence that blacks were intellectually inferior to whites. Gunnar Mydral’s, who was Swedish, *An America Dilemma* spelled out several problems with America’s outlook on blacks. His primary point was that white prejudice and Negro standards cause each other harm psychologically. The foreign contingency of scholars’ viewpoints were all brought into question when the arguments against “separate but equal” came to court. Marshall had a style very reminiscent of Houston in how he argued for those who could not fight for themselves.

Houston should be regarded as the father a movement because twelve of the fifteen lawyers on the Brown case were taught by him, including Marshall, the lead lawyer in the case. Marshall won an argument against John Davis who, during that era, had argued the most cases in front of the Supreme Court. The unanimous verdict was the pinnacle in the process of building a strategy that demonstrated separate facilities were not equal. The ruling showed that Houston’s passion for justice was not in vain.

Marshall’s achievements did not end there. He became the first black Solicitor General in American history in 1967. The position gave him status as the legal representative for the federal government in any Supreme Court case. He took the job instead of remaining as a judge in the Circuit Court of Appeals. He did a serviceable job and was in line to become a Supreme Court Justice.
Nonetheless, his appointment was clouded because of another Houston protégé, William Hastie, who was also in line for the position. He was Houston’s cousin and had graduated from Amherst College and Harvard University just like Houston. He took the job as a federal judge in the Third Circuit Court in 1949 and held the job for twenty-two years. In 1967, President Lyndon Johnson appointed Marshall to become the first black Supreme Court Justice and he was confirmed by the Senate. Black people finally had one of their own to hear cases that dealt with their civil rights issues on the highest court in the land.

The Charles Hamilton Houston Institute for Race and Justice was started in September 2005 by Professor Charles Ogletree, Jr. at Harvard University. The institute has used contributions from lawyers, scholars, and concerned citizens to develop strategies into defeat the chronic ills of discrimination. Their basic practice is to use research to find inequalities to push for reforms in constant injustices. The institute focuses on three areas considered by many to be important to the struggle for racial justice: closing the racial achievement gap, reforming criminal justice procedures, and improving the prospects for people of color and foreign-born citizens to enjoy the full benefits of being Americans.

Harvard University has had prestige since its founding in 1636, but Houston was the conduit for the institution to become more inclusive in its admission/acceptance process. He became one of the top litigators the school has ever produced. He was the first black member of the Harvard Law Review. He would not be the last as Harvard looked to become more diverse and to give students access to various points of view reflective of the society in which they would live. America’s first black president, Barack Obama, has simply carried the torch Houston and other black intellectuals passed down.
Marshall was accepted into a Harvard postgraduate program for judicial science but rejected the offer. He went into private practice in Baltimore but a Marshall protégé did set a high standard at Harvard. Elena Kagan was a graduate of Harvard Law School and held a series of federal clerkships. She ultimately clerked for Marshall when he was a Supreme Court Justice. Her experience had to have taught her a great deal about the law and Marshall was always complimentary of her knowledge base.

Kagan returned to Harvard and became the first Charles Hamilton Houston Professor of Law as well as the first female dean of the Law School. She hired several professors of color during her time as dean which serves as an example of Houston and Marshall’s decisive vision that those underrepresented be given an opportunity to demonstrate their talent at the highest level. In addition, the percentage of minorities in Harvard Law School’s student body increased between 2003 and 2009. Her qualifications lead her to become Solicitor General, then in 2010, the fourth female Supreme Court Justice.

Howard Law School was not as heralded as Harvard nationwide, but proved instrumental in attaining the civil rights of black America from the time of Houston to the present. The objective of the School of Law was/is to produce superior professionals capable of achieving positions of leadership in law, business, government, education, and public service. It had done so for years before and after Houston but he led the school on the path to national credibility. He led the law school to full accreditation. That achievement resulted in more talented students applying for admission. In addition, it provided more access for in depth research avenues to those who were arguing important civil rights cases.
To some, the school was known as the “Dummie Retreat.” Houston quickly changed that perception. His stern pursuit of excellence brought the best and brightest to matriculate at Howard. Houston’s refusal to accept excuses for shortcomings made him some enemies but also won some supporters. In addition, more funding and contributions would come to the school once it showed progress. Hence, the library received the volumes it needed for accreditation due to Houston and Mordecai Johnson’s combined efforts.

One group that contributed heavily to the start of the Modern Civil Rights Movement along with blacks were Jewish people. One of the first major alliances for blacks and Jews was between Louis Brandeis and President Mordecai Johnson at Howard. The exchange of ideas between high level black and Jewish intellectuals made Houston, as well as others, a direct beneficiary. The support of one of the top legal minds in America gave credence for Houston’s revolutionary ideas. To make the law seem as a beneficial for blacks instead of a hindrance was a novel idea, considering that many laws were not being enforced for blacks in terms of basic citizenship rights. Houston used Howard as the launching point for forcing the various levels of government to prove that they were responsible for administering the law to all and they failed in that designation.

Johnson was Howard’s first black president. That feat alone was a major achievement of the time. The success of the law school was further evidence of the competence of a black man running that organization. In addition, the dependence on white figures to educate blacks started to wane at the Law School. The stigma of blacks being inefficient in educating their own was replaced with a sense of urgency because higher learning could solve some social problems in America.
Unfortunately, criticism of blacks who broke away from the status quo was and still is a problem. Houston’s performance was not always approved of by those on the campus. Nevertheless, he established that underdeveloped skill sets could not be tolerated if success was to be met. The significant improvement of the library’s holdings was essential to developing the legal strategies necessary to defeat Jim Crow. Howard was and continues to be a beacon for black lawyers and Houston set those high standards.

The legal fights that Houston won are relevant and naturally pertinent but the arduous process of attaining equality is still ongoing. The factor of having a black President gives an impression that race is not as pressing a factor in our society as it used to be. Nonetheless, current social statistics support that the need for a Houston-like figure still exists. According to a report in the New York Times in 2010, there were a record 580,000 stop-and-frisks in the city in 2009. Most of those stopped (55 percent) were black males (a large portion were also Hispanic), and most were young.25 According to the Census Bureau there were only 300,000 black males between the ages of 13 and 34 living in the city that year. A mere six percent of the stops resulted in arrests.26 The Times article also revealed that in one eight-block area of an overwhelmingly black neighborhood in Brooklyn, the police made 52,000 stops in just four years, an average of nearly one stop for each resident each year.27

Many aspects in our society are beginning to show that inconsistencies in the American paradigm of justice still exist and need a legal crusader. Black unemployment is an indicator of unbalanced hiring practices since the unemployment rate for blacks is normally doubles that of whites at any time even when the economy is sound. The decline of the black population in cities is increasing by these numbers. New York City is
an example of what has happened. Blacks’ moving to the South is one factor but there is also the city’s continued shedding of manufacturing jobs and the shrinking middle class that is pushing it ever closer to becoming a dim, stilted city divided between the wealthy and impoverished. The year 2010 marked the first drop in New York City’s black population since the 1880s.28

The dominant figures of the Civil Rights Movement had different aims than Houston. They had the fortitude to show whites that blacks were full human beings. Houston’s method was to show whites that they had ignored the laws that had to be established for all Americans. Thus, the legal fight for jury service, to be educated, and to live where you chose were paramount to demonstrate equality. The movement’s objective was not to show that blacks were better than anyone else. Its goal was to give blacks the same opportunity whites had at Life, Liberty, and the Pursuit of Happiness.

One precipitous fight blacks are dealing with that should have been addressed well before now is the sexism that exists in education for young black males. Black men, according to the Bureau of Justice Statistics, have nearly a one-third chance of being incarcerated at some point in their lives.29 By the time they are in their mid-30s, a solid majority of black men without a high school diploma have spent time in prison.30 Homicide is the leading cause of death for young black men.31 The modern Civil Rights Movement that provided equal rights to education requires a change in how blacks treat one another as well as how whites see the benefits of educating minorities. Black young men are funneled into special education in public schools at a rate that deserves significant legal challenges.32 Unfortunately, few legal warriors to rival Houston has come
around to address this issue with the vigor with which he addressed segregation and matched success.

Segregation is an issue that is presently as pervasive as when Houston was fighting it years ago. School districts in towns such as Philadelphia, PA, Cincinnati, OH, and Buffalo, NY are among the most segregated schools in the country today. None of these cities are below the mythical Mason-Dixon Line. The education gap is growing between the black community and the general population. Part of the reason is environmental but there have been no landmark initiatives for schools to be de-segregated. Until that event occurs, black education will remain in the malaise Houston saw years ago.

A new Civil Rights Movement is brewing and it is not solely for blacks. Latinos caught in "papers-please" policies, in which local law enforcement can ask people for their citizenship documents under any suspicion, are not reflective of what America is or should be. Income inequality is a civil rights issue as well. Consider this startling information from the Pew Hispanic Center: in the year following the official end of the Great Recession in June 2009, foreign-born workers in the U.S. gained 656,000 jobs while native-born workers lost 1.2 million.\(^33\) Even as the hiring of immigrants picked up during that period, those same workers "experienced a sharp decline in earnings."\(^34\)

Currently, the issue of Latino studies being removed from certain state schools is a civil rights issue. A person has to know something about themselves, their culture, and their past in order to understand how they have added to the melting pot we call America. The Supreme Court case *Hernandez vs. Brown* followed the historic *Brown vs. BOE* decision. Hernandez involved jury discrimination, which the court had long prohibited. The question in *Hernandez*, unlike in *Brown*, was not whether the conduct was
unconstitutional; it was whether the Constitution protected Mexican Americans. It is worth celebrating because Hernandez got right something that Brown did not: the standard for when the Constitution should bar group-based discrimination.

A movement receives its energy from the charisma of its leader. Although a magnetic persona can help galvanize people, it does not signal substantive change overnight. Houston did not have a gregarious personality, but his charisma was evident in courtrooms and the field of academics. His Supreme Court wins caused America to take notice that a black man could use the law to get justice for himself. The concerns were not just for equal rights but prosperity of blacks in the meritocracy that was supposed to be America.

An activist is to consistently inform the powers that be that reforms have to be made or even brought into law to inform society of problems. A lawyer must employ persuadable rhetoric to construct quality arguments that a logical person can support. Houston was a civil rights leader for many reasons. Not only did he open doors for education, which is the passport to equality and social mobility for most, but he also forged a legal path where changes in laws had to be respected. The other civil rights leaders of the time led marches and spoke of educational parity but most were never educators themselves. Houston educated leaders of the legal movement that were relevant well into the 1990s. Other black leaders were successful in a selective capacity, but Houston was the first to establish national precedents to be followed at the state and federal levels in the courts and standards that lasted well after his death. Hence, he defined how to win civil rights before many who have/had more popularity than he does.
Chapter 7


2. Ibid., 206.

3. Ibid., 206.

4. Ibid., 206.

5. Ibid., 206.


7. Ibid.


10. Ibid., 8.

11. Salley, 143.


18. Ibid.


21. Ibid.

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26. Ibid.

27. Ibid.


29. Ibid.


33. Ibid.

34. Ibid.


36. Ibid.

37. Al Sharpton Interview on WAOK-Atlanta, August 28, 2011.
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