

“An Institution Exclusively for Members of the White Race”:
Early Integration Attempts at the University of North Carolina at Chapel Hill, 1933-1939

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Throughout the first half of the twentieth century, the University of North Carolina at Chapel Hill (UNC), like many other universities across the country, remained a whites-only university. Known as the university of the people, the opportunity to receive a public education at the institution did not extend to African Americans. Until 1951, when Floyd B. McKissick, Kenneth Lee, Harvey Beech, and James Lassiter entered the UNC School of Law, the university denied any black student that sought admission.¹ Before McKissick, Lee, Beech, and Lassiter, Harold Epps and Robert Davis Glass attempted to sue the university for entrance into the law school. A little over ten years prior to Epps and Glass, Pauli Murray made her attempt to integrate UNC in 1938. Five years before her, in 1933, a man named Thomas R. Hocutt of Durham, North Carolina, made the first attempt of any African American to gain entrance into UNC. While the judge ruled against him based on a technical error, the political climate in Durham, the state of North Carolina, and much of the South did not create an environment conducive for the *Hocutt* case or the integration of higher education. Nevertheless, grassroots efforts and the help of the NAACP paved the way for a legal attack on segregated education and the separate but equal precedent set by *Plessy v. Ferguson*.

In 1930, the National Association for the Advancement of Colored People (NAACP) applied for \$100,000 from the American Fund for Public Service (AFPS) to lead a legal and educational campaign for equal opportunity for African Americans.² Nathan Margold, an attorney hired by the NAACP, authored a 218-page report outlining the work to be undertaken

¹ *McKissick et al v. Carmichael et al.*, 187 F.2d 949 (1951).

² See the Nathan R. Margold report on Campaign for Education Equality, and civil rights court cases, Administrative File: Group 1, Subject File—American Fund for Public Service, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Educational Equality, Papers of the NAACP, Library of Congress Manuscript Division, hereafter referred to as Nathan R. Margold Report, Administrative File: Group 1, Subject File—American Fund for Public Service.

using the AFPS money. In the report, Margold recognized the underlying issue at hand in the educational campaign: the separate but equal clause of the *Plessy v. Ferguson* case.

Margold outlined three possible situations in which segregated school systems discriminated against children of color and violated the equal protection clause of the Fourteenth Amendment. In one situation, a white officer allocated money to both the white and black schools, but the state statute required the officer to give proportionately, however defined, to both sets of schools. In the second, the state picked the officer charged with allocation, but the statute did not provide guidelines for how to distribute the funds between the separate schools. In the third situation, the state mandated the “separate but equal” principle established in *Plessy*, but allowed the officer discretion on how to allocate the funds. As Margold explained, in each of these three situations, segregation was coupled with discrimination.³

Prior to the Margold Report, the NAACP used taxpayer suits to school segregation in the courts. In their article for the Yale Law Journal, Eva Patterson, Kimberly Thomas Rapp, and Johnson Lee described Margold’s plan for litigation as an alternative he developed when he determined taxpayer suits would not hold up in court, especially given the number of suits needed to start chipping away at the separate but equal clause.⁴ Mark V. Tushnet, in *The NAACP’s Legal Strategy Against Education*, argued that Margold sought to simplify the lawsuits by attacking the inherent inequality of segregated school systems – not the unequal expenditures spent on separate schools.⁵ Margold suggested the NAACP focus the AFPS funds on cases that would challenge segregated school systems that blatantly discriminated through the allocation of

³ Nathan R. Margold Report, Administrative File: Group 1, Subject File—American Fund for Public Service, 30-31.

⁴ Eva Patterson, Kimberly Thomas Rapp, and Johnson Lee, “Equal Justice—Same Vision in a New Day,” Yale Law Journal, September 1, 2006;

⁵ Mark V. Tushnet, *The NAACP’s Legal Strategy Against Segregated Education, 1925-1950* (Chapel Hill: University of North Carolina Press, 1987), 27.

funding and cases that could use the precedent set by *Yick Wo v. Hopkins* to attack discrimination through administrative action.⁶

While the Margold Report included several ways of attacking segregated education, he did not go as far as to attack the principle of separateness. Instead, he noted that the legal fight against separate schools would not necessarily lead to integration. It would allow states to determine how they would remedy the issue of unequal schools, whether through equal allocation of expenditures or desegregation.⁷ The purpose of the legal campaign was not to end segregation, but inequality for African American students. This strategy, Margold suggested, would not alienate the NAACP's white allies nor create more white hostility than necessary in the southern states where litigation would occur.

With Margold's recommendations for litigation, the NAACP began its education campaign. However, in the midst of the Great Depression, the education campaign delayed and the AFPS funds fell short.⁸ With \$10,000 granted and Margold newly appointed to the Department of the Interior, Walter White suggested Charles Hamilton Houston, Dean of the Howard University School of Law, as the first Special Counsel.⁹ Historian Mark V. Tushnet described the appointment of Houston as a move away from white lawyers and towards a black-

⁶ Nathan R. Margold Report, Administrative File: Group 1, Subject File—American Fund for Public Service, 93-94. The Supreme Court ruled that the San Francisco ordinance *Yick Wo* violated actually violated his Fourteenth Amendment rights by arbitrarily citing Chinese business owners for breaking the law of owning a laundry in a building that was not brick or stone when white business owners often did the same. For more on *Yick Wo v. Hopkins* see *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). For more on how Margold used *Yick Wo v. Hopkins* in the report see Patterson et al., “Equal Justice—Same Vision in a New Day.”

⁷ Nathan R. Margold Report, Administrative File: Group 1, Subject File—American Fund for Public Service, 94.

⁸ For more on the relationship between the Great Depression and the distribution of the American Fund for Public Service, see Mark V. Tushnet, “Setting the Course: The Grant from the Garland Fund” in *The NAACP's Legal Strategy Against Segregated Education, 1925-1950*.

⁹ Walter White to Cecil McCoy and Conrad Pearson, March 20, 1933, Legal File: Group1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

centered legal task force.¹⁰ Not only did Houston's appointment mark a change in the NAACP's legal strategy, but it also marked a change in their strategy towards education discrimination. Houston's three-fold strategy included selecting specific cases that would present clear legal issues, selecting cases that would attack prior decisions and precedents, and solidifying interest and support for each case.¹¹

Under this context, the NAACP set out to assist students across the south in segregated education cases. In a memorandum regarding the expenditures of the AFPS funds, Houston urged the Joint Committee to focus the money on the campaign against segregated education. He argued that the Depression led white school officials to spend what little money was appropriated to education on the white schools.¹² This rang especially true in the case of higher education, where white schools received money while black schools started to feel the pressure of even less appropriations. For many students, going to school out of state to receive a higher education became the only option.

In North Carolina, local chapters sought qualified candidates for the integration of UNC. Even before Houston solidified the plan of action for the AFPS funds, Thomas R. Hocutt sought entrance to UNC. March 13, 1933, Hocutt went to UNC seeking admission to the School of Pharmacy. Conrad O. Pearson and Cecil A. McCoy, two Durham attorneys, and Louis E. Austin, the publisher of Durham newspaper *Carolina Times*, went with him to the registrar's office.¹³

¹⁰ Tushnet, *The NAACP's Legal Strategy Against Segregated Education*, 29.

¹¹ Genna Ray McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983), 219.

¹² Memorandum for the Joint Committee of the N.A.A.C.P. and the American Fund for Public Service, Inc. from Charles Hamilton Houston, Administrative File: Group 1, Subject File—American Fund for Public Service, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

¹³ Gilbert Ware, "Hocutt: Genesis of Brown," *Journal of Negro Education* 52 (1983): 227.

Thomas Hocutt, a twenty-four year old man from Durham, attended North Carolina College in Durham. He worked as a waiter in Durham at the Washington Duke Hotel, but his main interest lay in pharmaceuticals. Prior to working at the Duke Hotel, Hocutt worked in a drug store. However, under North Carolina's segregation laws, he could not attend the School of Pharmacy at UNC.¹⁴ Neither the North Carolina College in Durham nor any other black college in North Carolina offered pharmacy degrees, and his only option was to try to win a suit against UNC for entrance.

The two attorneys that accompanied Hocutt, Conrad Pearson and Cecil McCoy, grew up in Durham. Pearson attended law school at Howard University while McCoy attended Brooklyn Law School. Both returned to Durham after passing the requirements for the North Carolina Bar.¹⁵ In a letter to Houston discussing the case and the inclination of some prominent leaders in the black community to stay quiet on the case, White described the two men as "not disturbed in the slightest by this, nor by the pressure of some of the white papers in tempting to scare them off."¹⁶

While Houston could not join the Hocutt case, he sent William Hastie, a doctoral candidate at Harvard University Law School and former professor at Howard University School of Law, to join McCoy and Pearson in Durham. Both Pearson and McCoy once studied under Hastie at Howard. White sent an urgent letter to the two attorneys days before their appearance

¹⁴ Ware, "*Hocutt: Genesis of Brown*," 229.

¹⁵ Oral History Interview with Conrad Odell Pearson, April 18, 1979. Interview H-0218. Southern Oral History Program Collection (#4007) in the Southern Oral History Program Collection, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill.

¹⁶ Walter White to Charles Hamilton Houston, March 20, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress, hereafter referred to as Walter White to Charles Hamilton Houston, March 20, 1933, Legal File: Group 1.

in court to let them know that Hastie would be the one to join Hocutt's defense.¹⁷ He arrived the day before the case was set to be heard.¹⁸

The Hocutt case rested upon a writ of mandamus. Pearson, McCoy, and Hastie argued the university's registrar, Thomas J. Wilson Jr., denied Hocutt on the basis that he was of African descent. In their complaint, they asked the court to mandate Wilson review Hocutt's application without regard to his race and solely on his academic merit, as he would any other application submitted by a white student. An order submitted by Hocutt and his attorneys, but not issued by the court, argued the registrar should admit Hocutt to the School of Pharmacy or "inform him of any deficiency that may exist in his application, allowing him before final disposition is made of his application, reasonable opportunity to supplement his said application with any further data, information, records or other materials that may be required of the University of North Carolina."¹⁹

Their official complaint rested on the separate but equal precedent set by *Plessy*, much like the Margold Report recommended. Pearson and McCoy argued the entity the defendant worked for and reported to, the university, received funding from appropriations allotted by the North Carolina state legislature and therefore needed to promote the education of the state's children and young adults. Because no other state-funded institution offered pharmacy classes, UNC was Hocutt's only option. The complaint also argued Hocutt exhibited all of the necessary academic requirements as set by UNC for admission to the program. Regardless, Wilson denied

¹⁷ Walter White to Cecil McCoy and Conrad Pearson, March 22, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

¹⁸ Memorandum from Walter White, March 22, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

¹⁹ Order submitted by Thomas R. Hocutt, March 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

Hocutt admission based on his race.²⁰ In this case, segregation was coupled with discrimination, just as one of Marigold described in his report.

Wilson's answer to the original complaint included admission to three of the four claims. UNC admitted that Wilson was the person charged with registering students for classes, that the school received funding from state appropriations, and that no other school across the state offered coursework in pharmacy. At the end of each reply, Wilson's lawyers attached the statement, "only of those eligible and qualified to receive such instruction under the Constitution and laws of the State, and under the rules and regulations of its trustees and its faculty" in order to justify why Hocutt could not be admitted.²¹

The legal team for UNC admitted that Hocutt did seek admission, but that the rejection did not rest on a matter of race, but of legal technicality. First, they claimed that Hocutt submitted an incomplete application because his transcripts were not present, which meant Wilson could not begin the review of what materials he did submit. Secondly, the defense team argued that Wilson could not be forced into admitting Hocutt because he did not have the power to change the university's set requirements for admission. Their third argument directly involved segregated education. The defense cited North Carolina's public policy, in both the state's constitution and the university's charter, which did not allow for any university or school to admit people of color to whites-only institutions. Instead, their fourth point harkened back to the North Carolina College in Durham, as well as other black colleges, which they claimed had

²⁰ Complaint filed by Thomas R. Hocutt, March 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

²¹ Answer filed by Thomas J. Wilson, Jr., March 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress, hereafter referred to as Answer filed by Thomas J. Wilson, Jr., March 1933, Legal File: Group 1—University Admissions Cases.

equal opportunity for Hocutt and other African Americans seeking higher education.²² With these claims, the defense attempted to excuse Wilson and the university from the legal challenge while placing the burden on the states' laws and legal precedents, which in the books made segregated education separate but equal, although this was not fully realized in practice.

A memorandum put together by the defense team went into more detail on the exact language of North Carolina's state constitution and precedents set by state courts across the country. According to the memo, Article IX, section 2, of the North Carolina Constitution set the division of schools between the races. Both black and white schools would receive funding from appropriations and taxing by the state, but they would be separate. Section 2 also established the separate but equal mandate, which claimed discrimination or prejudice towards one race would not be allowed when allocating the funds. They also found that just because the funding for UNC was described under a different section than section 2, that the law still stood for universities just as it did primary and secondary schools. The defense stated "so the separate provision for the University, its administration, and its tuition charges, does not affect the scope of the provision of Article IX, section 2 that 'the children of the white race and the children of the colored race shall be taught in separate public schools'" as legal justification for continuing UNC's policy of segregation.²³

Four previous education suits in North Carolina were cited as precedents in the memorandum. The first, *McMillan v. School Committee*, a case from 1890, held that black children could not attend a public school for Croatan Native Americans. The second, *Johnson v.*

²² Answer filed by Thomas J. Wilson, Jr. March 1933, Legal File: Group 1—University Admissions Cases.

²³ Memorandum of Authorities for Defendants in *Hocutt v. Wilson and University of North Carolina*, March 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress, hereafter referred to as Memorandum of Authorities for Defendants in *Hocutt v. Wilson and University of North Carolina*, March 1933, Legal File: Group 1, Cases Supported—University Admissions Cases.

Board of Education, was argued in 1914. The court ruled that North Carolina laws required segregation and the plaintiff could not enter her children into a school for white children. *Pruitt v. Commissioners*, an 1885 case, ruled that taxes collected from one race would be used for the schools established for that race. *Lowery v. Board of Trustees*, argued in 1905, ruled that a new school building for white students was necessary while a new school for black children was not as their building remained adequate.²⁴

The defense also looked at precedents set in other states with similar state constitutions. While all the cases they listed dealt with primary or secondary schools, they reasoned that the decisions reflected a similar situation to the one in North Carolina, where the constitution mandated segregated education at all levels. They cited *Roberts v. City of Boston*, an 1849 case in which Massachusetts ruled that an African American girl must attend one of the two schools exclusively for black students instead of the whites only school within the city, and *Lewhew v. Brumell*, an 1891 case in Missouri in which an injunction was granted to stop black children from attending a white school. The case of *Tape v. Hurley*, in 1885, saw a California girl of Chinese descent seeking to attend a public school win because the state abandoned its segregation policy five years earlier. This was one of the only cases they cited that demonstrated the difference in North Carolina's segregation statute and a state in which segregation policies no longer existed.²⁵

Ultimately, the memorandum ended with an explanation of how the statute mandating segregated education did not violate any person's Fourteenth Amendment rights. The defense stated, "That Fourteenth Amendment does not require the education of the white and colored

²⁴ Memorandum of Authorities for Defendants in *Hocutt v. Wilson and University of North Carolina*, March 1933, Legal File: Group 1, Cases Supported—University Admissions Cases.

²⁵ *Ibid.*

racess in the same school is a proposition that is established beyond question.” They then went on to discuss the separate but equal clause established in *Plessy* and its application to the Hocutt case. Using the previous cases discussed coupled with the outcome of *Plessy*, the defense argued the mandamus filed by Hocutt could not be justified by the Fourteenth Amendment because the state could not be expected to establish equal higher education institutions for black students when no such desire had been established prior to this case. Similarly, they argued the Supreme Court had not yet had the chance to determine if the Fourteenth Amendment prevented discrimination at the professional and graduate training level of higher education.²⁶

Several historians have written about the *Hocutt* trial. They often described the courtroom as packed, filled with energy, and a scene for the community.²⁷ The NAACP released a series of press releases that detailed the case. On March 24, the National Office described why they chose to back Hocutt and send Hastie to assist Pearson and McCoy. They claimed the case had the potential to affect not just UNC, but higher education opportunities for black students across the South. The March 24 press release also made note of prominent African American leaders in Durham who chose to remain silent or write to local newspapers in opposition of Hocutt.²⁸ A week later, after the mandamus was denied, the NAACP circulated a second press release that described the courtroom. Hocutt generated enough interest, from both the black and white

²⁶ Memorandum of Authorities for Defendants in *Hocutt v. Wilson and University of North Carolina*, March 1933, Legal File: Group 1, Cases Supported—University Admissions Cases.

²⁷ Gilbert Ware discusses, at length, William Hastie’s prosecution in the *Hocutt* case in “Gideon’s Band” in *William Hastie: Grace Under Pressure* (New York: Oxford University Press, 1983), 35-65 and in “*Hocutt*: Genesis of *Brown*”; Sarah Caroline Thuesen notes the black community’s attendance and support at the *Hocutt* trial in “The High Cost of it All: James E. Shepard and Higher Education Equalization” in *Greater Than Equal: African American Struggles for Schools and Citizenship, 1919-1965* (Chapel Hill: University of North Carolina Press, 2013), 89-127; See also Jerry Gershenhorn, “*Hocutt v. Wilson* and Race Relations in Durham, North Carolina, during the 1930s,” *North Carolina Historical Review*, 78 (2001): 275-308.

²⁸ “N.A.A.C.P. Sends Attorney to Aid in North Carolina “U” Fight”, NAACP Press Release, March 24, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

communities, that other sessions recessed so lawyers could attend the questioning. Students from UNC and Duke University's law schools attended. Members of the Durham community filled the courtroom. When Attorney General Dennis R. Brummitt attempted to argue Hocutt only wanted to attend UNC so he could "associate with white people," the black audience members began to laugh.²⁹

Ultimately, the judge ruled against Hocutt on March 29, 1933. The judgment posed four questions: Did Hocutt complete and submit all necessary application materials to UNC? Did he have the qualifications necessary for admittance? Did Wilson and the registrar's office deny him based solely on his race? Did Hocutt show a legal right for admittance to UNC? Before even answering those questions, Judge Barnhill analyzed Hocutt's method for legal action, the writ of mandamus. He argued the mandamus was not the proper remedy for Hocutt's complaint given that Wilson did not have the authority to admit Hocutt as a student, but only to review the application in good faith without race as a factor. Additionally, Barnhill found that Hocutt failed to provide a transcript from his time at the North Carolina College at Durham, which constituted an incomplete application.³⁰

Barnhill made one last statement at the end of his final judgment. The statement, much like the defense team's arguments, posited that UNC, and by extension other whites-only colleges and universities, only had to admit black students when black colleges could not provide

²⁹ "Mandamus in North Carolina "U" Case Denied; To Appeal Decision," NAACP Press Release, March 31, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

³⁰ Judgment filed by Judge M.V. Barnhill, March 29, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress, hereafter referred to as Judgment filed by Judge M.V. Barnhill, March 29, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases.

them with equal higher education opportunities.³¹ If a black student wanted to study a field that only white schools offered, then he or she would have to follow every regulation of the application process and prove they had the academic merit to attend. Because Hocutt did not have a complete application, the university was relieved of having to admit its first African American student.

While the *Hocutt* case did not end in a victory, the three attorneys, as well as the NAACP, saw it as a first step in the campaign against segregated education. As early as April 1, 1933, Roy Wilkins, assistant secretary of the NAACP, wrote to Houston in regards to a possible appeal of the decision. In the letter, Wilkins explained that Hastie wanted to reframe the case on the constitutional question of whether denying Hocutt to the only school with a pharmacy track based on his race went against his Fourteenth Amendment rights.³² The same letter was also sent to Arthur Spingarn and Margold for their review of the case. Instead of using the mandamus, they would use a different method of legal relief. It seemed as though Hastie and his two former students were ready to continue fighting for Hocutt's right to attend UNC.

In June 1933, Walter White sent a letter to C.C. Spaulding, the head of the North Carolina Mutual Life Insurance Company in Durham, North Carolina, regarding a list of tasks the National Office had. One such task, specific to the North Carolina branches, was “to secure now the best persons qualified as to training, general appearance and courage to make application immediately for admission to every course in every institution supported by state funds where such courses are not given in the state-supported colored schools.”³³

³¹ Judgment filed by Judge M.V. Barnhill, March 29, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases.

³² Roy Wilkins to Charles Hamilton Houston, April 1, 1933, Legal File: Group 1, Cases Supported—University Admissions Cases, Series A: Legal Department and Central Office Records, 1913-1940, Part 03: The Campaign for Education Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

³³ Walter White to C.C. Spaulding, June 9, 1933, Group 1, Series G, Branch File, Series A: The South, Part 12: Selected Branch Files, 1913-1939, Papers of the NAACP, Manuscripts Division, Library of Congress.

Pearson and McCoy continued their search for qualified students to apply for admission to one of the professional schools at UNC. In order to form a solid case, the attorneys knew they needed a student with a clean record and top grades. Richard McDougald, of Durham's Mechanics and Farmers Bank, wrote to White that he worried the student McCoy and Pearson had in mind did not hold up to the task, as the man was a "C" student.³⁴ However, simply finding willing students proved to be a difficult task for the attorneys. The number of lynchings in North Carolina during the first half of the 1930s made students and their parents wary of extra-legal repercussions from desegregation attempts. In 1933, the year of Hocutt's case, the state ranked fourteenth among forty-four states across the nation for number of lynching victims between 1922 and 1927; over 3,000 black North Carolinians were lynched during that time.³⁵

Fear of white backlash did not just extend to the students and parents of students seeking higher education opportunities. Durham had a prominent black community, with the North Carolina College at Durham and prolific businesses. Community leaders, such as Spaulding and Dr. James E. Shepard, president of the North Carolina College in Durham, did not support Pearson and McCoy's endeavors with the *Hocutt* case. As leaders in Durham, the men remained wary of how their white counterparts would react, especially with UNC's involvement in the case. McDougald, in his letter to White, confided to the secretary, "If another suit is brought in this county I believe it is going to damper their enthusiasm. No matter how much we deny it, the North Carolina Mutual Life Insurance Company group is going to be charged with sponsoring

³⁴ Richard McDougald to Walter White, July 21, 1933, Group 1, Series G, Branch File, Series A: The South, Part 12: Selected Branch Files, 1913-1939, Papers of the NAACP, Manuscripts Division, Library of Congress, hereafter referred to as Richard McDougald to Walter White, July 21, 1933, Group 1, Series G.

³⁵ Ware, *William Hastie: Grace Under Pressure*, 47.

the suit and at this particular state of the game neither Spaulding, Ed, or myself are anxious to create any antagonism on the part of the whites of the state.”³⁶

Shepard, especially, found himself at risk by the *Hocutt* case. As the president of the black college in the city where the hearing took place, he knew any backlash could affect his school and students. For decades, he had already felt the pressure of the separate but equal clause written into North Carolina’s state constitution. He knew how much more money white schools and universities received in comparison to black schools and colleges. Shepard had fought to establish his college, keep it open during economic hardships, and transition the school from private to public funding.³⁷ For Shepard, backlash endured by the black community in Durham by the *Hocutt* case carried the possibility of being detrimental to his school.

At the time of the *Hocutt* case, North Carolina boasted four public higher education institutions for black students. Three state-funded normal schools stood across the state in Fayetteville, Elizabeth City, and Winston-Salem. North Carolina Agricultural and Mechanical College for the Colored Race, in Greensboro, became the first black land-grant college in the state.³⁸ Only a decade earlier had Shepard started the process of having his college incorporated by the state, which became Durham State Normal School upon the state takeover.

The North Carolina College at Durham had its roots in Shepard’s desires to train and lead future religious leaders. In 1910, after working as the only black minister with the International Sunday School Association, Shepard returned to North Carolina. Upon his return, he started the National Religious Training School and Chautauqua for the Colored Race, an institution for the

³⁶ Richard McDougald to Walter White, July 21, 1933, Group 1, Series G.

³⁷ Sarah Caroline Thuesen dedicates a chapter of her book *Greater Than Equal* to an analysis of James E. Shepard’s role in the *Hocutt* case and the greater Durham community, see “The High Cost of it All: James E. Shepard and Higher Education Equalization”; Jerry Gershenson, “*Hocutt v. Wilson* and Race Relations in Durham, North Carolina, during the 1930s.”

³⁸ Thuesen, *Greater Than Equal*, 91-92.

training of black ministers. Six years later, the school went into severe debt. In order to save it from going under, a philanthropist's wife purchased the school at an auction and allowed Shepard to take it back. He then transformed the school into the National Training School, which formalized the teacher-training component.³⁹

Another four years passed and Shepard once again found his school in financial trouble. In 1920, Shepard began to work with the North Carolina Department of Public Instruction in order for the state to take over the school and publicly fund it. Once the state had control, the National Training School became Durham State Normal School. Historian Sarah Caroline Thuesen argued in her book, *Greater Than Equal*, that this shift marked a rough transition for Shepard. For nearly a decade, he had run his school privately and through his own agency.⁴⁰ He had the ability to make the decisions, determine the curriculum, and hire within the black community. When the state took over, there would be less of a chance for black empowerment, and more white control.

Historians have debated whether Shepard's role in the founding, and subsequent transition, of the college in Durham meant he was accommodating to white demands or shrewd in his pursuit of providing black students with a chance at higher education.⁴¹ Even before Hocutt went before the registrar at UNC, Pearson and McCoy, and even White, knew they did not have his support. In a letter to Houston, White wrote, "The suit has raised considerable discussion in North Carolina and, as is unfortunately the case usually, some of the timid and

³⁹ Thuesen, 96-97.

⁴⁰ *Ibid.*, 98-100.

⁴¹ Sarah Caroline Thuesen argued there are two ways of viewing Shepard, as an ambitious educator that departed from the integrationist mindset to accommodate whites or as a silent protester that worked to unravel white paternalism, see *Greater Than Equal*, 90-91; Gilbert Ware argued Durham's black community saw Shepard as a "Judas" who sabotaged the *Hocutt* case in pursuit of his own goals, see Ware, "*Hocutt*: Genesis of *Brown*," 228; Jerry Gershenhorn argued Shepard, and C.C. Spaulding, had to balance between white control and the new wave of black activists that often were labeled "radical" by the white community; see Gershenhorn, "*Hocutt v. Wilson* and Race Relations in Durham, North Carolina, during the 1930s."

conservative Negroes have promptly run to cover.”⁴² In regards to the *Hocutt* case, one thing is certain: Shepard refused to release Hocutt’s transcript from his time spent at the North Carolina College in Durham.⁴³ Based on Judge Barnhill’s ruling, the lack of Hocutt’s transcript made his application incomplete, which aided the judge’s decision to rule against the complaint based on a technicality.

While Shepard’s role is often viewed as a stand against integration, Thuesen argued he actually utilized the case as a way to receive more funding for his college and, by extension, black education.⁴⁴ The Depression took its toll on all schools, but Shepard especially felt pressure as white officials decreased funding for black schools at a more drastic rate than white schools. By not standing with Hocutt and the NAACP, Shepard seemingly aligned himself with the whites in power. However, he protected himself and the college from backlash. In fact, in the year following the *Hocutt* case, Shepard wrote a letter to then-UNC president Frank Porter Graham asking if the time had come for graduate education at the North Carolina College in Durham.⁴⁵

In 1938, five years after the *Hocutt* case, North Carolina College in Durham received an A-rating from the Southern Association of Colleges and Secondary Schools. Through New Deal grant funding, Shepard expanded the college and new academic buildings, dormitories, and an auditorium went up.⁴⁶ That same year, a second attempt to integrate UNC occurred. Pauli Murray, after hearing about Hocutt's attempt to integrate the School of Pharmacy, applied to

⁴² Walter White to Charles Hamilton Houston, March 20, 1933, Legal File: Group 1.

⁴³ Ware, “*Hocutt: Genesis of Brown*,” 228.

⁴⁴ Thuesen, 109.

⁴⁵ James E. Shepard to Frank Porter Graham, January 26, 1934, folder 252, series 1.1., Frank Porter Graham Papers, Southern Historical Collection, Louis R. Wilson Library, University of North Carolina at Chapel Hill, as cited in Thuesen, 111.

⁴⁶ Thuesen, 112.

UNC's sociology department. Murray, whose white ancestors had once sat on the Board of Trustees and attended the school, could not get in due to her African American heritage.⁴⁷

Murray, who hoped for support from the black community back in North Carolina, wrote to Shepard in December 1938 seeking advice. In the letter, she asked for his opinion on higher education for black students in the state and explained she believed “that it is desirable to have graduate training for Negroes in North Carolina, but that setting up separate graduate schools we rely continues the double standard of education.”⁴⁸ In this statement, she went against what Shepard had gained by Hocutt's failure: the expansion of a black liberal arts college in North Carolina.

After not receiving any reply or acknowledgement from Shepard, Murray wrote him again. On New Year's Eve 1938, Murray questioned why he had yet to say anything back to her. Her tone, slightly accusatory, lamented Shepard for his silence. She asked him, “Am I to take it from your silence that my letter was not important enough to answer, or that the issues raised are not sufficiently pressing at this time?”⁴⁹ Shepard continued to ignore Murray's calls for support and advice.

In addition to the silence from Shepard, Murray received a similarly dismissive response from UNC. Dean of the Graduate School W.W. Pierson wrote to Murray on November 16, 1938 in regards to her request for a graduate catalog. He did not mention her application nor her race,

⁴⁷ *Ibid.*, 113-115.

⁴⁸ Pauli Murray to James E. Shepard, December 6, 1938, Administrative File, Subject File—Discrimination, Education, Series A: Legal Department and Central Office Records, Part 03: The Campaign for Educational Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

⁴⁹ Pauli Murray to James E. Shepard, December 31, 1938, Administrative File, Subject File—Discrimination, Education, Series A: Legal Department and Central Office Records, Part 03: The Campaign for Educational Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

but simply acknowledged her request.⁵⁰ Almost a month later, he wrote to her again. This time, his message was clear. Pierson told Murray he could not admit her to the Graduate School. HE explained, “Under the laws of North Carolina, and under the resolutions of the Board of Trustees of the University of North Carolina, members of your race are not admitted to the University.”⁵¹ Murray continued her fight for integration, but ultimately never gained the right to admission to UNC.

The 1930s saw two attempts to integrate UNC, the first public university in the country and a supposed liberal haven in the South. Both Thomas Hocutt and Pauli Murray grew up in Durham and found themselves trapped by the politics of respectability. For Hocutt, his average grades did not make him the top candidate, but his courage in the face of white backlash made him a strong candidate for testing the separate but equal clauses written into North Carolina’s state constitution. The grassroots efforts led by Conrad Pearson and Cecil McCoy made the *Hocutt* case one of the earliest attempts at university-level integration in the South, even before Charles Hamilton Houston could take over as the NAACP’s Special Counsel and lead the campaign against segregated education. While the pair of young attorneys could have pursued an alternative legal strategy, the help of William Hastie proved to both the black and white communities in Durham that black lawyers were fully capable of litigating for education equality. Furthermore, the *Hocutt* case exemplified the predicament black community leaders in Durham faced as the NAACP began waging legal battles in the city. C.C. Spaulding and, in particular, James E. Shepard’s lack of support for Hocutt, and then Murray five years later,

⁵⁰ W.W. Pierson to Pauli Murray, November 16, 1938, Administrative File, Subject File—Discrimination, Education, Series A: Legal Department and Central Office Records, Part 03: The Campaign for Educational Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

⁵¹ W.W. Pierson to Pauli Murray, December 14, 1938, Administrative File, Subject File—Discrimination, Education, Series A: Legal Department and Central Office Records, Part 03: The Campaign for Educational Equality, Papers of the NAACP, Manuscripts Division, Library of Congress.

indicated their difficult position in the middle of the interests of the black and white communities. Shepard, who strove for educational uplift at his own college in Durham, worked hard to provide a space for knowledge and learning to black North Carolinians.

Ultimately, it would take almost twenty years for UNC to admit its first black students. Following the influence of *Sweatt v. Painter*, in which the Supreme Court ruled the University of Texas had to admit Herman Sweatt to the School of Law, Robert L. Carter and Thurgood Marshall argued a case in 1951 for four UNC applicants. Floyd B. McKissick, Kenneth Lee, Harvey Beech, and James Lassiter then became the first four African Americans to gain admission to UNC.⁵² Unlike Hocutt, who applied to the School of Pharmacy when no other institution offered coursework in the field and found a hole in the separate but equal clause, McKissick, Lee, Beech, and Lassiter entered the School of Law of a historically white institution, despite a law school having been established at Shepard's college.

⁵² *McKissick et al v. Carmichael et al.*, 187 F.2d 949 (1951).

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