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Amilcar Shabazz
University of Massachusetts - Amherst, shabazz@afroam.umass.edu

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The American Democratic Tradition & the Quest for Access & Equity in Higher Education: The Browns and Blues of Social Change

by Professor Amilcar Shabazz, University of Alabama

Revisiting *Brown v. Board of Education*: Fifty Years of Legal and Social Debate

Cornell Law Review 2004 Symposium

Panel One: Law, Democracy, and Ideals: Equal Access to Higher Education

Co-sponsored by the Allen R. Tessler Dean and the Dean of Students of the Cornell Law School, Cornell Law School (Admissions Office), the Black Law Students Association, the Cornell Law Students Association, the Federalist Society, the Institute for African Development, the Latino American Law Students Association, Law School Admission Council, the Native American Law Students Association, the Public Interest Law Union, the Women's Law Coalition at the Cornell Law School; the Africana Studies and Research Center, Henry '48 and Nancy '48 Bartels, Cornell United Religious Work, the Council of American Indian Graduate and Professional Students, the Graduate and Professional Student Assembly Finance Commission, Law and Society, the Office of the Vice President for Student and Academic Services, the Society for the Humanities, Vice Provost of Diversity and Faculty Development, Vice Provost of Undergraduate Education; LEXIS-NEXIS; BAR/BRI; Westlaw.

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Amilcar@bama.ua.edu

The American Democratic Tradition & the Quest for Access & Equity in Higher Education: The Browns and Blues of Social Change

In the United States, from the very moment that Thomas Jefferson excised all criticism of chattel enslavement and the trade in human beings from the Declaration of Independence, the American democratic tradition has been stained by the most parasitical form of hypocrisy in human history. Moreover, from the day that the U.S. Constitution was ratified, law for the country's African inhabitants has simply been the legal and rational means of administering injustice. The 13th, 14th, and 15th amendments that followed the Civil War, put on paper the possibility that this land could be a place fit for justice to dwell, but by the centennial birthday of the country, elite white males reached a compromise—as they had done so many times before—and determined that insofar as the African is concerned what was written on paper--"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" [www.law.cornell.edu/constitution/constitution.amendmentxiv.html]--was devoid of meaning. Their conviction in 1876, supremely conferred into a legal doctrine known as "Separate but Equal" two decades later, was not, however, the only conviction to be found. Other women and men challenged the age-old, economically expedient tendency to compromise the humanity and human rights of Africans. This paper focuses on that challenge as a part of what may be called the American democratic tradition specifically in the area of higher education.

The American democratic tradition finds deep artistic expression in the blues which we will have need to listen to far longer than will have a need for symposia on *Brown* v. *Board of Education*. In "The Discovery of What it Means to be an American," published the year of the Court's ruling in *Brown* in *Nobody Knows My Name*, James Baldwin wrote that the discovery of his Americanness led to a nervous breakdown and his being transported to Switzerland to recover. "There," he penned, "in that alabaster landscape, armed with two Bessie Smith records and a typewriter, I began to try to re-create the life that I had first known as a child and from which I had spent so many years in flight. It was Bessie Smith, through her tone and her cadence, who helped me dig back to…myself…to remember the things I had heard and seen and felt…she helped to reconcile me to being a 'nigger.'" (Baldwin, 138). We must follow Baldwin's lead and reconcile our identity as Americans with being the nigger that we all are. In Smith's **Weary Blues** she sings the anguish at the heart of the American democratic tradition:

> I wish I could lose these weary blues
> My tired heart can't love no more
> Can't love the way it did before
>
> My love was big, your love was small
> And now I've gotten no love at all
> Wish I could lose these weary blues
>
> Want you in the mornin' and I want you in the evenin'
> Yes, I want you, yes I want you but it don't do no good
> Miss you when it's rainin' and I miss you when it's shinin'
> and I wish that I could kiss you and I would if I could
>
> But my heart can't forget the run-around it used to get
> Oh, can't you see? I'm tired of this old unfair one-sided love
> Come back to me, please don't refuse,
> and help me lose these weary blues

In that dark storm of time known as the Reconstruction Era, Africans tried on their American identity trying to lose the "weary blues" of enslavement. They quickly discovered that being an

American means you are literate or trying to become so, and most definitely seeing to it that your children are being educated. If their children were to be educated, they had to have teachers and therefore institutions of higher learning to train and inspire into being the needed teachers. As Reconstruction ended in Texas there was only one land grant state-supported college, Texas A&M, which barred the admission of Africans when it opened in 1876. The same year, however, the state legislature promised Africans an institution of their very own and in 1879 it provided them with Prairie View A&M on an old slave plantation as the fulfillment of its promise. Black state legislator Norris Wright Cuney, like many blacks of his day, did not rush to endorse the machinations of the white supremacists setting up Prairie View. Before the school was opened, word spread that Cuney had given his support to legislation creating a segregated state school. Answering the rumor in his characteristic style of burning forthrightness, Cuney voiced his opposition to segregation in no uncertain terms. He stated that had legislation to establish a special state school for the hearing and visually impaired "been drawn to read that the State should make provision for all her unfortunates, I should certainly have endorsed it, but I do not seek special legislation for the Negro." He assailed the fact that in Texas only two public institutions showed any eagerness about admitting persons of African descent: the penitentiary and the lunatic asylum. The state-supported institutions of higher learning and the asylum for the hearing and visually impaired were all closed to blacks, he bemoaned. He went on to articulate a clear argument against a dual system of higher education:

> It is a sad travesty upon humanity and justice that the State of Texas accepted gifts of public lands for the endowment of an Agricultural and Mechanical College for the benefit of the whole people, and bars a large proportion of her population because they were born black. . . . No, I do not ask for social equality for my race. That is a matter no law can touch. Men associate with men they find congenial, but in matters of education and State charity there certainly should be no distinction. There is a clause in our State constitution separating the schools. This brands the colored race as an inferior one.[1]

Ultimately, albeit reluctantly, Cuney became a supporter of the separate-but-unequal Prairie View. He helped many persons to get scholarships to attend the school and his daughter, Maud, later taught there, as well as headed the Music Department of the Deaf, Dumb, and Blind Institute for Colored Youth in Austin. Both Cuney and his daughter, and black Texans in general, lived in an age of compromises that typically cut unfairly against black equality. Nonetheless, for every sacrifice of principle, every indignity withstood, they also fought for ground. In 1883, when a Galveston businessman gave the city $200,000 to build a public high school Cuney, the first African American elected to the city council, demanded that the grant be accepted only if Ball High did not exclude black children. His principled but unsuccessful stand against segregated education and Jim Crow laws fade into the background of Cuney's pragmatic maneuvering as a politician. Historian Merline Pitre argues that Cuney "was too busy climbing [ladders for political offices] to devote much of his attention to racial matters." However fair this assessment of Cuney may be, it is clear that the dialectical interplay of accommodation to and rebellion against racial oppression formed a blues narrative that speaks to our current commemoration of *Brown*. Africans have not wanted special preferences or a dual system of higher education. They have simply wanted access and equity to a unitary school system.[2]

In the 1880s, when the state perfected its plans to create the University of Texas at Austin as an institution of the first class for white youths, blacks, including Cuney, protested government officials' failure to abide by the state constitution and a constitutionally-mandated popular vote in 1882 which affirmed that the state would create in Austin a branch of the University of Texas (UT) exclusively for black students. Black educational leaders consistently reproached the legislature's biased way of administering the state's dual system of education through the end of the nineteenth century and into the twentieth. The blues narrative of Dr.

Richard Hamilton is instructive of one successful effort to reform the opportunity structure for Africans while leaving an oppressive system of assumptions and policies in tact. The system in Texas could adapt to reform and maintain that it was not "practicable" to establish a Colored Branch of the University of Texas. The challenge of having black students *integrate* its flagship university came from a mid-twentieth century mass movement personified in blues narrative of a man named Heman Sweatt. Hamilton's Blues and Sweatt's blues must also be heard and felt.[3]

In 1934, a venerable New Negro named Richard T. Hamilton opened a front in the campaign to expand black higher educational opportunity.[4] Born in Montgomery, Alabama, on 31 March 1869, Hamilton graduated with valedictory honors from an all-black Alabama State Normal School in 1890. He left the Deep South for Washington, D.C., took a clerical position in the Department of Interior, and began studying medicine at Howard University where in 1893 he obtained his M.D. degree. He moved to Dallas in 1901. "From the very outset he has, in spite of his lucrative practice," wrote the scholar of African American folklore J. Mason Brewer, "found time to give the welfare of his race deep study. He has given the public the benefit of this study from the platform and through the columns of the leading newspapers of the city and state."[5] Brewer included two of Hamilton's poems in his *Heralding Dawn*, "the first anthology of Negro verse published in Texas."[6] Hamilton's poem, "A Negro's Prayer," speaks best to the ideas and feelings of an intellectual who at seventy achieved a small, but important victory in the fight for freedom and equality. Before the "Lord God of Hosts," he asked, "What more must Afric's sons endure/For manhood rights—to have secure/The blessings of sweet liberty?" Hamilton recounted the "years of unrequited toil," noting how blacks fought bravely in domestic and foreign wars in the defense of "country, human rights and law," but then questioned how much longer before they are given "an even chance" in the land of their birth.[7]

Fired by the human determination to be free, Hamilton led a five-year-long campaign for state support of black out-of-state graduate and professional school work as chairman of the Committee on Civics and Public Welfare of the Dallas Negro Chamber of Commerce.[8] He conceived that his campaign needed allies, black and white. In 1934 he secured the support of the Colored State Teachers Association of Texas. In 1935 he turned to the Texas Commission on Interracial Cooperation (TCIC) for white support. Founded in 1922, the TCIC brought together reform-minded whites under the program of the larger Commission on Interracial Cooperation (CIC), which by the middle of the decade was the largest southern-based organization promoting interracial communication.[9] At a meeting held at Prairie View, December 6-7, 1935, the TCIC unanimously adopted a resolution submitted by Hamilton to the effect that:

> Whereas, in lieu of establishing separate universities for the Negro race wherein such courses may be pursued, a number of Southern States, including Oklahoma, Missouri, West Virginia, and Maryland have made provisions under certain conditions, to give aid to Negro students who are denied permission to enter the state universities on account of race, and who desire to enter the professions or to take post-graduate work, by paying their tuition and their transportation to recognized institutions outside the state wherein they are admitted, therefore Be it resolved, that the Texas Commission on Inter-racial Cooperation be, and is hereby requested to sponsor an enactment by the Texas Legislature similar to the existing law in the State of Oklahoma.[10]

On 11 March 1936, Hamilton sent letters of inquiry to the departments of education of the four states identified in the resolution. He sought detailed information regarding the kind and number of scholarships they had given, the requirements and procedures they used, the amount of money spent, and any printed matter they may have produced on their programs. He received responses from every state except for one.[11] In 1937, Hamilton hired a lobbyist to help him prepare a draft bill and secure a legislator that would introduce the measure. For $200 the lobbyist prepared a legislative proposal and, in the artful language of governmental prose patterned after the U.S.

Constitution, it made no mention of race. Representative Lonnie Smith of Tarrant County became the sponsor of House Bill No. 678 for out-of-state scholarship aid.[12]

Hamilton knew he faced an uphill battle. Even after the legislature created a Division of Graduate Study at Prairie View, which offered a Master's degree in education, he remained hopeful that a lily-white Texas legislature would still do the right thing and pass H. B. No. 678.[13] As soon as Smith got the bill drafted, Hamilton sent a copy of it along with supporting information to President Harry Y. Benedict of the University of Texas. Benedict answered that the student aid bill was "the best and most inexpensive way to attain a result that should be desired."[14] On March 1, Hamilton wrote Benedict to thank him for his "kind letter" and asked his permission to use it in his lobbying efforts. He attached to his letter clippings of editorials and articles favorable to the bill from the *Dispatch*, *Express*, and *Times Herald*, all Dallas newspapers. The editor of the *Dispatch* opined that "good argument is given for the appeal to the legislature for funds for the education of qualified Negroes in the professions." The editor reported that the lack of opportunities for blacks to pursue advanced degrees led to a situation where the state's six Negro colleges were "largely staffed by Northern Negroes, unfamiliar with the problems and the customs of the South." Furthermore, Texas faced a "genuine shortage in the number of Negro doctors, dentists, and lawyers," and new additions to professional ranks could also "assume leadership among their own people" that "would make for better racial relations."[15]

The *Dallas Express* article showed Hamilton also trying to milk Lone Star State particuliarism. He stressed the idea of a regional mismatch between the folkways of the state's black college educators and those of their students and other persons at the college and its environs in a letter he wrote to Representative Harry N. Graves on the bill. Texas needed "educated southern Negroes," in the professions and the classrooms, according to Hamilton,

"because Negroes who were raised in the east do not understand the situation in the south and often come to this area and embarrass themselves as well as southern Negroes." He went on to state that 97 percent of the faculty in the six black colleges in Texas were "not native Texans" and that "not infrequently the teachers can't adjust themselves to Texas customs and traditions." As a consequence, Hamilton said, "complications ensue."[16] An editorial in the *Dallas Times Herald* offered another perspective. Calling the requested annual appropriation of $15,000 a "small" sum, it held that "by enacting this bill, the legislature would give the colored race its due." It added that "in some places where discrimination exists, the Negroes have resorted to litigation to gain entry into white colleges and universities, but the colored race in this state is not following such a policy." Only through just such a policy, however, would the state legislature be shocked into action regarding black higher education.[17]

Leaders of the student aid bill campaign, which came to include NAACP activists, decided to show state officials that blacks meant to have access to graduate and professional education even if it required them to integrate the state's precious University of Texas. [18] George Allen, in October 1938, enrolled in an evening extension class entitled "Business Psychology and Salesmanship." Having registered over the telephone, he went to the first meeting of the class fully expecting to be turned away.[19] "The only wrench in the whole machine," Allen mused in an interview more than forty years later, "was that they admitted me."[20] Allen's "wrench" did not clog the sputtering, machinelike operation of white supremacy for long. He soon received a letter informing him that his enrollment at the university had been canceled. Allen protested the decision, but officials made it clear that he would not be allowed back into the class.[21]

Hamilton and his comrades converted the episode into a fillip for movement in the legislature on his student aid bill. On 12 December 1938, however, Hamilton got an even bigger

boost, ironically in the form of a Supreme Court decision in *Missouri, ex rel. Gaines* v. *Canada, Registrar of the University of Missouri, et al* which ruled that programs such as the one he was pursuing were not a constitutional fulfillment of the Separate but Equal doctrine. Initiated in 1935, this case involved Lloyd Gaines, a twenty-four year old graduate of Lincoln University who sought to attend the law school of the whites-only state university. The court ruled that Gaines "was entitled to be admitted to the law school of the State University in the absence of other and proper provision for his legal training within the state."[22] The state of Missouri complied with the ruling and set up a "makeshift" law school at Lincoln University. The Texas legislature now had to do something. The *Gaines* case put the U.S. Constitution on the side of a black UT, but Texas was still not prepared to create another black college.[23]

In an editorial, published soon after the *Gaines* decision, Hamilton offered answers to the "professional training problem of Negroes." He explained that "in view of present needs and pending extension of the educational curriculum and establishing of professional schools for Negroes in Texas, Negroes are willing to accept a substitute. The more practical substitute is scholarship aid in standard out-of-state institutions where Negroes are admitted." Hamilton supported the creation of a separate-but-equal university for blacks, but he also stressed that any "provision made for Negroes must measure favorably with those provided for whites." As such a development would take a considerable amount of time, Hamilton recommended that passage of the student aid bill would satisfy present needs and "return rich dividends to the state in all elements that make for a contributing, constructive, grateful and loyal Negro citizenship."[24]

The political winds inside the state legislature began to shift in favor of the bill, but with a reduction in the proposed appropriation. The original proposal called for the setting aside of $15,000 a year, but a front-page *Dallas Express* article of 22 April 1939 reported that the

legislature now proposed "an allotment of $10,000 per annum for the entire state." Noting that "Maryland, which has a much smaller Negro population has already appropriated $35,000, and the state of Virginia, $30,000," the article cited a TCIC report that more than 450 students had left Texas for graduate education at their own expense. The article warned that "the inadequacy of this expected appropriation has already caused speculation throughout the state over the probability that a number of Negro graduate students, who will not be covered by this small scholarship appropriation, will make strenuous efforts to enter A&M College and Texas University to do their graduate and professional work."[25]

Although no prospects for lawsuits to desegregate Texas A&M and the University of Texas existed, word had begun circulating that such a step marked the new direction in the movement for black educational and civil rights. A dozen letters from black students seeking admission to UT, dated from 15 January to 6 March 1939, suggest the likelihood of extensive black concern over higher educational policy. Neither university administrators nor state legislators could keep their heads in the sand any longer.[26]

The legislature approved House Bill No. 255 in June 1939, and Governor James Allred signed it into law that next month. They set the available funds for out-of-state aid at $25,000 for each year of the biennial appropriation. Allred appointed a dean from the UT, Texas A&M, and Sam Houston State Teachers College, to oversee the disbursement of scholarship funds. A little over a month after enactment, they had received sixty applications and doled out forty-five awards. The *Dallas Express* warned black students to claim the grants or risk having the program terminated for lack of interest. A limit on grant aid per student had been set at $200, but medical and law students could receive up to $300. Award recipients studied in the following areas: seventeen in medicine; four each in pharmacy, dentistry, and social work; five in doctoral studies

in the sciences, fourteen in Master's of Science programs, and one student each in law, optometry, library science, music, and costume design. By the end of 1939, 53 students had received assistance out of 180 who had applied. At $11,415.40, the state had expended less than half of the annual amount reserved for the purpose of helping black students acquire the graduate education white Texans could receive inside their native state, but they could not.[27] At seventy years old, Richard Hamilton could reflect with pride and satisfaction on what he had done to help more African Americans have access to higher education. His victory helped hundreds of black Texans go out of state to further their education. It was an immediate answer for some but it left a longstanding injustice in statu quo ante bellum. Therein Doc Hamilton's blues.

Shortly after the end of the Second World War, at a gathering of Houston's best and brightest at the Wesley Chapel AME Church, a young letter carrier and emerging NAACP activist, Heman Sweatt, listened intently as Houston branch leader Lulu White, a graduate of Prairie View, asked for a volunteer to file a lawsuit to gain admission to the University of Texas. A hush fell over the meeting. The other brothers and sisters present looked strangely at White and then searched the faces of their peers. No one wanted to be the sacrificial lamb; no one was prepared to endure the hardships such litigation would undoubtedly wreak. Sweatt finally broke the icy silence. In a soft but certain voice, he stood up and said he would do it. White was overjoyed and arranged for Sweatt to meet with NAACP attorneys who assessed that he was a good applicant. Another blues narrative was being written.[28]

On 26 February 1946, Sweatt's application to attend UT was carefully choreographed as part of a meeting that the Texas State Conference of NAACP Branches set up with UT President Theophilus Painter. R. A. Hester, president of the Progressive Voters League of Texas, headed the committee and was joined by his fellow Dallas citizens, Reverend C. D. Knight and Dr. B. E.

Howell; together with Houstonians Lulu White, James H. Jemison, C. F. Richardson Jr., and Sweatt; and St. Philip's College President Artemisia Bowden, Euretta K. Fairchild and Reverend E. J. Wilson of San Antonio. Painter had Vice President J. C. Dolley, Scott Gaines (UT Board of Regents attorney for land matters), and Registrar E. J. Matthews on hand for the meeting. Hester opened by asking what steps Painter had taken to provide blacks with equivalent graduate and professional school opportunities relative to the twelve-point program he released to the press on January 20. Painter reported that virtually no progress had been made and asked Hester and his group to give him suggestions. Hester replied:

> We are not here to discuss or try to solve the race problem. The Negro citizens of Texas are seriously interested and concerned about provisions for them in the graduate and professional schools. We want to know what the committee has done? What is available now. Not tomorrow, next week or next month. We need training for our returning GIs and our children who must compete with others in their own state for jobs with inferior education.[29]

The committee did, however, recommend to Painter that Prairie View be severed from the control of Texas A&M and be upgraded to a status equal to its white counterpart. Secondly, it called for a black graduate and professional school to be created at a large urban area. When the university officials hedged, citing the lack of funds, Lulu White reminded them of the more than $10 million in additional appropriations coming to UT and Texas A&M and suggested that the state should use that money instead to institute a black graduate and professional school center. Matthews sarcastically questioned White: "What would you have us do, close down the white schools for a year?" White answered him, "That would not be a bad idea. It would give us an opportunity to catch up with you in training."[30] Painter then shifted the discussion to the prospect of making some kind of a start by the coming fall semester. Hester then tossed the ball to Sweatt, and on cue he sent the meeting into an entirely different direction.

With all the courteousness of a southern gentleman, the thirty-three year-old, bespectacled Sweatt asked for permission to speak. He asserted that he had a right to legal training, and the state had the duty and the money to see to it that he got such training. Taking tuition assistance to go to a law school outside of Texas and waiting for some unspecified time when the state of Texas would erect a black law school was unacceptable. He pulled out a transcript from Wiley College from which he had graduated in 1934 and asked to be admitted to the UT law school. Painter had a ticking time-bomb in the UT tower, but he took it calmly. He acknowledged Sweatt's request and said he would seek a ruling from Texas Attorney General Grover Sellers as to what the law required. He doubted, however, that Sweatt would be admitted because the university was bound by the laws of Texas requiring the separation of the races. Matthews reacted by professing his love for black folks and that he held no more "than the normal amount of prejudice against Negroes." In the spirit of love he warned Sweatt that he would roll back great strides that the state government had undertaken to advance black higher education.[31] Notwithstanding the threat of litigation, the new wave of black assertiveness, and the democratic and antiracist rhetoric of the recently ended war, UT officials found no difficulty in refusing Sweatt admission solely on the basis of race. Painter wrote Attorney General Sellers that Sweatt was "duly qualified [for admission to the UT School of Law]. . . except for the fact that he is a Negro," and asked for his opinion. Sellers stated on March 16 that Sweatt must not be admitted to UT, but that a single instructor in law at Prairie View would answer his demand of equal educational opportunity.[32] Painter complied with the opinion, and by June he found himself in the 126th District Court in Austin on charges that he had violated Sweatt's constitutionally protected civil rights. The Texas A&M Board of Regents proffered that it would create a law school for blacks at once; consequently, Judge Roy Archer ruled against Sweatt.

Four years later the Supreme Court's decisions in *Sweatt* and *McLaurin* struck down segregated arrangements in graduate and professional education.[33] In the fall of 1950, twenty-two black students at UT out of a total student body of over 12,000. George Washington, Jr., of Dallas, one of the six black men who entered the law school in the fall term, described the racial atmosphere as "icy and uncomfortable." One night, in the first week of the term, Ku Klux Klansmen erected a burning cross in front of the law school building. The Klan meant for Sweatt, Washington, and all others, to know that white supremacy continued as the true law of the land. As Sweatt left the law library after studying late, he walked to his car in the glow of a fiery spectacle. The jeers and taunts of the crowd assembled on the lawn crowded out of his mind much of the information he had spent hours learning. Now he had to worry if he would make it home in one piece. A white friend accompanied him to his car, but with four slashed tires his car would not be able to take him anywhere. In the days after the incident a few white liberals offered words of consolation, but UT officials expressed no serious condemnation of the crime and Austin police never arrested the culprits. The black students downplayed the incident and went about their studies outwardly showing no signs of embarrassment or that their faith in the righteousness of their course had been shaken. Sweatt, in remarkable a letter to Thurgood Marshall dated 28 October 1950, portrayed the cross-burning as working to the benefit of the black students. White students, he reported, "have gone obviously out of their way to amend for any discomfort likely to have been caused us as a result of it [the Klan action]." UT's most famous student noted that he and his black peers had not been subjected to many of the commonplace forms of segregation at UT that existed elsewhere for blacks. They used the same university restrooms and water fountains whites used, and sat wherever they desired in the lounges, campus eating places, and sports events that occurred at UT. In the first month of school, Sweatt received an appointment to his

class' social committee and attended a "stag" party at the student union and a dance the students organized at the Austin Commodore Perry Hotel. He informed Marshall that his white classmates were "very agreeable." In this letter we see the tears of a clown.[34]

Sweatt would later describe himself during this period as an emotional wreck. Four years of putting his life on hold, of making his life a front page, policy-changing legal case had taken its toll. His health had begun to fail him and at the same time his marriage hit rock bottom and soon ended in a divorce court. A man of enormous will, he somehow felt that he could overcome the frustrations in his personal life, brave a hostile and high-pressured environment (which kept his ulcers from healing), and make passing grades at an intensely competitive law school after being out of school for more than a dozen years. He also worried incessantly over whether he had what it took to pass and if certain ones among his faculty and classmates were out to "get him." Ultimately the demons of white supremacy did drive him from the school and even from the state itself. He lived out the balance of his life in Atlanta, Georgia. A shroud of public silence and shame fell over Sweatt's nervous breakdown, as his condition was called in the rare moment when it was mentioned and given a name. It took more than a decade after his death in the 1970s before UT recognized him by naming a civil rights symposium in his honor and other public acknowledgments. In Sweatt's blues we hear the moan of the ineffable price that was paid to liberate the soul of America from the shackles of segregation.[35]

After *Sweatt* came *Brown*; same genre, but it was a different type of song. *Brown* was a happy blues narrative. Its ending promised an ultimate end to the weary blues of white supremacy with "all deliberate speed." Following *Brown*, however, there arose a new kind of blues involving contradictions not only between racial identity groups but within these groups. Winona Saint Julian Frank's story offers an exemplar of this kind of blues. On the opening day

of the fall semester at Lamar, she and four other blacks enrolled. By October 1, twenty-six blacks had been accepted, including her husband, Edward, as part of a record enrollment of 5,455 students.[36] Against black enrollment, a local node in a burgeoning massive resistance movement desperately tried to create a lawless, riotous condition. White extremists wanted an eruption in the city to occur that would lead campus officials to expel the black students as the University of Alabama trustees had down in Tuscaloosa some seven months earlier.[37]

The first day of class pickets appeared in front of most of the eleven gates of the campus. The picketers were abusive and quickly alienated the majority of the faculty and student body. Unable to attract enough support to close the campus or keep out all of the black students, the picketers became openly hostile, insulting and jeering whites who entered the campus. History professor Ralph Wooster recalled how they referred to him and his colleagues as "scabs," and threw things at one staff member who escorted a black student onto the campus. The picketers, he remembered, "seemed by their appearance to be lower-white middle class, because they were not very well clad; in fact . . . one of the ladies didn't even have shoes on. These were real hillbilly types."[38] In Winona Frank's second week of the semester picketers began making an attempt to stop everyone who entered the campus parking lots or driveways. The picketers "beat up one negro while a police officer stood idly by….They broke a taxi cab's window as it delivered a negro student and later the negro driver was found to have a pistol in his car." Noting the biased and unprofessional policing of the campus, McDonald observed that "by Thursday it was obvious that the law enforcement agencies were not going to discontinue the insulting of any teachers and students, and I decided that public opinion was sufficiently crystalized [sic] in my behalf to go on the offensive. The Editors of the Beaumont papers agreed to help me and I blasted away at the lack of law and order in Beaumont in front page headlines." The negative

publicity, he averred, "brought the Mayor over to my side and he called in the Police Chief and told him to clear the pickets from the area. At 1:00 p.m. on Thursday the police drove about 50 picketers from our eleven entrances to the campus, arresting one. At 6:00 the pickets were back and the police again drove them from the campus, arresting three including Mrs. A. W. Lightfoot, one of the ring leaders."[39]

On Friday, October 5, the day after the arrests, Lamar operated without pickets for the first time since classes had started. That night, however, crosses were burned on both the Lamar campus and in front of City Hall. Mayor Cokinos received numerous death threats and had to have twenty-four hour police protection after bombs were exploded at the church he attended and, in an apparent mistake, at the house directly behind his. Attorneys Johns and Willard, Ed Sprott, and Winona Frank's uncle Octave Herbert, and other NAACP leaders also experienced acts of terrorism.[40] That next week the picketing at Lamar resumed and continued until October 15, when Mrs. H. T. Mercer of Vidor informed the media that her group had chosen permanently to end the picketing. Admitting defeat, Mercer revealed the strategy behind the picket movement in a statement to the *Beaumont Journal*: "Our one and only purpose in picketing Lamar Tech . . . was to show public disapproval and aversion to having negroes [sic] forced into our all-white schools, which is against the laws of Texas, the laws of God, and the laws of personal morality and personal freedom. When we dared voice our protest to Dr. McDonald, and our picketing of the college, we had faint hopes that the people of Beaumont, or a portion of its white population, would become conscious of their white blood and the danger threatening their children (and mine), and awaken to what was happening."[41]

The demise of segregation at Lamar involved not only a racial conflict, but also a "class cleavage." In 1956, "the falling common whites," in Beaumont's factories, refineries, and

shipyards, reacted to what they saw as an attack on their economic status and the erosion of the social contract that guaranteed for all classes of whites their incontrovertible superiority over blacks. Bourgeois whites, like the Lamar regents, also loathed the assault on "Southern customs" that *Jackson* v. *McDonald* posed, but for their class, the imperative goal of law and order, forced them to permit a revision of the region's unwritten social policy. Both bourgeois and working-class whites, however, feared that racially mixed education would lead to miscegenation. Frances Lightfoot explained the attitude of many Southeast Texas whites when she said, "We like niggers here. We like a nice sweet collie dog, but we don't like 'em in bed with us. We'll help 'em out whenever we can, as white folks have always done in the South. But just don't let 'em get uppity on us." She warned that "if the white race doesn't rise up, we'll have a nation of mongrels in two generations." In her view the "cafe society," "froth" of the city, deeply opposed desegregation but were spineless. The regents fought it in the courtroom and the boardroom, but when the majority of Beaumont's affluent whites refused to help foment a crisis in which Shivers would authorize Texas Rangers to remove black students from Lamar as a public safety measure, their reluctance to take part in massive resistance amounted to a betrayal: "You take the upper crust—bankers, lawyers, and businessmen. I know them and I have yet to see one of them come out and take a stand. But I'll be downtown and some of them will come up to me and say, 'Mrs. [Lightfoot], here's $10 or $1, take it and use it, but don't quote me. I can't afford to be in this publicly. We're not fighting the niggers, we just want to keep our customs.'"[42]

Winona Frank's right to equal protection of the law was exercised in a violent crucible of custom-keeping. Her friend Lonnie Flanagan, having successfully run from a taxi through Lamar's rear gates to his class, went the next day but encountered sentries on the back gates. Passing near an entrance, Tom W. Sanford, a thirty-eight year old Beaumont fence salesman, ran

out in front of the cab and motioned to Mason to stop the car. Mason slowed down and then tried to speed away when Sanford yelled to other picketers, "He's got a nigger in the back." Sanford dropped his placard, leaned into the car, and made a grab for the steering wheel trying to stop the car. As Mason dragged Sanford the distance of a "city block," he drew his pistol and pointed it at the white man's head. Sanford still refused to let go of the car. He later said, "I told him to go ahead and shoot, but he didn't. He started beating my hands with the gun." Mason finally stopped the car when a police vehicle that patrolled the campus pulled in front of his car.[43]

Frank experienced no violence herself, but others she knew like Lillie Mae Joseph avoided a stoning, beating, or worse, only because another black student rescued her from a pursuing mob.[44] After the ugly period of rioting, Frank recalled "I felt myself surrounded by whites staring at me, gawking, and talking behind my back in their little groups that I was never asked to join." A light-skinned Creole and a product of Catholic schooling, Frank looked, spoke, and appeared white. She had no hostile encounters with picketers and never missed a day of class during the disturbances. Her husband, Edward, attending Lamar on the G.I. Bill, looked black. When they walked hand-in-hand to their classes they sometimes created a sensation. One instructor, unaware of Frank's racial classification, requested that she come to his office one day. Referring to her husband, he asked her, "What is that man to you?" When she told him they were married, the instructor became visibly upset and began treating her with less respect than before.[45] Nonetheless, she and five other black students received their degrees from the college in May 1958. After graduation, however, Winona Frank's blues took another turn. No white school hired blacks still, and no black school would touch her either. Some blacks persecuted her charging that she must have thought she was better than other blacks because she graduated from a white college. In time and with a great deal of brown-nosing and even bribes, she was hired as

a permanent substitute in nearby Port Arthur school district and years later in Beaumont where she taught for more than thirty years most all of her career spent in almost completely black elementary schools with high concentrations of poverty. Her blues warn that the pain of the desegregation ordeal can be inflicted by blacks as well as whites.[46]

Finally there is the blues of Winona and Edward Frank's grandson, Amilcar Shabazz II. He is ten years-old and lives in Tuscaloosa, Alabama, where the city school district is in the throes of a post-unitary status declaration that is re-segregating education. He faces a choice of next year of attending a middle school with a +99% black and poverty-stricken population nearest his home, or driving past it every morning to go to another public school with more racial and class diversity, or to one of several private school choices in the city where he will be a minority student. There are choices and the existence of those choices are part of the legacy of *Brown* and the blues of Cuney, Hamilton, Sweatt, Frank, Shabazz, and many others. These choices are a product of an American democratic tradition that runs in the mighty river of the blues. This tradition gives us not so much heroes to canonize, but their blues to guide and sustain us, to never allow us to give up whatever choices we make. *Brown*, all that came before it and all that has come since in the last fifty years tell us one simple thing: education is more important than race, there must be always be a struggle to have the greatest access possible to higher education regardless of the racial policies in force, that struggle will entail tremendous sacrifice to certain individuals and collectivities, and this struggle is as sacred as life itself. The blues of my parents and grandparents, and theirs before them have all become mine and ours. Whether affirmative action in higher education ended yesterday or it ends in Sandra Day O'Connor's 20-year projected time our blues will continue and the struggle it reflects. The psalmist bluesed: Carry us away captivity require from us a song. Baldwin observed: "The price the white

American paid for his ticket was to become white…they require of me a song less to celebrate my captivity than to justify their own." I sing and must continue to sing not for their self justification but to emancipate us all.

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1. Cuney's statements are quoted from Maud Cuney Hare, *Norris Wright Cuney: A Tribune of the Black People* (1913; reprint, Austin: Steck-Vaughn, 1968), 37-38.

2. Cuney's daughter also resisted the rituals of white supremacy. In 1897, when the management of the Austin Opera House would only permit Maud Cuney Hare, a pianist who had studied at Boston's New England Conservatory of Music and continued her studies in the capitol city with Edmund Ludwig, to hold a recital there provided blacks sat separately in the balcony, she and Ludwig canceled the engagement and instead performed at the Deaf, Dumb, and Blind Institute where the demeaning requirement of segregated seating would not be practiced. See Hare, *Norris Wright Cuney*, 32-33, 214-15. On Cuney as a "strong" but compromised black leader, see Pitre, *Through Many Dangers Toils & Snares: Black Leadership in Texas, 1870-1890* (Austin: Eakin Press, 1997, second revised edition), 211, 215-16.

3. David A. Williams, "The History of Higher Education for Black Texans, 1872-1977" (Ed.D. diss., Baylor University, 1978), chapter 2; and George Ruble Woolfolk, *Prairie View: A Study in Public Conscience, 1878-1946* (New York: Pageant Press, 1962), chapter 5, covers the struggle for the constitutional "colored" university.

4. Hamilton may have learned of the unsuccessful *Hocutt* case in which a black student sought admission to the law school at the University of North Carolina in 1933, but there is no evidence that he was inspired by the incident. He may just as well have read about West Virginia's enactment of a measure in 1933 which provided assistance to blacks who had to leave the state for graduate and professional education.

5. J. Mason Brewer, *Heralding Dawn* (Dallas: Mathis Publishing, 1936), 17.

6. John Lee Brooks, "J. Mason Brewer," in *Heralding Dawn*, 3.

7. Brewer, *Heralding Dawn*, 20-21.

8. On the DNCC see Marvin Dulaney, "What Happened to the Civil Rights Movement in Dallas, Texas?," in John Dittmer, George Wright, and Marvin Dulaney, *Essays on the Civil Rights Movement* (College Station: Texas A&M Press, 1993), 70. While the Klan had declined considerably by 1926, it still exerted influence in Dallas and elsewhere in Texas into the 1930s. See Kenneth T. Jackson, *The Ku Klux Klan in the City, 1915-1930* (New York: Oxford University Press, 1967), chapter 6. "In March 1931 fourteen armed Knights," writes Jackson, "abducted and flogged two Communist organizers in Dallas for making speeches against Jim Crow (segregation) laws and the lynching of Negroes," 80.

9. See Hall, *Revolt against Chivalry*, 59, 62, and 294-95 n. 13; for information on TCIC activities which Ames led; namely, state support for a home or "training school" for delinquent black girls, the erection of a tuberculosis hospital, the securing of greater services for blacks from the state Department of Health, and a drive for adoption of textbooks on black history. On the rise of the CIC in response to the cutting off of communication between the races, considered

an "insidious" product of the progressive era's perfecting of segregation, see Jack Temple Kirby, *Darkness at the Dawning* (Philadelphia: Lippincott, 1972), 179.

10. R. T. Hamilton, "Resolution Presented Inter-racial Commission at Prairie View," UTPOR, group VF 18/C.

11. All letters and documents in UTPOR. All of the letters are dated 11 March 1936, except for the one to Virginia, dated 29 June 1936.

12. "Proposed Bill," UTPOR, avoided any mention of race by referring to "such persons" unable to pursue certain courses of studies offered at the University of Texas or some other state-supported institution "because of provisions of Section 7 of Article VII of the Constitution of Texas." The draft bill authorized the appropriation of $15,000 each year from 1937 to 1939 for out-of-state tuition assistance.

13. Melvin J. Banks, "The Pursuit of Equality: The Movement for First Class Citizenship among Negroes in Texas," (D.S.S. diss., Syracuse University, 1972), 400, states that the new graduate division was established "to forestall a suit." There is, however, no evidence that such a suit was seriously impending in 1937, nor that state legislators acted in reaction to such a concern.

14. Banks, "The Pursuit of Equality," 359 n. 144. The quotation is from Neil Gary Sapper, "A Survey of the History of the Black People of Texas, 1930-1954" (Ph.D. diss., Texas Tech University, 1972), 358 n. 143. Sapper states that Hamilton and other school aid campaign supporters did not trust the lobbyist who drafted the bill and guaranteed its passage for an additional $3000.

15. "Negro Education," *Dallas Dispatch*, 1 March 1937.

16. "Dallas Negroes Ask State Aid for Education," *Dallas Express*, 26 February 1937. Evidence has not been found to substantiate the claim Hamilton and editor of the *Dallas Dispatch* make that most of the faculty members of the black colleges of Texas had come from the North. Hamilton's estimate of 97 percent might not, however, have been too badly exaggerated, if he had said that most black faculty members had received some part of their education in a northern school. See Michael R. Heintze, *Private Black Colleges in Texas, 1865-1954* (College Station: Texas A&M University Press, 1985), 120-26.

17. "An Appropriation that Should Be Voted," *Dallas Times Herald*, 27 February 1937.

18. Larry D. Hill and Robert A. Calvert, "The University of Texas Extension Services and Progressivism," *Southwestern Historical Quarterly* 86 (October 1982): 253. The authors point out an element of hypocrisy when they write that "in spite of avowed nonelitism, progressivist extension services for many years generally did not encompass black schools," 231 n. 1.To be sure, Texas segregationists left the matter in the hands of Prairie View and the other black colleges; but they must have overlooked the effect inadequate funding had on the ability of these colleges to reach the black population.

19. Sapper, "A Survey," 360.

20. Quoted in Michael L. Gillette, "Blacks Challenge the White University," *Southwestern Historical Quarterly* 86 (October 1982): 321.

21. Gillette, "Blacks Challenge the White University," 321-22. See also Sapper, "A Survey," 360.

22. *Gaines* v. *Canada*, 305 U.S. 337 (1938).

23. Jessie P. Guzman, *Twenty Years of Court Decisions Affecting Higher Education in the South, 1938-1958* (Tuskegee: Tuskegee Institute, 1960), 3-4.

24. R. T. Hamilton, "Professional Training Problem of Negroes," *Dallas Times Herald*, 31 December 1938.

25. "Scholarship Funds Inadequate; Negroes May Enter A. & M. College," *Dallas Express*, 22 April 1939.

26. Letters: Murphy to President, 15 January 1939, UTPOR; Hayes to George E. Bethel, ibid.; Goss to J. W. Calhoun, ibid.; and Jackson to Registrar, 6 March 1939, ibid.

27. *Dallas Express*, 9 September 1939, p. 1. *Dallas Express*, 16 December 1939, p. 3.

28. On Sweatt's becoming the "test case," see Gillette, "Heman Marion Sweatt," 158-61; and "Heman Sweatt Twenty-Five Years Later: The Price and the Product of Black Efforts to Integrate White Institutions," 13 August 1973, from the private papers of Albert H. Miller, in possession of the author. Professor Miller shared these papers with me when I was a student in his course "The History and Philosophy of Education," at the University of Houston.

29. "Texas Prexy Asked to Admit Negro Student," *The Houston Defender*, 9 March 1946.

30. "Texas Prexy," ibid.

31. "Texas Prexy," ibid.; and see also Gillette, "Heman Marion Sweatt," 167-68.

32. "Sweatt Denied Entry to University of Texas: Sellers, Stevenson Say Negroes Must Have Law Training," *HI*, 23 March 1946.

[33]. Lanier to Painter, 20 April 1950, UTPOR; Lanier to Painter, 11 May 1950, UTPOR; McCown to Chase, 4 May 1950, UTPOR; McMath to Dana Young, 8 May 1950, UTPOR; and W. R. Woolrich to McMath, 18 May 1950, UTPOR. See "First Negroes Enter U. of Texas: Students from Austin and Waco Seek Degrees," *HC*, 7 June 1950; and "Texas University Enrolls 2 Negroes," *NYT*, 8 June 1950.

[34]. Washington is quoted in "When the Barriers Fall," *Time*, 31 August 1953, 40. Sweatt to Marshall, 28 October 1950, NAACP Papers; and Gillette, "Sweatt," 181-82.See also "Heman Sweatt's Victory," *Life*, October 1950, for pictures of him in class seated next to white students on the back row, and walking with a white student in front of the UT tower.

[35]. See Michael L. Gillette, "Heman Marion Sweatt: Civil Rights Plaintiff," in Alwyn Barr and Robert A. Calvert, *Black Leader: Texans for Their Times* (Austin: Texas State Historical Association, 1981), 157-84. I am also indebted to Albert H. Miller for sharing "Heman Sweatt Twenty-Five Years Later: The Price and the Product of Black Efforts to Integrate White Institutions" (Proposal and Paper delivered at the 1974 Annual Meeting of the American Educational Research Association); Helen C. Moore, "The Lonely Struggle of Heman Sweatt" (Paper presented to Dr. Albert Miller, University of Houston, Houston, Texas, 9 May 1973); and other insights and documents in his possession related to Sweatt's life and times. Moore's paper contained many lengthy quotes from seventeen hours of tape recorded interviews between Sweatt and Michael Gillette. She received access to the tapes from James L. Sweatt, the brother of the late Heman Sweatt.

36. "State Will File Lamar Tech Appeal on Negroes," *Beaumont Enterprise*, 26 September 1956. Sim Myers, "Picketers Escort Negro Students from Lamar," *Beaumont Enterprise*, 2 October 1956; "5,455 Students Register at Lamar for All-Time High," *Beaumont*

Enterprise, 2 October 1956. F. L. McDonald, "Progress Report," 6, in McDonald Papers, however, states that twenty-seven blacks had enrolled.

37. Letter from F. L. McDonald to Sheriff Charley Meyers, 11 September 1956, McDonald Papers.

38. For descriptions of the picketers, see Sim Myers, "Picketers Escort Negro Students from Lamar: Three More in Class are Sent Home By Officers," *Beaumont Enterprise*, 2 October 1956; Ralph Wooster, interview with author, 23 June 1989, tape in author's possession; and Breed, "College Desegregation," 5-7.

39. F. L. McDonald, "Newsletter from the Office of the President" to the Board of Regents, 5 October 1956, McDonald Papers.

40. "Lamar Tech Quiet as Pickets Observe Mayor Cokinos' Ban," *Beaumont Enterprise*, 6 October 1956; Patrick K. Graves, "Leaders Recall Time of Civil Rights Act," *Beaumont Enterprise*, 2 July 1989; and G. P. Cokinos, Letter to the Editor, *Beaumont Enterprise*, 15 July 1990. On violence against blacks, see "Vandalism at Office of Negro Attorney Probed," *Beaumont Journal*, 9 October 1956; and Johns interview.

41. Quoted from "Statement: Mrs. Mercer Clarifies Picket Role," *Beaumont Journal*, 16 October 1956. See also "Voluntary End of Picketing Comes at Lamar," *Beaumont Enterprise*, 16 October 1956.

42. Breed, "College Desegregation," 15-16.

43. Quotations are from Sarah Marstellar, "Violence Erupts at Lamar Tech; Picket is Beaten," *HC*, 4 October 1956. See also "Rangers Patrol at Lamar Tech; Pickets Halt 7," *HC*, 3 October 1956; "Negro Cab Driver and White Picket Held after Rift," *Beaumont Journal*, 4 October 1956; and Cynthia Pommier, "Segregation Is a Thing of the Past," *Beaumont Enterprise*, 17 February 1990.

44. Quotation from Kirkland Jones, "Writer Enumerates LU's Black History," *University Press*, Lamar University Sixtieth Anniversary Supplement, 16 September 1983, 30. See also Alvin Randolph interviewed by author, 22 June 1989, tape in author's possession.

45. Winona Frank, interviewed by author, 4 November 1990.

46. Lamar State College of Technology, *The Cardinal* [Yearbook], 1958.