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Deflect, Delay, Deny: A Case Study of Segregation by Law School Faculty

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DEFLECT, DELAY, DENY: A CASE STUDY OF SEGREGATION BY LAW SCHOOL FACULTY BEFORE *BROWN V. BOARD OF EDUCATION*

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Many histories of school desegregation litigation center on the natural protagonists, such as the lawyers and plaintiffs who fought the status quo. Little attention is paid to the role that individual faculty members played in the perpetuation of segregated legal education. When the antagonists in the historiographies do appear, it is usually as anonymous individuals and groups. Thus, "the Board of Regents" refused to change its policy and "the University" denied a person's application.

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But recently discovered and rarely accessed historic documents provide proof of the direct role that some law school faculty members played in the perpetuation of segregation. For example, records at the University of Tennessee College of Law ("UT Law") reveal that several UT Law faculty members helped to design and implement UT's segregation strategy, including by acting as legal and policy advisers to state and university officials and by organizing and executing a concerted obfuscation plan to deny black applicants based not on their race, but on "neutral" technicalities. These segregationist faculty members are honored and memorialized still today, including through a named professorship and in portraits hanging on campus walls.

This Article seeks to excavate the truths of one law faculty's segregationist history. To do this, it tells the story of Rudolph Valentino McKamey, a black citizen of Knoxville, TN who applied to UT Law in June 1948 but was denied admission. The Article reconstructs the facts of Mr. McKamey's efforts to achieve his goal of becoming a lawyer at Tennessee's flagship institution and, at the same time, the tactics that UT Law faculty used to obstruct that effort. This history of UT Law adds to the recent efforts of scholars to thoroughly document the roles of educational institutions in slavery and segregation. This endeavor is particularly crucial in states like Tennessee, which have attempted to effectively outlaw academic reckonings with the state's racist past.

INTRODUCTION

> *"When nobody talks about the complete history of our law schools and the 'leaders' in our legal community, we risk forgetting the truth. Once the truth is forgotten, we have no secure foundation upon which to build a better system."*
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> – J.D. Candidate, Elizabeth Lyon, UALR William H. Bowen School of Law (2022).

The story of the desegregation of the University of Tennessee College of Law has been told many times before.[1] According to the usual account, university officials worked hand in hand with the University of Tennessee Board of Trustees in both the pre- and post-*Brown* eras to prevent integration. NAACP lawyers filed several cases

1. *See, e.g.*, Julia Hardin, *Polishing the Lamp of Justice: A History of Legal Education at the University of Tennessee, 1890-1990*, 57 TENN. L. REV. 145, 174–75 (1990); Luis Ruuska, *Trailblazer Lincoln Blakeney*, TENN. L. MAG. 2015 at 15.

on behalf of prospective black[2] students to try to force desegregation. They were finally successful in 1952 when certain defeat at the United States Supreme Court forced the University to concede and admit its first black graduate students. One of these students was Lincoln A. Blakeney, the first black student at the University of Tennessee College of Law. Blakeney dropped out of UT Law shortly after enrolling, and R.B.J. Cambelle became the first black student to graduate from the University of Tennessee College of Law in 1956.

This account, while technically accurate, leaves out a vast amount. Like many histories of desegregation at American law schools, it avoids examination of the role of individual faculty members in the perpetuation of segregation at the University of Tennessee ("UT"). Historic documents reveal that, in the pre-*Brown* era, several UT Law faculty members helped to design and implement UT's segregation strategy. UT Law faculty members led efforts to stall national accreditation policies that would force change and helped to design and promote statewide alternatives to desegregation. They acted as legal and policy advisers to the university officials who were resisting desegregation. And they worked at the college level to deliberately process applications by black prospective students in ways that would ensure that no black student would attend UT Law. The faculty members who were responsible for perpetuating segregation at UT Law are memorialized still today, including through a named professorship and in portraits hanging on campus walls.This Article corrects the oversimplified narrative. To do so, it tells the story of Rudolph Valentino McKamey, a black citizen of Knoxville, TN who applied to UT Law in June 1948 and was denied because of his race. Drawing on documents in numerous archives, this Article reconstructs the facts of Mr. McKamey's efforts to obtain a legal education at Tennessee's

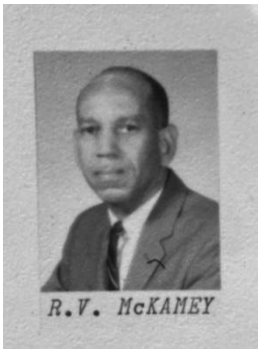

Figure 1: Rudolph McKamey. From 1966 Knoxville Bar Association Photo. On file with author.

2. As one civil rights era historian has explained, "[t]the persistent and evolving uses of racial terminology can be confusing to both writers and readers." BOBBY L. LOVETT, THE CIVIL RIGHTS MOVEMENT IN TENNESSEE: A NARRATIVE HISTORY xv (1st ed. 2005). But "as long as the artificial concept of 'race' matters to Americans," such descriptive terms are necessary. *Id.* In this Article, I use the term "black" to refer to persons of African descent in the United States, but I will also use terms like "Negro" and "Colored" when citing to and quoting the language of people of the historical period. For more information on the historical use of these terms, *see id.* at xv–xvi.

flagship institution and the tactics that UT Law faculty used to obstruct that effort.

At the time of his application to UT Law, McKamey had recently returned from serving in World War II. He was a longtime native of Knoxville, TN, having attended primary and secondary schools there. Although he grew up in the same city as UT, he was prohibited from attending. UT refused to admit black students at any level of education, undergraduate or graduate. Nevertheless, McKamey applied to attend UT Law's summer 1948 quarter and was denied admission. The fact of the denial is not surprising considering UT's policy at the time, but the records reveal previously unexplored aspects of the process that the law school used in denying the applications of black applicants. Although law school faculty received McKamey's application in April 1948, they delayed replying. When McKamey made a surprise appearance at the law school on June 14, 1948, one day before the deadline for admission and two days before the start of school, a law school professor explained that he could not attend because he was missing certain documents. It was next to impossible for McKamey to correct the problem and obtain the missing documents in time. Thus, McKamey's effort to attend UT Law was effectively obstructed. Undaunted, McKamey attended Howard Law School and, after returning to his hometown, became a prominent Knoxville lawyer, politician, and activist.

Surviving records from the period—including McKamey's application and internal university correspondence—show that the law school's "missing documents" explanation was a subterfuge, designed to hide the real reason for denying his application: his race. McKamey applied to law school six years before *Brown v. Board of Education*, at a time when legal victories by the NAACP and other civil rights leaders were making it clear to southern educational institutions that desegregation was inevitable. In the early 1930s, the NAACP—led by Thurgood Marshall and Charles Houston—had started a concerted effort to desegregate education, with an initial focus on graduate schools.[3] When McKamey applied in June 1948, the NAACP had already won several cases that had begun the process of dismantling *Plessy v. Ferguson*'s separate but equal doctrine.[4] The record suggests that McKamey's application was one of several "test

3. *See* Genna Rae McNeil, *Before Brown: Reflections on Historical Context and Vision*, 52 AM. U. L. REV. 1431, 1451–52 (2003); Leland B. Ware, *Setting the Stage for Brown: The Development and Implementation of the NAACP's School Desegregation Campaign, 1930–1950*, 52 MERCER L. REV. 631, 632 (2001).

4. Sipuel v. Bd. of Regents of University of Okla., 332 U.S. 631, 632–33 (1948); Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 350–52 (1938).

cases" that local NAACP lawyers had helped individuals file to challenge segregation at UT. Although McKamey did not end up suing UT for admission, that doesn't make his application less important. Each application to UT revealed—to both civil rights activists and university officials—the weak spots in the practice of desegregation. The records show that UT officials continually adapted their obfuscation strategies in response to McKamey's application and those like his until eventually, they had to say outright what they were doing: denying admission based on race.

Furthermore, whatever value others placed in McKamey's application as a test case, his own personal goal was clear: he wanted to become a lawyer. Despite UT Law's efforts to thwart that ambition, he accomplished his goal, graduating from Howard Law School and enjoying a successful career as a lawyer in Knoxville. McKamey may not be well-known nationally, but he should be. He was a trailblazer, acting at the forefront of several important events in civil rights history, including leading the charge on law school desegregation, representing the next generation of students who sought to desegregate lunch counters in 1960 and advocating against police brutality against black citizens in his community. McKamey's story, one of perseverance despite enormous adverse odds, deserves to be told.

As legal historian Daniel Sharfstein has explained, "[e]very grassroots story complicates what we already know."[5] This is certainly true of McKamey's story. First, it fills in the gaps of the historical accounts of segregation in legal education by highlighting the specific insidious actions of the law professors. Current narratives of the segregation era at UT Law largely place the College of Law, its dean, and faculty as bystanders to anti-desegregation efforts, not as active participants. Although it is often written that UT officials—including the University President and the Board of Trustees—resisted desegregation pre-*Brown*, records show that many UT Law faculty in 1948—three out of the eight then full-time faculty members—were responsible for planning, organizing, or implementing the University's segregation strategy. There also is evidence to suggest that the rest of the faculty, if not primary actors in the scheme, were at least complicit.

The literature on pre-*Brown* school desegregation litigation is extensive. The painstaking work of sociologists and legal historians

5. Daniel J. Sharfstein, *Brown, Massive Resistance, and the Lawyer's View: A Nashville Story*, 74 VAND. L. REV. 1435, 1445 (2021).

has brought us rich accounts of the advocates and lawyers,[6] the state officials,[7] the judges,[8] and the major cases[9] of the school desegregation civil rights struggle. A growing body of scholarship has begun to shift the focus from "'top-down' historical studies . . . to 'bottom-up' investigations of ordinary people often overlooked, shadow figures in the glare of charismatic leaders' spotlight."[10] This Article adds to these grassroots historiographies by highlighting the role that the faculty played in perpetuating segregation in legal education.

It also adds to the literature by focusing on the individuals who resisted integration. Many histories of school desegregation litigation center on the natural protagonists, usually the lawyers, plaintiffs, activists, and judges who fought the status quo. The antagonists are part of these stories too, but often as anonymous individuals and

6. *See, e.g.*, KENNETH W. MACK, REPRESENTING THE RACE 2 (2012) (discussing the difficulty for historians in telling Thurgood Marshall's story about applying to law school in Maryland because surviving records make no mention of Marshall's application); GENNA RAE MCNEIL, GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS xv (1983) ("trac[ing] the journey of a heroic lawyer who tried so valiantly to make the American legal process a system that synthesized concepts of more conscience and justice for blacks within the commands and obligations of law").

7. *See, e.g.*, Sharfstein, *supra* note 5, at 1439–41 (describing Cecil Sims as "Nashville's most successful litigator and powerbroker—an independent insider" who had a complicated relationship with desegregation).

8. *See, e.g.*, MARK TUSHNET, MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT 4 (1994).

9. *See, e.g.*, RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY x (1st ed. 1976); MARK V. TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION 1925-1950 xi (1987) (taking a narrow approach to researching the history of litigation after *Plessy*).

10. Michael Foltz, *Reviewed Work:* From the Grassroots to the Supreme Court: Brown v. Board of Education and American Democracy *by Peter F. Lau*, U. CHI. PRESS (2006), https://www.jstor.org/stable/20064109 (reviewing Peter F. Lau, *From the Grassroots to the Supreme Court:* Brown v. Board of Education *and American Democracy*, 91 J. AFRICAN. AMER. HISTORY 356 (2004)); *see, e.g.,* Danielle Wingfield-Smith, *Movement Lawyers: Henry L. Marsh's Long Struggle for Educational Justice*, 56 U. RICH. L. REV. 1339 (2022) (documenting an account of an "overlooked, shadow figure" Henry Marsh).

groups.[11] Thus, "the Board of Regents" refused to change its policy,[12] and "the University" denied a person's application.[13] Passive voice is a common tool used, making the actual individuals a silent presence lurking in the background.[14] When faculty members are named, it is often to point out the rare faculty member who went against the grain. For example, some accounts of Ada Lois Sipuel Fisher's efforts to desegregate Oklahoma University Law School recount the story that OU Law Professor Henry Foster, Jr. testified as a witness on Fisher's behalf.[15] At the trial, Professor Foster famously "lost his temper while on the stand and charged that the creation of a separate law school for Fisher was 'cheap, political chicanery.'"[16] This is certainly a noble story worth telling. But what about the faculties of the law schools who actively resisted integration? What about those who failed to take a stand?

Supreme Court opinions regarding segregation follow this same pattern, largely leaving out the actions of the responsible individuals. An example can be found in *McLaurin v. Oklahoma State Regents for Higher Education*,[17] a case brought by the NAACP in 1948 on behalf of George McLaurin, a student who was admitted to the graduate

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11. *See* Sharfstein, *supra* note 5, at 1442 (offering a case study of prominent Vanderbilt Law alumnus Cecil Sims and his ties to segregation); Ariela Gross, *A Grassroots History of Colorblind Conservative Constitutionalism*, 44 LAW & SOC. INQUIRY 58, 59 (2019) (offering a "case study of grassroots activism" in the local neighborhoods of Los Angeles); *see also* case studies cited *infra* note 286 (in addition to these individual "case studies," there is also a wide body of scholarship documenting and analyzing desegregation resistance.).

12. Cheryl Brown Wattley, *ADA Lois Sipuel Fisher: How A "Skinny Little Girl" Took on the University of Oklahoma and Helped Pave the Road to* Brown v. Board of Education, 62 OKLA. L. REV. 449, 473 (2010) ("the State Board of Regents failed to take any action").

13. Ruuska, *supra* note 1, at 15 (explaining that "the university had denied admission to six black applicants" in 1939 and "the UT Board of Trustees denied" the applications of Blakeney and his three fellow plaintiffs).

14. *See, e.g.*, Bob Burke & Justice Steven W. Taylor, *Humble Beginnings: A History of the OU College of Law*, 62 OKLA. L. REV. 383, 390 (2010) ("[Fisher] was forced to sit in the back of the room behind a row of empty seats and a wooden railing"); Ware, *supra* note 3 at 665 ("Sweatt's application was denied on the grounds of his race"); Ruuska, *supra* note 1, at 15 ("The Board 'felt [it] did not have the authority to decide on applications—[it was a] matter for [the] courts to decide or [the] legislature.").

15. Burke, *supra* note 14, at 389.

16. Burke, *supra* note 14, at 389.

17. McLaurin v. Okla. State Regents for Higher Ed., 339 U.S. 637, 641 (1950).

school of the University of Oklahoma but was segregated within it. In its opinion, the Court described some of the changes that had taken place at the school while McLaurin was a student:

> For some time, the section of the classroom in which [McLaurin] sat was surrounded by a rail on which there was a sign stating, "Reserved For Colored," but these have been removed. He is now assigned to a seat in the classroom in a row specified for colored students; he is assigned to a table in the library on the main floor; and he is permitted to eat at the same time in the cafeteria as other students, although here again he is assigned to a special table.[18]

This account of McLaurin's experience is rich in factual detail, painting a tangible picture of his experience. But the only characters in this story are the students: McLaurin and his fellow white students. Who assigned McLaurin to a special table in the cafeteria? Who put up the "Reserved for Colored" sign? Missing from this account are the faculty members at the graduate school. This omission is particularly striking given the fact that faculty members are notorious for protecting their rights to manage even the smallest aspects of education.[19] This silence turns the absent faculty members into witnesses, not participants, and relieves them of individual responsibility for what is portrayed as collective wrongdoing.

Perhaps some of the mystery about faculty involvement in the perpetuation of segregation lies in the private and arcane processes that govern law schools. Faculties conduct meetings that usually result in meeting minutes, but these minutes are often vague and tend to avoid associating specific faculty members with specific views. Much of the work of faculties occurs through committees, but these committees are not automatically expected to produce documents. Thus, there is often very little paper trail to follow.

But it turns out that UT Law is an exception. Due to an extraordinary plethora of segregation-era primary sources at UT, this Author was able to construct a detailed account of McKamey's application and the involvement of UT Law faculty in the policies supporting segregation at the time. Beginning around the early 1940s,

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18. *Id.* at 669.

19. Susan J. Becker, *Thanks, But I'm Just Looking: Or, Why I Don't Want to be a Dean*, 49 J. LEGAL EDUC. 595, 598-99 (1999) (describing the difficulties associated with faculty governance, which "entitles faculty members to significant or even decisive input in virtually every decision made at the law school").

faculty at UT Law forwarded the files of black applicants to the university president to coordinate strategy and facilitate a unified response.[20] As a result, McKamey's file, including his application, internal university memoranda, extensive notes taken to memorialize private meetings, and correspondence, can still be found in the University archives of then-UT President, Dr. C.E. Brehm. There, too, are hundreds of pages of documents related to efforts by specific administrators and faculty members to resist integration throughout the pre-*Brown* era. Furthermore, a recent discovery by this Author revealed the existence of the records of UT Law's dean at the time of McKamey's application, William Wicker.[21] These records, which survive in largely unorganized and uncategorized boxes, include internal and external correspondence, faculty meeting minutes, and committee reports. They offer a rare opportunity to observe the thoughts, motivations, and actions of the faculty members of a legal education institution at the time of segregation.

In addition to the documents preserved by the University, several sources provide opportunities to view the law school application process from McKamey's point of view. NAACP records related to McKamey's case survive in the NAACP archives at the Library of Congress. There can be found the legal file of McKamey's case kept by his attorney, local Knoxville NAACP lawyer Carl A. Cowan ("Cowan"). Furthermore, Cowan kept his own personal records from his practice. These rarely accessed documents are located at the Knox County Public Library in Knoxville, Tennessee. Together, these sources provide a uniquely detailed account of one man's failed effort to challenge segregation and the law school faculty's efforts to resist change.

In addition to filling in gaps of the historical accounts of the period, telling McKamey's story also provides more meaningful opportunities for understanding and change in modern legal education. When we examine the roles and methods used by historical individuals to resist change, we are better able to see (and correct) the lasting effects of these nefarious practices. As just one example, after learning this history, it becomes quickly apparent that the methods used by law faculty to resist change in the segregation era are similar to those used to resist change in legal education today. Pre-*Brown* UT Law professors designed and enacted a plan to deny applicants, not

20. Letter from John Baugh to C.E. Brehm, Faculty, Univ. of Tenn. Coll. of L. (June 20, 1950) (University of Tennessee Office of the President Records, AR0006, Box 9, Folder 27, p.97).

21. Papers of Carl Cowan (on file with the Knox County Public Library, Calvin M. McClung Historical Collection).

because of their race, but for "neutral," technical reasons. They used procedural maneuvers—such as requests to study the issue further—to stall policy change at the national level. Knowing this history invites a more comprehensive critical analysis of modern education, including the relationships—if any—between the practices of the past and the present and the responsibility of law schools for the insidious actions of our academic ancestors.

Historical accounts often portray the opponents of desegregation as one-dimensional. The famous image of Elizabeth Eckford walking bravely into school with a white woman screaming behind her comes to mind.[22] The hatred on the face of the white woman stands as a symbol of the blatantly bigoted actions that we imagine took place throughout the country at that time. Of course, blatantly bigoted actions did take place, including at UT Law. But McKamey's story also shows a different, but pervasive, kind of resistance to integration. Bigotry masked as neutrality. As Ariela Gross has found in her research of Los Angeles in the 1960s, "Although cross burnings and bombings certainly occurred, the most effective opponents of integration were non-violent—and even race neutral—in their resistance."[23] Legal historians have documented the widespread use of neutrality as a tool to resist integration and racial justice progress during, civil rights era. It was employed as a tactic by both radical segregationists and so-called "moderates,"[24] throughout the country (not just in the South),[25] and by both national figures and locals.[26] McKamey's story complements these accounts by showing the use of neutrality to resist change by law school faculty, the shadowy, unnamed figures who usually occupy the background of school

22. *Elizabeth Eckford and Hazel Bryan* (photograph), INDIANA UNIVERSITY, http://purl.dlib.indiana.edu/iudl/archives/photos/P0026600.

23. Gross, *supra* note 11, at 59.

24. Anders Walker, THE GHOST OF JIM CROW: HOW SOUTHERN MODERATES USED *BROWN V. BOARD OF EDUCATION* TO STALL CIVIL RIGHTS 142 (2009); Sharfstein, *supra* note 5, at 1460.

25. Ariela J. Gross, *From the Streets to the Courts: Doing Grassroots Legal History of the Civil Rights Era*, 90 TEX. L. REV. 1233, 1252–54 (2012) (reviewing TOMIKO BROWN-NAGIN, COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT (2010)).

26. Kevin M. Kruse, WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM 8 (William Chafe et al. eds., 2005) ("If we shift our attention away from politicians and focus on the lives of ordinary segregationists, the flexibility and continuity of white resistance becomes clear.").

desegregation stories.[27]

This Article proceeds as follows. Part I provides a summary of the historical background of McKamey's 1948 application, including a brief description of segregated Knoxville and the efforts to desegregate higher education in the south. The summary sets the stage for McKamey's story by relating the social, political, and legal context of his application to UT Law. Part II then chronicles McKamey's application to UT College of Law. This story is uniquely told from the perspective of both the individual applicant and the institution, as it draws from extensive archival records of both the University and the NAACP lawyers representing McKamey. Part III connects the denial of McKamey's application to the broader effort by individual faculty members at UT Law to resist desegregation. A word of caution: this account is not meant to be a full history of UT Law and its faculty. It offers a snapshot of UT Law faculty involvement in segregation during one period of time: after *Plessy* and before *Brown*. Accounts of different time periods, different individuals, and different perspectives derived from different primary documents must be told through future research.

One further note before proceeding. There is a growing consensus among social science researchers that scholars should articulate their positionality.[28] Positionality—sometimes called reflexivity or subjectivity—is the recognition of a scholar's "views, values, and beliefs about the research design, conduct, and output(s)."[29] If one accepts that "very little research in the social or educational field is or can be value-free," then it is important to articulate these values and, ideally, attempt to account for them.[30] This type of positionality statement is rare in legal scholarship, though. Perhaps this is because legal scholars see themselves as objective observers and analysts. But accepting that would mean that we are somehow separate from the processes that we study. This seems, at best, naïve. As one researcher has explained, "there is no way we can escape the social world we live in to study it."[31] There is no reason to think that law, legal systems, and legal history are somehow different. Accordingly, what follows is

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27. *See* cases cited *supra* note 11 (providing accounts of grassroots stories of individuals in the resistance to integration).

28. *See* Jessica Soedirgo & Aarie Glas, *Toward Active Reflexivity: Positionality and Practice in the Production of Knowledge*, 53 PS: POL. SCI. & POL. 527 (2020).

29. Andrew Gary Darwin Holmes, *Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide*, 8 SHANLAX INT'L J. EDUC. 1, 2 (2020).

30. *Id.*

31. Holmes, *supra* note 29, at 3.

my own positionality statement:

> I have been a tenure-track professor at UT Law in Knoxville, TN since 2013. Before that, I was a teaching fellow at Stanford Law School, and before that I was a practicing attorney. My tenured faculty position at UT Law makes me an insider of the institution that I'm studying, which gives me unique access to UT Law information, while also raising questions about my ability to remain objective. Also, I grew up on the west coast and, thus, have lived in the South for a relatively short duration. I suspect that this affects my research in two, slightly contradictory ways. On the one hand, I have a limited understanding of the cultural and social norms that might have influenced the historical individuals in this Knoxville-based story. However, that same limited understanding also frees me from biases that might have led me to make different investigative or research process choices. Finally, I identify as a white, heterosexual, cisgendered woman. I can claim no expertise on, or experience with, the black lived experience. I cannot know what it would be like to live in Knoxville as a black person either today or in 1948. Nor can I understand what it would be like to experience discrimination based on the color of my skin. My research uses narrative and storytelling, drawing primarily from historic documents generated contemporaneously by the studied individuals. As a result of my biases and lack of experience, I have sought to limit my own speculations about the documents, and, when I do speculate, to do so transparently.

I. CONTEXTUALIZING RUDOLPH MCKAMEY'S LAW SCHOOL APPLICATION

A. *Knoxville, TN in 1948: The Segregated Home of Rudolph McKamey and The University of Tennessee*

Rudolph McKamey grew up and spent most of his life in Knoxville, Tennessee.[32] Knoxville, located in the eastern region of Tennessee, is

32. *Obituary, Attorney Rudolph McKamey*, KNOXVILLE NEWS SENTINEL, January 2, 2003, at B2.

the third largest city in Tennessee and one of the major urban areas in Southern Appalachia. It also serves as the home for the flagship campus of the statewide University of Tennessee system. Recent social and historical research on the region has exposed the complex dualities that characterize Knoxville and the Appalachian region. It is a place where freedom and frontier ideals clashed with the institution of slavery. Where "niceties" are prided, all while segregation and discrimination were rampant.[33] As historian and sociologist Enkeshi Thom El-Amin has shown, although "the city has historically prided itself in peaceful race relations between Blacks and whites, its history suggests parallel but unequal realities for Black and white Knoxvillians."[34]

Knoxville is often characterized as a beacon of liberty within a less tolerant south. While Tennessee was originally a confederate state, Knoxville residents are more apt to point out that the East Tennessee region voted, successfully, to remain in the Union.[35] Local narratives often either applaud the rarity of slavery in the region or "portray[] a nicer, more humane form of the institution."[36] During the civil rights era, local leaders hyped the "peaceful race relations" of the city, pointing out that Knoxville's black citizens could vote, hold public

33. *See generally* Enkeshi Thom El-Amin, Chocolate City Way Up South in Appalachia: Black Knoxville at the Intersection of Race, Place, and Region at 39–41 (May 2019) (unpublished Ph.D. dissertation, University of Tennessee Knoxville) (on file with author) (examining the debate on whether East Tennessee and the greater Appalachian region engaged in a "nicer" and more humane version of slavery than the deep south).

34. *Id.* at 66.

35. Ruby J. Anderson Hassan, Desegregation in Knoxville Tennessee: A Case Study 62 (1999) (unpublished Ph.D. dissertation, University of Tennessee Knoxville) (on file with author).

36. El-Amin, *supra* note 34; Gabrielle Hays & Madison Stacey, *More Than 100 Years After it Ended, East Tennessee Still Wants to Forget People Suffered Under Slavery Here,* WUOT (Feb. 22, 2020), https://www.wbir.com/article/features /more-than-100-years-after-it-ended-east-tennessee-still-wants-to-forget-people-suffered-under-slavery-here/51-9d4e5af4-15b2-446b-b943-08326809ef95 (describing the loss of family histories of descendants of slaves in East Tennessee because of the lack of records, change of name, and oral storytelling); *see also* Cynthia Griggs Fleming, *White Lunch Counters and Black Consciousness: The Story of the Knoxville Sit-ins*, 49 TENN. HIST. QUARTERLY 40, 42 (1990) (describing slavery in Knoxville as "never flourish[ing]" due to the absence of "plantation slavery" in the mountainous region, and the "very close relationship between master and servant").

office, and sit on juries.[37] Knoxville is also home to Knoxville College, "one of the earliest and regionally recognized black educational institutions to be established after the Civil War."[38] Many Knoxville citizens—black and white—saw Knoxville as having a "racially lenient" attitude and felt the need to preserve the city's "delicate racial equilibrium."[39]

But historians and social scientists examining the lives of Knoxville's black population tell a more nuanced story of Knoxville's place in civil rights history. These accounts question much of the "peaceful race relations" account of antebellum Knoxville and Appalachia.[40] As stated by University of Tennessee archivist Tim Baumann, who has researched and documented the lives of slaves in the region, "Slavery was here and it was brutal. Period."[41] And although the East Tennessee region voted to remain in the Union at the time of the Civil War, the delegate from Knoxville was the only delegate from East Tennessee to vote to secede.[42] There are also reasons to question the restoration and segregation-era accounts of a relatively tolerant Knoxville. Although the formal, legal system of segregation may have been "less rigid" in Knoxville than in other areas of the south, a system of de facto segregation was quite strong.[43] Local residents recounting their experiences report that hotels, restaurants, downtown lunch counters, and movie theaters were

37. Matthew Lakin, *A Dark Night: The Knoxville Race Riot of 1919*, 72 J. EAST TENN. HIST. 1, 2 (2000).

38. El-Amin, *supra* note 33, at 7.

39. Fleming, *supra* note 36, at 42–43; *see* Michael Blum, An Island of Peace in a Sea of Racial Strife: The Civil Rights Movement in Knoxville, Tennessee at 25 (April 25, 2014) (Ph.D. dissertation, University of Memphis) (available at https://digitalcommons.memphis.edu/etd/882).

40. El-Amin, *supra* note 33, at 40 ("Researchers . . . have challenged these ideas of Appalachia's exceptionalism and suggested that slavery in the highlands of southern Appalachia was neither kinder nor more insignificant than it was in the lowlands of the South.").

41. Hays and Stacey, *supra* note 36*; see* El-Amin, *supra* note 34, at 46–47 ("census data suggests that in 1801, 37% of Knoxville's population consisted of enslaved Blacks").

42. Hassan, *supra* note 35. Knox County voted to remain in the Union, while the city of Knoxville voted to join the Confederacy. *See* William Bruce Wheeler, KNOXVILLE, TENNESSEE: A MOUNTAIN CITY IN THE NEW SOUTH 4 (2005). Thank you to Bill Mercer, for raising this point.

43. *See* Lakin, *supra* note 37, at 2–3.

segregated[44]. Water fountains were separated by race, as were the seats on buses.[45] Bob Booker, a Knoxville College student, historian, and civil rights leader, remembered the local McDonald's Restaurant's policy as: "We don't serve mustard, ketchup, or Negroes."[46] Chilhowee Park, a local park that hosted carnivals, rides, boating, and festivities in the summer, was only open to black residents once a year: on Tennessee's Emancipation Day, the 8th of August.[47] The Klu Klux Klan openly held and advertised meetings in the area,[48] and white citizens burned crosses on black citizens' yards.[49] Although black males could vote in Tennessee since 1867, a combination of the small black population in Knoxville, the poll tax, and gerrymandering all but ensured that black Knoxvillians retained little political power.[50]

Furthermore, while Knoxville might have characterized itself as a liberal bastion, it could not escape the fact that it was part of—and therefore influenced by—the larger state of Tennessee. After the Civil War, Tennessee enacted Jim Crow laws designed to ensure segregation in all aspects of life, including marriage, housing, transportation, and education.[51] Tennessee amended its Constitution in 1870 to prohibit miscegenation, and strengthened that prohibition through a statute which made interracial marriages a crime.[52] An 1885 statute gave proprietors the right to create separate

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44. City of Knoxville, *Robert J. "Bob" Booker: Returning to segregated Knoxville after serving in the military*, YouTube (Feb. 15, 2019), https://youtu.be/un5hsMjMOu8.

45. City of Knoxville, *Robert J. "Bob" Booker: Returning to segregated Knoxville after serving in the military*, YOUTUBE (Feb. 15, 2019), https://youtu.be/un5hsMjMOu8.

46. Fleming, *supra* note 36, at 40.

47. City of Knoxville, *Robert J. "Bob" Booker: Chilhowee Park during segregated Knoxville*, YOUTUBE (Feb. 18, 2019), https://youtu.be/s7szSNwNAEo.

48. Carl Cowan Papers, Annual Report of the Legal Redress Committee for 1949, Knoxville Branch of the NAACP (Nov. 14, 1949) (on file with the Knox County Public Library, Calvin M. McClung Historical Collection).

49. *See, e.g.*, *Klan Threatens Knoxville Lawyer*, THE CHICAGO DEFENDER, Apr. 18, 1953, at 5.

50. Kathy Lauder, *Chapter 130 and the Black Vote in Tennessee*, 24 Middle Tenn. J. Genealogy & Hist. 1, 1 (2010); *150 Years Later: A "Brief" History of the 15th Amendment and Other Voting Laws*, Nashville Public Library (Dec. 12, 2020).

51. TENNESSEE ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS, SCHOOL DESEGREGATION IN TENNESSEE, at 1 (2008) [hereinafter "SCHOOL DESEGREGATION IN TENNESSEE"].

52. *Id.*

accommodations for blacks and whites.[53] Other laws, while seemingly neutral, were designed to effectively disenfranchise black Tennesseans and enforce the status quo of segregation. Examples include the poll tax, requiring voter registration in certain urban areas, and secret ballot requirements.[54]

Segregation was particularly evident in Tennessee schools, including in Knoxville. Tennessee enacted its first state-wide school segregation statute in 1866, just one year after the end of the Civil War.[55] Throughout the next sixty years, the state legislature would go on to pass numerous laws reinforcing the dual education system in Tennessee. In 1869, the legislature amended Article XI of the state constitution to bar racial integration in all schools in the state, and a 1901 statute made it an offense punishable by a fine of $50, or imprisonment from 30 to 60 days, or both for any school or college to educate students in an integrated school.[56]

In 1896, the same year that Tennessee amended its constitution to bar integration of schools, the Supreme Court famously held in *Plessy v. Ferguson* that states could lawfully provide "separate but equal" facilities to their black and white citizens.[57] Yet even before *Plessy*, Tennessee's educational institutions had been following a "separate," if not equal, policy. In 1890, the University of Tennessee established the "Industrial Department" at nearby Knoxville College, a local freedman's school, to educate black students.[58] Although the students technically attended UT, facilities in the early years of Knoxville College were substandard, and courses were limited to shop work, manual labor, and farm work.[59] The then-president of the University of Tennessee argued that these subjects were appropriate "to suit the requirements of these students of the race."[60]

Nevertheless, Tennessee claimed that it was complying with *Plessy* and that its black citizens had an opportunity to obtain a college education, pointing to Knoxville College and other historically

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53. *Id.*

54. Miranda Fraley-Rhodes, *When Paying a Poll Tax in Tennessee Was the Norm*, TENN. STATE MUSEUM, https://tnmuseum.org/Stories/posts/when-paying-a-poll-tax-in-tennessee-was-the-norm (last visited Oct. 6, 2022).

55. SCHOOL DESEGREGATION IN TENNESSEE, *supra* note 51, at 2.

56. *Id.*

57. 163 U.S. 537, 552 (1896).

58. LOVETT, *supra* note 2, at 336–337.

59. *Id.* at 337.

60. *Id.* at 336–37. For a recently published history of the University of Tennessee and its history of discrimination and segregation, *see* T.R.C. HUTTON, BEARING THE TORCH: THE UNIVERSITY OF TENNESSEE, 1794–2010 (1st ed. 2022).

black colleges in the state, such as Tennessee Agricultural and Industrial State College for Negroes ("Tennessee A&I"). The state could not make such a claim about graduate education, though. In 1948, at the time of McKamey's application to UT Law, black students had relatively few opportunities to obtain professional degrees in Tennessee, and they had no access to a state-funded law school. Instead, starting in the 1930s, Tennessee provided scholarships to black students to attend out-of-state graduate schools, including for those who wanted to obtain a law degree. From the 1920s through the 1940s, Tennessee made several attempts to start state-run graduate degree programs for black students, including a graduate school at Tennessee A&I and a state-funded medical school at Meharry Medical College.[61] However, for reasons such as political complications and underfunding, these efforts were either complete failures or far from the "equal" education required by *Plessy*.

B. *NAACP School Desegregation Litigation in 1948: A Focus on Graduate Schools*

In 1930, the NAACP started a concerted campaign to "attack . . . the inequalities in public education."[62] This effort was primarily led by Thurgood Marshall—then the Special Counsel for the NAACP and later Supreme Court Justice—and Charles Hamilton Houston, the General Counsel for the NAACP and Dean of Howard Law School. "Houston feared that a frontal attack on the constitutionality of the separate-but-equal doctrine established under *Plessy* . . . would be doomed."[63] Instead, he "conceptualized an incremental strategy that focused 'on the planned, deliberate prosecution of test cases to secure favorable legal precedents' that would eventually overturn *Plessy*."[64] Houston's initial target was graduate and professional schools in states like Tennessee where there were no state-funded opportunities for black citizens.[65] Houston argued that, in these cases, the legal question "narrows down to a simple proposition of law: whether the state can appropriate public money for graduate and professional

61. Lovett, *supra* note 2, at 340–341.

62. Thurgood Marshall, *An Evaluation of Recent Efforts to Achieve Racial Integration in Education Through Resort to the Courts*, 21 J. NEGRO EDUC. 316, 317 (1952).

63. Vanessa Northington Gamble, *"No Struggle, No Fight, No Court Battle": The 1948 Desegregation of the University of Arkansas School of Medicine*, 68 J. HIST. MED. & ALLIED SCI. 377, 380 (2013).

64. *Id.*

65. Marshall, *supra* note 62.

education for white students exclusively."[66]

Marshall and Houston won their first victory in the education campaign in 1936: *Pearson v. Murray*.[67] In that case, the plaintiff, Donald Gaines Murray, applied for admission to the University of Maryland Law School, but was denied based on his race. Marshall argued that the school's policy of racial segregation was unconstitutional and "since the State of Maryland had not provided a comparable law school for blacks that Murray should be allowed to attend the white university."[68] The lower court issued a writ of mandamus ordering that Murray be admitted to the law school. That ruling was affirmed by Maryland's highest court on January 15, 1936. Murray became the first black graduate of Maryland University's law school in 1938.

While the *Murray* case was a victory, it was only a partial one. It only applied to the state of Maryland and, although the Maryland Court of Appeals ruled that Murray had to be allowed to attend the institution, he could still be separated from other white students. In 1938, the NAACP legal team reached another victory in *Gaines v. Canada*.[69] Lloyd Gaines had applied for and was denied admission to the University of Missouri's law school. The Supreme Court held 6-2 that the state had the obligation to "provide negroes with advantages for higher education substantially equal to the advantages afforded to white students" and that its obligation to "give the protection of equal laws can be performed only . . . within its own jurisdiction."[70] Thus, the Supreme Court rejected Missouri's solution—similar to Tennessee's at the time—that would have provided funding for black students to attend law school elsewhere. It also rejected the State's promise to provide legal education sometime in the future.[71] Like *Murray*, though, the *Gaines* victory was a limited one. The Court suggested that Missouri could act constitutionally if it admitted black students to already established schools *or* provided them with "substantially equal" educational facilities.[72]

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66. Charles H. Houston, *Educational Inequalities Must Go!*, THE CRISIS, Oct. 1935 at 301; *see also* TUSHNET, *supra* note 9 (examining the efforts of the NAACP to move from the "separate but equal" doctrine to desegregation).

67. *See generally* Pearson v. Murray, 182 A. 590, 594 (Md. 1936).

68. DAVID PILGRIM & FRANKLIN HUGHES, HASTE TO RISE: A REMARKABLE EXPERIENCE OF BLACK EDUCATION DURING JIM CROW 100 (2020).

69. *See* Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337, 352 (1938).

70. *Id.* at 344, 350.

71. Lucile H. Bluford, *The Lloyd Gaines Story*, 32 J. EDUC. SOC. 242, 243 (1959).

72. *Missouri ex rel. Gaines*, 305 U.S. at 352.

Figure 2: Carl Cowan. From Papers of Carl Cowan (on file with the Knox County Public Library, Calvin M. McClung Historical

Armed with these victories, the NAACP shifted its focus to targeting state-supported graduate and professional education, particularly in those states where no "substantially equal" educational facilities existed as required by *Gaines*.[73] To do this, they worked with local NAACP branches and local attorneys to identify potential plaintiffs and work up cases.[74] McKamey's lawyer, Carl A. Cowan, was one of those local attorneys.[75]

Carl Cowan was born and raised in Knoxville and graduated from Knoxville College.[76] He earned his law degree from Howard University and practiced law in Knoxville from 1931 to 1980.[77] Carl Cowan is well-known in Knoxville today. A local park is named after him, and UT offers a scholarship to students in his name. Cowan was elected to the Knox County Court from 1946-1948 and became the first black assistant district attorney for Knox County in 1953. But he is perhaps most well-known for his work as a civil rights attorney.[78] Cowan worked for years on desegregation advocacy and litigation, including fighting segregation in Tennessee's primary, secondary, and graduate school systems.[79] He was a close associate of Thurgood Marshall in this effort and worked directly with him on cases such as *Goss v. Board of Education*, *Gray*

73. Wattley, *supra* note 12, at 454–55; Memorandum from Legal Department of National Office to NAACP Branches in Tennessee (April 26, 1944) (on file with the Library of Congress).

74. LOVETT, *supra* note 2, at 3; Wattley, *supra* note 12, at 460–62*; see also* Charles H. Houston, *The Need for Negro Lawyers*, 4 J. NEGRO EDUC. 49, 52 (1935) (discussing how younger black attorneys had both the energy and passion required to work with the NAACP on desegregation cases).

75. For further information about Carl Cowan, *see* ROBERT J. BOOKER, AN ENCYCLOPEDIA: EXPERIENCES OF BLACK PEOPLE IN KNOXVILLE, TENNESSEE 1844-1974 119–21 (2017); ROBERT J. BOOKER, TWO HUNDRED YEARS OF BLACK CULTURE IN KNOXVILLE, TENNESSEE 1791 TO 1991 136–37 (Ken Skidmore ed., 1993) [hereinafter TWO HUNDRED YEARS].

76. Robert Booker, *Carl Cowan Park Was Source of Pride*, KNOXVILLE NEWS SENTINEL, Dec. 11, 2012, at B3.

77. *Carl A. Cowan*, KNOX COUNTY, *https://knoxcounty.org/parks/pdfs/carl cowan_memorial_info.pdf* (last visited Oct. 10, 2022) [hereinafter *Cowan Biography*].

78. Booker, *supra* note 75 at B3.

79. *Cowan Biography, supra* note 77.

v. University of Tennessee, and *McSwain v. County Board of Education*.

Cowan was responsible for implementing NAACP strategy on the ground in Knoxville. In August 1939, Cowan worked with both national and local NAACP affiliated attorneys, including Marshall, to file a lawsuit, *Michael v. Witham,* on behalf of several applicants to various UT graduate schools.[80] Two plaintiffs had applied to UT Law: P.L. Smith and Joseph Michael.[81] The case worked its way through Tennessee state courts, and eventually made it to the Tennessee Supreme Court. In the meantime, fearing a contrary ruling in the courts, the Tennessee General Assembly passed an Act in 1941 mandating the provision of "educational training and instruction" to black students and authorizing a graduate studies program at Tennessee A&I.[82] As a result, the Tennessee Supreme Court ruled against the plaintiffs, holding that their claims were moot. The Court explained its reasoning:

> The state having provided a full, adequate and complete method by which negroes may obtain educational training and instruction equivalent to that provided at the University of Tennessee, a decision of the issues made in the consolidated causes becomes unnecessary and improper. The legislation of 1941 took no rights away from appellants; on the contrary the right to equality in education with white students was specifically recognized and the method by which those rights would be satisfied was set forth in the legislation. What more could be demanded?[83]

Thus, for the time, Tennessee had stalled the efforts of Cowan and the NAACP to integrate higher education in the state. After years of political maneuvering, however, the promised graduate school at Tennessee A&I was still mostly just a promise. Tennessee still had no law school for black students by the mid-1940s.

Regardless of the outcome in Tennessee, the NAACP continued to follow Houston's strategy, filing additional cases challenging higher education segregation policies in other states. In 1946, the NAACP filed suit on behalf of Ada Lois Sipuel Fisher, who was denied admission to the law school at Oklahoma University based on her

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80. 165 S.W.2d 378 (Tenn. 1942); TWO HUNDRED YEARS, *supra* note 75, at 137.

81. TWO HUNDRED YEARS, *supra* note 75; *see* State ex rel. Michael v. Witham, 165 S.W.2d 378, 379 (Tenn. 1942).

82. Lovett, *supra* note 2, at 339.

83. *Michael*, 165 S.W.2d at 382.

race.[84] The case made it to the Supreme Court, and on January 12, 1948—the same year as McKamey's application to the University of Tennessee—the Supreme Court unanimously ruled in favor of Fisher. The Court held that Fisher could not be denied a legal education simply because she was black and that Oklahoma had to provide her with a legal education "in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."[85] The Court did not articulate what that legal education had to be, though, and on remand the Oklahoma Supreme Court held that the University could "follow one of three options: admit [her] to the University of Oklahoma Law School, not enroll any students at the existing law school until one was built for black students, or establish a separate black law school."[86] The state responded with the third option: establishing a new law school for black students. Marshall's attempts to challenge Oklahoma's response met with failure when the Supreme Court denied his petition for mandamus in February 1948.[87]

Thus, by the summer of 1948, when McKamey applied to UT Law, decisions like *Gaines* and *Sipuel* had made it clear that any state which failed to provide an equivalent legal education for black students in the same manner as white students would be subject to litigation and would likely be found to violate the Constitution of the United States.[88] It was also clear that Tennessee's solution, granting scholarships to attend graduate schools out of state, was not lawful.[89] Yet questions were still unanswered, including what it meant to provide an education "in the same manner." Could the state set up a separate state-run law school and comply as Oklahoma had? Could it allow black students to attend UT Law, but make them use separate facilities while there? All these questions, and more, remained. It is in this context that McKamey filed his application to UT Law.

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84. Sipuel v. Bd. of Regents of Univ. of Okla., 332 U.S. 631, 632 (1948).

85. *Id.* at 633.

86. Gamble, *supra* note 63, at 386.

87. *Id.*

88. *See Gaines*, 305 U.S at 349 ("The white resident is afforded a legal education . . . the negro having the same qualifications is refused it . . . That is a denial of equality of the legal right to the enjoyment of the privilege.").

89. *Id.* at 350, 351–52.

II. RUDOLPH MCKAMEY'S APPLICATION TO THE UNIVERSITY OF TENNESSEE COLLEGE OF LAW

Figure 3: Rudolph McKamey. From Howard Law School Graduation Photo 1951. Courtesy of Beck Cultural Exchange Center.

McKamey grew up in Knoxville. He attended and graduated with honors from Knoxville's Austin High School.[90] Austin High, formerly known as the Knoxville Colored High School, was the first public high school to educate the city's black youth and was only two miles away from the all-white East High.[91] The University of Tennessee was not an option for McKamey, despite growing up just down the road. Instead, he attended Talladega College, Alabama's oldest private historically black college.[92] After pausing his education from 1943 to 1945 to serve in the US Army in World War II, McKamey returned to

90. Transcript of Rudolph McKamey, Student, Talladega Coll. (May 17, 1948) (on file with University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, pp.52-54).

91. Robert J. Booker, *Austin High School (1879-1968)*, TENN. STATE UNIV., https://ww2.tnstate.edu/library/digital/austin.htm (last visited Oct. 6, 2022) (discussing the history of Austin High, which Knox County did not desegregate until 1968 when Austin High students moved to merge with the all-white East High School).

92. Application of Rudolph McKamey, Student, to Univ. of Tenn. Coll. of L. (May 5, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p. 50).

Talladega College and obtained his degree in sociology in 1947.[93]

McKamey's next plan was to attend law school. But there was no law school in the state of Tennessee that accepted black students for admission.[94] His initial step, then, was to enroll in the law school program at North Carolina College at Durham.[95] When North Carolina College opened in 1940, it was the only state institution in North Carolina providing legal education to black students.[96] As was the case for many state-supported separate educational institutions, North Carolina College was underfunded and far from equal. As the College itself describes it, by 1949, it was "poorly equipped and barely making ends meet."[97] Perhaps as a result, enrollments were low: only 30 students enrolled in the 1948–49 academic year with McKamey.[98]

At some point during his first year at North Carolina College, McKamey decided to apply to the state-run law school in his hometown: the University of Tennessee College of Law. He retained Carl Cowan as his attorney to assist in this process. McKamey first expressed interest in applying to UT Law through a letter to its dean, William Wicker, dated April 12, 1948.[99] At that time, McKamey did not state his race. The Secretary of the College of Law,[100] Elvin E. Overton, sent McKamey the application materials.[101] On May 1, 1948, Overton wrote again to inform McKamey that the law school would be making its "decision with regard to the applicants for the summer session . . . in about a week."[102] He further advised that, "It will be highly advantageous if your formal application and transcript can be received by that time" and that "there is a substantial chance that we will be able to accept all qualified applicants for the summer

93. *Id.*

94. Lovett, *supra* note 2, at 340–341.

95. *Id.*

96. *So Far, 70th Anniversary: The Starting Point*, N. CAROLINA CENTRAL U. SCH. OF L., 2009, at 8.

97. *Id.* at 20.

98. *Id.*

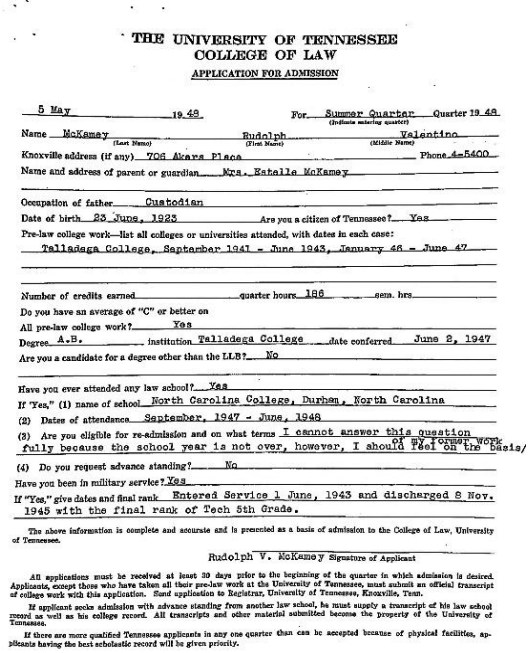
99. Letter from Rudolph McKamey, Student Applicant, to Dean, Univ. of Tenn. Coll. of L. (Apr. 12, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p. 43).

100. It appears that the Secretary of the College of Law at the time was the equivalent of both the Dean of Admissions and Associate Dean for Faculty Affairs today. On such a small faculty, it is likely that he also held other responsibilities.

101. Letter from Elvin E. Overton, Sec'y, Univ. of Tenn. Coll. of L., to Rudolph McKamey, Student Applicant (Apr. 20, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p. 48).

102. *Id.*

quarter."[103]



THE UNIVERSITY OF TENNESSEE
COLLEGE OF LAW
APPLICATION FOR ADMISSION

5 May 19 48 For Summer Quarter Quarter 19 48
(Indicate entering quarter)

Name McKamey (Last Name) Rudolph (First Name) Valentino (Middle Name)
Knoxville address (if any) 706 Akers Place Phone 4-5400
Name and address of parent or guardian Mrs. Estelle McKamey

Occupation of father Custodian
Date of birth 23 June, 1925 Are you a citizen of Tennessee? Yes
Pre-law college work—list all colleges or universities attended, with dates in each case:
Talladega College, September 1941 - June 1943, January 46 - June 47

Number of credits earned quarter hours 186 sem. hrs
Do you have an average of "C" or better on
All pre-law college work? Yes
Degree A.B. institution Talladega College date conferred June 2, 1947
Are you a candidate for a degree other than the LLB? No

Have you ever attended any law school? Yes
If "Yes," (1) name of school North Carolina College, Durham, North Carolina
(2) Dates of attendance September, 1947 - June, 1948
(3) Are you eligible for re-admission and on what terms I cannot answer this question fully because the school year is not over, however, I should feel on the basis of my former work
(4) Do you request advance standing? No
Have you been in military service? Yes
If "Yes," give dates and final rank Entered Service 1 June, 1943 and discharged 8 Nov. 1945 with the final rank of Tech 5th Grade.

The above information is complete and accurate and is presented as a basis of admission to the College of Law, University of Tennessee.

Rudolph V. McKamey Signature of Applicant

All applications must be received at least 30 days prior to the beginning of the quarter in which admission is desired. Applicants, except those who have taken all their pre-law work at the University of Tennessee, must submit an official transcript of college work with this application. Send application to Registrar, University of Tennessee, Knoxville, Tenn.

If applicant seeks admission with advance standing from another law school, he must supply a transcript of his law school record as well as his college record. All transcripts and other material submitted become the property of the University of Tennessee.

If there are more qualified Tennessee applicants in any one quarter than can be accepted because of physical facilities, applicants having the best scholastic record will be given priority.

Figure 4: Application of Rudolph McKamey, May 5, 1948. From University of Tennessee Special Collections.

McKamey sent his application on May 5, 1948 seeking admission in the summer quarter.[104] On this application, McKamey stated that he had attended Talladega College and North Carolina College at Durham.[105] It is likely these entries that gave law school officials the first suggestion of McKamey's race.

At this point, the process grinds to a halt. Overton's strategy appeared to be to wait to respond to McKamey's application, perhaps in the hope that nothing would come of it. McKamey heard nothing back from the law school for weeks. This, despite the fact that the deadline for registration for the summer quarter was June 15 and the start of summer classes was June 16.[106] Undaunted, McKamey decided to force the issue. On June 14, the first day of registration, McKamey delivered a letter to university administrators—including to Dean Wicker and C.E. Brehm, the University of Tennessee's

103. Letter from Elvin E. Overton, Sec'y, Univ. of Tenn. Coll. of L., to Rudolph McKamey, Student Applicant (May 1, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.47).

104. Letter from Rudolph McKamey, Student Applicant, to Elvin Overton, Sec'y, Univ. of Tenn. Coll. of L. (May 5, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.49).

105. Rudolph McKamey, Student, Application to Univ. of Tenn. Coll. of L. (May 5, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.50).

106. Letter from Rudolph McKamey, Student Applicant, to C.E. Brehm, President, Univ. of Tenn., Knoxville (June 14, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p. 60).

President—asking the university to act on his application immediately.[107] Failure to act by the start of classes on June 16, McKamey stated, would be "consider[ed] . . . a rejection of my application."[108]

On that same day, June 14, McKamey showed up in person at the law school seeking a meeting with Overton. Both McKamey and Overton clearly understood the importance of this meeting, as they separately documented their contemporaneous memories of the meeting in lengthy internal reports that survive today.[109] In the meeting, Overton told McKamey for the first time that his application was incomplete. According to Overton, students transferring from another law school had to obtain a statement of good standing and transcript from their current law school. In reality, the law school had no such policy. The University Record at the time contained a section called "Advanced Standing," which read:

> **Advanced Standing**
>
> A student may transfer with advanced standing from any [AALS] law school . . . and may receive . . . up to two academic years of credit. . . . As a condition of admission a transfer student must forward to the Dean of the College of Law a certificate of good standing by the Dean of the law school previously attended.[110]

The application form for the Summer 1948 session states a similar policy. It read: "If an applicant seeks admission with advance standing from another law school, he must supply a transcript of his law school record as well as his college record."[111]

One line of the law school's application asked, "Do you request

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107. *Id.*

108. *Id.*

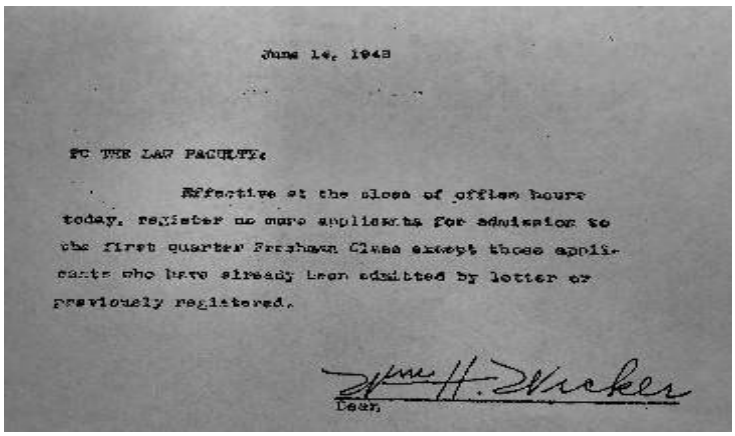
109. Rudolph McKamey, Student Applicant, Report of Conversation with Elvin E. Overton, Sec'y, Univ. of Tenn. Coll. of L. (available at https://congressional.proquest.com/histvault?q=001512-004-0779&accountid=14766) [hereinafter McKamey Meeting Report]; Elvin E. Overton, Sec'y, Univ. of Tenn. Coll of L., Report of Conversation with Rudolph McKamey, Student Applicant (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.74) [hereinafter Overton Meeting Report].

110. *The University of Tennessee Record,* 51 U. TENN. COLL. L. 1, 5, 374 (1948) (available in the University of Tennessee Special Collections).

111. Rudolph McKamey, Student, Application to Univ. of Tenn. Coll. of L. (May 5, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.50).

advance standing?" McKamey stated, "No".[112] According to McKamey's account, McKamey also informed Overton in the meeting that he was "not seeking advanced standing" but "was applying as any other student would apply coming right out of college."[113] Overton acknowledged this, but said that, nevertheless, it was the policy of the law school to require the good standing letter of all transfers and that this was nothing special to McKamey. Curiously, Overton's report of the June 14 meeting mentions nothing of the discussion he had with McKamey about "advanced standing" transfers.[114] Both agreed, however, that McKamey told Overton that he would get the required papers "right away."[115] The meeting ended shortly after.

According to McKamey's account of the meeting, although Overton "attempted to be calm, intellectual [and] cordial . . ., there was a bit of nervousness on his part."[116] The record suggests that McKamey was right. His visit appeared to have made the entire law school administration quite nervous. On the very same day, Dean Wicker sent a note to all College of Law faculty stating in full:



June 14, 1948

TO THE LAW FACULTY:

Effective at the close of office hours today, register no more applicants for admission to the first quarter Freshman Class except those applicants who have already been admitted by letter or previously registered.

Dean

Figure 5: Memo to Faculty from Dean Wicker, June 14, 1948. From University of Tennessee Special Collections.

Effective at the close of office hours today, register no

112. *Id.*

113. McKamey Meeting Report, *supra* note 109.

114. Overton Meeting Report, *supra* note 109.

115. McKamey Meeting Report, *supra* note 109; Overton Meeting Report, *supra* note 109.

116. McKamey Meeting Report, *supra* note 109.

> more applicants for admission to the first quarter freshman class except those applicants who have already been admitted by letter or previously registered.[117]

It appears that this directive was so hastily sent that, according to Overton, the College of Law was forced to reject the applications of two (apparently white) "qualified applicants who otherwise would have been admitted."[118]

The next day, June 15, 1948, Dean Wicker wrote to McKamey officially denying his application. Two versions of this letter survive. One letter, from Cowan's case file, is the actual letter that McKamey received.[119] The other, from President Brehm's records, is an unsent draft.[120] In the draft, Wicker tells McKamey that the law school could not "act[] upon" his application because it was "incomplete." In light of the lack of a letter of good standing and transcript, Wicker states that UT Law could not admit McKamey. Further, because "registration for the Summer quarter of all new students has been closed," no further applications would be accepted.[121] The draft letter also contains a lengthy paragraph describing the Tennessee statutes related to "educational training and instruction for negro citizens" and recommending that McKamey write to the State Commissioner of Education to seek assistance in obtaining financial aid to attend law school out of state. The draft strikes a very conciliatory tone: "We stand ready," Wicker assures McKamey, "to exert our best efforts to secure for you such financial assistance."

The letter that Wicker actually sent to McKamey is largely the same as the draft, but with one conspicuous difference: it leaves out any mention of race.[122] Gone is the offer of assistance; absent is the

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117. Memorandum from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Law Faculty (June 14, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.72).

118. Letter from Elvin Overton, Sec'y, Univ. of Tenn. Coll. of L., to C.E. Brehm, President, Univ. of Tenn. (June 21, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.40).

119. *Id.*

120. Letter from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Rudolph McKamey, Student Applicant (June 15, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.76) (includes handwritten note: "[l]etter not sent").

121. *Id.*

122. Letter from William Wicker, Dean, Univ. of Tenn. Coll. Of L., to Rudolph

discussion of Tennessee laws regarding segregated education. The sole focus of the final version of the letter is McKamey's apparent failure to provide a complete application. It is not known what caused Wicker to delete the language about race in his final letter. What is clear is that, read together, these two letters are a transparent, and physical, reflection of the UT Law faculty's attempts to avoid denying applications based on race.

Meanwhile, behind the scenes, law school faculty and university administrators scrambled to decide how to respond to the increasing number of applications coming in from black applicants, including McKamey's. After the *Sipuel* decision came down earlier that year, university officials were on high alert for cases that would force the issue of admissions based on race. Deans and administrators of colleges throughout the university forwarded the applications of black applicants to university and state officials working on the issue.[123] The record suggests that McKamey's application particularly worried officials because he was so close to meeting required admissions standards. In late June 1948, Professor John Baugh, a faculty member at UT College of Law who also served as UT's legal counsel, wrote a memo to university officials urging hasty action to prevent the need to admit black students to UT Law.[124] Although Professor Overton and Dean Wicker had temporarily obstructed McKamey's application, Baugh explained that it was just a matter of time before McKamey or some other qualified applicant came "well prepared and with all the required certificates, transcripts and other papers." As a result, Baugh stated, "I feel certain that we will soon be faced squarely with the issue." Baugh recommended immediate action:

> I am convinced that the state of Tennessee should, without further delay, establish a separate law school and have it ready by the beginning of the fall quarter period. Unless this is done, McKamey or some other applicant will catch us unprepared and the alternatives will be closing of the College of law to all

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McKamey, student applicant (June 15, 1948) (available at https://congressional.proquest.com/histvault?q=001512-004-0779&accountid=14766).

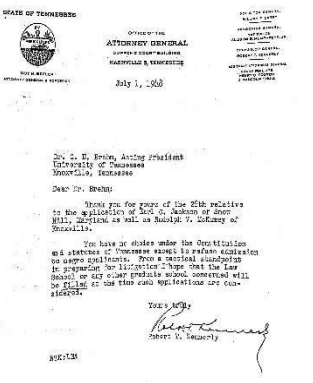
123. *See, e.g.*, Letter from C.E. Brehm, President, Univ. of Tenn. to Robert Kennerly, Att'y Gen. (June 23, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.80) (forwarding the application file of Rudolph McKamey to the Attorney General of Tennessee).

124. Letter from John Baugh, Univ. of Tenn. Coll. of L., to C.E. Brehm, President, Univ. of Tenn. (June 22, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 25, p.38).

> first year applicants, or the admission of the applicant forced upon us by court order.

In turn, University President Brehm communicated this sense of concern and urgency to officials throughout the state, including to the then Attorney General of Tennessee, Robert Kennerly (Attorney General Kennerly).[125] In response, Attorney General Kennerly wrote to Brehm stating:

> Thank you for [your letter dated June] 28th relative to the application of . . . Rudolph V. McKamey of Knoxville.
>
> You have no choice under the Constitution and statutes of Tennessee to refuse admission to negro applications. From a tactical standpoint in preparing for litigation I hope that the Law School or any other graduate school concerned will be filled at the time such applications are considered.[126]



STATE OF TENNESSEE

ATTORNEY GENERAL

NASHVILLE 3, TENNESSEE

July 1, 1948

Dr. C. E. Brehm, Acting President
University of Tennessee
Knoxville, Tennessee

Dear Dr. Brehm:

Thank you for yours of the 28th relative to the applicacy of Lyle C. Jackson or Knox Hill, Harrison as well as Rudolph V. McKamey of Knoxville.

You have no choice under the Constitution and statutes of Tennessee except to refuse admission to negro applicants. From a tactical standpoint in preparation for litigation I hope that the Law School or any other graduate school concerned will be filled at the time such applications are considered.

Yours truly

Robert V. Kennerly

RVK:LM

Figure 6: Letter from Attorney General Kennerly to President Brehm, July 1, 1948. From University of Tennessee

McKamey dropped his attempt to attend UT Law after June 1948. Documents in NAACP files suggest that this decision was, at least in part, due to lack of available litigation funding. On June 21, under a week after receiving Dean Wicker's letter denying admission to McKamey, Cowan attended the NAACP National Legal Conference in Kansas City, Missouri, along with Thurgood Marshall and other local lawyers from across the country working on civil rights litigation. There, Cowan "raised the question of filing suit against the University of Tenn. where there is no law school available for negros."[127] In response, Thurgood Marshall pointed out that the NAACP "had three

125. *See* Letter from C.E. Brehm, President, Univ. of Tenn. to Robert Kennerly, Att'y Gen. (June 23, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.80).

126. Letter from Robert Kennerly, Off. of the Att'y Gen. to C.E. Brehm, President, Univ. of Tenn. (July 1, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 19, p.1).

127. Resume of N.A.A.C.P. Legal Conference 2 (June 21, 1948), Papers of the NAACP, Part 1, Folder 001412-012-0024, https://congressional.proquest.com/histvault?q=001412-012-0224&accountid=14766.

cases presently pending involving law schools" and that "because of the tremendous cost of these test cases, it was improbable that the NAACP would support any great number of cases involving the same principle."[128]

Perhaps we will never know what truly motivated McKamey to drop his attempt to attend UT Law. Could it have been the cost of litigation, as suggested by the NAACP records? Or a personal motivation to get on with life? Either way, McKamey did not wait to pursue his goal of becoming a lawyer. He entered Howard University's law school that very fall of 1948, graduated in 1951, and according to newspaper accounts, was the first member of his class to be admitted to the bar.[129]

After attending law school, McKamey had a long and successful career. He held membership in four bar associations and practiced law for thirty-two years, much of that time in his hometown, Knoxville.[130] He was active in the NAACP and various city-wide civic organizations and ran for city council in 1953, although he lost. McKamey and his once-lawyer, Carl Cowan, practiced law together in Knoxville. They appeared as co-counsel in a 1954 right-to-counsel due process case that went to the United States Supreme Court, *Chandler v. Fretag*,[131] and shared the same business office: 101½ Vine Ave., Knoxville, Tennessee.[132] Sadly, this historic business location—once part of a thriving black Knoxville community—is now gone. It, along with "[t]he entire black business district around East Vine Street was

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128. *Id.* It seems that Marshall was speaking of *Sipuel v. Board of Regents of University of Oklahoma*, 332 U.S. 631 (1948) and *Sweatt v. Painter*, 339 U.S. 629 (1950), NAACP cases that were then-pending against the law schools at University of Oklahoma and University of Texas. The third "presently pending" case referred to by Marshall is a bit less clear. *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U.S. 637 (1950), was pending at the time, but it involved a student in Oklahoma University's graduate school of education, not in the law school.

129. *Knoxville Atty. Qualified for Council Race*, Oct. 9, 1953.

130. *Obituary of Attorney Rudolph McKamey*, KNOXVILLE NEWS SENTINEL, Jan. 2, 2003, at B2.

131. *See* Chandler v. Fretag, 348 U.S. 3, 5 (1954) (holding that the denial of the opportunity to obtain counsel on a habitual criminal accusation was a deprivation of due process).

132. Brief for Appellants at 3, Chandler v. Fretag, 348 U.S. 3 (1954) (No. 39), 1954 WL 72896. From historic maps, this appears to be a location at the corner of Vine and Central in old city in Knoxville, a portion of the city that was once a thriving part of the black Knoxville community but was demolished by the city as part of urban renewal.

wiped out" as part of the city's urban renewal effort.[133]

Figure 7: Rudolph McKamey. From Obituary, KNOXVILLE NEWS SENTINEL, January 2, 2003.

Throughout his life, Mr. McKamey continued to raise his voice highlighting injustices in the community. For example, in 1960, McKamey joined Cowan and three other attorneys in filing litigation to protect the right of black citizens to engage in sit-in demonstrations of a Knoxville drug store's segregated lunch counter.[134] And in 1970, McKamey helped lead an effort to push for reform in the Knoxville Police Department when a black woman, Mrs. Ethel Beck, died after spending time in police custody.[135] He also shared his views publicly in several "letters to the editor" of the local newspaper, the *Knoxville News Sentinel*. After a Knoxville Krystal Burger refused to serve McKamey in 1964, telling him that they had "orders not to serve Negroes," McKamey wrote: "Let us not be fooled that Knoxville is an open city. It is not. If anything, it is an open shut city."[136] And in 1997, just five years before his death, he wrote to the paper opposing the use of taxpayer funds to build a new stadium for the Smokies baseball team.[137] "As a black man 74 years old who could not even buy a ticket to sit in the stands and watch a baseball game when I was a child," he explained, "I do not want to see any group . . . that ever practiced segregation and discriminated against me or my race as a child prosper from my taxpayer dollars."[138]

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133. S. Heather Duncan, *Losing Home: When Urban Renewal Came to Knoxville*, WUOT (May 13, 2021, 6:00 AM), https://www.wuot.org/news/2021-05-13/losing-home-when-urban-renewal-came-to-knoxville.

134. *Negroes Seek End to Sit-in Injunction*, KNOXVILLE NEWS SENTINEL, Sept. 25, 1960, at B2.

135. *Beck Case to Get Council Check: Negros Make Several Demands*, KNOXVILLE NEWS SENTINEL, Aug. 19, 1970, at 1. For a perspective on the relationship between Ethel Beck's death and modern police profiling, *see* Theotis Robinson, Jr., *50 Years After Ethel Beck's Death, Policing Issues Remain*, KNOXVILLE NEWS SENTINEL, Aug. 9, 2020, at 1E, 3E.

136. Rudolph V. McKamey, *Negro Complains City Isn't Open*, KNOXVILLE NEWS SENTINEL, June 18, 1964, at 29.

137. Rudolph V. McKamey, *Letter to the Editor*, KNOXVILLE NEWS SENTINEL, Nov. 30, 1997, at F5.

138. *Id.* In November 2021, the Knoxville City Council approved a plan to spend public money to build a new stadium for the Smokies downtown. That plan is expected to cost the taxpayers approximately $480,000 each year until year 10, when it is

McKamey passed away on December 29, 2002 at his home in Knoxville.[139]

III. "WE HAVE NEVER TURNED ONE DOWN ON THE RACE QUESTION": UT LAW FACULTY'S EFFORTS TO RESIST DESEGREGATION

From the University's perspective, McKamey's application was one of many applications that seemed to be slowly, but inevitably, leading to integration. But the University was not going to allow this change easily. To ensure that black students were never admitted and to protect themselves from further litigation, UT Law faculty and university officials implemented a broad strategy of delaying and denying applications based not on race, but on "neutral" technicalities. McKamey was one victim of this broad scheme. At the time of McKamey's application, UT Law had eight full-time faculty members.[140] Of these, at least three—Dean Wicker and Professors Baugh and Overton—had direct involvement in UT's pre-*Brown* scheme to resist integration. These three UT Law faculty members were responsible for planning, organizing, or implementing UT's strategies for furthering segregated education in the pre-*Brown* era. There is also evidence that the rest of the 1948 UT Law faculty was at least complicit in these endeavors.

A. *Maintaining Segregation at UT: Dean Wicker, Professor Baugh, and Professor Overton*

Professor Overton and Dean Wicker told Mr. McKamey that he was denied admission for a reason unrelated to race—a neutral policy requiring additional documents from transfer students. But this was an obfuscation. Taken together, the surviving records described above show the tenuousness of Overton's claim that McKamey needed a letter of good standing to transfer. But even if he did need such a letter, Overton and Wicker also ensured that McKamey had no way of fulfilling this requirement: they waited to tell him until he showed up

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expected to pay for itself. Kevin Reichard, *New Knoxville ballpark receives final city approval*, BALLPARK DIGEST (Nov. 17, 2021), https://ballparkdigest.com/2021/11/17/new-knoxville-ballpark-receives-final-city-approval/.

139. *Obituary of Attorney Rudolph McKame*y, KNOXVILLE NEWS SENTINEL, Jan. 2, 2003, at B2.

140. The full-time faculty at UT College of Law in 1948 included: John C. Baugh, Robert M. Jones, Charles H. Miller, Blakely M. Murphy, Dix W. Noel, Elvin E. Overton, Harold C. Warner, and William Henry Wicker. *The University of Tennessee Record, supra* note 110, at 2–3.

in the office on the first day of registration, and then, after McKamey stated his intent to obtain the letter, immediately closed registration.[141]

The University archives also show the tactics used in McKamey's case were not unique; they were a part of a wider practice of delay and obfuscation designed to resist integration and protect the University from litigation. UT President Brehm admitted as much, describing these efforts to another UT administrator as a "concerted action and plan" to stall and delay action on applications for admission by a black person.[142] The tactics used were numerous and were implemented throughout the University, including the College of Law. Some examples include: making applicants follow an exceedingly complex admissions process,[143] giving the individual colleges "discretion" to judge the merits of applications,[144] pointing out technicalities that resulted in delaying or denying applications,[145] implementing

141. Memorandum from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Law Faculty (June 14, 1948) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.72).

142. Telephone Conversation Record between C.E. Brehm, President, Univ. of Tenn., and O.W. Hyman (June 10, 1954) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 23, p.44-45).

143. Carl Cowan Papers, Letter from Carl Cowan to Milton Konvitz, Assistant Special Couns., NAACP (May 24, 1944), (available at https://congressional.proquest.com/histvault?q=001512-004-0779&accountid=14766 in Papers of the NAACP, Part 2, Folder 001512-004-0779) (describing the burden placed on black applicants "to make demand upon the Board for training and instruction in any branch of learning taught in the University of Tennessee" and to provide the Board with "reasonable advance notice of the intention"); Telephone Conversation Record between C.E. Brehm, President, Univ. of Tenn., and O.W. Hyman (June 10, 1954) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 23, p.45) (suggesting that the college of medicine "make him (applicant) put out a little work" by requiring exhaustion of a number of remedies before making a decision on the application).

144. Telephone Conversation Record between C.E. Brehm, President, Univ. of Tenn., and O.W. Hyman (June 10, 1954) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 23, p.45).

145. *See, e.g.*, Letter from Elvin Overton, Sec'y, Univ. of Tenn. Coll, of L., to Harold Smith, Jr., Student Applicant (Jan. 12, 1949) (on file at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.99) (replying to an applicant for admission that UT Law did not start its quarter on the date of admission requested); Letter from C.E. Brehm, President, Univ. of Tenn. Coll. of L., to Hon. Burgin Dossett, Comm'r of Educ. (July 7, 1948) (on file at the University of Tennessee

admissions standards in a way that weeded out black applicants,[146] and delaying replying to inquiries until the admissions window was almost closed.[147]

Figure 8: Dean Wicker, University of Tennessee College of Law. Currently hanging on the wall of UT Law.

As McKamey's case illustrates, UT Law faculty were active participants in this scheme. But their efforts went beyond the pre-*Brown* delay and obfuscation admissions strategy. College of Law faculty had a hand in designing and implementing numerous aspects of the entire segregation strategy, on the national, university, and law school levels. One of the main defenders of segregation was the College of Law's Dean William Wicker. Wicker served as the law school's dean from 1944 to 1963.[148] He was a native of Newberry, South Carolina, and received his B.A. from Newberry College in 1917, his LL.B. from Yale University in 1920, and his LL.M. from

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Office of the President Records, AR0006, Box 9, Folder 28, p.7) (arguing that an applicant be denied for failing to provide a transcript for all hours of pre-law college work).

146. Carl Cowan, Memorandum from the Tenn. State Bd. of Educ. on the L. Pertaining to Pub. Scholarships for Negro Coll. Students (Aug. 24, 1937) (on file with the Knox County Public Library, Calvin M. McClung Historical Collection) (requiring that to be granted a Tennessee sponsored scholarship for a "colored person" to attend out of state graduate schools, the applicant must submit, among other documents, "a statement from a reputable physician, giving the condition of your health" and the names of "three reputable people who are acquainted with you who will attest to your character"); *see* Letter from John C. Baugh, Professor of L. & Univ. Couns., to Cloide E. Brehm, Acting President, Univ. of Tenn. 1 (June 22, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 25, p. 38) (pointing out a potential error on the application of Earl Jackson that could prevent him from registering); Letter from Cloide E. Brehm, Acting President, Univ. of Tenn., to Honorable Burgin Dossett, Tenn. Comm'r of Educ. (July 27, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 20, Folder 28, p. 7) (discussing giving preference to in-state applicants and those who have completed pre-law work at Tennessee institutions).

147. Rudolph McKamey's application is only one such example of this delay tactic. *See* Letter from J. P. Hess, Off. of the Sec'y, Univ. of Tenn., Knoxville, to Robert Williams, Student Applicant (Aug. 13, 1949) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 25, p. 56) (notifying applicant Williams that the University would have to wait to present his letter until the Board of Trustees' next session).

148. The history of William Wicker is largely derived from various annual reports

Harvard University in 1925. He taught as a law professor at the University of Tennessee for thirty-eight years, from 1925 to 1967. When he inherited the deanship in 1944, he was only one of three full-time law professors. Wicker is credited for making "admissions standards . . . more selective" during his deanship, and for expanding the number of enrolled law students, law faculty members, and law library materials.[149] Wicker was a prolific scholar and professor; he taught over twenty-four different legal courses and published over seventy different articles in various law journals and periodicals on subjects ranging from business organizations to discovery tactics. He also served in several public service positions, including chairman of a Federal Land Condemnation Commission for East Tennessee, commissioner on Uniform State Laws for Tennessee, and as a United States Juror Commissioner.[150]

Dean Wicker's views regarding desegregation of UT Law are perhaps best reflected in his brazen statement in a 1951 letter to the Dean of the University of North Carolina: "We don't want any more Negroes than we have to accept."[151] Throughout the forties and fifties, Wicker participated in numerous efforts—both on a local and national level—to achieve this goal. There is also evidence that Wicker saw this fight as personal. In one letter to President Brehm, Wicker expressed "surprise[]" after the dean at the University of Nebraska College of Law, Ed Belsheim, publicly aligned himself with the opponents of segregation.[152] What was most disturbing to Wicker? Dean Belsheim was a former University of Tennessee Law faculty member and "personal friend," and Wicker assumed that "he could be depended on to understand the Southern view point."[153]

Locally, Dean Wicker provided legal and strategic advice to university officials and coordinated the law school's segregation policies and practices. The records contain numerous exchanges between Wicker and university officials discussing the best way to

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and publications at UT Law. *See* UNIV. OF TENN. COLL. OF L., 1989 ANN. REP. (1989), http://trace.tennessee.edu/utk_lawannualreport/7; William H. Wicker, *My Years at the University*, 34 TENN. L. REV. 564, 564 (1967); *Dean Wicker Retires After 40 Years*, THE UT LAW., Summer 1967, at 2, [hereinafter *Dean Wicker Retires*].

149. *Our Sixth Dean*, TENN. L. MAG., Fall 2015, at 13.

150. *Dean Wicker Retires*, *supra* note 148, at 2.

151. Letter from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Henry Brandis, Jr., Dean, Univ. of N.C. Sch. of L. (Apr. 21, 1951) (on file with author).

152. Letter from William Wicker, Dean, Univ. of Tenn. Coll. Of L., to Cloide E. Brehm, President, Univ. of Tenn. (Dec. 7, 1951) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 20, p.33).

153. *Id.*

respond to applications of black applicants, while also protecting the university from litigation. As an example, in July 1948, Dean Wicker and Professor Overton reached out to President Brehm and Burgin Dossett, Chairman of the State Board of Education, to advise them that the university had received another application from a black person wishing to attend law school.[154] In response, Chairman Dossett suggested that the law school respond by informing the applicant of the state statutes that prohibited integrated education.[155] After conferring with Brehm, Wicker counseled a different approach, explaining that it was unwise to "deny him admission based on the color line."[156] Instead, Wicker identified potential technical deficiencies in the application and advised that they be used as a basis for denial. Shortly after, Overton did just that.[157]

Nationally, Dean Wicker worked with other southern law schools to resist efforts to make desegregation a condition of membership of the Association of American Law Schools ("AALS"). As he explained to the Chairman of the Special Committee of the AALS on Racial Discrimination in opposing one such effort in 1951, "our College of Law will vote against almost any AALS proposal purporting to make anti-segregation an educational standard. My own view is that segregation of the races is a social and, in Tennessee at least, a political issue, and is not an educational standard."[158] At the Annual Meeting of the AALS in December 1951, delegates were asked to vote on various resolutions regarding prohibition of segregation at AALS

154. Letter from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Cloide E. Brehm, Acting President, Univ. of Tenn. (July 12, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.33); letter from Elvin E. Overton, Sec'y, Univ. of Tenn. Coll. of L., to Cloide E. Brehm, Acting President, Univ. of Tenn. (July 20, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28).

155. Letter from Burgin Dossett, Tenn. Comm'r of Education, to Cloide E. Brehm, President, Univ. of Tenn. (July 23, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28).

156. Letter from Cloide E. Brehm, Acting President, Univ. of Tenn., to Honorable Burgin Dossett, Tenn. Comm'r of Educ. (July 27, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.7).

157. *See infra* notes 165–66 and accompanying text (discussing the application of Henry Hill).

158. Letter from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Elliott Cheatham, Professor, Colum. Univ. (Apr. 20, 1951) (on file with the University of Tennessee Office of the President Records, AR0006, Box 20, Folder 1 "Dean William H. Wicker Sundry Correspondence").

law schools.[159] It was clear to Wicker that any such proposal was "likely to be adopted" because, as he acknowledged in a letter to President Brehm, "only 24 out of the 105 schools that are members of this association exclude negros now."[160] In an effort to forestall this inevitable change, Wicker promoted various stalling techniques. He first supported a substitute resolution that would have delayed a vote entirely, instead sending it to a committee to study the issue.[161] When that effort failed, he supported a "relatively mild" proposal that would adopt a "Resolution" stating as an "Objective" that all AALS law schools eliminate segregation and refer the matter for further study.[162] This effort succeeded and the watered-down version passed at the December 1951 meeting.[163] As Wicker hoped, although the resolution included a statement affirming the value of equality in education, the only thing it did to achieve this goal was to create a special committee tasked with "effectuating" the objective.[164]

Proponents of desegregation were furious. Ed Belsheim, the Dean of Nebraska College of Law and former UT Law professor, lamented that the resolution was toothless, "a sanctionless statement of policy against segregation coupled with a wait and see attitude."[165] And Yale faculty members expressed dismay that the AALS had

159. Letter from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Cloide E. Brehm, President, Univ. of Tenn. 2 (Jan. 8, 1951) (on file with the University of Tennessee Office of the President Records, AR0006, Box 20, Folder 1 "Dean William H. Wicker Sundry Correspondence").

160. Letter from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Cloide. E. Brehm, President, Univ. of Tenn. (Oct. 27, 1950) (on file with the University of Tennessee Office of the President Records, AR0006, Box 20, Folder 1 "Dean William H. Wicker Sundry Correspondence").

161. Letter from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Cloide E. Brehm, President, Univ. of Tenn., *supra* note 159 at 2.

162. Letter and Report of the Special Committee on Racial Discrimination from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Cloide E. Brehm, President, Univ. of Tenn. 16–17 (Oct. 30, 1951) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 20, p.43-75).

163. Resolution, Ass'n of Am. L. Schs. 1 (Dec. 28–30, 1951) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 20, p.9).

164. *Id.*

165. Memorandum from Edmund O. Belsheim, Dean. Univ. of Neb. Coll. of L., to the Member Schs. of the Ass'n of Am. L. Schs. (Nov. 30, 1951) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 20, p.34).

"temporize[ed]" on such a deeply moral issue.[166] "By every humanitarian and democratic standard, racial discrimination is an evil," they argued.[167] "To tolerate it, however reluctantly, to temporize with it however briefly, to compromise with it however wishfully, is to condone that evil now."[168] Member schools of the AALS would continue to debate the question of whether and how to enforce its anti-segregation resolution for years.[169]

Dean Wicker was joined in his anti-desegregation efforts by another University of Tennessee law faculty member, Professor John Baugh. Professor Baugh was a graduate of UT College of Law.[170] After obtaining his degree, he served in WWII in the Office of the Judge Advocate General of the Navy as a legal advisor related to land acquisitions.[171] After his return to civil life in 1945, Baugh joined the law faculty at Tennessee, and taught and wrote on procedure-related matters until 1964.[172] For most of that time, he also served as legal counsel for the University of Tennessee, first as staff attorney from 1947 to 1965 and then, once he resigned from teaching at the College of Law, as the university's Chief Legal Counsel and Secretary to the Board of Trustees until 1975.[173]

Figure 9: Professor John Baugh, University of Tennessee College of Law. From 1959-60 Student Photo. Currently hanging on the wall of UT Law Library.

In his capacity as legal counsel to the University, Baugh was instrumental in the creation and implementation of the University's years-long segregation policies and practices. On numerous occasions, he provided legal and strategic advice to university officials seeking

166. Memorandum from Comm. on L. Sch. Ass'n Affs., Yale L. Sch., to Members of the Ass'n of Am. L. Schs. 4 (Nov. 21, 1951) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 20, pp.36-40).

167. *Id.*

168. *Id.*

169. *See* Michael H. Cardozo, *Racial Discrimination in Legal Education, 1950 to 1963*, 43 J. LEGAL EDUC. 79, 79 (1993) (describing the efforts at the AALS to ban racial segregation, and the tactics used in response).

170. *Baugh Resigns Law College Position*, The UT Lawyer (Fall 1964), at 15, https://trace.tennessee.edu/cgi/viewcontent.cgi?article=1012&context=utk_lawnews.

171. *Id.*

172. *Id.*

173. *Id.*

to prevent integration.[174] He was such an integral part of the school's segregation effort in the years immediately preceding *Brown* that he was either cc'd on or formally approved much of the correspondence related to the issue.[175] At one point, administrators throughout the university were asked to call and seek Baugh's advice before considering any application of a black person.[176]

By 1948, after the *Gaines* and *Sipuel* decisions, Baugh and other school officials privately recognized that they could not legally prevent the admission of black applicants unless Tennessee provided an "equivalent" legal education elsewhere.[177] Surviving records show that state officials had been discussing establishing a separate law school in the state at least since 1941, when the Tennessee General Assembly passed legislation mandating the provision of separate and equivalent "educational training and instruction" for black citizens of

174. *See, e.g.*, Letter from J. P. Hess, Off. of the Sec'y, Univ. of Tenn, Knoxville, to Cloide E. Brehm, President, Univ. of Tenn. (June 13, 1950) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 5, p.1) (describing a call that Hess and Baugh made to the Attorney General of the state of Tennessee to discuss strategy after *McLaurin v. Oklahoma State Regents for Higher Education* and *Sweatt v. Painter*); Memorandum of Wassell Randolph, Member, Univ. of Tenn. Bd. of Trs. 2 (1950) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 1, p.12) (noting that Baugh had warned the Board of Trustees that they could be personally subject to criminal liability if they adopted a policy against segregation at UT).

175. *See, e.g.*, Letter from Cloide E. Brehm, President, Univ. of Tenn., to Roy Beeler, Tenn. Att'y Gen. (Aug. 30, 1950) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 27, p.33) (cc'ing John Baugh on letter designed "primarily to keep [the Attorney General] informed of applications for negroes to various colleges and departments of the University"); Letter from R.F. Thomason, Dean of Admissions and Recs., Univ. of Tenn, to Evelyn Stewart, Student Applicant (July 25, 1950) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 27, p.3) (providing applicant with information regarding the graduate school and including a handwritten note stating "Approved by Prof. Baugh").

176. John C. Baugh, Professor of L. & Univ. Couns., Univ. of Tenn. Coll. of L., Remarks at the Meeting Regarding Supreme Court Decisions on Segregation 10 (June 15, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18).

177. Letter from Robert Kennerly, Tenn. Att'y Gen. to Burgin Dossett, Tenn. Comm'r of Educ. 1 (July 1, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 19, p. 5).

Tennessee.[178] Deans from across the university assisted in the effort to try to comply with the Act. This included Dean Henry Witham, the dean of the UT College of Law before Wicker, who served as a member of a statewide committee tasked with appraising and designing a potential law school at Tennessee A&I.[179] But these efforts were doomed from the beginning. State officials disagreed on several matters, including who would run the school and what the curriculum would be.[180] Funding from the legislature never materialized, and infighting stalled implementation.[181]

Thus, by June 1948, Tennessee still had no state-run law school for Black students. But Baugh continued to urge state officials to go forward with the plan. Otherwise, he warned, "the alternatives will be closing of the College of Law to all first year applicants, or the admission of the applicant forced upon us by court order."[182] Tennessee Attorney General Robert Kennerly agreed with the separate law school plan, although he admitted that this effort was a smokescreen designed to "provide a helpful defense to any suit."[183] On July 22, 1948, just a few weeks after the law school denied McKamey's application, Attorney General Kennerly wrote to the state's Commissioner of Education, Burgin Dossett, cc'ing Dean Wicker. In that letter, he reiterated the "need of a negro law school or at least the organization of a tentative faculty which may be called a negro law

178. As explained above, this Act was passed in a successful effort to avert a judicial decree in Michael v. Witham, 165 S.W.2d 378 (1942), which would have forced the University to integrate. *See supra* notes 80–81 and accompanying text; Letter from Roy H. Beeler, Att'y Gen. of Tenn., to James D. Hoskins, President, Univ. of Tenn. 1 (Oct. 14, 1942) (on file with the University of Tennessee Office of the President Records) (highlighting one of many internal correspondences between 1939 and 1942 related to the establishment of a graduate school for black students).

179. Letter from W. E. Turner, Coordinator, Tenn. Div. of Coordination of Higher Educ. for Negroes, to B.O. Duggan, Chairman, Tenn. State Bd. of Educ. 1 (Aug. 5, 1941) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 15, p.7).

180. *See* Bobby L. Lovett, America's Historically Black Colleges & Universities 131 (2015) (describing tension between the white committee members and the all-black Tennessee A&I faculty over graduate curriculum).

181. *Id.* at 127–31.

182. *See* Letter from Baugh to Brehm, *supra* note 146, at 2 and accompanying text.

183. Letter from Robert Kennerly, Tenn. Att'y Gen., to Burgin Dossett, Tenn. Comm'r of Educ. 2 (July 1, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 19, p.5).

school."[184] This, Attorney General Kennerly explained, was an urgent matter:

> I feel that that if the University Law School Dean is able to advise the . . . negro applicants that the state has provided a negro law school for them at A&I that the whole thing will blow over and you will have no actual students and probably no need to actually operate the law school.[185]

Dean Wicker at UT Law was not only in favor of this sham law school proposal, but he was ready to commit the entire faculty of the law school to the effort. He assured Attorney General Kennerly that "any member" of the law school faculty "[would] be glad to cooperate . . . in the carrying out of this suggestion."[186]

Perhaps not surprisingly, the effort to create a new law school in the state of Tennessee for black students never came to fruition. Political maneuvering and failure to expend adequate resources continued to dog the project.[187] Meanwhile, the NAACP had reached additional litigation victories that further undermined *Plessy* and called into question the legality of a separate state-run law school escape route.[188] On June 5, 1950, the United States Supreme Court issued two decisions regarding segregation in higher education: *McLaurin v. Oklahoma State Regents for Higher Education*[189] and *Sweatt v. Painter*.[190] In *Sweatt*, the Court held that the University of Texas Law School violated the Equal Protection Clause by establishing a separate law school for black students. According to the Court, this arrangement was unequal:

> The University of Texas Law School possesses to a far

184. Letter from Robert Kennerly, Tenn. Att'y Gen., to Burgin Dossett, Tenn. Comm'r of Educ. (July 22, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 19, p.9).

185. *Id.*

186. Letter from William Wicker, Dean, Univ. of Tenn. Coll. of L., to Robert Kennerly, Tenn. Att'y Gen. (July 7, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 19, p.7).

187. W. E. Turner, Coordinator, Tenn. Div. of Coordination of Higher Educ. for Negroes, Remarks at the Meeting Regarding Segregation 5 (Aug. 9, 1950) (transcript available at the University of Tennessee Office of the President Records).

188. *See* Ware, *supra* note 3, at 670.

189. 339 U.S. 637, 642 (1950).

190. 339 U.S. 629, 636 (1950).

> greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. . . . It is difficult to believe that one who had a free choice between these law schools would consider the question close.[191]

In *McLaurin*, the Court held that the University of Oklahoma acted unlawfully when it admitted black law students but segregated them within the law school. As the Court explained, the University had "handicapped [McLaurin] in his pursuit of effective graduate instruction."[192]

This slow but steady dismantling of *Plessy v. Ferguson* required a change in strategy for law school faculty and administration.[193] Thus, by the early 1950s, the university began to rely heavily on the strategy of obfuscation and delay that characterized their handling of McKamey's application. On June 15, 1950, ten days after the *McLaurin* and *Sweatt* decisions, Professor Baugh met with the Secretary of the Board of Trustees, President Brehm, and various UT deans and administrators to discuss the Supreme Court decisions and "to get a more or less uniform policy about the way we want to approach it."[194] Remarkably, a full transcript was made of this meeting, which survives in the university's archives. In that meeting, Baugh and Brehm urged all administrators to avoid, at all costs, denying an applicant based on his race. Instead, they suggested, "play dumb."[195] "[R]emind him probably he is not aware we have a fine institution in this state—A&I—and that provision has made been made for courses which are similar to serve members of his own race."[196] Then, Brehm counseled, "stall for time

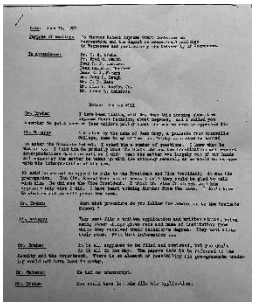

Figure 10: Meeting Transcript, June 15, 1950. From University of Tennessee Special Collections.

191. *Id.* at 634.

192. *McLaurin*, 339 U.S. at 641; *see* Ware, *supra* note 3 at 667–68 (describing the NAACP school desegregation cases, including *McLaurin* and *Sweatt*).

193. *See e.g.*, *Sweatt*, 339 U.S. at 629; *McLaurin*, 339 U.S. at 637.

194. Cloide E. Brehm, President, Univ. of Tenn., Remarks at the Meeting Regarding Supreme Court Decisions on Segregation 1 (June 15, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18).

195. *Id.* at 9.

196. *Id.*

. . . see what he came back with."[197] Alternatively, Baugh noted, they could "check[] operations and find they are not in order."[198] In what seems a clear reference to Rudolph McKamey, Fred Smith—Dean of the Graduate School—noted that this strategy had worked in the past: "a law student applicant did not get in because he did not have the dean of his college recommend him on his character."[199] Brehm emphasized that "we have never turned one down on the race question," and he urged administrators to continue that approach.[200] Later that same year, Baugh and Brehm travelled to Nashville to meet with the Governor and Attorney General at the Governor's office to inform them of their strategy and to seek further direction.[201] There, they were met with approval of their plan to avoid denying applications "on racial grounds" and, as Baugh described it, to "stall off [black] applicants."[202] In this way, litigation could be avoided.[203] And, as Governor Browning pointed out, "If we don't have a lawsuit, there will not be any political troubles."[204]

197. *Id.*

198. Baugh, *supra* note 176, at 6.

199. Fred C. Smith, Dean of the Graduate Sch. & Vice President, Univ. of Tenn., Remarks at the Meeting Regarding Supreme Court Decisions on Segregation 4 (June 15, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18).

200. Brehm, *supra* note 159, at 3.

201. *See generally* Cloide E. Brehm, President, Univ. of Tenn., Remarks at the Meeting Regarding Segregation (Aug. 9, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18) (describing the current handling of University of Tennessee applicants of color and requesting policy regarding handling qualified applicants in light of Supreme Court decisions).

202. *Id.* at 2, 8; John C. Baugh, Professor of L. & Univ. Couns., Univ. of Tenn. Coll. of L., Remarks at the Meeting Regarding Segregation 6 (Aug. 9, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18); Gordon Browning, Tenn. Governor, Remarks at the Meeting Regarding Segregation 8 (Aug. 9, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18).

203. *See* Brehm, supra note 159, at 4; see also W. E. Turner, Tenn. State Dep't Educ., Remarks at the Meeting Regarding Segregation 4 (Aug. 9, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18).

204. Browning, *supra* note 202, at 7.

Figure 11: Elvin E. Overton, University of Tennessee College of Law. Currently hanging on the wall of UT Law.

The law school faculty and administration faithfully implemented this obfuscation strategy. The person most intimately connected with this process at the College of Law was Professor Elvin E. Overton. After graduating from Harvard Law and serving as a commissioned officer in the Navy during World War II, Overton joined the College of Law faculty permanently in 1946 and taught there until his retirement in 1977.[205] He served as the Secretary to the College of Law for much of that time, making him in charge of admissions throughout much of his thirty-two year tenure. There is a named professorship in his honor. He was also well-known in the community for his unique "flair."[206] As one Tennessee Law publication explained, he "earned a reputation for getting his students' attention by somewhat unorthodox means. He was reported to have tap-danced on a tabletop, showered a classroom of students with imaginary machine-gun fire, [and] lain prostrate on the floor, 'levelled by the incoherence of a student.'"[207]

"Flair" aside, the archival record also shows that Professor Overton was instrumental in the university's pre-*Brown* efforts to prevent the admission of black students at the College of Law. During his tenure as Secretary in this era, he fielded applications from black applicants, forwarded applications to university officials for their review, delayed responding, and identified specific technicalities or justifications for denying admission. As in McKamey's case, these justifications were usually either extremely thin or blatantly preposterous. For example, in 1949, Overton told one individual, Robert Williams, that his application wasn't complete because, in part, his undergraduate transcript was not sealed.[208] Overton also purposefully delayed responding to Williams' application until after he had forwarded it to President Brehm and other university and

205. Univ. of Tenn. Coll. of L. Fac., Tribute, *A Tribute to Elvin E. Overton from His Colleagues*, 44 TENN. L. REV. 925, 925 (1977); see also Hardin, supra note 1, at 177.

206. Hardin, *supra* note 1, at 177–78.

207. Julia P. Hardin, 1989 Annual Report: University of Tennessee College of Law 20 (1989) [hereinafter "1989 Annual Report"]. For more on Professor Overton, *see A Tribute to Elvin E. Overton from His Colleagues*, 44 TENN. L. REV. 925, 925–26 (1977).

208. Letter from Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., to Robert E. Williams (Aug. 3, 1949) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 25, p.59).

state officials. Overton told Brehm that "he would be pleased" to receive "instructions" from him and assured him that he did not plan to write to Williams until after state officials "had time to act in the case."[209]

Another example can be found the application of Henry Hill, who sought admission to the College of Law for the fall quarter of 1948.[210] When Overton wrote Hill to deny his application, he asserted that he was relying, in part, on a rule that required the law school to first admit Tennessee residents.[211] However, on his application, Hill stated that he was a resident of Alcoa, Tennessee.[212] Overton acknowledged this in a letter to Hill, but stated, "in view of your age and your long sojourn in Washington we have grave doubts whether or not you are a citizen of Tennessee now."[213] In finding technical, non-race-based reasons for denying Hill's application, Overton was following the direction of his superiors, Dean Wicker and President Brehm, who had conferred and agreed that Hill should not be denied "on the color line."[214] Overton was also clearly grasping at straws. Hill's application

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209. Letter from Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., to Cloide E. Brehm, President, Univ. of Tenn. (July 11, 1949) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 25, p.61).

210. Application from Henry C. Hill to Univ. of Tenn. Coll. of L. (Mar. 30, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, pp.17-18).

211. Letter from Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., to Henry C. Hill (July 27, 1948) (on file with the University of Tennessee Office of the President Records).

212. Application from Henry C. Hill to Univ. of Tenn. Coll. of L. (Mar. 30, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, pp.17-18).

213. Letter from Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., to Henry C. Hill (July 27, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.36).

214. Letter from Cloide E. Brehm, Acting President, Univ. of Tenn., to Honorable Burgin E. Dossett, Comm'r of Educ. (July 27, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.7). In addition to the matter of Hill's residency, Overton also stated that Hill was missing a transcript for 29 hours of pre-law college work. Letter from Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., to Henry C. Hill (July 27, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28, p.36). This mirrors one of the reasons that Dean Wicker and President Brehm suggested as a basis for denial of Hill's application. *See* Letter from Brehm, *supra* note 214.

and Howard University transcript clearly show that Hill attended high school in Alcoa, Tennessee, and that his "long sojourn" in Washington, D.C. amounted to approximately three years of college at Howard University, plus approximately four years of a break in his studies to serve in World War II.[215]

Surviving faculty meeting minutes confirm that Professor Overton treated white applicants differently during this same period. On July 23, 1948, the College of Law faculty met to discuss several matters, including the status of admissions for the fall quarter.[216] This was the same year as McKamey's application and the very same quarter for which Hill sought admission. The Admissions Committee—which was chaired by Overton in his capacity as Secretary of the College of Law—reported that of the 125 individuals applying for the fall quarter, the College of Law admitted 52. In addition, "16 had been promised admission if their transcripts to arrive would make them eligible . . . ." This was despite the fact that the University Record required transcripts of prior undergraduate coursework from all applicants.[217] The contrast in Overton's treatment of applicants based on race is evident. Just a month earlier, Overton had assured McKamey that he could neither "pass on . . . applications" that were not complete nor "indicate that his application would be accepted if it were complete."[218] But the faculty meeting minutes reveal that this practice wasn't as rigid or standard as he would have McKamey believe. Overton was evidently comfortable with bending the rules, but only for white applicants.

Unlike Dean Wicker and Professor Baugh, Professor Overton rarely expressed his views on the segregation matter.[219] He forwarded

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215. *See generally* Application of Henry C. Hill to Univ. of Tenn. Coll. of L. (Mar. 30, 1948) (on file with the University of Tennessee Office of the President Records AR0006, Box 9, Folder 28, pp.17-18) (describing overlapping time where Hill attended University and served in the military); *see also* Transcript of Henry C. Hill, Student Applicant, from How. Univ. (Mar. 30, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 28) (including confirmation of Hill's high school education in Alcoa, Tennessee).

216. Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., Minutes from the Coll. of L. Fac. Meeting 2 (July 23, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9).

217. *The University of Tennessee Record*, *supra* note 110, at 1, 6.

218. Overton Meeting Report, *supra* note 109.

219. *Compare* Letter from Cloide E. Brehm to Honorable Burgin E. Dossett, supra note 214 (describing Wicker and Brehm's suggestions to deny admission based on

the materials, came up with the excuses, and denied the applications as requested. But one 1951 letter in the law school's archives does provide a clue of Overton's thinking. As explained above, in 1951 the AALS was considering, among other measures, a Yale-led proposed amendment to the Articles of Association that would have required desegregation as a condition of AALS membership. The Chairman of the Special Committee of the AALS on Racial Discrimination, Elliott Cheatham, solicited comments from all faculty members at the member law schools. Overton took him up on the offer, writing to state his opposition to the Yale measure. He argued that making desegregation a condition of membership would undermine the Association's core purpose, which he said was to "raise standards of legal education."[220] When "certain school administrations" decide to withdraw from the AALS as a result of a desegregation requirement, Overton warned, such "standards would suffer."[221]

B. *The Remaining Five: A Largely Silent Record.*

In 1948, the year of McKamey's application, there were eight full-time members of the faculty at the University of Tennessee College of Law.[222] The record contains strong evidence that three members of the faculty—Dean Wicker and Professors Baugh and Overton—were actively involved in the maintenance of segregation at the College of Law and elsewhere. But the record is less clear about the views and actions of the remaining five professors: Robert M. Jones, Charles H. Miller, Blakely M. Murphy, Dix W. Noel, and Harold C. Warner.[223] The tenure of these professors, together, spanned over 50 years. The first to join the faculty, was Jones, who began teaching at the University of Tennessee College of Law in 1921, and the most recent was Miller, who retired from the College of Law in 1975. These professors held numerous prominent positions at the law school and in the wider academic community. To give just a few examples: Miller

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transcript discrepancy and residency to not make the decision based "on color"), *with* Letter from Elvin E. Overton to Henry C. Hill, supra note 165 (denying admission based on transcript discrepancy and residency).

220. Letter from Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., to Elliott E. Cheatham, Chairman, AALS Comm. on Segregation (Apr. 26, 1951) (on file with author).

221. *Id.*

222. The College of Law: Announcement 1948–1949, The Univ. of Tenn. Rec. (Univ. of Tenn. Coll. of L., Knoxville, Tenn.), May 1948, at 2–3.

223. *The College of Law: Announcement 1948–1949*, THE UNIV. OF TENN. REC. (Univ. of Tenn. Coll. of L., Knoxville, Tenn.), May 1948, at 2–3.

founded the University of Tennessee Legal Clinic in 1947 and served as its director until his retirement in 1975, Warner became UT Law's seventh dean after Wicker stepped down, and one of Noel's articles was cited by the United States Supreme Court in the famous defamation case, *New York Times v. Sullivan*.[224] Like Dean Wicker and Professors Baugh and Overton, these five faculty members' pictures line the walls of College of Law today.

There is precious little in the record to help us understand the actions—if any—of these five regarding pre-*Brown* segregation at the University of Tennessee College of Law. If they had actively opposed segregation during this time, it seems likely that fact would be reflected somewhere in the surviving record. But the record, which includes hundreds of pages of law school faculty meeting minutes and multiple boxes of internal and external letters sent to and from Dean Wicker, internal law school committee memoranda, and letters and memoranda in the university President's files[225]—is eerily silent on this issue. Nowhere is there a suggestion that any of the five remaining faculty members took any action to oppose segregation during this time. That said, there is also nothing showing that these professors actively supported segregation.

However, the record does contain seemingly contradictory hints of these faculty members' views on the issue. Several surviving documents provide evidence that the law faculty was in favor of efforts to delay integration at the College of Law. First, there is some indication that the entire law school faculty supported Dean Wicker's attempts to prevent adoption of a AALS desegregation resolution. In October 1950, the faculty formed a law school committee tasked with reviewing proposed amendments to the Articles and Standards of the AALS, including a proposed AALS desegregation resolution.[226] The committee, chaired by Professor Overton, submitted a report that recommended that "our staff go on record as being opposed to such amendment."[227] Faculty meeting minutes reveal that the full faculty not only approved the committee's recommendation, but also voted to leave "all controversial questions . . . to the Dean's discretion."[228] Second, there is also evidence that the whole faculty supported the

224. *See, e.g.*, New York Times Co. v. Sullivan, 376 U.S. 254, 280 n.20 (1964); Hardin, *supra* note 1, at 172, 193; 1989 Annual Report, *supra* note 207, at 56.

225. *See, e.g.*, sources cited *supra* Section II.A.

226. Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., Rep. of the Special Meeting to Consider Amends. to the Articles of Ass'n 1 (on file with author).

227. *Id.* at 1–2.

228. Elvin E. Overton, Professor of L. & Sec'y, Univ. of Tenn. Coll. of L., Minutes from the Coll. of L. Fac. Meeting 2 (Nov. 9, 1950) (on file with author).

state's effort to set up a separate law school for black students as a method of complying with *Plessy vs. Ferguson* and avoiding admitting black students to the College of Law. In June 1948, Professor Baugh assured President Brehm via letter that "all of us here at the college of law will be most happy to assist the state officials in every way within our powers in setting up the new law school if that is done."[229] And in July 1948, Wicker informed Attorney General Kennerly that "any member" of the College of Law faculty "would be glad to cooperate . . . in the carrying out of this suggestion."[230]

But a review of the law school's internal records also provides tantalizingly contradictory evidence suggesting that at least some of the college of law faculty was, in fact, in favor of integration. In the spring of 1951, after Wicker and other southern law school deans had succeeded in stalling the Yale-led effort to include desegregation as a criterion for AALS accreditation, the AALS began the process of appointing a committee charged with studying the issue. Wicker's hope was that this committee would be stacked with members who shared his point of view.[231] But, in a letter to Dean Prince of the University of South Carolina School of Law, he stated that he was "embarrassed" to say that he could not recommend any of his own faculty for placement on the committee. As he put it, "by and large the attitude relative to segregation of the faculty members of the University of Tennessee is not typically Southern." He further informed Dean Prince that, "[i]f the matter of admitting Negroes to the University of Tennessee could be settled by a faculty vote, even without any pressure from the courts, it is my opinion that Negroes would be admitted by a lopsided vote." His fellow faculty members, he stated "tend in the direction of favoring the admission of Negroes into our College of Law."[232]

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229. Letter from John C. Baugh Professor of L. & Univ. Couns., Univ. of Tenn. Coll. of L., to Cloide E. Brehm, Acting President, Univ. of Tenn. 2 (June 22, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 25, p.38).

230. Letter from William H. Wicker, Dean, Univ. of Tenn. Coll. of L., to Robert T. Kennerly, Tenn. Couns. Gen. (July 7, 1948) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 19, p.7).

231. Letter from William H. Wicker, Dean, Univ. of Tenn. Coll. of L., to Samuel L. Prince, Dean, Univ. of S.C. Sch. of L. 1 (Mar. 24, 1951) (on file with author).

232. *Id.* In a confusing twist, Dean Wicker's letter to Dean Prince also gives reason to distrust his representations of the "non-southern" views of his UT Law faculty. In that letter, Wicker states that he had personally "been opposing setting up a separate Negro law school in Tennessee on the ground that it would be better to use that money

It is hard to know how to interpret such conflicting accounts of the College of Law faculty's views on segregation. Wicker's letter to Dean Prince expressing his faculty's sympathy with the desegregation movement seems quite clear, and it is possible that Wicker would have had less incentive to lie about the attitudes of his faculty to a fellow southern dean. This is especially so, as it appears that he saw the sympathetic attitudes of his faculty toward integration as a personal embarrassment. Further, as faculty members of a state school, there were likely strong institutional concerns at play. President Brehm often explained that he and other university officials saw the University of Tennessee as "an arm of the State."[233] As at other state flagship institutions, the Board of Regents and the Tennessee legislature exercised power over just about everything, from budgets, to tenure standards, to teaching loads.[234] Perhaps Dean Wicker and Professor Baugh were eager to paint the law faculty as dutiful members of this state system. And, when addressing university and state officials, they might have had political reasons to inflate the appeasing attitude of the law school faculty.

One further ambiguity complicates an attempt to ascribe motives to the other five faculty members at UT Law: faculty governance. Meeting minutes show that UT Law's faculty met regularly through the 40s and 50s.[235] In these meetings, they discussed and voted on a myriad of issues, both minor (such as conference travel arrangements and which wife would be making food for an event) and major (such as which new courses would be adopted and which books would be purchased for the library).[236] They formed committees to study and

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to strengthen my own College of Law and admit Negroes to it." *Id.; see also* Letter from William H. Wicker, Dean, Univ. of Tenn. Coll. of L., to Henry Brandis, Jr., Dean, Univ. of N.C. Sch. of L (Apr. 21, 1951) (on file with author) ("Confidentially, I am going to continue to do everything I can to prevent Tennessee from setting up a separate Negro law school."). However, this statement is contradicted in other parts of the record, including Wicker's 1948 letter to the Attorney General offering full faculty support for the separate law school plan. *See* Letter from Wicker to Kennerly, *supra* note 230.

233. Letter from Cloide E. Brehm, President, Univ. of Tenn., to Honorable Roy H. Beeler, Tenn. Att'y Gen. (June 22, 1950) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 27, p.101).

234. For more on the role that the dean of a law school plays in institutions of legal education, including at state schools, *see generally* Frank T. Read, *The Unique Role of the Law School Dean in American Legal Education*, 51 J. LEGAL EDUC. 389 (2001) (describing the various constituencies a law school dean deals with, in addition to his or her powers and responsibilities).

235. Minutes from the Coll. of L. Fac. Meetings (on file with author).

236. *Id.*

recommend policies and practices (such as how to vote on AALS proposals and whether to change the standards of admission).[237] And they considered, discussed, and voted on student discipline matters.[238] This appears to mirror the governance of modern law schools in many ways. But it may be that, in practice, Dean Wicker enjoyed a more autocratic rule than enjoyed by modern law school deans. Indeed, research suggests that law school deans enjoyed far more power during this period, and faculty had far less of a say in the running of their institutions.[239] If that was the case, the fact that the other five faculty members didn't do anything to resist Wicker's segregationist policies wouldn't be as surprising.

Ultimately, this historical account is just that—only an account of the facts in the historical record. It is left to other discussions and other historiographies to further explore and interpret the motives and actions of the then-faculty of the University of Tennessee College of Law. That said, it is also important to clarify what we do know. A review of the existing record shows that three of the most influential members of the law school faculty—it's Dean, its Secretary, and the university's Chief Legal Counsel—actively supported the university's segregation policies in the pre-*Brown* era. This same review also strongly suggests that, if the remaining faculty members took an opposing view, they did so privately and they did not engage in active work to challenge the status quo.

C. *Forcing an End to Segregation at UT Law*

In the end, the delay and obfuscation strategy conceived in part by Baugh and Wicker and implemented in the law school by Wicker and Overton was extremely effective by university standards. Despite routinely receiving applications from black applicants throughout the 1930s, 1940s, and early 1950s, Overton was able to delay until late 1950 the moment when the College of Law would have to consider an application on its merits. Beginning in 1949, Overton began inserting language in letters to black applicants describing Tennessee statutory and constitutional law that prohibited integrated education and noting that these laws "appeared" to raise "an insurmountable

237. *Id.*

238. *Id.*

239. *See* Frank T. Read, *supra* note 234, at 390–91 ("Prior to the Vietnam era, law deans typically operated with small staffs and little faculty participation in governance. . . . They hired faculty members, fired faculty members, and they made most educational decisions. In short, they had vast responsibility, but they also had vast powers.").

difficulty in our admitting you to the College of Law."[240] Still, Overton was also careful to point out technical problems with the applications in these same letters. The non-legal departments of the university were not as cautious. Starting in 1950, letters to black applicants from some university officials began to drop any pretense of technical violations. Instead, they simply pointed out the state statute that "prevents negroes and members of the white race from attending the same schools" and recommended that the applicants write to the State Department of Education to learn about alternative educational opportunities.[241]

In 1950, four individuals applied to the University of Tennessee: two—Lincoln Anderson Blakeney and Joseph Hutch Patterson—were applicants to the College of Law, and two—Gene Mitchell Gray and Jack Alexander—were applicants to the Graduate School.[242] The university's early responses to these four students's applications appears to be, in part, the catalyst for the revealing June 15 university staff meeting described above.[243] In that meeting, President Brehm chastised Dr. E. A. Waters, the Dean of the Graduate School, for telling Gray "very definitely and specifically about the State Statute and your present interpretation."[244] "I think," he told Waters, that "is where you slipped up."[245]

Nevertheless, from the university's perspective, the damage was done. The university had been exposed to just the liability that it was seeking to avoid, and the expected litigation indeed came.[246] Carl Cowan and his fellow NAACP colleagues worked around the university's various delay tactics and forced the Board of Trustees to pass a resolution explicitly denying these four applicants admission

240. *See, e.g.*, Letter from Overton to Williams, *supra* note 208.

241. Letter from Richmond F. Thomason, Dean of Admissions and Recs., Univ. of Tenn., to Aldorothy L. Lewis, Student Applicant (June 14, 1950) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 27, p.107).

242. Brief for Appellants at 2–3, Gray v. Bd. of Trs. of Univ. of Tenn., 342 U.S. 517 (1952) (No. 120), 1951 WL 82222 at *2–3.

243. Waters, Dean of the Graduate Sch., Univ. of Tenn., Remarks at the Meeting Regarding Supreme Court Decisions on Segregation 1 (June 15, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18).

244. *Id.*

245. *Id.*

246. *Id.* at 4 (discussing how denying applications outright would lead to immediate suit).

based on their race.[247] In 1951, Carl Cowan and other NAACP lawyers, including Z. Alexander Looby, Avon Williams, Jr., Leon Ransom, and Thurgood Marshall, filed a lawsuit on behalf of Gray, Alexander, Blakeney, and Patterson.[248] At the district level, Judge Robert L. Taylor ruled on the merits of the suit in favor of the applicants for admission, stating: "these plaintiffs are being denied their right to the equal protection of the laws as provided by the Fourteenth Amendment."[249] The court further held that "under the decisions of the Supreme Court the plaintiffs are entitled to be admitted to the schools of the University of Tennessee to which they have applied for admission."[250] However, Judge Taylor did not issue an injunction, theorizing that it was unnecessary to do so. The court assumed that "the University authorities will either comply with the law as herein declared or take the case up on appeal."[251] They did appeal, and the case made its way to the United States Supreme Court.[252] In January 1952, during oral argument, UT's attorney "rose . . . to say that university trustees had agreed" to admit the four plaintiffs.[253] As a result, the Court ruled the case moot.[254]

It is well known that none of the four plaintiffs in the *Gray* case actually graduated from UT. As is often recounted, only Blakeney and Gray enrolled at UT, and, Blakeney attended only the Summer Quarter of law school and dropped out, while Gray attended for only a year and a half before transferring to Lehigh University in Pennsylvania.[255] Less well known are the reasons for Gray and Blakeney's decisions to withdraw. Surviving records in Carl Cowan's personal papers, the University archives, and accounts from historical

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247. Brief for Appellants at 3, Gray v. Bd. of Trs. of Univ. of Tenn., 342 U.S. 517 (1952) (No. 120), 1951 WL 82222 at *3 (citing Dec. 4, 1950 Board of Trustees Resolution: "Be it therefore resolved, that the applications by members of the Negro race for admission as students into The University of Tennessee be and the same are hereby denied.").

248. *See* Gray, 97 F. Supp. at 464–65 (E.D. Tenn. 1951), *vacated*, 342 U.S. 517 (1952).

249. *Id.* at 468.

250. *Id.*

251. *Id.*

252. *See* Gray v. Univ. of Tenn., 342 U.S. 517 (1952).

253. *Along the N.A.A.C.P. Battlefront*, 59 CRISIS 72, 115 (1952). *See also* Gail S. Stephenson, *The Unsung Heroes of the Desegregation of American Law Schools*, 51 J.L. & EDUC. 118, 166–67 (2022) (discussing the *Gray* case).

254. Gray, 342 U.S. at 518 (1952).

255. *See, e.g.*, MILTON KLEIN, VOLUNTEER MOMENTS: VIGNETTES OF THE HISTORY OF THE UNIVERSITY OF TENNESSEE 68, 186 (2nd ed. 1996).

black newspapers give us some clues.

Gene Mitchell Gray enrolled at UT on January 14, 1952 as a biochemistry student. The next day, January 15, he was fired from his job as a bellhop at a local Knoxville hotel.[256] Shortly thereafter, his mother also lost her job. These events were reported in the national press, including in a February 9 newspaper account in the Chicago Defender, a national and influential black newspaper. There, the report said that Gray thought that he had been "'frozen' out of his hotel job" and that other places of employment were giving him "the cold shoulder." Gray could find no employment to finance his education, the newspaper reported, and he was forced to rely on gifts and donations and "had to pawn his wedding band and watch in order to keep himself and his family intact." "At present," the newspaper went on to theorize, "Gray's stay at the University depends on two things: how long his friends here can hold out, and how many articles he has left to pawn." We know that President Brehm was aware of this situation and, therefore, the potential retaliation that Gray was experiencing.[257] On February 8, 1952, a concerned citizen who had read a similar article in the Pittsburgh Courier, forwarded it to Brehm along with a $10 check for Gray and an appeal to the President "as a Christian and a builder of our democratic principles" to assist Gray in finding a job and obtaining his education.[258] Brehm replied, promising to give the check to Gray and insisting that "[w]e are doing everything to help him that we can."[259] It is unclear what kind of help Gray received, if any, but we do know he dropped out in March of the following year.[260]

Meanwhile, Blakeney intended to enroll at UT Law in the spring of 1952. However, Blakeney had seen the newspaper accounts of retaliation against Gray and was second-guessing that plan. On March 4, Blakeney wrote a handwritten letter to Carl Cowan stating

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256. *Enters Tennessee U., Loses His Job, Friends Aid, but He Asks for No Help*, CHI. DEF., Feb. 9, 1952, at 1.

257. Letter from C.E. Brehm, President, Univ. of Tenn., to Captain J. Harweda Woolfolk, Captain, USAFRMC (Feb. 14, 1952) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 26, p.1).

258. Letter from Captain J. Harweda Woolfolk, Captain, USAFRMC, to C.E. Brehm, President, Univ. of Tenn. (Feb. 8, 1952) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 26, p.3).

259. Letter from C.E. Brehm, President, Univ. of Tenn., to Captain J. Harweda Woolfolk, Captain, USAFRMC (Feb. 14, 1952) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 26, p.1).

260. KLEIN, *supra* note 255, at 186.

that he would not attend law school as planned.[261] This letter still survives in Cowan's personal files. Blakeney wrote, "I have been reading . . . of the difficult time Gray is having in making a livelihood. I was not aware the situation was as bad as the papers would have some believe." Blakeney noted that he was only in a temporary job at the Treasury Department, was currently applying for longer term positions, and already had financial obligations. As a result, he thought it would be "unwise to try to go to school . . . considering the present circumstances." Despite all of this, Blakeney told Cowan that he wanted to attend school. This led Cowan to try to find financial assistance to make this happen. A still-surviving telegram from Blakeney to Cowan, dated March 18, thirteen days before the start of school, shows that Cowan worked with Blakeney to raise the needed school funds.[262] It appears that this worked at least in part: Blakeney did end up attending school in the spring of 1952.[263] But he dropped out shortly thereafter. Why did he do that? Was he still plagued by financial concerns? Did he experience the same type of retaliation from the community as Gray? Did he experience this in the law school itself? The answer is still unclear.

Regardless, university officials praised the lawyers in the *Gray* case for the "very fine decision" that they had achieved.[264] As the University President explained it in a congratulatory letter to the attorneys, although the University "did not have much legal background to hang a case," they were still able to limit the consequences: the University would only have to admit "these four Negroes who were parties to the suit" and "the whole segregation question was not brought into the case."[265]

In 1954, the Supreme Court decided *Brown v. Board of Education*, declaring racial segregation in public schools to be unconstitutional. Eventually, the law school and Board of Trustees had to relent, and

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261. Carl Cowan Papers, Letter from Lincoln Blakeney to Carol Cowan, Att'y, N.A.A.C.P. (Mar. 4, 1952) (Papers of Carl Cowan, East Tennessee History Museum, Calvin M. McClung Historical Collection, Box 2).

262. Carl Cowan Papers, Telegram from Lincoln Blakeney to Carol Cowan, Att'y, N.A.A.C.P. (Mar. 18, 1952) (Papers of Carl Cowan, East Tennessee History Museum, Calvin M. McClung Historical Collection, Box 2).

263. Martin J. Freerick, Instructor Summary Sheet for the Off. of the Dean of Admissions (June 6, 1952) (on file with author) (listing Lincoln Blakeney as a student enrolled in a Legal Bibliography course with the College of Law in the Spring of 1952).

264. Letter from C.E. Brehm, President, Univ. of Tenn., to John Hooker & Harlan Dodson Jr. (Jan. 15, 1952) (on file with the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 6, p.3).

265. *Id.*

R.B.J. Cambelle became the first black student to graduate from UT College of Law in 1956. Still, UT administration continued to resist efforts to desegregate other areas of the University, including the undergraduate department. As President Brehm advised the Board of Trustees, "the admission of even one African American . . . would 'let the camel get his nose in the door' and gratify the [NAACP]."[266] Thus, despite the *Brown* decision, Tennessee continued to accept black students "only for courses of study not offered at the Negro State colleges."[267] In October 1956, the Tennessee Supreme Court ruled in *Roy v. Brittain* that "all State laws on segregation must yield to the paramount authority of the Federal Constitution" and that, after *Brown*, all such laws were unlawful.[268] But the University *still* dragged its feet. Finally, in 1960, the Board of Trustees gave in after a Knoxville graduate of Austin High School named Theotis Robinson sought admission to UT's undergraduate program and threatened to sue when his application was denied.[269] On November 18, 1960, the Board adopted a resolution that declared, "That it is the policy of the Board that there shall be no racial discrimination in the admission of qualified students to the University of Tennessee."[270]

FINAL THOUGHTS AND OBSERVATIONS

This Article tells the story of one man's efforts to achieve his goal of becoming a lawyer in his hometown, and the efforts of several law professors to thwart that ambition. Rudolph McKamey persevered, obtaining his law degree and enjoying an illustrious career despite the law school's obstruction. It is a shame that UT Law can't count McKamey as one of its alumni. We have only ourselves to blame.

Upon learning this history, one might feel the urge to downplay the responsibility of the law faculty. One argument might be that the faculty of state-run institutions like UT had limited power to change segregation policy. The record does suggest that faculty members at UT Law indeed felt constrained by political and institutional

266. KLEIN, *supra* note 255, at 70.

267. Stephenson, *supra* note 253, at 167.

268. Roy v. Brittain, 297 S.W.2d 72, 73–74 (Tenn. 1956).

269. *See generally* Goss v. Bd. of Educ. of City of Knoxville, 373 U.S. 683 (1963) (Theotis Robinson, joined by seventeen other plaintiffs, filed suit against the Knoxville Board of Education to press the school district to accelerate desegregation). Robinson was represented in the Goss case by Carl Cowan. *Id.* at 683.

270. Klein, *supra* note 255, at 71 (quoting November 18, 1960 Board of Trustees Resolution).

concerns.[271] Before *Brown*, numerous state statutory and constitutional provisions prohibited integrated education in Tennessee.[272] According to one internal legal memorandum in President Brehm's files, these laws together made it seem "that the State of Tennessee has gone as far as it can to relieve the University of Tennessee of all responsibility for the education of negroes."[273] Brehm and other university officials were particularly wary of stepping on the toes of state officials, including the Board of Trustees. As an example, in the June 15, 1950 meeting of university officials arranged by Brehm to discuss strategy for responding to applications by black applicants, Brehm and Baugh repeatedly emphasized that it was out of the University's hands, that the University was "an arm of the state," and that they were "governed by the Attorney General's office" and the Executive Committee of the Board.[274]

It may be that, as a practical matter, law school faculty felt they were powerless to change the policies of the Board of Trustees. Even still, there are several reasons to think that they should not escape responsibility. The first is the fact that the archives reveal no efforts by members of the College of Law faculty to push-back against segregation. No protests, no letters or memoranda offering an alternative point of view, no discussions in faculty meetings, no community activism. Nothing. The only suggestion of dissent in the internal records is the letter from Dean Wicker to Dean Prince of South Carolina School of Law stating that the rest of the law school faculty wished to desegregate.[275] But even if that letter accurately reflected the faculty's desire, it is telling that no record exists that the faculty of the College of Law took a single concrete action toward its fulfilment. Indeed, as has been documented above, all actions taken

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271. *See* Letter from William H. Wicker, Dean, Univ. of Tenn. Coll. of L., to Samuel L. Prince, Dean, Univ. of S.C. Sch. of L. 1 (Mar. 24, 1951) (on file with author). (discussing the faculty's attitude toward segregation).

272. *See, e.g.,* Tenn. Const. of 1870, art. XI, § 12 ("[n]o school established under this section shall allow white and negro children to be received as scholars together in the same school").

273. Memorandum on the Articles of Ass'n of the Ass'n of American L. Schs. Adopted Dec. 1947, 10 (on file with author).

274. Cloide E. Brehm, President, Univ. of Tenn., Remarks at the Meeting Regarding Supreme Court Decisions on Segregation 4, 7, 10 (June 15, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18) (discussing recent Supreme Court decisions on segregation and the impact of those cases on educational policies in Tennessee and particularly on the University of Tennessee).

275. *See supra* notes 231–32 and accompanying text.

by faculty members regarding segregation—specifically by Dean Wicker and Professors Overton and Baugh—were either to promote segregation or to implement faithfully the University's segregation strategy.

Second, there is also evidence that the faculty members at UT Law were motivated by more than just a sense of powerlessness. For Dean Wicker and Professor Baugh, the record described above demonstrates conclusively that a driving force was their own personal views against desegregation. They did not want black people attending their white school. Period. The personal views of the other faculty members are less clear. Professor Overton provides a perfect example of this ambiguity. On the one hand, he worked extensively to assist the administration in their pre-*Brown* segregation practices at the law school. That itself is, of course, quite damning. On the other hand, it does not appear that he took a stand on, either in opposition or in support. On the contrary, it seems he took pains to avoid doing so. In 1951, when he wrote to the AALS committee regarding the proposal to make desegregation a condition of membership, he was careful to state that he wasn't writing about the question of whether "segregation is good or bad."[276] Instead, he assured the committee, he was merely writing to raise process concerns with the method that the committee recommended for enforcement.

But even if one were to assume that the rest of the faculty personally opposed segregation before *Brown*, it seems that this fact is largely irrelevant to the issue of their culpability for its perpetuation. Much more germane is the lack of evidence showing the faculty did anything to resist. What the record does suggest is that the choice to remain silent was, at least in part, motivated by a desire for self-preservation. Examples in the record abound. In the same June 15, 1950 meeting of university officials described above, some university staff expressed concern that there would be a backlash if "officials of the University just folded up and admitted" black students.[277] In apparent agreement, Brehm responded that it was imperative that the Attorney General decide the matter "rather than you or me."[278] Professor Baugh then ominously warned the group that "[s]everal members of the Board of Trustees are very jealous of their

276. *See* Letter Overton to Cheatham, *supra* note 220.

277. J. P. Hess, Off. of the Sec'y, Univ. of Tenn., Knoxville, Remarks at the Meeting Regarding Supreme Court Decisions on Segregation 5 (June 15, 1950) (transcript available at the University of Tennessee Office of the President Records, AR0006, Box 9, Folder 18).

278. *Id.*

prerogatives"[279] and reminded them that "a lot of heads were chopped off" at the University of Oklahoma after the Attorney General and Governor accused them of mismanaging the situation.[280] The take-away: at this institution, the state pulls the purse-strings and exercises complete control of your jobs, so don't step out of line.

It seems, then, that the very best interpretation of the views and actions of the faculty at UT College of Law in the late 1940s (or at least of Overton and the five who did nothing) is that they were well-meaning individuals who feared for their jobs and felt powerless to alter the status quo. But again, even accepting that fact, these professors still had the power to make choices, and they did so. Overton chose to actively engage in efforts to keep black students out of the law school, and the remaining faculty members chose to do nothing.

In today's environment, it seems easy to empathize with the choices that pre-*Brown* faculty at state-run schools made to remain quiet and stay under the radar. That empathy is particularly acute in states like Tennessee, which have recently attempted to effectively outlaw academic reckonings with those states' racist pasts. Some states, like Tennessee, have prohibited academic speech on specific race-related topics.[281] For example, in May 2021, Tennessee passed a statute barring educational institutions from teaching that a person "by virtue of their race or sex, is inherently privileged, racist, sexist, or oppressive, whether consciously or subconsciously."[282] Some states have gone even further, attempting to target speech that makes white students feel badly. In January 2022, the Florida Senate's Education Committee approved a bill pushed by Republican Florida Gov. Ron DeSantis that would prohibit schools from making white students "feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race."[283] Measures likes these stifle frank discussion about historical truths and the continuing presence

279. *Id.*

280. *Id.* at 6.

281. *See* Emerson Sykes & Sarah Hinger, State Lawmakers Are Trying to Ban Talk About Race in Schools, ACLU (May 14, 2021), https://www.aclu.org/news/free-speech/state-lawmakers-are-trying-to-ban-talk-about-race-in-schools (discussing steps taken by lawmakers in several states to prohibit speech about race in public schools).

282. TENN. CODE ANN. § 49-6-1019(a)(2) (2021).

283. S.B. 148, 2022 Sess. (Fla. 2022). The bill died in the Rules Committee in March 2022. The Florida Senate, *SB 148: Individual Freedom*, MYFLORIDAHOUSE.GOV (Mar. 14, 2022), https://www.flsenate.gov/Session/Bill/2022/148.

of racism in our society.[284] But, as Dr. Martin Luther King argued, "the ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy. The true neighbor will risk his position, his prestige, and even his life for the welfare of others."[285] At the very least, we know that the pre-*Brown* faculty at UT Law were not willing to take these risks.[286]

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284. *See TN Educators of Color Alliance Urges Gov. Lee to Veto HB580/SB623 in Letter Signed by Over 350 Teachers, Parents and Education Leaders*, THE EDUC. TR. (May 12, 2021), https://edtrust.org/press-release/tn-educators-of-color-alliance-urges-gov-lee-to-veto-hb580-sb623-in-letter-signed-by-over-350-teachers-parents-and-education-leaders/.

285. DR. MARTIN LUTHER KING, JR., STRENGTH TO LOVE 26–27 (1963).

286. For a few of the many works examining white moderates' responses to the civil rights movement, *see* DAVID L. CHAPPELL, INSIDE AGITATORS: WHITE SOUTHERNERS IN THE CIVIL RIGHTS MOVEMENT (1994) (discussing the relationship between black leaders of the civil rights movement and white Southerners); MATHEW LASSITER & ANDREW LEWIS, THE MODERATE'S DILEMMA: MASSIVE RESISTANCE TO SCHOOL DESEGREGATION IN VIRGINIA (1998) (discussing how white moderate Virginians resolved tensions between public education and preservation of segregation); KEVIN M. KRUSE, WHITE FLIGHT: ATLANTA AND THE MAKING OF MODERN CONSERVATISM (2005) (discussing "white flight", primarily in Atlanta, and its effects on modern politics); MATTHEW LASSITER, THE SILENT MAJORITY: SUBURBAN POLITICS IN THE SUNBELT SOUTH (2006) (discussing "the grassroot politics produced by residential segregation"); JASON SOKOL, THERE GOES MY EVERYTHING: WHITE SOUTHERNERS IN THE AGE OF CIVIL RIGHTS, 1945–1975 (Alfred A. Knopf ed., 2006); MATHEW LASSITER & JOSEPH CRESPINO, THE MYTH OF SOUTHERN EXCEPTIONALISM (2009); Walker, *supra* note 24 (discussing the struggle between extremists and moderates over the best strategy to evade the Supreme Court post-*Brown*); Mark Golub, *Remembering Massive Resistance to School Desegregation*, 31 LAW & HIST. REV. 491 (2013) (discussing the influence of massive resistance to desegregation by southern moderates and its impact on current law and policy); Christopher W. Schmidt, *Litigating Against the Civil Rights Movement*, 86 U. COLO. L. REV. 1173 (2015) (discussing segregationist civil litigation strategies); Joseph Mello, *Reluctant Radicals: How Moderates Shape Movements for Social Change*, 41 LAW & SOC. INQUIRY 720, 721 (2016) (reviewing KRUSE, *supra* note 286); JEANNE THEOHARIS, A MORE BEAUTIFUL AND TERRIBLE HISTORY: THE USES AND MISUSES OF CIVIL RIGHTS HISTORY (2018) (discussing the commonalities between race-neutral opposition to racial equality in the civil rights era and modern racial inequality); Katie R. Eyer, *The New Jim Crow Is the Old Jim Crow*, 128 YALE L.J. 1002 (2019) (reviewing ELIZABETH GILLESPIE MCRAE, MOTHERS OF MASSIVE RESISTANCE: WHITE WOMEN AND THE POLITICS OF WHITE SUPREMACY (2018); Gross, *supra* note 11 (discussing colorblind

This story attempts to construct the precise actions taken by the individuals who played a role in perpetuating segregation at the University of Tennessee College of Law. Although it may seem counter-intuitive to focus scholarly attention on the antagonists of civil rights history, it is imperative that we do so. As legal historian Christopher Schmidt has argued, "Our understanding of the civil rights era is impoverished when we refuse to take the losing side seriously."[287] That is certainly true when it comes to telling the stories of segregation at American law schools. As a result of this research, we now know exactly which UT law faculty members resisted change and the methods they used to carry out this resistance. This gives us a richer understanding of both the history of discrimination in legal education and of the potential historical roots of contemporary practices. To point out just one example, through McKamey's story, we see how faculty members like Overton, Baugh, and Wicker used seemingly race-neutral means to delay integration of legal education, and they did so despite (or perhaps because of) numerous court opinions that showed that desegregation was inevitable. These three professors were not the kind of raging segregationists that loudly preached the benefits of segregation. They were the quieter kind. In this way, they were exactly like the "southern moderates" described by Anders Walker in his book, *The Ghost of Jim Crow*.[288] Walker offers a powerful critique of seemingly "moderate" southern governors like J. P. Coleman of Mississippi, Luther Hodges of North Carolina, and LeRoy Collins of Florida and the tactics they used to stall the civil rights movement after *Brown v. Board of Education*. Just like these governors, Overton, Baugh, and Wicker "did not boast" of their efforts to maintain segregation (at least they didn't publicly); they "hid the lengths they had gone to in thwarting black political gains."[289] Just like these southern governors, they, too, used "facially neutral, standards based criteria"[290] that were not obviously segregationist,

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conservative constitutionalism and its roots in grassroots campaigns against integration); Sharfstein, *supra* note 5 (discussing Cecil Sims's contributions to Vanderbilt Law School as well as his efforts to maintain Nashville's segregated school system); Gregory Briker & Justin Driver, *Brown and Red: Defending Jim Crow in Cold War America*, 74 STAN. L. REV. 447 (2022) (documenting links between anticommunist and opposition to integration).

287. Schmidt, *supra* note 286, at 1217; *see also* Briker & Driver, *supra* note 286, at 514 ("Investigating the losing side of this iconic legal event in American history is a vital intellectual endeavor.").

288. WALKER, *supra* note 24.

289. *Id.* at 159.

290. *Id.* at 7.

but they did so to maintain racial inequality at UT Law. Although Walker's focus was on the use of such tactics by high-level state actors to stall the civil rights movement after *Brown*, McKamey's story shows their earlier origins.

Carl Sagan said, "You have to know the past to understand the present."[291] This is certainly true of legal education. Law schools play an important role in shaping the legal profession, and thus the law itself. Therefore, those institutions should be subject to critical inquiry. The archival research described above establishes that the University of Tennessee College of Law faculty and administration were not just complicit in the anti-desegregation efforts of the 1940s-50s but helped design, steer, and implement those efforts. They did so both openly (for example, by advocating against policy change at the AALS and providing legal advice to those pushing the segregation agenda) and covertly (such as through the obfuscation strategy implemented by Overton and the procedural mechanisms used by Wicker to stall change at the AALS). Accepting these facts, what is the role of the faculty of the College of Law today? What is the role of law faculties at the many other educational institutions with similar segregationist academic ancestors? Do we faculty members have a responsibility to make up for their past insidious actions? Do any of our modern practices and policies have their roots in this sinister history? This work raises these, and many other questions. It is left for future conversations to answer them.

A final word. Some would resist efforts to reckon with the past in this way. Indeed, the modern anti-critical race theory movement is premised on just this thought: people of today should not bear responsibility for, or be made to feel bad about, the decisions of those in the past. But there is no doubt that a reckoning should occur. The reason is not because our academic forebearers were racists, although the evidence suggests that they were. Instead, to the extent that the effects of their racism persist (and extensive research suggests that it does), we modern faculties bear direct responsibility for perpetuating them.

291. Carl Sagan et al., *Cosmos 2: One Voice in the Cosmic Fugue*, TURNER HOME ENT. (Oct. 5, 1980), https://archive.org/details/cosmos2onevoiceinthecosmicfugue360p.