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Virgil Hawkins: A One-Man Civil Rights Movement

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ESSAYS

VIRGIL HAWKINS: A ONE-MAN CIVIL RIGHTS MOVEMENT

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I. INTRODUCTION

> The Negro lawyer is of critical importance to the advancement of Negro rights essential to legal change. Not until Howard University began in the 30s graduating numbers of Negro lawyers trained in civil rights did the race relations picture begin to change.[1]

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Editor's Note: Prior to writing this Essay, Professor Dubin produced a documentary on Virgil Hawkins entitled *A Lawyer Made in Heaven: The Virgil Hawkins Story*. The documentary, narrated by the Honorable Barbara Jordan, was exhibited on May 25, 1999 during a ceremonial session held by the Florida Supreme Court to honor the 50th anniversary of Virgil Hawkins' lawsuit to desegregate Florida's universities. *See Florida Supreme Court Ceremonial Session Honoring the 50th Anniversary of Virgil Hawkins' Lawsuit to Desegregate Florida's Universities* (visited Oct. 12, 1999) <http://www.flcourts.org/COURTS/supct/Photos/Hawkins/index2.html> (featuring a photograph of the exhibition itself, revealing a frame of Professor Dubin's documentary). This Web site includes a photograph of Mr. Hawkins.

1. Samuel Selkow, *Hawkins, The United States Supreme Court and Justice*, 31 J. NEGRO EDUC. 97, 97 (1962) (citing JACK GREENBERG, RACE RELATIONS AND AMERICAN LAW 22 (1959)).

The life of Virgil Hawkins is not merely a story of one man. Rather, it is the story of how our government systematically discriminated against African Americans, how our courts subverted our Constitution, and how whites cruelly exercised domination over African Americans through intimidation and brutality. Virgil Hawkins never accepted the handicap of being black that white society imposed upon him. With love in his heart toward everyone, Hawkins became a one man civil rights movement before the modern civil rights movement began. In the end, Hawkins' life stood for the principles of justice, equality, love, and respect for all persons. Hawkins was a great man who lived an important life that will long be remembered and honored.

II. HAWKINS' PERSONAL LIFE AND LITIGATION

Stating that Virgil Hawkins came from humble beginnings would be a gross understatement. He was born the fifth of eight children in Okahumpka, Florida to Virgil Senior and Josephine Hawkins.[2] Hawkins' father was a "part-time preacher and day worker."[3] In addition to laboring for others, Virgil Senior also harvested fruit, and operated a small store across from his home to help bring in a few extra dollars to support his large family.[4]

Okahumpka was a little town with a few hundred black residents who all shared a few things in common: poverty, a lack of education, and a punishing Jim Crow-enforced life style of racial discrimination encompassing all aspects of life. The odds of young Virgil Hawkins ever becoming a lawyer would have seemed the equivalent of winning the big money jackpot in today's lottery. Yet from an early age, Virgil Hawkins had a dream: to become a lawyer.

As a child, Virgil Hawkins observed the difficult obstacles and harsh realities confronted by other blacks. He knew that his uncle was murdered after an argument with a white neighbor concerning a farm animal.[5] He learned about another uncle who, at a white mob's insistence, was forced to personally watch his son (Virgil's cousin) be lynched and then shot as

2. *See* Interview with Hallie Williams, Virgil Hawkins' sister, in Okahumpka, Fla. (Aug. 9, 1993) (on file with the Florida Law Review).

3. Lerone Bennett, Jr., *The South's Most Patient Man*, EBONY, Oct. 1958, at 50.

4. *See* Interview with Hallie Williams, *supra* note 2.

5. *See* Harley S. Herman, *A Tribute to an Invincible Civil Rights Pioneer*, THE CRISIS, July 1994, at 42. Herman recounts how Hawkins observed black prisoners' "unshaven faces and disheveled clothes and hair." *Id.* According to Herman, Hawkins "knew they had spent the night in jail." *Id.* In his unpublished memoirs, Hawkins wrote: "'I had never seen a lawyer to know it, and certainly no black lawyer. At that tender age, I didn't know what a lawyer did, but I knew I had to do something.'" *Id.* (quoting Hawkins' unpublished memoirs).

he swung from a tree.[6]

However, the most significant experience which made Hawkins want to be a lawyer—even though his father encouraged young Virgil to be a preacher—occurred when he was seven years old.[7] Virgil accompanied his father to the local courthouse one day so that his father could conduct some business.[8] Virgil wandered off to a courtroom and, while peering in, observed a line of black men being accused of illegal gambling offenses arising out of the wagering of pennies.[9] When the judge asked the men if they understood what it meant to plead "guilty," the men responded that they did not know.[10] Without the aid of legal representation, the men were sentenced to six months in jail.[11] To a sensitive child, this experience left an indelible impression in his young mind—that his people needed legal representation to cope with the cruel intentions of a white power structure.[12]

Hawkins was the only child in his family who aspired to acquire a formal education. Since there were no high schools in his area that educated blacks, Hawkins had to be sent two hundred miles from his home to the Edward Waters College in Jacksonville, Florida to complete his high school education.[13] Hawkins showed up on the school campus with only two shirts, one pair of pants and a hat.[14] He worked in a kitchen to help pay for his educational costs.[15]

In 1930, Hawkins started college at Lincoln University in Pennsylvania.[16] During the depression, Hawkins quit college for economic reasons and was forced to take a series of jobs.[17] During this period, he also married Ida, a school teacher, who was to be his wife for over fifty years.[18]

Hawkins eventually went into teaching and later became a public relations director at Edward Waters College in Jacksonville.[19] Thereafter, he attended Bethune-Cookman College, a black college, in Daytona Beach, Florida where he received his undergraduate college degree.[20] Hawkins

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6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*
12. *See id.*
13. *See id.*
14. *See id.*
15. *See id.*
16. *See* Bennett, *supra* note 3, at 50.
17. *See id.*
18. *See id.*
19. *See id.* at 52.
20. *See id.*

was then hired as the public relations director at Bethune-Cookman.[21]

In April 1949, Hawkins took a giant step toward obtaining his dream of becoming a lawyer by mailing in his law school application to the University of Florida.[22] In the meantime, four other black students had applied to different graduate schools at the University of Florida.[23]

The time seemed right to break the barriers of racial segregation in graduate school education that had been imposed on blacks in the State of Florida. Hawkins historian and Florida lawyer Harley Herman describes Hawkins' professional environment at Bethune-Cookman in 1949, when Hawkins filed his law school application:

> Many of the students and faculty at that time shortly after World War II felt that they had fought in the war to bring the promise of America's Constitution to the world and that now it was time to bring that promise back home . . . . [T]hat meant eliminating the barrier of Jim Crow laws.[24]

On May 13, 1949, the University of Florida through its governing body, the Florida Board of Control, denied admission to Hawkins as well as the other four black applicants based solely upon the applicants' race, and not based upon a lack of qualifications.[25]

Due to the entrenched manner in which Jim Crow laws had been brutally enforced against blacks, even most of Hawkins' black friends and associates at Bethune-Cookman believed that Hawkins was unrealistically pursuing his goal and that he was doomed for failure. Carrie Meek,[26] now a member of the United States House of Representatives, met Hawkins in 1946 during her first year as a teacher at Bethune-Cookman.[27] At that time, Hawkins was Director of Public Relations at the college.[28] During their first meeting, Hawkins told Meek that he was going to become a lawyer and graduate from the University of Florida.[29]

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21. *See* Herman, *supra* note 5.

22. *See* Bennett, *supra* note 3, at 48.

23. *See* Darryl Paulson & Paul Hawkes, *Desegregating the University of Florida Law School:* Virgil Hawkins v. The Florida Bd. of Control, 12 FLA. ST. U. L. REV. 59, 59 (1984).

24. Interview with Harley S. Herman, Hawkins' historian and attorney, in Leesburg, Fla. (Aug. 4, 1992) (on file with the Florida Law Review).

25. *See id.*; Paulson & Hawkes, *supra* note 23.

26. In 1992, Carrie Meek was elected to Florida's 17th Federal Congressional District. *See Representative Carrie Meek Biography* (visited June 6, 1999) <http://www.house.gov/meek>. Rep. Meek also was the first African-American since the Reconstruction to be elected to Congress in her state. *See id.* Rep. Meek serves as a member of the House Appropriations Committee.

27. Interview with Carrie Meek, Congresswoman of the 17th Congressional District of Florida, in Miami, Fla. (Aug. 6, 1992) (on file with the Florida Law Review).

28. *See id.*

29. *See id.*

Meek describes her reaction to Hawkins' bold assertion: "My reaction was that it was a cockamamy idea that . . . wasn't going to happen. . . . [W]e had a dual system which was just going to get him caught up into the same thing all of us had been caught up in . . . ."[30] In fact, Meek was educated at the University of Michigan having accepted a stipend from the State of Florida to pay for her out-of-state tuition in lieu of the fact that Florida law did not permit black students to attend white state universities.[31]

Not only were Hawkins' friends skeptical about his ability to meet his aspirations to become a law student at the University of Florida, but the white community also acted adversely with threats and intimidations in an effort to convince Hawkins not to challenge the order of the day.[32] Hawkins historian Harley Herman wrote about this adverse community reaction after Hawkins' application was denied:

> [T]he lives, livelihoods and families of the applicants were jeopardized. Bethune-Cookman College was told its loans would not be renewed unless it fired Hawkins. Stores and banks where Hawkins had credit claimed his loans were due. On the streets, Hawkins was treated like a wanted man.
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> At night, Daytona Beach Police would drive through the black community, asking residents if they were Hawkins. Relatives were arrested, under the guise that they might be the "unknown Negro" suspect of a crime.[33]

United States Representative Carrie Meek recounted the horrors Hawkins experienced at that time.[34] She stated: "It would be very difficult to realize the kind of intimidation, the devastation that Virgil went through. No one would have withstood it but Virgil Hawkins because he had the tenacity to do so."[35] She recalled how "[h]e would let [her] read the letters that he received, the hate mail . . . the letters he got with animals particularly . . . monkeys and baboons and gorillas pasted to them saying that this was Virgil and why would we want to go to school with an ape."[36]

Hawkins remained undaunted by the pressure brought against him, including the University's denial of his application for admission to the College of Law.[37] Meek remembers Hawkins laughing off the intimidation

30. *Id.*
31. *See id.*
32. *See id.*
33. Herman, *supra* note 5.
34. *See* Interview with Carrie Meek, *supra* note 27.
35. *Id.*
36. *Id.*
37. *See id.*

as just a minor impediment to his goal.[38] Another Hawkins colleague at Bethune-Cookman, Charles Cherry, who later became publisher of the *Daytona Times*, remembers how Hawkins never let the pressure bother him.[39] Cherry recalled how Hawkins knew that change was inevitable.[40]

Hawkins was perceived by all who knew him at Bethune-Cookman not as a rabble-rouser, but rather, as a warm and sensitive man who always enjoyed a good laugh and never hated those people who were trying to destroy him.[41] Hawkins' affable demeanor may have mislead his adversaries into underestimating the strength of his convictions.[42]

Hawkins decided to legally challenge the denial of his application to the University of Florida College of Law.[43] Based on existing United States Supreme Court precedent, Hawkins' challenge appeared to have merit.

In *Missouri ex rel. Gaines v. Canada*,[44] Lloyd Gaines, a black resident of Missouri and a 1935 graduate of a local black college, Lincoln University, was denied admission to State University of Missouri's School of Law.[45] A Missouri statute provided that Missouri had the authority to arrange and pay for a Negro resident to attend a university of any adjacent state.[46]

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38. *See id.*

39. Interview with Charles Cherry, Publisher of the *Daytona Times*, in Daytona, Fla. (Aug. 7, 1999) (on file with the Florida Law Review).

40. *See id.*

41. *See* Interview with Carrie Meek, *supra* note 27.

42. *See id.*

43. *See id.*

44. 305 U.S. 337 (1938).

45. *See id.* at 342.

46. MO. REV. STAT. § 9622 (1929). Section 9622 provided that:

> Pending the full development of the Lincoln university, the board of curators shall have the authority to arrange for the attendance of negro residents of the State of Missouri at the university of any adjacent State to take any course or to study any subjects provided for at the state university of Missouri, and which are not taught at the Lincoln university and to pay the reasonable tuition fees for such attendance; provided that whenever the board of curators deem it advisable they shall have the power to open any necessary school or department.

Id.; *see also* RICHARD KLUGER, SIMPLE JUSTICE 202 (1975). Kluger explains the practical significance of *Gaines*:

> Colored lawyers were scarce in Missouri; there were only forty-five in the whole state, and thirty of those practiced in St. Louis. A total of just three Negro attorneys had been admitted to the Missouri bar in the previous five years, and there were fewer black practitioners in the state in 1936 than there had been ten years earlier. Something had to be done about it. The president of the St. Louis NAACP and one of the branch's directors, both lawyers, decided to launch a test

The State of Missouri conceded that Mr. Gaines was a qualified student but held him ineligible because it was "'contrary to the constitution, laws and public policy of the State to admit a negro as a student in the University of Missouri.'"[47] Missouri offered to pay Mr. Gaines' tuition to a university in Kansas, Nebraska, Iowa, or Illinois since at that time those states did admit non-resident black students.[48]

Gaines argued that he was improperly discriminated against because of his race, thereby denying him the equal protection of the law under the Fourteenth Amendment to the United States Constitution.[49] In essence, Gaines contended that the "separate but equal" doctrine *of Plessy v. Ferguson*[50] was violated in Missouri by providing whites with a law school education but not blacks.[51] Simply paying the tuition for black students to attend law schools in adjoining states was not the equivalent of providing an in-state legal education to whites, and therefore did not rectify the constitutional violation.[52]

In a 6-2 vote, the Supreme Court agreed with Gaines.[53] The Court summed up the discrimination incurred by Mr. Gaines:

> The question here is not of a duty of the State to supply legal training, or of the quality of the training which it does supply, but of its duty when it provides such training to furnish it to

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> case. Their plaintiff, a twenty-five-year-old St. Louis Resident named Lloyd Lionel Gaines, did not have to be dragooned into participation. He had graduated from Missouri's state-supported black college, Lincoln University, in June 1935 and wanted to go to law school. Lincoln, though, had no law school; it was, in fact, not a university at all but merely been empowered to become one by the state legislature, should the need ever arise among the state's black population. The law school at the University of Missouri, a Jim Crow institution, refused Gaines's application and instructed him to apply either to Lincoln, which in theory could provide him with a legal education, or to an out-of-state law school. If he chose the latter course, the state would pay any tuition charge in excess of what Gaines would have paid if enrolled at the Missouri law school.

Id. at 202.

47. *Gaines*, 305 U.S. at 343.

48. *See id.* at 343, 348.

49. *See id.* at 342.

50. 163 U.S. 537, 543-44 (1896) (holding that separate facilities for blacks and whites did not violate equal protection).

51. *See Gaines*, 305 U.S. at 349-51.

52. *See id.*; KLUGER, *supra* note 46, at 212. In this case, attorney Charles Hamilton Houston did not challenge the constitutionality of the "separate but equal" doctrine of *Plessy*, but rather, "insisted that the Court enforce the principle. If Missouri offered its white citizens a law school, then it had to offer its black citizens a law school every bit as good. That was what separate-but-equal meant. Anything short of that was pantomime justice." *Id.*

53. *See Gaines*, 305 U.S. at 342, 353-54.

> the residents of the State upon the basis of an equality of right. By the operation of the laws of Missouri a privilege has been created for white law students which is denied to negroes by reason of their race. The white resident is afforded legal education within the State; the negro resident having the same qualifications is refused it there and must go outside the State to obtain it.[54]

In his dissent, Justice McReynolds expressed not only his indignation concerning Mr. Gaines' lack of appreciation for the financial offer available to him to attend a law school in an adjoining state but perhaps also the underlying racist sentiment against a policy of integration: "The State has offered to provide the Negro petitioner opportunity for study of the law—if perchance that is the thing really desired—by paying his tuition at some nearby school of good standing."[55] Justice McReynolds' dissent further stated that "[t]his is far from unmistakable disregard of [Gaines'] rights and in the circumstances is enough to satisfy any reasonable demand for specialized training. It appears that never before has a negro applied for admission to the Law School and none has ever asked that Lincoln University provide legal instruction."[56]

In *Sipuel v. Board of Regents of University of Oklahoma*,[57] the U.S. Supreme Court once again provided Hawkins with a precedent that should have supported the Florida Supreme Court's decision to have ordered Hawkins' admission to the University of Florida Law School. Ms. Sipuel, represented by Thurgood Marshall, was a black woman who applied to the University of Oklahoma School of Law.[58] Sipuel was admittedly qualified to be accepted to the law school but was denied admission solely because of her race.[59] No other law school in Oklahoma offered a legal education to blacks.[60]

The U.S. Supreme Court was very clear in its pronouncement that Ms. Sipuel's constitutional rights had been violated. The Court concluded that "[t]he petitioner [Sipuel] is entitled to secure legal education afforded by a state institution. To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the State."[61] The Court ordered the state to "provide [a legal education] for her in conformity with the equal protection clause [sic] of the Fourteenth

54. *Id.* at 349.
55. *Id.* at 353.
56. *Id.* at 353-54.
57. 332 U.S. 631 (1948).
58. *See id.* at 632.
59. *See id.*
60. *See id.*
61. *Id.* at 632-33.

Amendment and provide it as soon as it does for applicants of any other group."[62]

Twelve years after *Gaines*, and two years after *Sipuel*, the United States Supreme Court decided two cases that further supported Virgil Hawkins' right to obtain a legal education at the University of Florida: *Sweatt v. Painter*[63] and *McLaurin v. Oklahoma State Regents for Higher Education*.[64]

Sweatt closely paralleled the facts that were personally confronted by Hawkins. In 1946, Sweatt, a black man, filed an application for admission to the law school at the University of Texas.[65] As with Hawkins, Sweatt's application was denied solely on the basis of race.[66] At the time, no law school in Texas admitted black students.[67] Since the State of Texas could not lawfully argue that providing whites with a law school while denying blacks that same educational opportunity was not a violation of the Equal Protection Clause, the State sought to remedy the constitutional violation by establishing a new law school exclusively for blacks.[68] The State of Texas contended that the separate black law school was equal to the white law school at the University of Texas, and therefore, in conformity with the "separate but equal" doctrine of *Plessy*.[69]

The U.S. Supreme Court examined the faculty, resources and the facility at the all white University of Texas Law School.[70] The faculty consisted of sixteen full-time and three part-time professors.[71] Some professors were nationally renown.[72] Eight hundred and fifty students attended the law school.[73] The library had an impressive collection of books.[74] In reviewing the educational opportunities to its students and the success of its alumni, the court acknowledged the University of Texas Law

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62. *Id.* at 633; *see also* KLUGER, *supra* note 46, at 260. As Kluger explained, *Sipuel* did not overturn *Plessy*, or even go so far as to demand a separate law school for blacks had to be equal to that for whites, rather, "[a]ll that *Sipuel* established . . . was that a state had to offer something or other that passed for a school to meet the separate-but-equal test—and it had to do so promptly." *Id.* Kluger went on to state: "*Sipuel* was the judicial ratification of tokenism, and it did nothing to advance the NAACP drive for truly equal schools, let alone the end of segregated ones." *Id.*

63. 339 U.S. 629 (1950).

64. 339 U.S. 637 (1950).

65. *See Sweatt*, 339 U.S. at 631.

66. *See id.*

67. *See id.*

68. *See id.* at 632.

69. *See id.*

70. *See id.* at 632-33.

71. *See id.* at 632.

72. *See id.*

73. *See id.*

74. *See id.* at 633.

School was considered to be a law school of national repute.[75]

By comparison, the court examined the proposed law school that Texas scheduled to open the following year for black students.[76] The school would have no full-time faculty.[77] Rather, four professors from the University of Texas would undertake the teaching responsibilities.[78] The library had few books ordered.[79] The obvious deficiencies of this new law school explained why it lacked accreditation.

When the black law school opened, improvement was apparent. There were five full-time faculty members teaching twenty-three students.[80] The library acquired more books than originally anticipated.[81] However, the U.S. Supreme Court unanimously agreed that the separate newly established black law school was not equal to the educational opportunities offered white law students by the State of Texas.[82] The court wrote that "in terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the University of Texas Law School is superior."[83]

The U.S. Supreme Court, without overturning the "separate but equal" doctrine of *Plessy*, refused to allow Texas to use the doctrine as a subterfuge for excluding blacks from the University of Texas. It was obvious to the U.S. Supreme Court that a new law school created for blacks merely to satisfy *Plessy* would not in fact be equal to a well established state law school that educated white students.

Since *Sweatt* was decided on June 5, 1950 (before *Hawkins* was first decided by the Florida Supreme Court), *Sweatt* became an important precedent for Hawkins' constitutional challenge to the denial of his application for admission to the University of Florida College of Law. In fact, the State of Florida had filed an amicus brief in support of the State of Texas and had notice that its legal position was soundly rejected by *Sweatt*.[84]

Hawkins decided to challenge the denial of his admission to the University of Florida by hiring Alex Akerman, a white lawyer from Orlando, Florida.[85] Although Hawkins wanted his case commenced in

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75. *See id.* at 633-44.
76. *See id.* at 633-34.
77. *See id.* at 633.
78. *See id.*
79. *See id.*
80. *See id.*
81. *See id.*
82. *See id.*
83. *Id.* at 633-34.
84. *See* Herman, *supra* note 5.
85. *See* B.R. Brazeal, *Some Problems in the Desegregation of Higher Education in the "Hard*

federal district court, Mr. Akerman decided to bring the Hawkins case in state court.[86]

Hawkins brought a writ of mandamus from the Florida Supreme Court seeking relief to compel the University of Florida to admit him as a law student.[87] Just as in *Sweatt*, the Florida Supreme Court acknowledged that Hawkins possessed "all the scholastic, moral and other qualifications, except as to race and color" for admission to the law school.[88]

Hawkins should have clearly prevailed under the *Sweatt* precedent of the U.S. Supreme Court. However, the Supreme Court of Florida blatantly chose to ignore *Sweatt* and did not even cite this pertinent precedent in its opinion which denied Hawkins admission to the University of Florida College of Law.[89] In further defiance of the U.S. Supreme Court, the Supreme Court of Florida opined that there were two options that could be offered to Hawkins by the State of Florida that would be in compliance with the Equal Protection Clause of the U.S. Constitution.[90] First, Florida could pay for Hawkins' legal education outside of Florida.[91] This option by itself had been held to be unconstitutional by the U.S. Supreme Court in *Gaines* more than a decade earlier.[92] However, the second option was for the State of Florida to create a newly approved law school for black students in general and Virgil Hawkins in particular at Florida A & M University, a black college in Tallahassee, Florida.[93]

The Florida Supreme Court stated that during the interim period while this new black law school was being constructed and was in the process of achieving equal status with the University of Florida, Hawkins would be afforded the right to attend law classes at the University of Florida—even though he would not be considered to be officially enrolled there as a law student.[94]

Harley Herman chronicles the outrage of the NAACP's Legal Defense Fund to the Florida Supreme Court deliberately disregarding the U.S.

Core" States, 27 J. NEGRO EDUC. 352, 356 (1958).

86. *See id.* at 357. The author quotes Hawkins as saying: "[Akerman] wanted to go into state courts whereas I [Hawkins] wanted to get the case in Federal courts." *Id.*; *see also* JEAN L. PREER, LAWYERS V. EDUCATORS: BLACK COLLEGES AND DESEGREGATION IN PUBLIC HIGHER EDUCATION 137 (1982). The author reported that Hawkins' preference was to commence his litigation in the federal court system and that the decision by his attorney to start the case in Florida played a significant role in the litigation's ultimate failure.

87. *See* State *ex rel.* Hawkins, 47 So. 2d 608, 609 (Fla. 1950).

88. *Id.*

89. *See id.* at 609-17.

90. *See id.* at 610.

91. *See id.*

92. *See* Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337, 351 (1938).

93. *See id.*

94. *See Hawkins*, 47 So. 2d at 616.

Supreme Court's mandate in *Sweatt*: "At the national office of the NAACP's Legal Defense Fund, Thurgood Marshall recognized that Florida's actions were the Fort Sumter of an undeclared second civil war. If Florida could succeed in defying the United States Supreme Court, other southern states would follow."[95]

The easily anticipated legal victory that Hawkins had expected based upon the *Sweatt* precedent signaled a longer and more arduous legal battle that would lie ahead than was originally anticipated. The State of Florida had made a clear statement. Hawkins would not be attending the University of Florida College of Law in spite of United States Supreme Court precedent.[96]

When Hawkins was asked directly in an interview why he filed suit after his application to law school was rejected, he stated: "I filed for two reasons: First, I always wanted to study law. Secondly, I was poor, the son of a Methodist preacher, and I dropped out of school several times."[97] Hawkins went on to explain that: "I could not afford to go out of the state where I paid taxes and had loved ones. Further, I didn't want to go out of the state to study law even if I could have afforded it. The white boys with whom I had played didn't have to go off."[98]

In that same interview, Hawkins explained why he refused to attend Florida A & M:

> Florida A&M has a make-shift law school which was put up for me to go to. At one time it had seven full-time professors with only three students. This school has no prestige whereas the law school at the University of Florida is over fifty years old and has numbers of senators, judges and distinguished lawyers among its graduates.[99]

The Florida Supreme Court made clear that the "separate but equal"

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95. Herman, *supra* note 5, at 43.

96. *See* PREER, *supra* note 86, at 137-38 (stating that the Florida Supreme Court ignored the *Sweatt* opinion in holding that the State of Florida's commitment to creating a new law school at Florida A & M for Negro students would satisfy the Fourteenth Amendment).

97. Brazeal, *supra* note 85, at 356; *see also* PREER, *supra* note 86. Preer suggests that Hawkins should have been willing to attend the University of Florida Law School even though he would have been enrolled at the purportedly equal black law school at Florida A & M. *See id.* Negro students who were, at that time, attending classes in Arkansas and Oklahoma were not causing the dangers that the state of Florida subsequently expressed concern about later in the *Hawkins* litigation. *See id.* Had Hawkins attended the University of Florida College of Law in the early 1950s, he could possibly have dispelled the argument that was later made in his litigation to justify excluding him from law school, to wit, that social unrest that would have been caused by the integration of the races at the University of Florida. *See id.*

98. Brazeal, *supra* note 85, at 356.

99. *Id.* at 357.

doctrine was alive and well in the State of Florida and would be given a very broad interpretation in justifying the exclusion of Hawkins from the University of Florida. The court quoted its adherence to *Plessy* in this regard:

> The object of the amendment [Fourteenth Amendment Equal Protection Clause] was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation, in places where they are liable to be brought into contact, do not necessarily imply the inferiority of either race to the other. . . . [100]

The Florida Supreme Court further frustrated Hawkins in maintaining jurisdiction over his case, rather than issuing a final order. When Hawkins appealed this decision and filed a petition for certiorari with the United States Supreme Court, the Court denied his petition because the Florida Supreme Court had continued to maintain jurisdiction since it had not issued a final judgment.[101]

Hawkins initiated his second action before the Florida Supreme Court ten months after losing his first petition.[102] Once again, Hawkins sought an order that would admit him to the University of Florida College of Law. Hawkins complained that he had not been provided the equal educational opportunity that the court previously ordered in its earlier decision.[103]

Hawkins further complained that he had exhausted all reasonable means available to him for attaining admittance to the University of Florida, the only institution maintained in the State of Florida by its taxpayers which offered courses necessary to obtain a law degree. Hawkins further averred that the creation of a law school on paper for Negroes at Florida A & M, like the alternative plan adopted by the Board of Control, did not accord to Hawkins the equal protection of the laws as required by the Fourteenth Amendment to the United States Constitution.[104]

Even though Hawkins should have prevailed as a result of *Sweatt*, *McLaurin*, *Sipuel*, and *Gaines*, the Florida Supreme Court summarily

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100. State *ex rel.* Hawkins, 47 So. 2d 608, 614 (citing Plessy v. Ferguson, 163 U.S. 537, 537 (1896)).

101. *See* PREER, *supra* note 86, at 138.

102. *See* State *ex rel.* Hawkins v. Board of Control, 53 So. 2d 116 (Fla. 1951).

103. *See Hawkins*, 47 So. 2d at 608.

104. *See* Paulson & Hawkes, *supra* note 23, at 61.

dismissed Hawkins' request.[105] Instead the court suggested Hawkins file a timely application to attend the Florida A & M law school and the state would then be obliged to meet its obligation in providing this separate but equal facility for Hawkins.[106] The Florida Supreme Court again tried to further frustrate Hawkins' opportunity to appeal directly to the U.S. Supreme Court by refusing to terminate jurisdiction over the case in its unwillingness to enter a final order.[107]

Horace Hill, a black Daytona Beach lawyer, represented Hawkins before the Florida Supreme Court. Hill sadly remembered the unjudicial reception he received from the court when he appeared to argue the case:

> They [the justices] actually just turned their backs on [me]. I was arguing to just the curtain so to speak. It was almost seeming that I had brought a kind of litigation which was just unheard of and unthinkable and it was rebuffed in that way. . . . I continued to argue anyway because I thought the position was ultimately sound. . . . [T]hey received the clear issue [as] . . . something to embarrass the state.[108]

Fourteen months later, Hawkins returned to the Florida Supreme Court for his third appearance.[109] He again requested an order granting him admission to the University of Florida College of Law based upon his constitutional right to equal protection under the law. In dicta, the court determined that Hawkins

> intend[ed] to stand on the contention that in order to receive the full political rights guaranteed him by the Federal Constitution he must be admitted to the University of Florida Law School, maintained, under the Constitution of Florida, exclusively for citizens of the white race, even though there is in existence in the state a tax-supported law school which is maintained exclusively for Negroes and which, on the face of this record, we must assume will afford to him opportunities and facilities which are substantially equal to those to be found at the University of Florida. This is but another way of contending that in order for there to be equality of treatment accorded a citizen, in respect to tax-supported facilities, there must likewise be complete identity of treatment, or else the requirements of the Federal

105. *See Hawkins*, 47 So. 2d at 610.

106. *See id.* at 610.

107. *See* Paulson & Hawkes, *supra* note 23, at 61.

108. Interview with Horace Hill, Hawkins' former attorney, in Daytona, Fla. (Aug. 7, 1992) (on file with the Florida Law Review).

109. *See* State *ex rel.* Hawkins v. Board of Control, 60 So. 2d 162 (Fla. 1952).

> Constitution will not be satisfied. This contention is not sound.[110]

The court took judicial notice that Florida A & M had an operational law school equal to the University of Florida's. It emphasized that Florida A & M provided an educational experience exclusively for blacks with "classrooms, a law library, a law facility, and appropriations of public moneys which appear to be sufficient adequately to maintain the law school and to offer legal instruction to such Negro students as are presently enrolled there or who may be reasonably expected to enroll there in the future."[111]

The court suggested that if Hawkins would apply to Florida A & M's law school, he would be admitted and then this matter would be resolved.[112] In essence, the court believed the importance of maintaining the "separate but equal" doctrine under *Plessy* justified the public expense of starting an entirely new and separate law school at Florida A & M—initially, just for Virgil Hawkins.

Since Hawkins had refused to apply for admission to Florida A & M, the Florida Supreme Court again held solely on the basis of the pleadings in the case that Hawkins was not entitled to the relief he sought and dismissed his plea for the third time.[113]

Once again, Hawkins—now forty-eight years old—appealed the final order of the Florida Supreme Court. The United States Supreme Court first decided *Brown v. Board of Education*[114] on May 17, 1954. One week later, the high court ruled on the Hawkins appeal.

In *Brown*, the U.S. Supreme Court broke new ground. A unanimous court held that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[115] The Court determined "that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the law guaranteed by the Fourteenth Amendment."[116]

The United States Supreme Court in rejecting the precedent of *Plessy* ruled that the government in providing public education could no longer separate the races. For Virgil Hawkins, the attempts by the State of Florida to offer tuition payments for his attendance at an out-of-state law school or

110. *Id.* at 165.
111. *Id.* at 164.
112. *See id.* at 162.
113. *See id.*
114. 347 U.S. 483 (1954) [hereinafter *Brown I*].
115. *Id.* at 495.
116. *Id.*

to commence operations of a separate but equal law school at an existing black university no longer seemed like constitutionally tenable alternatives.

On May 24, 1954, the U.S. Supreme Court, having tackled the major issue of equality in public schools, faced an easier issue with respect to Virgil Hawkins' right to attend the law program at the University of Florida. The high court remanded *State ex rel. Hawkins v. Board of Control*[117] back to the Florida Supreme Court for consideration in light of *Brown v. Board of Education.*[118]

Hawkins historian Harley Herman viewed *Brown* as being completely dispositive with respect to the Hawkins case. Herman stated:

> The U.S. Supreme Court in directing the Florida Supreme Court to consider *Hawkins* in light of *Brown* meant that the high court had not only decided the issue of equality for professional education, but now had also resolved the question for elementary education. There was no doubt but that the Florida Supreme Court had to integrate the University of Florida['s] law school by admitting Hawkins.[119]

Horace Hill, Hawkins' black attorney who took over the case with support from the NAACP, and who argued the Hawkins case along with co-counsel Thurgood Marshall before the U.S. Supreme Court, concurred with Herman's assessment.[120] Hill was confident that in *Brown* the U.S. Supreme Court had accepted the principle that segregation was discrimination per se and unconstitutional.[121] Hence, the Florida Supreme Court's immediate implementation of that decision would compel the court to order that Virgil Hawkins be admitted without any delay to the University of Florida Law School.[122]

In 1955, the United States Supreme Court heard *Brown*[123] on the issue of implementation. The Court firmly reasserted that the local school districts cannot ignore "the vitality of these constitutional principles . . . simply because of disagreement with them."[124] However, the Court did authorize the speed of integration to be based, in part, upon an assessment of local conditions in mandating these officials to "make a prompt and

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117. 347 U.S. 971 (1954).

118. *See id.* at 971.

119. Interview with Harley Herman, Hawkins' Historian and attorney, in Leesburg, Fla. (Aug. 4, 1992) (on file with the Florida Law Review).

120. *See* Interview with Horace Hill, *supra* note 108.

121. *See id.*

122. *See id.*; *see also* Selkow, *supra* note 1, at 98 (explaining the Supreme Court's decision to vacate and remand the *Hawkins* case in light of recent desegregation cases).

123. Brown v. Board of Educ., 349 U.S. 294 (1955) [hereinafter *Brown II*].

124. *Id.* at 300.

reasonable start toward full compliance with . . . [the original *Brown* ruling.]"[125] This language which did not require the prompt desegregation of public schools was to be misinterpreted by the Florida Supreme Court as being applicable to colleges and universities.[126]

Samuel Selkow regards the Florida Supreme Court as finding an excuse to keep Hawkins out of the University of Florida:

> The Florida Board of Control read . . . [*Brown II*], chewed it awhile and then spit up a bitter scheme with which to frustrate Hawkins. Since the United States Supreme Court was relying on the [original] *Brown* case, it was reasoned, the criteria of the Court's May 31, 1955 'implementation decision' giving effect to the Brown decision also applied to the Hawkins case. The Board of Control chose to ignore the fact that the 'implementation decision' and the Brown case allowed delay of integration only in so far as they dealt with problems incident to young children in public schools. In its 'implementation decision,' the United States Supreme Court had said that Courts enforcing integration could allow time for compliance, if in their opinion, administrative adjustments and local problems required a moderating approach. The Supreme Court of Florida, relying on this 'implementation decision,' stated that they had no legal duty to admit Hawkins 'immediately or at any particular time in the future.' Using the United States Supreme Court's decision as its cue, the Florida Court withheld an order for Hawkins' admission pending a subsequent determination of law and facts as to the time when

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125. *Id.*

126. *See* Thomas M. Jenkins, *Judicial Discretion in Desegregation: The Hawkins Case*, 4 HOWARD L.J. 193, 200 (1958). Jenkins, dean of Florida A & M's College of Law had the paradoxical opinion that the *Brown* decisions, although significant, may have actually slowed down Hawkins' legal battle for admission to the University of Florida. *See id.* Jenkins wrote:

> Had it not been for the advent of *Brown*, it is felt that . . . *Hawkins* would have been decided differently in the Florida Supreme Court. . . . The thought is that *Sweatt v. Painter* and cases of like nature were accomplishing on the graduate and professional level of public instruction, anyway, what was desired by desegregation proponents, without bitter, though strong resistance. It can be argued, of course, and soundly, that "diehard" segregationists were not going to be led, "even more gradually" down the highway being opening by *Sweatt v. Painter*. But the fact remains that appreciable violence did not precede *Brown*. It could very well be . . . that many state judicial officers, and certainly the rabble rousers not exposed to legal training did not fully understand that *Sweatt v. Painter* had, by setting an impossible standard, ended segregation in the public schools, assuming its announced measuring stick was followed.

Id.

he should be admitted.[127]

The Florida Supreme Court, in losing the legal battle but not their will to keep Hawkins out of the University of Florida Law School, changed the rules in the middle of the game. Up to that point, Florida had only contested the legal issue of whether the State had to admit a qualified Negro to an all-white university if a separate and equal black law school was established. For the first time, the Florida Supreme Court recognized a factual issue that had to be resolved. The State of Florida claimed to be concerned that admitting a black student to the all-white University of Florida presented "grave and serious problems affecting the welfare of all students" which required various adjustments and changes.[128] To resolve this artificially interjected factual issue which was designed to further obstruct Hawkins' intentions and to ignore *Sweatt* and *Brown*, the court appointed the Honorable John A.H. Murphree, Circuit Judge, to hear testimony and file a report as to when Hawkins should be admitted to the University of Florida.[129]

Hawkins' lawyer, Constance Baker-Motley, understood the historical significance of the latest Hawkins decision. The Florida Supreme Court took the brazen position to engage in "massive resistance" against an order of the federal government vis-à-vis the direct order of the U.S. Supreme Court.[130]

In a letter to the Hon. John Murphree, Cyril Pogue of Clearwater, Florida expressed the typical reaction of many white members of The Florida Bar. In declaring his sentiments about Hawkins integrating the University of Florida, Pogue wrote:

> I cannot compel my conscience to in anywise agree to integration of both Negro women and men to matriculate at the University of Florida for the reason that no appreciable part of these races have integrated each with the other within the southern states and within the boundaries of the state of Florida. I do not feel that it would serve any useful purpose for either race, and it would amount to a disintegration of the white race and would be applauded by numbers of the Negro race as obtaining a great objective.[131]

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127. Selkow, *supra* note 1, at 98; *see also* PREER, *supra* note 86, at 139 (discussing how the Florida Supreme Court used *Brown II* to delay Hawkins' entrance to the University of Florida Law School).

128. State *ex rel.* Hawkins, 83 So. 2d 20, 24 (Fla. 1955).

129. *See id.* at 25; *cf.* CONSTANCE BAKER-MOTLEY, EQUAL JUSTICE UNDER LAW 113 (1998) (describing the Florida Supreme Court as having been "a group of stone faced white male judges").

130. BAKER-MOTLEY, *supra* note 129, at 113-14.

131. Letter from Cyril E. Pogue, attorney at law and member of The Florida Bar Association,

Justice Terrell, in providing a brief dissertation on the divine scheme of animal segregation, echoed the court's underlying racial hatred:

> I might venture to point out in this connection that segregation is not a new philosophy generated by the states that practice it. It is and has always been the unvarying law of the animal kingdom. The dove and the quail, the turkey and the turkey buzzard, the chicken and the guinea, it matters not where they are found, are segregated; place the horse, the cow, the sheep, the goat and the pig in the same pasture and they instinctively segregate; the fish in the sea segregate into "schools" of their kind; when the goose and duck arise from the Canadian marshes and take off for the Gulf of Mexico and other points in the south, they are always found segregated; and when God created man, he allotted each race to his own continent according to color, Europe to the white man, Asia to the yellow man, Africa to the black man, and America to the red man, but we are now advised that God's plan was in error and must be reversed despite the fact that gregariousness has been the law of the various species of the animal kingdom.[132]

Justice Leander Shaw, a current member of the Florida Supreme Court, looks back on Justice Terrell's arguments for segregation of the races and "finds it incredible that th[e] court would have said what it said even in those times."[133] Justice Shaw, an African-American, has expressed:

> Some people I've heard would tend to justify it by saying that it was a different time, but the law was not so different back then from what it is today.... [T]here is no way to escape the fact that there was an outright defiance of the U.S. Supreme Court that said, you shall admit Virgil Hawkins. Th[e Florida Supreme Court] is one of the few courts I've ever heard of in this nation [that] said, "We're not going to do it. We are going to find as many ways to keep Hawkins out as you can find to put him in."[134]

Even though the Florida Supreme Court denied Hawkins' requested relief for the fourth time, a matter of great significance occurred. For the first time in all of the Hawkins decisions, the court lacked unanimity. Two

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to Hon. John A.H. Murphree, Circuit Judge (Feb. 23, 1956) (on file with author).

132. *Hawkins*, 83 So. 2d at 27-28.

133. Interview with Honorable Leander Shaw, Florida Supreme Court Justice, Tallahassee, Fla. (Aug. 8,1999) (on file with the Florida Law Review).

134. *Id.*

justices dissented in part from the majority decision.[135] The dissenters, Justices Sebring and Thomas, stated that their judicial duty took priority over their personal views.[136] Justice Sebring concluded that under the cases previously decided by the United States Supreme Court, if Hawkins would be deemed qualified for admission to the University of Florida College of Law if he was white, then he should be admitted.[137]

In 1956, Hawkins for a third time sought a ruling from the U.S. Supreme Court to provide him relief from the Florida Supreme Court's adverse judgment.[138] In his petition for certiorari, Hawkins argued that *Brown II* applied only to public school education and not college-level education. Hawkins' petition stated in part:

> We submit that the formula laid down in *Brown v. Board of Education* . . . for ending segregation in public schools is not applicable to state junior colleges, colleges, graduate and professional schools. The May 31, 1955 formula was designed to give public officials, who had to undertake necessary administrative planning, such as redistricting, reassignment of pupils, reorganization of schools and staff, time essential to free a public school system of color discrimination in compliance with the law. The removal of racial barriers with respect to admission to state junior colleges, colleges, graduate or professional schools involves no administrative problems. . . . These schools merely have to adopt and enforce rules and regulations pursuant to which qualified Negro applicants are admitted on the same basis as other persons.[139]

Florida's brief in opposition to Hawkins' writ of certiorari argued that *Brown II* was applicable to both public school and college-level education.[140] The state asserted, in part, that "[a] consideration of the welfare and proper operation of the College of Law and other colleges of the University of Florida cannot be divorced from a consideration of the welfare, scholastic standing, customs, administrative procedures, policies and physical facilities of the Florida public school system as a whole."[141]

On March 12, 1956, the U.S. Supreme Court, in an effort to clarify any possible ambiguity from *Brown II*, stated in its per curiam opinion: "As

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135. *See Hawkins*, 83 So. 2d at 25.

136. *See id.* at 31 (Sebring, J., concurring in part & dissenting in part).

137. *See id.* at 33-34 (Sebring, J., concurring in part & dissenting in part).

138. *See* Paulson & Hawkes, *supra* note 23, at 64; *see also* BAKER-MOTLEY, *supra* note 129, at 113 (indicating that Bob Carter from the NAACP Legal Defense Fund handled Hawkins' petition to the U.S. Supreme Court).

139. PREER, *supra* note 86, at 140 (citation omitted).

140. *See id.* at 141.

141. *Id.* (citation omitted).

this case involves the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates."[142] The Court pointed out that the *Brown II* implementation opinion concerned elementary and secondary schools and did not address whether a black applicant should be admitted to a state law school.[143]

After the U.S. Supreme Court's 1956 *Hawkins* opinion, it seemed a certainty that Hawkins had won his court battle for admission to the University of Florida College of Law. Horace Hill, co-counsel with Thurgood Marshall on the Hawkins case, interpreted the March 12, 1956 decision as follows: "They didn't retreat from the original decision. . . . [T]hey said that he was entitled to admission and we thought and felt that they meant admission right away. . . ."[144]

Newspapers ran articles proclaiming Hawkins' legal victory. The *New York Times*' front-page story on Hawkins was entitled "Court Bars Delay In Granting Negro Law School Seat."[145] A local Florida newspaper, the *Tampa Tribune* published the headline, "High Court Orders Florida U. To Admit Negro Law Student."[146] However, the optimism perceived by Hawkins and his lawyers that was generated from this decision was short-lived. As soon as the U.S. Supreme Court decision was released, Hawkins went over to the University of Florida to register and was denied admission.[147]

Hawkins historian Harley Herman recounts the impact this most recent Hawkins decision before the U.S. Supreme Court had on the 1956 Florida gubernatorial race:

> [I]t created an uproar in the [S]tate of Florida during the campaign for the governorship [in 1956] . . . . [T]he three main candidates include[d] incumbent Leroy Collins . . . a former governor [Fuller Warren], and a man from Tampa known as Sumter Lowry. . . . [They all chose to] run against Hawkins rather than each other. . . . Each one [tried to show he] could do a better job of keeping Hawkins out of law school.[148]

Governor Collins, who was considered a moderate in race relations, wasted no time in letting Floridians know where he stood on the Hawkins

142. Florida *ex rel.* Hawkins v. Board of Control, 350 U.S. 413, 414 (1956).
143. *See id.* at 413-14; Paulson & Hawkes, *supra* note 23, at 64.
144. Interview with Horace Hill, *supra* note 108.
145. *See* Paulson & Hawkes, *supra* note 23, at 64.
146. *See id.*
147. *See* Interview with Horace Hill, *supra* note 108.
148. Interview with Harley Herman, *supra* note 24.

matter. He immediately announced that he not only disagreed with the U.S. Supreme Court opinion in Hawkins, but that he would like to personally argue Florida's opposition to Hawkins' admission to the University of Florida before the U.S. Supreme Court.[149] The Governor promised in a radio speech that his state was "just as determined as any Southern state to maintain segregation, but we will do so by lawful and peaceful means."[150]

Sumpter Lowry contended that racial integration was a plot calculated "to destroy the white race" by causing its blood to be mixed with Negro blood.[151] Lowry argued that Governor Collins was too moderate on race relation issues and that Florida needed to assert its sovereign power in resisting forced integration.[152]

In a telegram to the State Board of Law Examiners, former Governor Fuller Warren alleged that Hawkins had assaulted two school children when he was a teacher over a decade earlier.[153] Hawkins denied the charges.[154] The school superintendent of the county in which Hawkins had been a teacher denied having ever heard of any such incident.[155] The former governor even urged the Florida Attorney General to request a hearing before the Supreme Court so that this newly discovered evidence could be presented.[156] The Attorney General rejected this request.[157] Warren's insistence seemed motivated more by political capital than by getting to the truth of the charges he alleged against Hawkins.

Paulson and Hawkes have documented Governor Collins' efforts to fight Hawkins' admission to the University of Florida.[158] On March 21, 1956, the governor conferred with his cabinet, the Board of Control, the presidents of state universities, and others.[159] Four matters were then agreed upon:

> First, they agreed to petition the Supreme Court to rehear the *Hawkins* case. Second, they voted to adopt new regulations

149. *See* Frank Trippett, *Collins Defers to Argue Before the Supreme Court*, ST. PETERSBURG TIMES, Mar. 13, 1956, at A1.

150. Paulson & Hawkes, *supra* note 23, at 64-65; *see also* Jack Bell, *If Gillins Had Allowed Negro in UF . . .*, MIAMI HERALD, Sept. 30, 1956, at G4 (indicating Bell's disapproval of Governor Collins and his lack of courage in responding to the Hawkins case).

151. Paulson & Hawkes, *supra* note 23, at 65.

152. *See id.*; State Roundup: *Avoid Court, Says Lowry*, ST. PETERSBURG TIMES, Apr. 4, 1956, at A12.

153. *See* Warren Accusses Hawkins, *Lake Man Can't Recall Negro Beating Children*, ORLANDO SENTINEL, Mar. 16, 1956, at B1.

154. *See id.*

155. *See id.*

156. *See* Paulson & Hawkes, *supra* note 23, at 66 n.33.

157. *See id.*

158. *See id.* at 64-65.

159. *See id.* at 65.

> for admission to state universities. Third, they agreed to appoint a commission to study desegregation remedies. Finally, they urged Governor Collins to ask President Eisenhower to call a meeting of Southern governors to discuss desegregation.[160]

In spite of the U.S. Supreme Court's March 12, 1956 pronouncement to admit Hawkins, Judge Murphree concluded his work on behalf of the Florida Supreme Court and determined that Hawkins' admission to the University of Florida "may have the potential of causing serious public discord and disturbances in the state."[161] Judge Murphree gave the Florida Supreme Court the ammunition it needed to further defy the Supreme Court's 1956 ruling.

On March 8, 1957, Virgil Hawkins—now fifty-one years old—pleaded his case for the fifth time before the Florida Supreme Court for admission to the University of Florida College of Law.[162] Hawkins' argument was strengthened by the prior 1956 U.S. Supreme Court order. Hawkins' contention was simple: The 1956 U.S. Supreme Court decision entitled him "to immediate admission, provided he is otherwise qualified, without regard to the outcome of the factual study which was in progress at the time of the filing of his motion. . . ."[163]

The State of Florida countered Hawkins' arguments by presenting the findings contained in the Judge Murphree's report.[164] Florida Attorney General Richard Ervin argued the Florida Supreme Court should assert the sovereignty of the state in refusing law school admission to Hawkins.[165] In Ervin's brief to the court, he wrote: "The Supreme Court of Florida represents the majesty of the state, and may, in its discretion, implement the rights and powers of the state where the public welfare, including good order and education is involved."[166] Ervin cited the Tenth Amendment to the U.S. Constitution as authority for the powers not specifically granted to the federal government to be left to the states.[167]

The Florida Legislature outrageously asserted primacy over the United States Supreme Court. In 1957, the Legislature passed a resolution

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160. *Id.*

161. *Id.* at 66.

162. *See* State *ex rel.* Hawkins v. Board of Control, 93 So. 2d 354, 355 (Fla. 1957).

163. *Id.* at 356.

164. *See id.* at 359.

165. *See Invoke Sovereignty to Bar Negro-Ervin*, ORLANDO SENTINEL, June 20, 1956, at 13.

166. *Id.*

167. *See id.* Ervin then advocated that the Florida Supreme Court disregard the 1956 order of the United States Supreme Court: "We do not believe that the United States Supreme Court has presumed to assume the power or right to deny a state the exercise of discretion, either through administrative or judicial processes in guarding the peace and safety of its citizens." *Id.*

furthering the concerns of white Floridians regarding the racial tensions arising from the 1956 U.S. Supreme Court's order mandating that Hawkins be admitted to the University of Florida.[168] In an effort to advance popular opinion as a justification for not following the law, Richard Ervin stated:

> This resolution which is not without historical precedent, we construe to be the strongest possible form of protest which can be legally filed by the people of a sovereign state in opposition to an action of any branch of the federal [government] which the people consider to be inherently wrong.[169]

The Florida Supreme Court expressed concern for the U.S. Supreme Court diminishing the concept of state sovereignty.[170] The Court cited President Lincoln's first inaugural address wherein he stated, "If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal."[171]

The Florida Supreme Court disingenuously assumed, despite what the U.S. Supreme Court had plainly stated and previously ordered, that the Court was not trying to control Florida's "rules of practice and procedure necessary to carry out the administration of justice."[172] The Florida Supreme Court chided Hawkins for not giving testimony before the Murphree Commission.[173] Even though Hawkins had bravely litigated his case for many years, the court gratuitously doubted his sincerity in wanting to obtain a legal education.[174] The court characterized Hawkins as an ingrate who refused the many generous offers previously made to him by Florida to get a legal education:

> He was given an opportunity to secure a legal education outside this state . . . but declined; he was given an opportunity to attend the University of Florida Law School, temporarily, if law facilities were not available at the Florida Agricultural & Mechanical University, but declined; he was then given an opportunity to attend the law school at the

168. *See Avoid Racial Unrest, U.S. Supreme Court Urged*, ORLANDO SENTINEL, July 2, 1957, at A3.
169. *Id.*
170. *See Hawkins*, 93 So. 2d at 357.
171. *Id.*
172. *Id.* at 358.
173. *See id.*
174. *See id.*

> Florida Agricultural & Mechanical University, but declined. And, as noted, he was given an opportunity to appear before the court's commissioner and offer evidence in support of his right to immediate admission to the University of Florida Law School, but declined.[175]

The court discussed the findings of the Murphree Commission and how Hawkins' admission would cause great public mischief.[176]

> The survey conducted under the guidance of the court's commissioner shows . . . that a substantial number of students and a substantial number of the parents of students state that they expect to take action—which apparently is positive action—to persuade Negro students to leave the University or make it so unpleasant for them that they will move out of a dormitory room or out of a class or out of a cafeteria or otherwise stop using the facilities . . . should integration occur. It was also shown that 41 percent of the parents of students now in our white universities would cause them to drop out of those schools or transfer to another school; and that 62 percent of . . . parents . . . would send their children elsewhere than to our white state institutions, if we have enforced integration. There would be loss of revenue to our white institutions from grants, from activities on the part of the alumni . . . and from students moving out of dormitories . . . if we have integration. . . ."[177]

Once again, the court changed the rules to create a new obstacle for Hawkins. It inappropriately placed the burden of proof on Hawkins to establish that his admission would not cause great public mischief in the future.[178] Hawkins was made responsible for proving the unprovable—that no racist activities would be caused by his admission to the University of Florida College of Law.

In his concurring his opinion, Florida Supreme Court Justice Terrell could not contain his racist beliefs and articulated some of the most racist ideas ever written in a judicial opinion:

> Some anthropologists and historians much better informed than I am point out that segregation is as old as the hills. The Egyptians practiced it on the Israelites; the Greeks did likewise for the barbarians; the Romans segregated the

175. *Id.*
176. *See id.* at 359; BAKER-MOTLEY, *supra* note 129, at 115.
177. *Hawkins*, 93 So. 2d. at 359.
178. *See id.* at 360.

> Syrians; the Chinese segregated all foreigners; segregation is said to have produced the caste system in India and Hitler practiced it in his Germany, but no one ever discovered that it was in violation of due process until recently and to do so some of the same historians point out that the Supreme Court abandoned the Constitution, precedent and common sense. . . .[179]

The Florida Legislature felt compelled to aid in the blockade of Hawkins' admission to law school. This governmental body tried to intimidate Hawkins, his attorneys and even the NAACP. The Johns Committee, created by the Legislature, held hearings in an effort to discourage what it viewed as agitators who wanted to force integration upon the citizens of Florida. Hawkins' historian Harley Herman Scott described the Johns Committee as conducting an investigation:

> [T]o prove that the NAACP was a communist front engaged in an unlawful effort to litigate civil rights cases. Appearing before the committee, [Hawkins' attorney] Horace Hill [who] found [his un-subpoenaed] records from his office in the hands of the committee, was accused of participating in illegal NAACP legal actions, and was threatened with the loss of his license to practice law. Hawkins claimed that the committee placed him in a dark, unventilated room in 90 degree heat for hours, and told he would not be released until he said what the committee wanted to hear. Though neither bent under this pressure, Hill cited ill health as the reason he resigned from the case shortly after appearing before the Johns Committee.[180]

Harley Herman described the motivation of the legislature creating the Johns Committee as "[p]art of the uproar that came out of the *Brown* decision, [*and* its] direct order to admit Hawkins, was the political philosophy in Florida was that [a] bunch of northern individuals in the federal government were trying to interfere in the lawful duties of the state. . . ."[181] He went on to explain that the northerners in the federal

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179. *Id.* at 360-61.

180. Herman, *supra* note 5; *see also NAACP Probe Calls Hawkins*, ORLANDO SENTINEL, Feb. 4, 1957, at A1; *Control Board Asks Hawkins Suit Deferment*, ORLANDO SENTINEL, Feb. 20, 1957, at A3 (showing Florida Attorney General Richard Ervin requested a delay in the Hawkins' decision based upon "testimony brought out by a legislative committee investigating the NAACP . . . ."); *Supreme Court Lets Verdict on Hawkins Stand; Ervin Denied*, ORLANDO SENTINEL, Feb. 27, 1957, at A3 (revealing the State's position that "the NAACP may be guilty of old common laws making it illegal to stir up court litigation or to interfere in the law suit in which one has no basic interest").

181. Interview with Harley S. Herman, *supra* note 24.

government were considered to be "Communist inspired and otherwise being inspired by agitators. So [the Johns Committee] was basically Florida's version of the McCarthy Committee. . . ."[182]

Hawkins' only legal recourse was to petition the U.S. Supreme Court for the fourth time. On October 14, 1957, the High Court informed Hawkins that there was nothing more that could be done for him. The Court suggested he seek his relief in the United States District Court.[183]

Governor Collins was elated at the Court's unwillingness to demand Hawkins' immediate admission to the University of Florida. He stated, "I only say 'thank goodness.'"[184] He was quoted as saying that "I have not read the . . . opinion[,] but from what I have heard[,] the court has indicated a more conciliatory and understanding position."[185]

Samuel Selkow praised the High Court's intent on giving Hawkins the advice to leave the Florida state court system and start all over in the federal court system. "By employing this procedural device, the United States Supreme Court was probably proceeding on the shrewd assumption that in a lower Federal court there would be no disposition to evade. Furthermore, appellate control over an inferior Federal court would not present as many difficult questions of federal—state relationships."[186]

Hawkins' lawyer, Constance Baker Motley, further explained why the U.S. Supreme Court did not directly tangle with the resistance from the Florida Supreme Court:

> The Supreme Court did this because it had no apparatus for enforcing its own decision, which is why an oath to uphold the Constitution is required of every state official. Under the Constitution, the President of the United States has the responsibility to enforce the law, which includes Supreme Court decisions. Obviously hoping to avoid a federal-state crisis in 1957 in a state with a large segment of its population unopposed to integration at the university level, the Supreme court suggested we bring the suit in a federal district court over which it had supervisory jurisdiction, thus avoiding a constitutional crisis over state resistance. Eisenhower had been re-elected in 1956, and again he evinced no interest in state defiance of the *Brown* decision and made no supporting

182. *Id.*

183. *See Florida ex. rel.* Hawkins v. Board of Control, 355 U.S. 839 (1957) (Oedler denying petition for writ of certiorari); *see also NAACP Plans New Action In Florida,* ORLANDO SENTINEL, Oct. 15, 1957, at A1.

184. Jim Hardee, *Gov. Collins, Others Hail Court Rule,* ORLANDO SENTINEL, Oct. 15, 1957, at A1.

185. *Id.*

186. Selkow, *supra* note 1, at 99.

> statement, something this nation desperately needed at the time.[187]

When Hawkins first applied to the University of Florida College of Law in 1949, he was forty-three years old and was rejected for admission not because he was unqualified, but because of his race. The Florida Supreme Court's most recent decision had imposed on Hawkins an additional burden of proving that his acceptance would not create "public mischief."[188] Another barrier was constructed against Hawkins ever being admitted as a law student. On May 16, 1958, the State increased its admissions standards to the law school retroactively to ensure that Hawkins would lack the requisite qualifications to be admitted.[189]

Following the U.S. Supreme Court's advice, in January 1958, Hawkins filed a lawsuit in the United States District Court for the Northern District of Florida seeking his immediate admission to the University of Florida College of Law.[190] Judge DeVane, to whom the case was assigned, had put off his retirement, perhaps so he could exercise a hidden agenda to ensure that Hawkins never would become a law student in a white Florida law school.[191]

In Judge DeVane's initial ruling, he committed reversible error.[192] Hawkins requested a preliminary injunction against university officials and offered to present evidence.[193] The judge denied Hawkins the opportunity to offer evidence.[194] The Fifth Circuit Court of Appeals agreed with Hawkins and ordered a speedy hearing to be set.[195]

Hawkins' lawyer, Constance Baker Motley, described the condescending manner undertaken by Judge DeVane when she first appeared before him in the Hawkins case:

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187. BAKER-MOTLEY, *supra* note 129, at 116.

188. State *ex rel.* Hawkins v. Board of Control, 93 So. 2d 354, 360 (Fla. 1957).

189. Paulson & Hawkes, *supra* note 23, at 68-69.

190. PREER, *supra* note 86, at 142. Unlike the state petitions filed by Hawkins, this Hawkins case was filed as a class action.

191. *See* Harley S. Herman, *A Tribute to an Invincible Civil Rights Pioneer (Part II)*, THE CRISIS, Aug./Sept. 1994, at 22; *see also DeVane Denies Hawkins Writ*, ORLANDO SENTINEL, Jan. 29, 1958, at A3 (reporting that Judge DeVane in denying Hawkins' relief stated that he did not think Hawkins would suffer irreparable injury if he had to wait for a final hearing). After nine years of litigation, apparently the judge lacked the sensitivity to believe there was any urgency for Hawkins to want a decision to be made concerning his eligibility for admission to law school.

192. *See* Florida *ex rel.* Hawkins v. Board of Control, 253 F.2d 752, 753 (5th Cir. 1958).

193. *See id.*

194. *See id.*

195. *See* id. at 752; *see also Hawkins Wins Early Hearing*, ORLANDO SENTINEL, Apr. 10, 1958, at A1 (chronicling Judge DeVane being ordered by the Fifth Circuit to provide Hawkins with a speedy hearing).

> He then proceeded to lecture me on all he had done to help "your people in Florida." He said, "I was on the committee that set up Florida A & M for your people. What are we going to do with that college?" I replied that we were not seeking the admission of Hawkins to college but to law school. The court clerk slouched all the way down in his chair, a signal that the judge was "going off." The judge proceeded with his lecture on all he had done to aid black people, but much of it was incomprehensible and certainly irrelevant.[196]

On June 16, 1958, when *Florida ex rel. Hawkins v. Board of Control* returned to Judge DeVane's court, the State contended that "Hawkins was not scholastically or morally fit" to be admitted to the University of Florida.[197] With loyalty toward the politics of the day, Judge DeVane refused to consider the Hawkins case solely on the legal issue of race, or whether Florida could exclude a qualified black applicant from its public law school. Rather, Judge DeVane indicated that the factual issue of Hawkins being qualified for admission to law school had to be resolved before Hawkins could be admitted to the University of Florida.[198]

The days of segregation in graduate studies were on the wane. Aware of the inevitability of desegregation, Judge DeVane conditioned the integration of the graduate school at the University of Florida upon Hawkins' willing withdrawal of his original 1949 application for admission to the law school.[199] Had Hawkins refused to withdraw, the litigation concerning his qualification to enter law school would have gone on for years.[200] Hawkins selflessly agreed to withdraw his 1949 application thereby ending his nine-year court battle so that other blacks could be immediately admitted. Hawkins' decision meant he would never be admitted to that law school since the admissions requirements had been raised to guarantee, in part, that Hawkins would never be deemed qualified as he previously had been in 1949 when he originally filed his law school

196. BAKER-MOTLEY, *supra* note 129, at 116.

197. Selkow, *supra* note 1, at 100.

198. *See* Hawkins v. Board of Control, 162 F. Supp. 851, 853 (N.D. Fla. 1958). Here, the court limited the injunction to "enjoining the defendants from enforcing any policy, custom, or usage of limiting any policy, custom, or usage of limiting admission to the *graduate* schools and *graduate* professional schools of the University of Florida to white persons only." *Id.* Hence, the Board of Control sought to show Hawkins was unqualified, regardless of color. *See also* Selkow, *supra* note 1, at 100. The author summarized the state's position by writing: "The Board presented the Federal Court with affidavits alleging that Hawkins had once written a worthless check, that he left town leaving behind a defaulted car note and that he had beaten two school children while teaching school." *Id.* These charges were never substantiated, but reflected a pattern of harassment that Hawkins had encountered in the past and would confront again in the future.

199. *See* Herman, *supra* note 191, at 22.

200. *See id.*

application.[201]

A deeply religious man, Hawkins reflected on why he fought the battle for integration for nine long years, despite the personal toll it took on him:

> It's a devil of a thing to go through. You know you are right but after a while things break so bad for you. Many times I have gone off by myself and said, "Hawkins, maybe you're wrong." I sat here in my office. I went through everything: how lots of my friends were doing fine, how they weren't fighting, how they were at home enjoying life with their families and I thought how they were buying homes and how I didn't have anything and I asked myself, "Why me? What are you fighting for? You've never had any money. You've never made any. You struggled all your life. Surely you're entitled to some rest now." I said to myself, "Wouldn't your wife shout for joy if you go back and say, 'Honey, I've given it up?'" Then I remembered in the Bible when Mordecai appealed to Esther and how he told her, "Who knoweth but what thou art come to the kingdom for just such a time as this?" Maybe, I thought, maybe this is what God has me here for.[202]

When discussing why he had been known as "the South's Most Patient Man," Hawkins responded, "After ten years of delaying tactics, they talk about gradualism and patience! How gradual can we be? How patient can we be? I wish I were nine years younger."[203]

Hawkins' courageous battle to integrate the University of Florida College of Law brought positive results. Even though Hawkins was not to become the direct beneficiary of his legal fight, on August 26, 1958, George Starke became the first black man to be accepted for admission to the University of Florida College of Law.[204] While registering for classes, Starke did not cause the great "public mischief" that had previously been predicted as the danger that justified Hawkins' exclusion.[205] Rather, Starke was warmly received with a handshake by a fellow student.[206]

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201. *See id.*; *see also* Paulson & Hawkes, *supra* note 23, at 69; *Hawkins' U of F Entry Barred by New Rule*, ORLANDO SENTINEL, May 16, 1958, at B1 (stating, "The Board of Control adopted rigid entrance requirements yesterday that apparently would make it impossible for Negro Virgil Hawkins to enroll at the University of Florida Law School even if he wins court permission.").

202. Bennett, *supra* note 3, at 54 (quoting Virgil Hawkins).

203. Brazeal, *supra* note 85, at 358 (quoting Virgil Hawkins).

204. *See* Paulson & Hawkes, *supra* note 23, at 69 n.51; Selkow, *supra* note 1, at 101; Herman, *supra* note 191.

205. *See* State *ex rel.* Hawkins v. Board of Control, 93 So. 2d 354, 355-56, 360 (Fla. 1957); Paulson & Hawkes, *supra* note 23, at 66-67; Selkow, *supra* note 1, at 101.

206. *See* Selkow, *supra* note 1, at 101.

Starke was described by the University of Florida as "a truly qualified individual with a serious intent to join the legal profession" making the implied comparison to Hawkins who had always been portrayed as a troublemaker and never seriously intended to become a lawyer.[207] As the irony of history would ultimately prove, Starke dropped out of law school after three semesters while Hawkins' dream of becoming a lawyer only grew stronger.[208]

Once Hawkins realized he would never be able to attend the University of Florida College of Law, he set his sights on obtaining a graduate degree.[209] In September 1959 Hawkins commenced his studies in a masters program in public relations at Boston University, and successfully completed his studies within two years.[210] Hawkins' nephew, Buddy Mathis, remembers visiting Hawkins in Boston: "[W]hen I went up there, he was waiting tables and doing [things] to support himself financially [by] . . . driving cabs, janitorial work, cleaning windows, and all types of things. . . ."[211]

In 1962, Hawkins took a giant step toward reaching his dream of becoming a lawyer by enrolling at the New England School of Law in Boston.[212] Ironically, just as Hawkins was starting his legal education, George Allen, from Fort Lauderdale, Florida, became the first black to successfully graduate from the University of Florida College of Law.[213] Allen first met Virgil Hawkins when Allen was an undergraduate student: "I was eighteen years old at Florida A & M University. One of my professors was . . . head of the political science department. He was a frustrated lawyer and when lawyers would come to Tallahassee to argue cases, he would bring them into class. . . ."[214] Allen explained how this professor "was very instrument[al] in . . . doing a lot of the research in the Virgil Hawkins case. He introduced Horace Hill, who was the first lawyer I had ever met as a youngster. Virgil Hawkins . . . [came] over to the school and [met] with students. . . ."[215]

When asked about Allen's impression of Hawkins at that time, he

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207. *Hawkins*, 93 So. 2d at 358; Herman, *supra* note 191.

208. *See* Herman, *supra* note 191.

209. *See* Selkow, *supra* note 1, at 100.

210. *See* Paulson & Hawkes, *supra* note 23, at 70.

211. Interview with Plato "Buddy" Mathis, Virgil Hawkins' nephew, in Ocala, Fla. (Aug. 9, 1992) (on file with the Florida Law Review); *see also* Herman, *supra* note 191 (indicating that some of Hawkins' janitorial work was done at the exclusive all-white Boston's Mens Club).

212. *See* Herman, *supra* note 191.

213. *See id.*

214. Interview with George Allen, first African-American to graduate for the University of Florida College of Law, in Ft. Lauderdale, Fla. (Aug. 5, 1992) (on file with the Florida Law Review).

215. *Id.*

stated:

> At [eighteen] . . . [back] in 1954-55, it was right after *Brown v. [Board] of Education*. We were in a segregated school and the whole impact of *Brown* had not struck me and I had not been moved by it to the extent that I even understood what it was about and how momentous it was.[216]

He recalled that "in Florida, [we] were still being educated separately. . . . I knew that Virgil Hawkins was a brave person to do what he was doing. . . . Being [eighteen] years old, I just saw him as someone with a lot of courage to fight the white power structure as he was doing."[217]

After graduating from law school, Allen became a successful and respected lawyer in Ft. Lauderdale. He recognized the significance of Hawkins' contribution to his career and the careers of other black lawyers in Florida.[218] In Allen's opinion,

> Virgil made it possible for me to go to law school at the University of Florida and made it possible for me to open the door for the rest of the blacks that came after me. . . . I see him as . . . the father of the black legal profession in the State of Florida.[219]

In 1964, Hawkins graduated from the New England College of Law with the intention of returning to Florida and opening an office in his hometown of Leesburg.[220] At that time, Hawkins was confronted by another major obstacle placed before him by the State of Florida. Unfortunately, the New England College of Law had not received accreditation from the American Bar Association (ABA) prior to his graduation; thus, Florida would not allow him to sit for the bar examination.[221] The New England College of Law obtained ABA accreditation four years after Hawkins' graduation, but because his graduation was prior to the school's accreditation, he was never allowed to sit for the Florida bar examination.[222] With his dignity preserved, he resumed a career outside of the legal profession, with the exception of providing some assistance to NAACP attorneys who were working on

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216. *Id.*
217. *Id.*
218. *See id.*
219. *Id.*
220. *See* Interview with Harley S. Herman, *supra* note 119.
221. *See* Paulson & Hawkes, *supra* note 23, at 70.
222. *See id.*

matters concerning race issues.[223] As Hawkins was approaching his late 60's, he had still not achieved his childhood dream of becoming a lawyer.[224]

Even though Hawkins was sixty-eight years old and had graduated law school a decade earlier, he never lost his dream of becoming a lawyer. Fortunately for that dream, Hawkins discovered an important precedent. In 1974, the Florida Supreme Court admitted Benjamin Ervin to the practice of law, although he had not passed the bar examination.[225] (Ervin happened to be the brother of former Florida Attorney General Richard Ervin, who had represented the State against Hawkins.) Benjamin Ervin, meanwhile, had flunked the bar examination on four different occasions.[226] Ervin's argument to the court was that he had originally been accepted to law school at a time when there was no bar examination for graduates of Florida law schools.[227] This "diploma privilege" existed during the Korean War and but for Ervin's military service, he would have finished law school and admitted to the bar without an examination.[228] The Florida Supreme Court was willing to apply "diploma privilege" to Mr. Ervin retroactively, since he intended to become a lawyer at a time when "diploma privilege" was in effect.[229]

When Hawkins discovered the *Ervin* precedent, he knew he needed a lawyer to represent him. Without an appointment, Hawkins stopped into the law office of James Shook, a practicing lawyer in Ocala, Florida.[230] Shook described himself at that time as a redneck who was raised that way and who had previously protested integrating the Florida schools.[231]

> Well, Virgil is a very small fellow . . . and he had no appointment. . . . My secretary came back and asked me if I

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223. *See* Interview with Harley S. Herman, *supra* note 24.

224. *See* Interview with Robert Saunders, Field Director of the NAACP from 1952–1956 and Chief of the Office of Civil Rights for the Southeast Region of the Office of Economic Opportunity, in Tampa, Fla. (Aug.7, 1992) (on file with the Florida Law Review) (recalling Hawkins holding a position in a community action agency); *see also* Interview with T. H. Poole, President of the Florida Chapter of the NAACP, in Eustis, Fla. (Aug. 8, 1992) (on file with the Florida Law Review) (recalling Hawkins working in the area of housing; Interview with Bill Bond, Columnist for the Lake Sentinel News Paper, in Leesburg, Fla. (Aug. 8, 1992) (on file with the Florida Law Review) (remembering Hawkins in 1974 working for the Lake Community Action Agency, a federal poverty program, in Eustis, Florida).

225. *See In re* Ervin, 290 So. 2d 9, 12 (Fla. 1974).

226. *See* Paulson & Hawkes, *supra* note 23, at 70.

227. *See Ervin*, 290 So. 2d at 11.

228. *See id.* at 10-11.

229. *See id.* at 11-12.

230. Interview with James Shook, attorney, Ocala, Fla. (Aug. 9, 1992) (on file with the Florida Law Review).

231. *See id.*

> wanted to see this black man out there and he wouldn't tell her what it was about. I didn't have anything to do so I said, "Sure, send him back."[232]

After hearing Hawkins story, Shook was "totally overwhelmed" by his plight.[233] Shook remembers feeling that Hawkins "was a very honest and hard working man of great integrity. . . . Virgil had a dream. He got his dream before Martin Luther King [had his]. . . . [A]nd [Virgil] didn't care how many walls were put in front of him. He'd climb them or scratch at them until [it was time to go] to his grave."[234]

Using *Ervin* as precedent, Shook filed a petition for waiver of the bar examination, on behalf of Virgil Hawkins.[235] Hawkins certainly had no trouble establishing his intent to attend the University of Florida College of Law at a time when there was "diploma privilege."[236] Hawkins, of course, had his many appellate decisions to substantiate that fact.[237]

Hawkins' historian Harley Herman saw the prospect of Hawkins becoming a lawyer as "a formula for disaster."[238]

> Hawkins was now almost 70 years old. It had been over 12 years since he attended law school, and Hawkins did not have a high court justice to mentor him as he learned the ropes of practicing law. The Florida Bar knew this. In a brief that was otherwise critical of Florida's 1950's efforts against Hawkins, the Bar argued against Hawkins' automatic admission to the practice of law. The court also understood the problem. Its decision expressed concerns about the potential harm to the public, which was likely to result from Hawkins entering the legal profession at this time in his life.[239]

At the time of Hawkins' petition for admission to the Florida Bar, certain members of the Florida Supreme Court were being plagued by allegations of extra-judicial ethical problems which impacted the court's need to resolve the matter.[240] Harley Herman described the court as "[s]crambling to restore its image"; as Herman explains, "[T]he last thing the court needed was a reminder of its illegal acts during the 1950's, or of

232. *Id.*
233. *Id.*
234. *Id.*
235. *See In re* Hawkins, 339 So. 2d 637, 638 (Fla. 1976).
236. *See id.*
237. *See id.*
238. Herman, *supra* note 191, at 23.
239. *Id.*
240. *See id.*

its questionable gift to a relative of one of its justices."[241]

Herman went on to illustrate how "[t]he Florida Supreme Court chose the easy way out. The 1976 opinion granting Hawkins' admission was carefully worded to eliminate the history, and any admission of wrongdoing or liability."[242] However, the court did state that Hawkins petition was a "claim on th[e] court's conscience."[243]

In 1977, Hawkins' life long dream of being a lawyer became a reality. On February 8, 1977, he was sworn in as a member in good standing of the Florida Bar. Hawkins finally proved to all his past critics that he always truly wanted to become a lawyer.

U.S. Representative Carrie Meek recalls Hawkins' reaction to becoming a lawyer: "He was extremely happy that he was admitted. He mentioned the fact that it had been a long fight, a long struggle but it was a good struggle. Virgil by this time was getting old, but he had not given up the fight."[244] Meek described how

> [Hawkins] was happy that he could help the little people who lived around Leesburg, Keloma, [and] Okahumpka. We used to tease Virgil about all these little cities. . . . There weren't any cities more racist than those cities. . . . He wasn't intimidated by the fact that these hate mongers were still there . . . badgering him. He was elated. He had reached his goal.[245]

A big celebration was planned in Hawkins' hometown of Leesburg, Florida to celebrate his admission to the Bar.[246] Bill Bond, columnist for the Lake Sentinel attended the event.[247] "It was a dinner put on by the black community . . . at the community center with about two-hundred-fifty to three-hundred people [in attendance]. . . . There was one white [lawyer who came]."[248]

George Allen, the first black graduate of the University of Florida College of Law, also came to Leesburg to celebrate this special occasion.[249] He recalled how "[Hawkins] was happy that he was one of us and that all of us had come to Leesburg to celebrate with him becoming a lawyer and that the town . . . of Leesburg, where . . . the last lynching in Florida had

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241. *Id.*
242. *Id.*; *see also Hawkins*, 339 So. 2d at 637.
243. *Hawkins*, 339 So. 2d at 638.
244. Interview with Carrie Meeks, *supra* note 27.
245. *Id.*
246. Interview with Bill Bond, *supra* note 224.
247. *See id.*
248. *Id.*
249. *See* Interview with George Allen, *supra* note 214.

occurred . . . had honored him . . . declaring it Virgil Hawkins Day."[250]

To the black lawyers of Florida who had an opportunity to personally meet Hawkins, there was great admiration and appreciation for the historical significance of his contribution in improving equality among the races in our society. Beryl Thompson, a black female attorney from Leesburg, recalls meeting Hawkins at a Young Black Lawyers Association Meeting.[251] She described Hawkins as an "amicable man [who was very] funny and . . . an excellent orator. . . . [H]e made a good impression about holding on to your dream. . . . [H]e still had [a] twinkle in his eye. . . . [H]e said it was still all worth it. It took a long time but he made it."[252] H.T. Smith, a well-known Miami lawyer and former President of the National Bar Association, described his first encounter with Hawkins:

> Virgil came to a National Bar Association meeting. It was a very, very special meeting because just about everybody who became a lawyer in one way or another who was African American owed a debt of gratitude to Virgil Hawkins. . . . [T]hen when we met him . . . he was just a personable, likeable guy with no hate or vindictiveness for what had happened to him over the past [twenty-seven] years. It was actually amazing.[253]

Hawkins then opened a law office in downtown Leesburg. He was the first black lawyer who had an office in the downtown area. Hawkins historian Harley Herman, who also practiced in Leesburg and had some cases with Hawkins, recalled the type of lawyer Hawkins was: "When you practice law and have attorneys on the other side, it is . . . like playing poker with them. You get to know the soul of the attorney and I don't think I ever met an attorney who had such love and desire to secure justice for his clients as Hawkins."[254]

Unfortunately, Herman's view of Hawkins' love for justice was not shared by most other white members of the Lake County Bar Association. As newspaper columnist Bill Bond remembers, "It was a major stain on the bar association to have Virgil Hawkins. . . . Maybe another black, but for some reason the white bar association here felt that Virgil was not deserving to be a lawyer."[255]

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250. *Id.*

251. *See* Interview with Beryl Thompson, Florida Attorney in Leesburg, Fla. (Aug. 10, 1992) (on file with the Florida Law Review).

252. *Id.*

253. Interview with H.T. Smith, Florida Attorney in Miami, Fla. (Aug. 6, 1992) (on file with the Florida Law Review).

254. Interview with Harley Herman, *supra* note 119.

255. Interview with Bill Bond, *supra* note 224.

Hawkins had been in practice for five years. Although he was confronted by many problems, he was still pursuing his dream of representing poor people.[256] Ann Mathis, who is now married to Virgil Hawkins' nephew, remembered visiting Hawkins at this law office: "Anytime and every time we went into his office, he was always . . . busy. . . ."[257] She described how they "would have to sit . . . there for an hour [or] two . . . because he would have somebody there . . . some poor person he was trying to help. . . . [W]hen he came out he would always be so apologetic."[258]

After the University of Florida was desegregated in 1958, Florida Supreme Court Justice Roberts, who had always opposed Hawkins' admission to the University of Florida, commenced a campaign to close down the law school at Florida A & M. Since the charade of "separate but equal" had been struck down, Justice Roberts apparently did not see any need for a black state university to have its own law school anymore. After all, Florida A & M originally began its law school merely to provide a legal education to Virgil Hawkins so that he could be excluded from the University of Florida.[259]

Justice Roberts began a campaign to establish a new law school at Florida State University. Harley Herman captured the cynicism in closing the law school at Florida A & M and opening a new law school at Florida State University by stating:

> When the effort succeeded, [Florida State University] received [Florida] A & M's law library and funding, but hired none of its law professors. . . . When the F.S.U. [new] law library opened, many of its books still contained the seal of the Florida A & M College of Law. They were books purchased solely to bolster Florida's claim that it could provide a separate but equal legal education for Virgil Hawkins.[260]

In gratitude for his work on the establishment of the new law school at Florida State University, its building was named the B.K. Roberts Hall.[261] Carrie Meek, then a member of the Florida Senate, was approached by over one hundred white law students at Florida State University who had signed

256. *See* Interview with Harley Herman, *supra* note 119.

257. Interview with Ann Mathis, Hawkins' niece in Ocala, Fla. (Aug. 9, 1992) (on file with the Florida Law Review).

258. *Id.*

259. *See* Herman, *supra* note 191, at 23.

260. *Id.*

261. *See id.*

a petition regarding a proposal concerning Virgil Hawkins.[262] She recalled that "[W]hite law students came to [her] and said the State of Florida [was] going to . . . name a library after the Supreme Court Justice that kept Virgil [Hawkins] out of the University of Florida Law School [and they didn't think it was right]."[263] She explained how the students wanted her to help them have the library named after Hawkins.[264] Senator Meek "thought it was an excellent idea [and] . . . a fitting memorial for Virgil."[265] As a result of the students' petition, she filed a bill to have the library named after Hawkins.[266]

Meek's initiative on behalf of Hawkins caused the racism of the white legal establishment to rear its ugly head, just as it had over thirty years earlier when Hawkins first applied to law school. Senator Meek was shocked by the furor that her bill caused in the Florida Legislature.[267] As a result of the turmoil her bill created, she agreed to withdraw the bill and in its place the legislature agreed to provide for the establishment of ten law scholarships in Hawkins' name at both the University of Florida and Florida State University law schools.[268]

Harley Herman observed the irony in the Florida Legislature's establishment of the Hawkins fellowships:

> [About] thirty years before . . . Florida was willing to admit other [black] students rather than Hawkins and now they were willing to allow students to have the money to go to law school in Hawkins' name, so long as his name would not be on the school. The true irony of that law [was] that at the time the state was spending $100,000 a year for scholarships to keep [Hawkins'] name off the building, Hawkins didn't have [one hundred dollars] to pay his bar dues.[269]

Herman further observed how Senator Meek's initiative to honor Hawkins unwittingly created a dangerous environment for Hawkins. "The idea that recognition of Hawkins would be a permanent reminder of the skeletons in the closets of distinguished Floridians" posed a major

262. *See* Paulson & Hawkes, *supra* note 23, at 70 n.57.

263. Interview with Carrie Meeks, *supra* note 27.

264. *See id.*

265. *Id.*

266. *See id.*

267. *See id.*

268. *See id.*; *see also* FLA. STAT. ANN. § 240.4069 (West 1992) (enacting the scholarships); Paulson & Hawkes, *supra* note 23, at 70 n.57 (explaining how legislature enacted scholarships in Hawkins' name).

269. Interview with Harley Herman, *supra* note 119.

problem.[270]

It appears not to have been a coincidence that immediately after Senator Meek's bill to honor Hawkins was introduced in the Legislature, a pending grievance against Hawkins which would have been deemed confidential under the law was made public.[271] Disciplinary proceedings against Hawkins had been commenced for his alleged incompetence in the representation of a client's criminal case.[272] Hawkins allegedly failed to inform his client of a plea offer, failed to speak to certain witnesses, and suggested that a certain witness misrepresent her identity.[273] The Referee assigned to hear the evidence and make a recommendation to the Florida Supreme Court concluded that Hawkins "'actions were [not] undertaken with intent to deceive the court but resulted from a lack of experience.'"[274] The referee recommended a reprimand with Hawkins being placed on two years probation.[275]

Although Hawkins was willing to agree to these recommended sanctions, the Florida Bar requested the Florida Supreme Court to disregard the referee's recommendation and enter a three month suspension of Hawkins' law license with his reinstatement to practice law being contingent upon proof of rehabilitation.[276]

On November 9, 1983, Hawkins argued his own case before the Florida Supreme Court.[277] Florida Supreme Court Justice Leander Shaw remembered Hawkins' performance on that day. He explained how "[n]o lawyer in the country could have pleaded Virgil's case better than Virgil did it."[278] Justice Shaw commented:

> There was an angel up there, that told old Virgil what to say and what to do. When [Virgil] said, 'When I die, I want to leave this earth a member of the Florida bar,' it touched everybody on that bench. After that, it was a foregone conclusion that Virgil was going to be a member of the bar.[279]

In his oral argument, Hawkins reflected his love of being a lawyer and his trust in the Florida Supreme Court. Hawkins stated: "[T]he sands of time are running out in my life. I want to got to heaven and I want to be a

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270. Herman, *supra* note 191, at 23.
271. *See id.*
272. *See* The Florida Bar v. Hawkins, 444 So. 2d 961 (Fla. 1984).
273. *See id.* at 961-62.
274. *Id.* at 962.
275. *See id.*
276. *See id.*
277. *See id.* at 961.
278. Interview with Honorable Leander Shaw, *supra* note 132.
279. *Id.*

member of the Florida Bar."[280]

Hawkins won his own case. The Florida Supreme Court upheld the referee's recommendation. Hawkins was not suspended from the practice of law but instead received a public reprimand and probation.[281] Harley Herman pointed out how Hawkins' self-representation helped to dispel the charge against him of being an incompetent lawyer: "Hawkins stood alone before the court whose prior actions prevented him from obtaining the education needed to avoid professional mistakes."[282] Herman recognized, when Hawkins spoke before the Florida Supreme Court that Hawkins "had demonstrated his abilities to plead a case before the court; abilities that would have served thousands of clients if his opportunities to join the legal profession during the prime of his life had not been thwarted two decades earlier by the illegal actions of the Florida Supreme Court."[283]

Herman felt that despite the Florida Supreme Court's decision not to suspend Hawkins' privilege to practice law, the court failed to take responsibility for its past discrimination against Hawkins, and the resulting disadvantage it caused him professionally: "Though no attempt was made to remedy the self-evident problems created by Hawkins late-in-life admission, and the court admitted no responsibility for his predicament, Hawkins license remained intact."[284] Herman believed "the opinion contained a veiled message from the court that some way should be sought to allow Hawkins to live out his life as a member of the legal profession."[285]

The attempts to remove Hawkins from the legal profession did not end with the Florida bar's unsuccessful effort in 1983. During the next two years, Hawkins' professional activities were closely monitored by those members of the bar who had the hopes of proving once again that he was unqualified to be a lawyer.[286] Harley Herman remembered Hawkins confiding in him during this period by stating: "They are sending people to my [Hawkins'] office posing as clients and then the next thing I know they are filing a proceeding against me for something."[287]

Herman believed that a combination of Hawkins' approaching eighty years of age and his experiencing the mental pressures from this campaign aimed against him caused him to panic. Herman recalled: "At a certain point, there was the question of his [Hawkins] handling of money [in a]

280. Interview with Harley Herman, *supra* note 119.
281. *See* The Florida Bar v. Hawkins, 444 So. 2d 961, 962-63 (Fla. 1984).
282. Herman, *supra* note 191, at 23.
283. *Id.*
284. *Id.*
285. *Id.*
286. *See id.*
287. Interview with Harley Herman, *supra* note 119.

guardianship [for an incapacitated relative]."[288] Herman believed the matters would have probably "[b]een resolved under other circumstances.[289] But Hawkins was so afraid at the time that he panicked.[290] He borrowed client funds to cover the questioned expenditures.[291]

On April 19, 1985, with some grievances pending against him, Virgil Hawkins voluntarily surrendered both his license to practice law and his dream to be a lawyer when he got to Heaven.[292] In his eight years as a lawyer, he had represented a multitude of clients, most of whom paid him little or no fees for his services.[293]

Florida Supreme Court Justice Leander Shaw viewed Hawkins more as a victim of circumstances than a man of bad character. "I don't think Virgil was a dishonest man. I don't think he would intentionally steal anything from anybody. . . ."[294]

In 1987, Hawkins suffered a paralyzing stroke.[295] Hawkins died on February 11, 1988 at the age of 82 following a brief illness.[296] Hawkins died and was buried in a pauper's grave.[297] The real danger to history was that Virgil Hawkins' legacy would also be buried with him.

III. THE HAWKINS LEGACY

Fortunately, Harley Herman, the only white lawyer in Lake County[298] who attended Hawkins' funeral, knew that the dignity of Virgil Hawkins had to be restored, and that his historical legacy had to be maintained.[299] Hawkins' dream of being a lawyer when he got to Heaven had to be realized.

Herman believed he had to so something: "It was clear to me as I read the obituary that he was to be written out of history. Not because he didn't deserve to be a part of history, but because at the tail end of his life, when he was over [seventy] years of age, he tried one more time to help his fellow members of the human race. And [because he made one mistake],

288. *Id.*
289. *Id.*
290. *See id.*
291. *See id.*
292. *See* Herman, *supra* note 191, at 24.
293. *See* Interview with Harley Herman, *supra* note 119.
294. Interview with Honorable Leander Shaw, *supra* note 133.
295. *See* Herman, *supra* note 191, at 24.
296. *See id.*
297. *See* Interview with Harley Herman, *supra* note 119.
298. Virgil Hawkins' law office was in the city of Leesburg, located in Lake County, Florida.
299. *See* Interview with Harley Herman, *supra* note 119.

we were going to say that everything he did meant nothing."[300]

Within two months of Virgil Hawkins' death, Harley Herman revived Hawkins' dream of being a lawyer when he got to Heaven. Herman petitioned the Florida Supreme Court to posthumously reinstate Virgil Hawkins as a lawyer in good standing. There was no precedent to support the request for such relief. Yet, on October 20, 1988, almost forty years after Hawkins first applied to law school, the Florida Supreme Court granted Harley Herman's petition. For the first time in the history of the United States, a lawyer's license to practice law had been posthumously reinstated. Through this historic event, the Florida Supreme Court acknowledged the injustices visited upon Hawkins in the past as well as the difficulties he had to face as an attorney.

Thereafter, Harley Herman initiated a campaign to name the civil legal clinics at the University of Florida Law School in honor of Virgil Hawkins. On June 16, 1989, Governor Bob Martinez signed a legislative bill into law which named the University of Florida's civil legal clinic as the Virgil Darnell Hawkins Civil Legal Clinics.

Professor Donald Peters, Director of the Virgil Darnell Hawkins Civil Legal Clinics understood the significance in naming the Clinics after Hawkins:

> [A]ll of our clients are by definition and by law indigent clients. People who could not otherwise pay a fee and obtain the legal services that we provide. About half of our clients are black Americans. They are certainly the same kind of people that Mr. Hawkins dedicated his professional career [to serving once he became a member of the Bar]. . . .[301]

The most recent tribute to Virgil Hawkins was bestowed upon him by the Florida Supreme Court in a special ceremonial session on May 25, 1999, in celebration of the fiftieth anniversary of the historic lawsuit brought by Hawkins to desegregate Florida's State University System. During the session, Florida Chief Justice Major Harding commented on Hawkins' courage: "He took on our entire system and proved that hatred

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300. *Id.*

301. Interview with Donald Peters, Director of the Virgil Hawkins Civil Clinic (place and date unknown) (on file with the Florida Law Review).

Editor's Note: The University of Florida also honored the late Virgil Hawkins by dedicating a plaque in his honor on Bryan Hall, the University's previous law school facility. *See Honoring a Pioneer* (visited Oct. 14, 1888) <http://www.napa.ufl.edu/Digest/old/1998-99/pioneer.htm> (featuring a photograph of Virgil Hawkins' sister, Mallie Williams, with former University of Florida President John Lombardi, as they, along with others, unveil the plaque honoring Hawkins and his legacy).

and discrimination will not triumph in the end."[302]

For this special occasion, Florida Governor Jeb Bush signed a proclamation entitled "50th Anniversary of Florida's First Desegregation Suit" which read, in part:

> WHEREAS, in 1949 [Virgil Hawkins] . . . initiated what would become a nine-year legal challenge to Florida's system of segregated public education . . . and WHEREAS, on June 18, 1958, the United States District Court entered an order calling for the desegregation of the University of Florida . . . ; and WHEREAS, May 25, 1999 marks the 50th anniversary of the date [Virgil Hawkins and four other African-American] Floridians filed suit to obtain admission to the University of Florida; NOW, THEREFORE, I, JEB BUSH, Governor of the State of Florida, do hereby recognize these important events in our state's history and send best wishes to all who are celebrating this 50th anniversary milestone.[303]

The significance of the Florida Supreme Court's formal acknowledgment of the past injustices suffered by Hawkins as a result of the past actions of the State of Florida should serve as a model for other states as well as the United States government. Racial reconciliation would be advanced if the United States Supreme Court were to publicly recognize these injustices. A special session honoring Virgil Hawkins and others who were denied their constitutional rights as a result of the previous actions taken by the United States Supreme Court would help to heal past wounds.[304]

IV. CONCLUSION: REMEMBRANCES ABOUT HAWKINS

Those persons who knew Virgil Hawkins best understand the lessons that should be remembered from his life. Their words of tribute become more meaningful through their personal experiences with Hawkins. Florida Supreme Court Justice Leander Shaw commented that "God sent the right man to do what Virgil Hawkins had to do. Somehow throughout history you will find that the right man appears at the right time . . . to make changes."[305] Leesburg attorney Beryl Thompson remembered Hawkins as

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302. Tony Martin, *Court Remembering Virgil Hawkins*, TALLAHASSEE DEMOCRAT, May 26, 1999, at 1C.

303. Governor Jeb Bush's Formal Proclamation at a Session of the Florida Supreme Court (May 25, 1999).

304. *See* Lawrence Dubin, *Facing Court's Racist Past*, NAT'L L.J., June 28, 1999, at A22.

305. Interview with Honorable Leander Shaw, *supra* note 133.

"a man who held his dream and [as a] man who brought change. . . ."[306] Newspaper publisher Charles Cherry in reflecting upon Hawkins stated that "it's a fool that forgets his past in terms of trying to [chart] where he is going in the present. . . ."[307] Cherry also believed that "any person who wants to be well based and have a good foundation in life . . . ought to know about the Hawkins story which tells them something about how hard the struggle is. . . . [E]ven though it's hard . . . you can still be victorious in the end."[308] Miami attorney, H.T. Smith commented that "[Hawkins] didn't just liberate African Americans to go to law school. He liberated Blacks and White[s]. . . ."[309] The first black graduate from the University of Florida College of Law, George Allen, recognized that "[f]rom an historical standpoint, young blacks ought to know that it just didn't happen. . . . [T]here were fighters, people like Virgil that made it happen. . . ."[310]

Perhaps the most important lesson to be learned from the life of Virgil Hawkins is the recognition of how prejudice exposes the ignorance of those who discriminate, and how prejudice robs those who are discriminated against from attaining their full potential as human beings. Even though Virgil Hawkins was discriminated against in his lifetime, he has finally found his rightful place in history. In spite of the monumental odds against him, he was able to become a lawyer during his lifetime.

Now he is in Heaven as a member of the Florida Bar.

306. Interview with Beryl Thompson, *supra* note 251.
307. Interview with Charles Cherry, *supra* note 39.
308. *Id.*
309. Interview with H.T. Smith, *supra* note 253.
310. Interview with George Allen, *supra* note 214.