Frasier v. UNC—A Personal Account

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No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty . . . without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

—Fourteenth Amendment to the Constitution of the United States
Every newspaper, most magazines and especially, the bar journals, have paused this year [2004] to recognize the most important U.S. Court ruling of the past century and perhaps of all time. Certainly, for African Americans, the decision has caused greater changes in our lifetime than any other. Prior to 1954, seventeen states had laws requiring segregation of some aspect of society—law enforcement, housing, marriage, adoption, education, healthcare, burial, transportation, employment, entertainment, food service, hotels. Most of the seventeen required segregation in all of those categories.

*Brown v. Board of Education of Topeka, Kansas* began the change of the mindset of the entire country which had accepted or, at least tolerated, the rationale of the 1896 decision in *Plessy v. Ferguson* that “separate facilities for the races are permissible . . . so long as the facilities were equal.” *Plessy* recognized, as fact, that segregation was required because of fears, prides, and prejudices which were rampant in the South and latent in the North. Segregation sought to prevent dilution of blood or dissipation of faith—the instinct for self-preservation. “Negroes do not have the capacity to absorb white education. Desegregation will result in lowering the intelligence of whites. . . .” *Brown* reversed *Plessy* and turned the underlying rationale upside down.

Much of the 2004 writing focuses on the trend toward resegregating the races in public education. Janine Hancock Jones, a young African American lawyer from Columbus, Ohio, writing in the Spring issue of *Columbus Bar Briefs,* analyzes trends in Columbus schools and concludes that we are back to the fifties. Unfortunately, the court did not set a timetable for enforcement and directed desegregation with “all deliberate speed”—interpreted as a euphemism for delay.

In 1954, one hundred members of Congress issued the Southern Manifesto encouraging massive resistance and pledging the “use of all lawful means to bring about a reversal.” The U.S. Attorney General, Herbert Brownell, called together the southern state attorneys general seeking their professional help in eliminating segregation. Many informed Brownell that they were potential gubernatorial candidates and that it would be political suicide to support desegregation.

No, Janine, we ain’t back to the fifties.

Like the *Brown* decision, *Frasier* was not simply an action challenging the right of three plaintiffs to attend one of the institutions of higher education within the State of North Carolina which historically had limited access to its undergraduate schools to white citizens. Rather, the suit was one of a series seeking to dismantle a system of deeply entrenched racial segregation and subjugation of black citizens by white masters.
The rigid segregation patterns were vestiges of slavery which later gave way to one of the greatest legal fictions ever visited upon citizens of the United States. Separation of the races had been a policy adopted and adhered to by many states since the Civil War. Courts had consistently held that separation did not per se create inequality. So long as there was no discrimination and facilities and opportunities offered were equal, the courts uniformly held that states were within their rights and that no right guaranteed by the Constitution of the United States had been violated.

In *Plessy v. Ferguson* [16 Sup. Ct., 1138, 163 U.S. 537 (1896)], the United States sanctioned segregated facilities so long as separate facilities were equal in their character and quality. In the southern states, in health care, transportation, education, law enforcement, public accommodations, employment, housing or government services, equality never existed nor was equality contemplated.

Beginning in 1951, the University of North Carolina conceded that the state failed to provide separate but equal graduate and professional facilities. In fact, in most instances no facilities for graduate and professional education of black citizens were available in the state; and hence, begrudgingly, UNC accepted blacks in graduate and professional schools. From June 1951 to September 1955, four black students had earned LLB degrees and one had been awarded a medical degree. As of September 1955, four blacks were enrolled in law school, two in the graduate school, and one in the school of medicine.

Since many who will read this were born after 1954, I want to identify some bodies and agencies just to give a flavor of leadership of the day and I also want to point to a few bodies and individuals who had a profound effect on me. With rare exceptions, the government’s leadership structure was composed of white males. In a few agencies (primarily dealing with education) a handful of white women held positions.

President Dwight Eisenhower interviewed approximately 520 white males and females for executive posts within his administration. In the Judiciary, all members of the U.S. Supreme Court, the U.S. Fourth Circuit Court of Appeals, the U.S. District Courts sitting in North Carolina and at the state level, the State Supreme Court, Superior Courts, and North Carolina Special Courts were presided over by only white males. Not only were those courts and their clerks and administrators all white, but so, too, were all employees above the rank of janitor.

One of the ugliest electoral campaigns in the history of the United States was the 1950 senatorial race in North Carolina, between Willis Smith and Frank Porter Graham. Graham, a liberal, was appointed to fill
the vacancy created by the death of Senator J. Melvin Broughton. That campaign was more racist than any campaign South Carolina, Georgia, Mississippi, Alabama, or other Deep South states imagined. Senator Smith’s campaign was guided substantially by Jesse Helms. The Smith-Helms platform promoting bigotry defeated Graham. Smith was succeeded in the Senate by W. Kerr Scott. Serving also during the mid-fifties was Senator Samuel J. Ervin, widely known as the constitutional scholar who presided over the Watergate hearings and the ouster of President Richard Nixon. However, Senator Ervin was known by blacks in North Carolina as a bigot of the first order. His record in the Senate and, before that, as a member of the North Carolina judiciary, took advantage of every opportunity to curtail the rights of black citizens.

During the mid-fifties, Jesse Helms was not an elected official; rather, he was a vice president of the NBC affiliate in Raleigh, WRAL, where he delivered a twice daily editorial commentary on issues of the day. It so happened that the issues most days centered on civil rights and Helms continued the bigotry and racism for which he was well known. James K. Dorsett Jr. was his son-in-law and a member of Senator Smith’s Raleigh law firm. Dorsett also later served in an official capacity in Helms’s campaigns.

The trustees of North Carolina’s universities were appointed by the all-white North Carolina Legislature and hence, the hundred members of the University of North Carolina’s Board of Trustees, not surprisingly, were all white. All county sheriffs were white; all members of the State Highway Patrol were white; all county commissioners were white; most restaurants were white; all hotels were white. The restaurants and theaters which admitted blacks admitted them only in theater balconies or take-out windows at restaurants. I was grown and married with children before I ever stayed in a hotel or motel. When blacks traveled, they were going to see someone. The black extended family was extended, in part, because of the necessity of visiting with friends and families whenever one traveled. If you did not have a “somebody” you didn’t go.

Now back to 1954. On May 17, 1954, I was an eleventh grade student at Hillside High School in Durham, North Carolina. I remember that afternoon during Mae Bass Spaulding’s Latin class, when an announcement was made over the public address system informing the school of the U.S. Supreme Court’s *Brown* decision. For the balance of the class period, our discussion focused exclusively on the anticipated consequences of the decision and, based upon what little we had heard over the public address system, it was everybody’s belief that at the beginning
of the fall 1954 term, probably half of our student body would enroll at Durham High School since approximately that percentage lived closer to Durham High than to Hillside. It was our view that the Court’s mandate would be implemented “with all deliberate speed” with the emphasis on speed. We were not prepared for the deceit, hypocrisy, and chicanery that would follow. The Court ruled, in part, “we conclude that in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.”

Reaction to the Brown decision was varied in North Carolina. Governor William B. Umstead said that he was “terribly disappointed” with the Court’s ruling. Frank Porter Graham, then United Nations mediator and former president of the University of North Carolina, told a group in Washington that the Court’s decision must be “accepted in good faith and wisdom” by everyone. He saw such an attitude as a “moral imperative.” This view, however, was not the view of the 1954 UNC administration or trustees. Even before the Brown decision was announced, the Board of Trustees of the University of North Carolina had gone on record with respect to undergraduate admissions, adopting a policy to exclude Negroes from the undergraduate schools.

Following the Brown decision, interested students from the UNC YM/YWCA determined that the time was right for them to make a difference. A delegation from the Y led by William O. Loftquist visited with H. M. Holmes, principal of Hillside High School in Durham. The Y delegation expressed the need to have black undergraduate students on campus and pledged the full support of their organization as well as the support of the individual members. Included among the leadership supporting the desegregation of the university was Charles Kuralt, editor of the UNC Daily Tar Heel newspaper, later to become the renowned CBS correspondent.

Mr. Holmes understood that persons undertaking a challenge to state and university policy would do so at great risk. He knew the social, political, and economic structure at the time and it was quite certain that political, social, and economic pressure would be applied to applicants and their families. Mr. Holmes informed the Durham Committee on Negro Affairs (“Durham Committee”) which concluded that the effort was worthy and timely and sought to identify students whose families could be somewhat insulated from the pressures likely to be exerted. Both of my parents were employees of North Carolina Mutual Life Insurance Company, at the time the largest black-controlled enterprise in the world. My mother’s brother was president. Their employment was
quite secure. John Lewis Brandon, another member of our Hillside class, was the son of custodial employees at Duke University whose wages were so low that the Durham committee could afford to counter any economic retaliation.

My father was a former president of the Durham Committee, former president of the Hillside Parent Teacher’s Association, and very much a community activist. He, more than we, decided that my brother LeRoy and I should submit applications for admission to the University of North Carolina. On May 18, 1955, LeRoy, John Brandon, and I received letters from Roy Armstrong, Director of Admissions, which stated in part: “The Trustees of the University have not yet changed the policy of admission of Negro students to the University. Negroes are eligible to make application to come to the University for graduate and professional study not offered at a Negro college in North Carolina. Negroes are not eligible to apply for admission to the undergraduate division of the University.”

There followed a torrent of publicity and a call for a meeting of the board of trustees. The one hundred members of the Board were all elected by the General Assembly and represented the ultimate political payoff for “supporters of good government.” By statute, the governor was ex officio the presiding officer. In the intervening year Governor Umstead died and was succeeded by Luther H. Hodges.

At a meeting on May 23, 1955, 89 members were present and voted unanimously to adopt the following resolution:

The State of North Carolina, having spent millions of dollars in providing adequate and equal educational facilities in the undergraduate departments of its institutions of higher learning for all races, it is hereby declared to be the policy of the Board of Trustees of the consolidated University of North Carolina, that applications of Negroes to the undergraduate schools of the three branches of the consolidated university, be not accepted.

The 89 affirmative votes included the votes of 22 lawyer-members later to be interpreted as 22 views on the legality of the trustees’ resolution and the rejection of a contrary construction of the Brown decision. Judge John J. Parker of the U.S. Fourth Circuit Court of Appeals was a member of the Board of Trustees but was not present at the May 23 meeting. On June 1, Judge Parker wrote Governor Hodges suggesting that the Board probably thought that the Brown decision was not final in light
of a motion for rehearing pending before the Supreme Court. Judge Parker stated that on May 31 the Court reaffirmed Brown (Brown II) and, based upon that development, Judge Parker suggested that a meeting of the Board be called to reconsider its action. Parker concluded that the Board of Trustees of a state university could not afford to put itself in the position of defying the law or of directing officials of the University to disregard it: “On the contrary, I think it is the duty of the Board not only to obey the law as declared by the Supreme Court, but also to take the lead in providing for its peaceful observance by our people. If the problem is approached in this spirit, many difficulties which now appear troublesome will be solved without friction.”

Another view was expressed by Donald O. Fowler, president of the Student Government at the University. He wrote:

It is my considered judgment that the majority of students at Chapel Hill would support the recent action of the Board of Trustees to refrain from integration at this time. I can reach no other conclusion as a result of the countless number of comments which have been directed to me during the past several weeks. I feel confident that the students at Chapel Hill have the utmost confidence in the wisdom of our state and university officials and at this crucial period, pledge our cooperation and full support of their action.

Those who are interested can read Frasier v. the Board of Trustees of the University of North Carolina, [134 Fed supp. 589, decided September 16, 1955(2)] as well as Board of Trustees of the University of North Carolina, et al. v. Frasier, et al., [350 U.S. 979, 76 S Ct 467, decided March 5, 1956(7)]. I won’t spend much time discussing the case either at the District Court level or the Supreme Court. It’s relatively straightforward. Three plaintiffs in a class action against the Board of Trustees of the University of North Carolina sought a declaratory judgment that certain orders of the Board of Trustees which deny admission to undergraduate schools to members of the Negro race are in violation of the equal protection clause of the Fourteenth Amendment of the Constitution. The complaint also sought an injunction restraining the University from denying admission to Negroes solely because of their race and color.

Citing the Brown decision previously discussed, Judge Morris A. Soper, writing for the three judge District Court Panel (including Armistead Dobie, from the United States Court of Appeals for the Fourth Circuit and Johnson J. Hayes of the U.S. District Court for the Middle District
of North Carolina), adopted the language from the *Brown* decision: “We conclude that in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” Next, the Court swiftly dispatched the university’s suggestion that the reasoning in the *Brown* decision did not apply with equal force to colleges as to primary schools. The court concluded “indeed it is fair to say that they apply with greater force to students of mature age in the concluding years of their formal education as they are about to engage in the serious business of adult life.”

The U.S. Supreme Court affirmed. The legal team for the state included William B. Rodman Jr., Attorney General, and I. Beverly Lake, Assistant Attorney General, and for the plaintiffs able counsel were Conrad O. Pearson, Floyd B. McKissick, John H. Wheeler, William A. Marsh Jr., E. A. Gadsden, Milton E. Johnson and joining at the Supreme Court, Thurgood Marshall and Robert L. Carter.

The District Court opinion was rendered on September 16, 1955, my seventeenth birthday, and we enrolled on that date.

William Friday, who became president of the university in 1956, recently said that UNC was a leader among southern universities. He described desegregation as moving slowly through gradual acceptance of what was the progressive thing to do—an attitude that continues to give UNC the reputation for being one of the most forward-thinking universities in the Nation: “When the *Brown* decision was made, this brought an end to the old traditional attitude about separate but equal. . . . It was the university itself that had to set the pace.” Throughout all the conflicts and victories for black equality, Friday said the university played a vital role in bringing people together and changing the views of people all over the state.

I guess that is why the revisionist history will next have Friday, Rodman, and Lake on the U.S. Supreme Court steps joining hands with Billy Marsh and Thurgood Marshall singing “We Shall Overcome.” Or should we forget that Governor Luther Hodges as *ex officio* chair of the Board of Trustees and its Executive Committee directed Attorney General Rodman to appeal the three judge Federal District Court decision and appointed Thomas J. Pearsall chair of a committee to confer with the attorney general “to . . . advise and direct with respect to the scope and extent of the appeal to be taken and matters incidental to the appeal and the enforcement of the court’s decree. . . .” This is the same “progressive” Thomas Pearsall who developed North Carolina’s Pearsall Plan under which the public school system would be abolished if North Carolina
were faced with a directive to desegregate the public schools. This is the same progressive university that required that the black students live in a segregated quadrant of a dormitory; that initially denied black students access to the swimming pool, the student section for athletic events, the Carolina Inn, and other university facilities.

It should also be noted that while the University dominated all aspects of the Chapel Hill community, nothing was done to foster access to restaurants, theaters, and other public accommodation facilities.

That sums up the posture of the participants in that litigation except that it should be noted that we recently gained access to work papers of Attorney General Rodman and Assistant Attorney General I. Beverly Lake. It is clear from some of the internal memoranda that they had no real expectation of success either at the District Court or the Supreme Court level. I suppose, in a sense, I would rather have had them deeply committed to the position which they espoused rather than acting hypocritically for political purposes. An August 30, 1955 memorandum from Lake to Rodman asserts:

I do not believe that there is the remotest possibility of our ultimate success. I do believe that we have here an opportunity to demonstrate both to the people of North Carolina and to the NAACP that we intend to fight integration at every step and that we have nothing of which we feel ashamed. Such a presentation by this office will, in my opinion, give to the people of the state some very badly needed encouragement.

On September 1, 1955, Rodman wrote to then Governor Luther H. Hodges (who had succeeded Governor Umstead on his death in November 1954): “nowhere have I found reasonable hope that we can succeed.”

Frasier v. UNC extended Brown to higher education and was the top North Carolina news story of 1955 and number 8 in North Carolina for the twentieth century.

I’d like to spend a few moments focusing on a few of the events and people who had a profound effect on my career. During the summer of 1964, the Congress was debating the Civil Rights Act of 1964 which, if enacted, would have a profound effect on public accommodations and employment. At the time, Roland Hayes was an assistant manager in the Church Street office of Wachovia Bank & Trust Company in Winston-Salem. That role was very unusual because at the time, most majority
businesses did not employ blacks in managerial positions. Wachovia was unique in that in the 1930s it had acquired the black-owned and managed Church Street Bank. The black president of the bank was president by day but at night he was a custodian at Wachovia. In the latter role, he became acquainted with much of the Wachovia senior management. With the black bank on the verge of collapse, its president prevailed on Wachovia management to acquire and save the Church Street Bank. After a period of all-white management, Wachovia operated the Church Street office solely with black employees at all levels well into the 1960s. Generally, those employees were restricted to that location and did not have the mobility to move through the ranks of the largest bank in the Southeast. Nevertheless, and despite those limitations, the Church Street office provided a training ground for a few fortunate blacks to experience banking in a major financial institution. In fact, during the sixties and seventies, if you looked around the country at black-owned banks, you would find that most of the executive management were alumni of the Wachovia Church Street office.

During the summer of 1964, I was slated to join my classmate, Maynard Jackson, in Boston where he had worked prior to coming to law school. He had been a successful sales manager of Colliers Encyclopedias. Maynard had taught me the sales spiel and I had every intention of going to Boston. Roland Hayes, the Church Street Assistant Manager, suggested—in fact dared me to submit an employment inquiry to Wachovia to see how they would respond. I wrote the Director of Human Resources explaining why he needed to hire me. He invited me for an interview, and to our amazement, he offered summer employment in the main office. Even more surprising, at the end of the summer, I was offered a full-time position to commence upon completion of my final semester in law school. I accepted.

As all lawyers know, before you gain approval to take any bar examination, you are required to satisfy a character and fitness test established by the State Board of Law Examiners. In North Carolina that included reference checking, and as was the case of black applicants, an inquisition before Edward L. Cannon, secretary of the North Carolina State Bar, the licensing agency. During his tenure, the Cannon inquisition was dreaded almost as much as the bar exam. The character and fitness passage for black applicants was only slightly better than the passage rate on the bar exam. Such things as NAACP membership, participation in civil rights activities, and other “communist inspired activity” subjected blacks to a grueling process and many were rejected as “unfit.”
Prior to taking the 1965 bar exam, I sought to arrange my interview with Mr. Cannon. When I made inquiry, I learned that Mr. Cannon’s son was taking the bar that year and, as a result, he had recused himself from the interview and examination process. In Cannon’s absence, interviews were conducted by the assistant secretary, B. E. James. I talked with Mr. James by phone and he informed me that on the morning prior to my call, he had been in Winston-Salem and had interviewed the entire Wake Forest University third year law class. Under Cannon, the interview for blacks lasted the better part of a day for each applicant. It was amazing that at Wake Forest, the entire class could be interviewed in a morning. Mr. James suggested that rather than coming back to Winston-Salem or have me come to Raleigh, it would be just as well to have a member of the Winston-Salem Bar conduct an interview and that would satisfy the requirement. You can imagine how elated I was by that development.

The next hurdle was to prepare for the exam itself. Two bar review courses were offered—one at Duke University in Durham and one at Wake Forest University in Winston-Salem. Since I was working and living in Winston-Salem, I sought to register for the bar review course at Wake Forest. I was informed that Negroes were not eligible to register for courses conducted at Wake Forest and told that I would have to make other arrangements and to “get over it.” The only other arrangement was the course at Duke, ninety miles away. Since I was working full time, I decided not to commute every day, but registered at Duke, obtained the review materials, and conducted my own course.

After passing the bar exam, and being admitted to the North Carolina State Bar, I made an application for membership in the North Carolina Bar Association, Inc., the professional trade association. My application was the subject of great debate at the Association’s April 1966 meeting. Moses Burt and Floyd McKissick had applied earlier and their applications had been “held over” to the April meeting. A motion to defer action on those three applications was defeated in favor of a motion to reject the applications of Burt and McKissick and defer action on my application until the Association’s July meeting. At the April 1966 meeting, 57 applications were approved. At the July 2, 1966 meeting, heated debate continued. In the end, Romallus O. Murphy and I were rejected and sixteen applicants were approved, having passed a three-prong test—(1) white male, (2) lawyer, and (3) the ability to fog a mirror. Though the Association’s sanitized minutes don’t mention it, Burt, McKissick, Murphy, and I are black. One of the leaders of maintaining a segregated association was James K. Dorsett Jr., whom I mentioned earlier.
Dorsett, the son-in-law of Willis Smith, former member of the North Carolina Legislature, former president of the North Carolina Bar Association, and a prominent Raleigh lawyer, had argued that blacks should not be admitted since the North Carolina Bar Association, in addition to professional activities, also sponsored social activities for its members and their spouses and that it would be inappropriate to have blacks in this latter setting.

Several years later, Dorsett, who knew very little about banking but was politically connected, was named Executive Vice President, General Counsel, and Secretary of Wachovia and I became one of his direct reports. This was genuine stress. Some months later, Dorsett was approving the payment of annual dues to various professional associations for the staff lawyers. He noted that I had not sought reimbursement for membership dues in the North Carolina Bar Association. I explained that I was not a member because “the bastards had denied my application and that I will not join until they offer me an apology.” Dorsett responded that “you shouldn’t be that way. You should get over that.”

For many years my resentment toward Wake Forest University was quite intense, but not nearly as intense as my resentment of Dorsett. Despite the overall positive experience and success that I enjoyed at Wachovia, I seethed with resentment every time I saw Dorsett. That resentment was partly responsible for my vulnerability to an offer for an opportunity in Ohio. For over twenty-five years, I thought of Dorsett every single day. I didn’t “get over it.”

About five years ago, I attended a meeting in Reno, Nevada. The travel schedule required that I arrive early in the afternoon of the day prior to my meeting. I decided that with that available time, I would compose a letter to Dorsett in an effort to “get over it.” Before sitting down to write, I looked through some of the reading material that I had brought, including the *North Carolina Bar Quarterly*, and saw that James K. Dorsett Jr. had died. I felt cheated out of the opportunity to inform him of the impact he had on my life. It occurred to me, however, that I may have been the loser for harboring resentment all those years to no good end.

Recently, I read an article about long-standing resentment. In 1930, a black Baltimore resident who lived approximately three blocks from the University of Maryland Law School, enrolled in the Law School at Howard University—forty miles away because he was not eligible to enter the University of Maryland due to his race and color. Over sixty years later, after the black lawyer had attained some degree of promi-
nence, the University of Maryland decided to honor a distinguished native son by commissioning a bust and naming the new University of Maryland Law School facility in his honor. The bust was done, the facility was built and Thurgood Marshall declined to participate in the dedication ceremony, stating that “I wasn’t good enough in 1930 and I won’t be good enough now.” He never “got over it.”

Reading that story gave me comfort and I then was able to assert with deep conviction that I will “get over it” with respect to Faubus, Thurmond, Talmadge, Wallace, Umstead, Hodges, Ervin, Smith, Helms, Wake Forest, Dorsett, and a thousand other bigots when the resentment is wrested from my cold, dead hand.