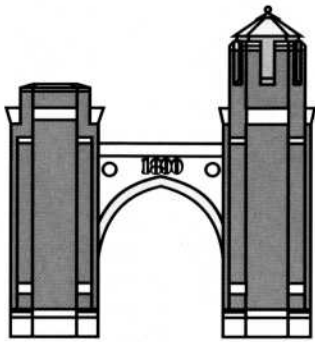
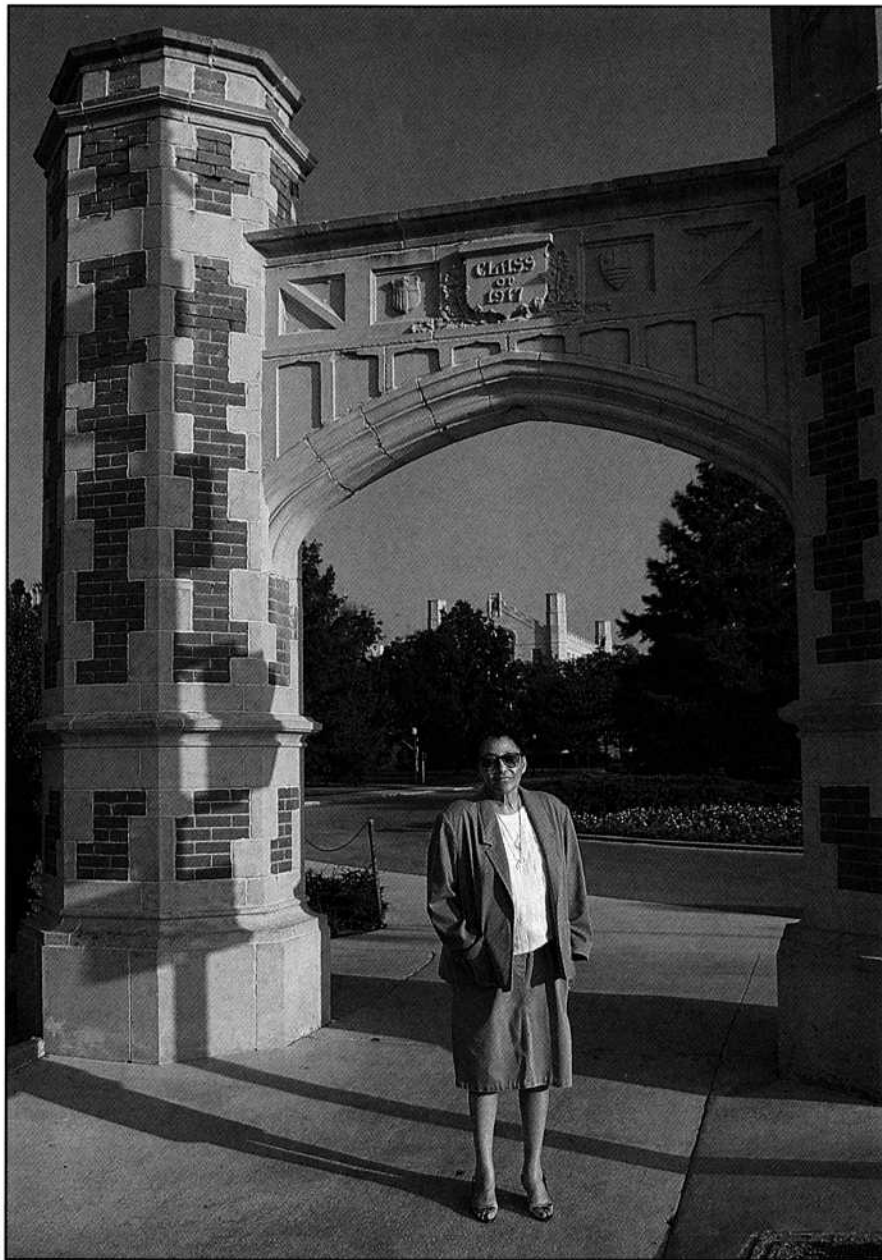


by EVE K. SANDSTROM



Regent Fisher Comes Home



Gil Jain

To gain admission to law school, a courageous young black woman had to sue the regents of the University of Oklahoma. Today, more than 45 years later, she is a member of the board.

Ada Lois Sipuel Fisher first heard the term “race riot” when she was five years old.

“I got so happy and excited, because the use of the word ‘race’ meant to me ‘race horses,’” she recalls. “I was sure there was going to be a parade. I was jumping up and down, saying, ‘Take me to it! Mama, get me a clean dress and take me to the race riot!’”

Her mother was fully aware of the meaning of the term. Early in their marriage, Bishop and Mrs. T. B. Sipuel had lost all their possessions when their home was looted and burned during the 1921 Tulsa race riots.

Dr. George Lynn Cross, former president of OU, grew up in South Dakota.

There were no blacks in his home town.

"I had never seen a black until I was 12 years old, when I went to Sioux City to have my tonsils out," he says. This was his only experience with persons of other races until he played college football with a black student.

"We didn't think anything about race," he says.

When Cross left South Dakota in 1934 to become an assistant professor of botany at the University of Oklahoma, one of the first people he met wanted to give him a few tips about living in Norman, his new home.

"It was a salesman at one of the downtown stores," Cross says. "He told me, 'One thing you'll never have to worry about is the nigger problem.' He said there was an unwritten law that no blacks stayed in Norman after sundown. This depressed me for a while, but I was so busy getting settled, I

segregation in university graduate schools throughout the United States.

The case was a landmark that pointed the way to the elimination of the legal basis of segregation in undergraduate colleges and in public schools, and later in restaurants, theaters, jobs and all aspects of American life. It was an early move in a social revolution that still is going on in the United States.

This year a landmark of a different type was passed. In April 1992, Ada Lois Sipuel Fisher—who had to go to the U.S. Supreme Court to gain admission to the OU School of Law—was named a member of the Board of Regents for the University of Oklahoma, the governing body she once was forced to sue.

Both Fisher and Cross believe that their participation in that lawsuit marked the single most significant episode in their professional lives.

No race riots were involved in the opening of OU to black students. The battle was waged entirely through the courts, and Cross and Fisher, nominally

adversaries, admired and respected each other from the first.

There were tensions, to be sure, but throughout the lawsuit, the cordiality between the litigants and University officials and the acceptance gained by the first black students who attended OU were in strong contrast with unpleasant and violent events at other universities. This peaceful change may have been due in large part to the personality of the poised and gracious young woman at its center and to the calm and cooperative atmosphere established by Cross and his administrative team.

Cross retired from the University's presidency in 1968 but has maintained an office in the Botany and Microbiology Building on OU's Van Vleet Oval. He well remembers Fisher's first visit.

She came to his office flanked by Roscoe Dunjee, publisher of *The Black Dispatch*, an Oklahoma City newspaper, who was state president of the National Association for the Advancement of Colored People, and by the regional director of the NAACP, Dr. W.A.J. Bullock, of Chickasha.

"Ada Lois was petite, attractive, poised," Cross says. "I remember thinking it was just a damn shame that a person like that had to go through what she went through before she got what she was entitled to."

"Dr. Cross was not at all sympathetic with the position of the state," Fisher says. "Considering the limitations placed upon him, he was a help. I always knew where he stood. Even after I entered the University as a student, I was always free to go by and talk to him. He's quite a gentleman."

The *Sipuel vs. OU Regents* case had first peeked over the Oklahoma horizon in September 1945, when the NAACP held a meeting in McAlester. Following that session, the national group's attorney, Thurgood Marshall—who in 1967 became the first black appointed a justice of the U.S. Supreme Court—announced that Oklahoma had been selected for lawsuits testing segregation and that efforts would be made to gain admission for Negro students to graduate schools at OU and Oklahoma A&M.

Cross says that Oklahoma law at that time, in effect, defined a Negro as someone who was born in Africa or who had an ancestor born in Africa.

"This left blacks from Haiti white," he says. "It also meant that any white born in Africa was black. It was such a silly law that I think Thurgood Marshall felt it would be the easiest law to attack."

Marshall's warning allowed Cross to prepare a response to the expected application. He met with the OU Re-

"Dr. Cross was not at all sympathetic with the position of the state."

didn't give it much thought."

The former president pauses to light his trademark pipe, then smiles and raises his eyebrows.

"In fact, I guess I didn't give it any thought until I became president and was confronted with the problem flat out."

That flat-out confrontation began on Monday, January 14, 1946, when Ada Lois Sipuel Fisher came to Cross's office to apply for admission to the University of Oklahoma School of Law.

Her visit was one of the opening scenes of a drama that changed American education—perhaps even America itself.

Ada Lois Sipuel Fisher's application was the first step toward a lawsuit that led eventually to the elimination of state law as a tool to enforce racial

AT RIGHT: A friendship forged in troubled times still endures for President Emeritus George L. Cross, left, and Regent Ada Lois Fisher.



Gil Jain



Even after a U.S. Supreme Court ruling in her favor in January 1948, OU Admissions Dean John Fellows, left, still could not admit Ada Lois Sipuel Fisher.

gents and talked to the Oklahoma Attorney General.

Cross's personal impulse was to admit any qualified black applicant to the University. But Oklahoma law would not permit this.

As he explains in his book, *Blacks in White Colleges*, the Oklahoma law requiring segregated education made it a misdemeanor to admit Negro students to a white school, to instruct classes composed of mixed races or to attend classes composed of mixed races.

If he had admitted Fisher, Cross himself could have been liable for a fine of up to \$500 a day. Instructors of her classes would have been liable for fines up to \$50 a day, and white students who attended classes with her could have been fined \$20 a day.

The regents and the attorney general told Cross he must obey the state law. Cross also was advised by the attorney general and by others that he should refuse to admit Fisher—but not on the grounds that she was black. He

should refuse on the grounds that she was a graduate of an unaccredited institution, Langston University.

But Cross rejected that proposal. "We had many white students who had transferred from institutions that were not accredited. I wasn't about . . . to try that subterfuge, because that would have been recognized immediately as monkey business."

So on January 14 Cross did refuse to admit Fisher—but on the grounds that Oklahoma law and Board of Regents policy denied admission to a person of Negro descent.

This action was what Fisher and her advisers had hoped for. It gave Fisher immediate access to the courts and kept the basic cause of her lawsuit unclouded.

It also propelled the young Chickasha woman onto the national scene and into a role she has fulfilled with dignity and intelligence for more than 45 years.

Today Ada Lois Sipuel Fisher, now

retired, lives in a comfortable home in Oklahoma City. She is working on her autobiography in a memento-filled office off her kitchen. Its walls are covered with plaques, reflecting her lengthy list of honors and awards, and with African artifacts. A large rocking horse waits in the corner for a visit from the youngest of her four grandchildren.

Fisher's father, the self-educated son of former slaves, was a preacher and church administrator, serving as state bishop for the Church of God in Christ. Her mother was a former teacher.

"I had a wonderful, a very special mother," she says, "but my greatest inspiration was my father. I was the middle child, and you know how middle children are. But my father always told me, 'You have a big brain, and I expect great things from you.'"

She smiles. "I believed him."

She says she became the Oklahoman selected for the test case by accident. "They really wanted my brother." Following the decision to file a test case in Oklahoma, she explains, local NAACP leaders were instructed to scout their communities for a plaintiff, an intelligent person with a strong academic background, someone who could work well under pressure.

"The person who fit that description better than anybody was my brother Lemuel," Fisher says. "So (NAACP director) Dr. Bullock, who lived in Chickasha and knew my family, asked him. But Lemuel had to turn them down. He'd graduated from Langston three years earlier, and he had just been discharged from the army. He had lost three years, and he was anxious to get on with his education."

Fisher sat in on the conversation, listening as Bullock speculated about where to look for another candidate. "I believe it was Mother finally, who said, 'Bullock, why don't you ask Lois? She's a good student; she was valedictorian in high school and an honor student at Langston. She might be interested.' And I said, 'Oh, I am! I'm available!'"

Lemuel Sipuel went on to graduate from Howard University Law School and practiced law in the Washington, D.C., area.

Mrs. Fisher won the endorsement of the state NAACP, but she also consulted her husband, Warren Fisher, who had been a childhood friend of Lemuel Sipuel.

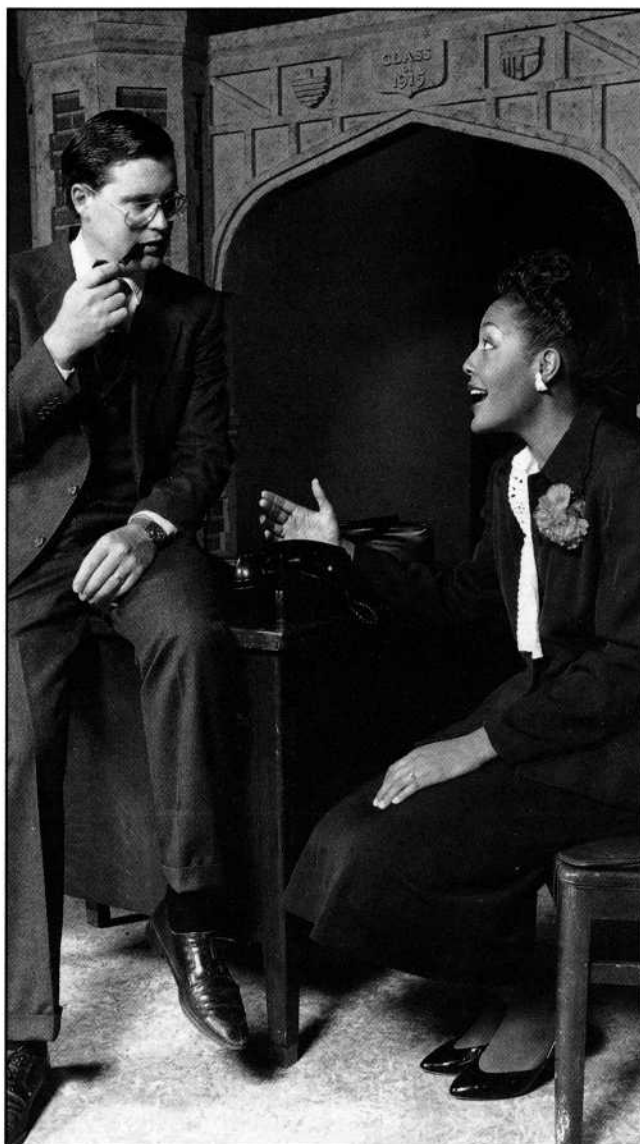
"I guess I first saw Warren when I was about five years old," Mrs. Fisher says. "My sister and I would trail in behind him. We thought he was the prettiest thing we'd ever seen."

Ada Lois and Warren Fisher were married when she was 19 and still a student at Langston.¹ At the time she was selected by the NAACP, he was stationed overseas with the U.S. Army. Mrs. Fisher wrote to ask her husband's opinion before she agreed to become involved in a major lawsuit.

"He was in total support," she recalls. "He wrote me back a glowing letter, and he wrote, 'I certainly hope I'll be back to wade the swiftest water with you.'"

"Warren was the strength in the family," Mrs. Fisher says. "When I began to be discouraged and to say, 'This is too hard or too much,' he'd say, 'Oh, no, no, no. Lois, you can do anything you want to do. I'll help you.'"

Warren Fisher was also a graduate of Langston, and at the time of his retirement was affirmative action officer at Tinker Air Force Base. The Fishers had been married 44 years when Warren Fisher died in 1988. Their son Bruce is on the Langston faculty, and daughter Charlene Factory teaches in Oklahoma City.



"Halls of Ivory," a three-act play by Jim Vance, dramatized the events of the famous lawsuit in a 1986 performance at OU with Shawn Dougherty, left, as President George L. Cross, and Dana Ledbetter as Ada Lois Sipuel Fisher.

Was it an advantage to have a woman as plaintiff in this landmark lawsuit? Was a young, slender, attractive black woman with a sweet smile less threatening to the white establishment of 1946 than a young man might have been?

"I'm going to pose that question in my book," Fisher says. "What if, instead of a slender, vulnerable-looking 21-year-old black woman walking in the door, here comes this six-foot, three-inch beautiful bronze man? I don't know

what people would have said if Lemuel would have been the one walking in there. He would have created, I imagine, a little more concern than I did. We'll never know."

The lawsuit, *Ada Lois Sipuel vs. the University of Oklahoma Board of Regents, et al*, was filed in April 1946, and three years later Fisher finally was allowed to enroll in the OU School of Law. In between, the case was fought through state and federal courts and with action of the Oklahoma legislature and the OU Regents. At one point the legislature even created the Langston School of Law, trying to create "separate but equal" facilities. Only one student ever enrolled.

For Ada Lois Fisher the lawsuit provided a lengthy association with Thurgood Marshall, a man she describes as "truly a constitutional scholar" and as "a magnificent person." As attorney for the NAACP, he was her chief counsel, and she says he never allowed her to become discouraged as the case dragged on.

Their first court appearance was in the Cleveland County Courthouse in Norman. When the judge called a lunch recess, Fisher and her advisors realized there was no restaurant in Norman that would serve blacks. And they didn't have time to drive back to Oklahoma City for lunch.

But Marshall had noticed a peanut machine in the courthouse.

"He collected all our pennies, and he bought all the peanuts he could carry." Fisher cups her hands to demonstrate, bringing back memories of coin machines that dispensed loose peanuts.

"He went from person to person, giving each of us a few peanuts. We

¹Ada Lois and Warren Fisher did not publicly reveal their marriage until a year into the U.S. Supreme Court case; therefore her academic records and the case itself bore her maiden name of Sipuel.



The newest University of Oklahoma Regents share a historic moment on the steps of Monnet Hall: Regent Melvin Hall, back row center, with wife Alicia, daughter Tenia and Governor David Walters; Regent Ada Lois Fisher, at right in blue, with son Bruce Fisher and his wife Sharon and children Emeka and Adanma. At left are President Emeritus George L. Cross, President Richard L. Van Horn, Cleo Cross and former Oklahoma Attorney General Robert Henry.

bought Cokes from a machine, and that was our lunch.

"Then Marshall said to me, 'Ada Lois, I'm going to try this lawsuit, but from here on out, you're in charge of baloney sandwiches. Don't let this happen again!'"

She laughs. "It's a scene I'll never forget."

Most of the episodes related to the lawsuit were not humorous. Although there was very little feeling against Fisher's application on the OU campus, many Oklahomans—including a number of state legislators—bitterly opposed her admission.

On one occasion Fisher and Dunjee heard strange voices on her telephone and realized the line had been tapped. Hate mail and obscene phone calls became routine. A bus driver recognized the person seated at the back of his bus and stopped at every tavern on his route so that curious drunks could stagger up to the windows and peer in at this "freak," a black woman who

wanted to attend a white university. One of the drunks even boarded the bus and staggered halfway down the aisle for a closer look.

And the cost of the suit was not borne by some giant NAACP fund. Fisher and Dunjee raised money by speaking before black organizations and at churches. Frequently an appearance would net only a few dollars.

Why did she do it? With her academic record, upbringing and financially secure family, Ada Lois Sipuel Fisher could have been admitted to many out-of-state law schools, where she would not have been forced to crash a racial barrier. Why was she willing to put herself through this, to endure the notoriety, discomfort and strain of becoming the plaintiff in a test case?

"It will sound like a cliché," she says, "but I do mean it.

"I believe in the Constitution.

"I am angered at any implication that someone else is better than I am, because you're not! And at whatever

sacrifice, I'm going to show you that you aren't. Yes, I could have gone to another school. I guess it was just stubbornness and a strong sense of what's right and what's wrong."

Fisher was not the first black student at OU. By the time her case was settled completely, other blacks had applied for graduate studies, and the state had been forced to abandon the attempt to create black graduate schools that would offer every program available at white universities. Officially, the first black to enter OU was George W. McLaurin, a member of the Langston University faculty, who began work toward a doctorate of education. Ironically, in 1923 McLaurin's wife Peninah had been the first black ever to apply for—and be refused—admission to OU.

During the first year McLaurin—and a group of students that later included Fisher—attended the University, the legislature ordered that they be admitted under "strictly

segregated" conditions.

Cross calls this situation the most humiliating part of the whole process. For approximately a year black students were forced to sit in sections of classrooms that had been cordoned off by ropes. They had a roped-off section of the cafeteria and special sections in the library.

One problem with this, Cross recalls, was that white students refused to observe the legally required separation. They stepped over the ropes or cut them up for souvenirs. This reflected the general support on the campus for Cross's position on admitting black students as quickly as possible.

"I had the support of the whole faculty and 90 percent of the student body," he says. "And only one regent favored the (segregation) law."

Fisher entered OU in June 1949, two weeks late for a summer session. By a trick of fate, the professor for her first class was the acting dean of the School of Law, Maurice H. Merrill, who had assisted the Oklahoma assistant attorney general in opposing Fisher's suit before the U.S. Supreme Court.

On her first day, she recalls, "I went in and climbed the steps past all the other students, past all the rows and rows of empty chairs to that highest step with just one chair—with the 'colored' sign nailed to the back of it.

"I sat down there. And in walked Dr. Merrill. He was my first instructor. I said to myself, 'This has got to be the worst trick in the world!'"

Fisher laughs. "But I found out I didn't have a thing to fear from him, not a thing. Merrill was in the same position that Cross was. They both worked for the state of Oklahoma. He didn't volunteer (to oppose her lawsuit), he was drafted, and he represented (the state) well. I grew to be very good friends with him."

Her fellow law students were also helpful, Fisher says. Since she was entering two weeks late, students lent her notes and helped her until she had caught up.

The OU School of Law was a masculine world at that time. Fisher recalls only one other woman student.

After graduation, Fisher practiced law for five years, then joined the Langston faculty, teaching American history and government and directing the public relations department. She retired in 1988 as chairman of the Social Science Department, then spent three years as a corporate counsel for a Virginia company before retiring a second time and moving back to Oklahoma City.

She earned a second graduate degree, a master's in history, at OU in 1968. She has been honored by the NAACP, the Oklahoma City Urban League, the Black Caucus organizations of both Oklahoma and national legislators and the Oklahoma Human Rights Commission. She has been inducted into the Order of the Coif, a highly prestigious national legal order. Langston twice designated her as an outstanding alumnus.

The Smithsonian Institution named her as one of the 150 black women who have had the most impact on the course and direction of American history. Among the other honorees were Sojourner Truth, Harriet Tubman, Rosa Parks, Coretta King and Barbara Jordan.

A three-act play, *Halls of Ivory*, by Jim Vance, dramatized the events around *Sipuel vs. Board of Regents*. It was performed at OU in 1986.

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Griffith J. Davis, *Ebony*

Ada Lois Fisher, right, waits for trial to resume in her suit to be admitted to the OU School of Law while her attorney (later U.S. Supreme Court Justice) Thurgood Marshall, left, confers with a colleague.

found no bad feelings (there), no bad treatment by the faculty, and certainly not by the students.

"I did not have a fight with the University of Oklahoma. I had a fight with the state of Oklahoma. The laws had to be changed. That was the only way to correct that inequity, so that's what we set out to do. The University was the vehicle by which we got those laws changed."

Fisher sees the poetic justice in the cycle that led to her appointment as an OU Regent, but the first time Gov. David Walters called to ask her to fill out the unexpired term of Sylvia Lewis, she declined. Regent Lewis, the first black to be named to the board, had resigned for health reasons. Fisher also had been ill; she told the governor

tend to be very student- and faculty-oriented, so I hope to add a dimension there. My experience in the Sipuel-OU case sensitized me to the position of women and the position of minorities, and I hope I will bring that dimension."

She is concerned about the new rise of racism that has been reported across the United States. "These are not southern colleges. It's all across the country—including OU, and including OSU—and California and Michigan and Connecticut and Illinois and you name it.

"The college students today, the young adults, have no real appreciation of the price people of my generation paid to bring the country to where they found it. I think they feel it has

treatment for minority students.

"Please don't bend over backward for me. Just don't put things in my way to hinder me, and let me go. Because if you're giving me special consideration, to me this is a way of saying, 'If we don't help you, you're going to fail.'"

And she has a vision for OU.

"I would hope that 30 years from now the University of Oklahoma would be one of the leading institutions of higher education in the nation. I would hope that they would have the faculty, the resources and the students to make it an outstanding university, not just in football and basketball, but in academics. I would like to see the College of Medicine become a nationally famous center for medical learning. I would like to see the law school, and all of the professional schools, occupy higher positions in the national ratings."

Fisher still thrills to the memory of the day *Sipuel vs. the OU Regents, et al*, was heard by the U.S. Supreme Court.

"Even to go into the Supreme Court building is such an experience. Great marbled halls, with uniformed Marines standing at attention at spaced intervals. To go into that chamber and to see that magnificent bar with the nine chairs behind it, the velvet curtain—it's an inspiring thing, very inspiring.

"And it was all about me and my rights of citizenship. I sat there, and I thought, 'Is this that girl from Chickasha? Is she the one who has all this activity going on in front of this, the highest court in the land?'"

Oklahoma was settled largely by Southerners, and it was inevitable that it would be founded as a "Jim Crow" state. Certainly race relations still have a long way to go in Oklahoma, just as they do in the rest of the United States.

But when the time came to work toward change, Ada Lois Sipuel Fisher stepped forward and helped to knock that first, important hole in the wall that separated the races.

Now, as a regent, she may knock out a few more bricks.

"The college students of today. . . have no real appreciation of the price people of my generation paid to bring the country to where they found it."

she appreciated the honor but felt unable to serve.

The governor called back. Again she refused.

"The next day I found him standing on my doorstep," she says. "I said, 'I give up! I'll do it!' At least I found out the governor is persistent!"

To accept the regental post, Fisher had to resign as a trustee of the University of Oklahoma Foundation Inc., where she had served since 1989. The announcement of her appointment as a regent was held on the steps of Monnet Hall, the old "Law Barn" she had worked so hard to enter.

What is Fisher's vision of herself as a regent?

"Having been involved in higher education here in Oklahoma for 33 or 34 years, I have some insight into the potentials and the problems. I

always been that way and that it would always be that way.

"Now (with the new wave of racism) they're learning that nothing stands still. When I look at the youngsters on some of the (television news) shows—skinheads and neo-Nazis—I say, those kids are playing a dangerous, dangerous game. They have no idea of the dangers that they are dabbling in. To them it's some kind . . . of youth rebellion, but it's an ugly thing, a very ugly thing."

She hopes to see more opportunities for minorities at OU. "I'd like to see more minorities enrolling, a larger percentage of them graduating. I'd like to see more minorities as professors—tenured faculty." She smiles again. "If they can find all these guys to play football . . ."

But she wants *equal*, not *special*

THE SIPUEL CASE

by HARRY F. TEPKER JR.

When Thurgood Marshall appeared in 1946 before the district court in Cleveland County, Oklahoma, in the case of *Ada Lois Sipuel versus the Board of Regents of the University of Oklahoma, et al*, he was in the middle of a long struggle to overturn the deliberate racial discrimination authorized and protected by the United States Supreme Court's 1896 decision in *Plessy v. Ferguson*.

Marshall knew that the Supreme Court had said that every state, including Oklahoma, was obligated to offer black students equal educational opportunity, even if the state preferred to keep black and white separate. However, he also knew that in pursuit of "separate but equal" education, the southern states, including Oklahoma, had done all to promote the principle of separation and little to honor the principle of equality.

Oklahoma admitted that Sipuel was qualified to study at the University of Oklahoma School of Law. The state attempted to show that it planned to create a separate law school for blacks. At the time Sipuel applied, Oklahoma said there was not enough demand to justify a new law school.

At trial, Sipuel's lawyers, including Marshall, presented evidence that a new all-black law school was a ludicrous sham that fooled no one. Nevertheless, the Oklahoma Supreme Court ruled that *Plessy v. Ferguson* allowed states to maintain a policy of segregation.

Marshall appealed to the U.S. Supreme Court. The case was argued in January 1948. Four days after oral argument was completed, the Court issued a unanimous decision. The brief opinion said little except that Sipuel was "entitled to secure legal education afforded by the state institution." As for Oklahoma's argument that she need only wait until there was enough demand for an all-black law school, the Court replied she was denied her rights "although during the same period many white applicants have been afforded legal education." The Court's conclusion seemed to be a victory for Ada Lois Sipuel:

The State must provide [legal education] for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group.

Sadly, however, Sipuel's victory before the Supreme Court proved to be temporary and hollow. Oklahoma followed its

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Griffith, J. Davis. *Ebony*

In 1948, the NAACP-backed lawsuit started through the state courts for a second time.

practice of evading the decisions of the Supreme Court and created a new all-black law school in the State Capitol building. The new school was intended to have one student—Ada Lois Sipuel. More than a thousand students and professors protested the state regents' outrageous behavior. As one OU law professor said: "It is a fake, it is a fraud, and . . . I think it is indecent." Sipuel refused to attend.

When Marshall returned to the Supreme Court to point out that Oklahoma's response did not comply with its duty under the Fourteenth Amendment, the Court turned aside Sipuel's claim. Marshall argued that no all-black law school could be equal, but the Court said this was a new argument. When all was said and done, the *Sipuel* case itself said little. A state had to offer some educational opportunity. It had to make the offer at the same time as white students were allowed to study. But the separate-but-equal principle remained, and obvious inequalities were tolerated.

And yet, the *Sipuel* case was only one of several that taught the U.S. Supreme Court about the problematic nature of the separate-but-equal doctrine. Two years after Sipuel was denied admission to the OU School of Law, the Supreme Court ordered integration of the University of Texas law school. The Court was persuaded by many of the arguments Marshall had made earlier on behalf of Ada Lois Sipuel.

Six years later, a unanimous Supreme Court led by Earl Warren accepted the principles first articulated by Marshall in *Sipuel*. Exclusion of blacks on the basis of race automatically created a badge of inferiority. No educational opportunity could be equal if the excluded group suffered such stigma. Desegregation, no phony equalization, was the appropriate demand of the Fourteenth Amendment's equal protection clause. If *Sipuel* was a setback, it was still part of a longer process of rewriting constitutional doctrine to make the principle of legal equality a part of our nation's supreme law.



ABOUT THE AUTHOR: Harry F. Tepker Jr. is a professor of law at the University of Oklahoma, where he teaches constitutional law.