

schools, police brutality, and other inequities in the criminal justice system—proved to be virtually intractable. Much of the black power response consisted of attempts to deal with the difficulties and frustrations of this situation. Ideologically the NAACP resisted this tendency toward separatism, and the national leadership's success in this matter was probably due to the commitment, especially in the South, of its largely middle-aged membership to the struggle for integration. Yet at this point the national board for the first time became all black, and it has remained that way ever since.

Just as the New Deal-style economic and social programs of the Great Society were on the verge of decline, so also the NAACP, from an organizational point of view, was looking at a bleaker future. Finding that its traditional strategies of legal redress and legislative reform were not adequate to deal with problems of this magnitude and that there was no national consensus on how to deal with these matters, the Association began to drift and decline. The NAACP began to lose its membership and its leadership role.

The Voting Rights Act opened up the possibility of significant gains in the political system; consequently much of black leadership has gravitated toward electoral politics. Leadership began to develop from the local level through the Congressional Black Caucus. The irony is that it was the NAACP's success in lobbying for black voting rights that helped lay the groundwork for the drift away from the organization and toward political activism. However, the increase in black voting power caused many white southerners and northern white ethnics to shift to the Republican party, reinforcing the decline in liberalism associated with the Republican ascendancy since the end of the 1960s.

In short, the NAACP, which outlived many of the Progressive and New Deal organizations and had a successful post-World War II career, now appears to have suffered the general fate of liberal reform in the 1970s and 1980s.

2.4

Genna Rae McNeil

Charles Hamilton Houston: Social Engineer for Civil Rights

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On May 17, 1954, the U.S. Supreme Court announced a series of decisions in which the justices declared segregation in public schools unconstitutional. These landmark cases set the stage for massive legal and extralegal attacks on segregation in every phase of the nation's life. Addressing an audience at Amherst College in April 1978, Justice Thurgood Marshall recalled that "Charlie Houston" was the "engineer of it all." Marshall spoke at length in paying homage to his former law professor, mentor, and colleague, Charles Hamilton Houston. Because

few knew of Houston's contribution to civil rights but most were well-acquainted with Marshall's important role in the 1954 cases, his assessment was telling. He explained that when *Brown v. Board of Education* (1954) and *Bolling v. Sharpe* (1954) were argued before the Supreme Court, "there were some two dozen lawyers on the side of the Negroes fighting for their schools. . . . Of those . . . there were only two who hadn't been touched by Charlie Houston."

For over two decades, Houston taught and practiced law, championed civil rights for black Americans, defended black workers facing unfair, racist labor policies or practices, and expounded the use of the law as an instrument of fundamental social change—"social engineering"—that would promote justice and liberty in the United States for blacks as well as whites. Houston's intellect, skill, and ingenuity during an era of racist state policies, laws, and practices, severe economic depression, and heightened class and racial conflicts all served to place him in a high position among Afro-American leaders. Among Howard University Law School students, faculty, and alumni he was the respected and inspiring "Dean Houston." Among civil rights veterans, there is a consensus that he was the first "Mr. Civil Rights"—an expert in constitutional law and a strategist and litigator in education, labor, and housing rights cases. This examination of Houston focuses on his activities as an educator, lawyer, and civil rights leader from 1929 to 1950.

Houston was born in Washington, D.C., in 1895, the grandson of former slaves and son of a lawyer and a hairdresser. He attended the District of Columbia's segregated public schools and was graduated from the excellent M Street college-preparatory high school. After earning a Bachelor of Arts degree at Amherst, he served as an officer in the American Expeditionary Forces from 1917 to 1919. These were genuinely formative years. Observing the court martial of a black officer for following orders, being adjudged unfit to command white field artillery soldiers, and having his life capriciously threatened by a lynch mob of enlisted men etched the meaning of racism on his mind. Houston left the "war to save democracy" and America's army with fiery determination. "I made up my mind that I would never get caught . . . without knowing . . . my rights, that I would study law and use my time fighting for men who could not strike back."

Houston attended Harvard Law School from September 1919 to June 1923, specializing in the study of constitutional law under the noted future Supreme Court Justice Felix Frankfurter. He absorbed much of the philosophy of "sociological jurisprudence" then in its ascendancy at Harvard under the influence of the celebrated Dean Roscoe Pound and attained the distinction of being the first black to serve on the editorial board of the *Harvard Law Review*. After winning a fellowship for a year of foreign study, Houston returned to Washington in the summer of 1924, where he joined his father, William L. Houston, in private practice and accepted a professorship at Howard University's Law School.

When Houston began teaching at Howard's Law School, its curriculum was typical of most successful evening law schools, which students could attend part-time, and its alumni had distinguished themselves in various areas of law and politics. Many of them, especially in the border states, had provided the backbone of the legal work of local branches for the National Association for the Advancement of Colored People. Nonetheless, Howard's standing in the field of legal education was in jeopardy. Like all schools for part-time students, it was suspect due

to a confluence of factors. Legal authorities insisted that part-time law schools were not comparable in quality to full-time institutions and ought to be improved. The American Bar Association (ABA), which excluded black lawyers from membership, had set standards that Howard University Law School could hardly meet. Howard was ineligible for membership in the Association of American Law Schools (AALS), the key agency for establishing or maintaining credibility in legal education, because it could not meet the AALS's standards for law libraries, faculty, or admissions policies.

Houston replaced the last white dean of Howard's Law School in 1929. Already, cautious steps had been taken to insure its upgrading. In 1927–28, supported by a grant from the Laura Spelman Rockefeller Memorial, Houston had undertaken a study of black lawyers. His findings revealed a striking shortage of black lawyers and, in particular, only a negligible number, in the North or South, with training and experience in constitutional law and thus equipped to handle effectively civil rights cases in the federal courts. Houston believed—and he convinced Howard University President Mordecai Johnson—that Howard should offer a fully accredited program of legal education to students attending classes on a full-time basis and that Howard's formal legal training should include preparation for civil rights litigation. Johnson, the university's first black president, was intrigued with the possibility of producing outstanding lawyers whose work could benefit the entire race. Consequently, he authorized Houston to take charge of a new program for full-time day students and a law school accreditation drive.

Under Houston the school became fully accredited by the ABA and the AALS. It was no small accomplishment, nor was it easily achieved. The requisite approvals were obtained between 1929 and 1931, in part, because Houston relished the challenge and knew how to stay on top of a variety of projects.

The law school's reorganization during Houston's leadership transformed the institution into one committed to excellence in both the study of law and in the defense of Afro-Americans' civil rights. Houston repeatedly pointed out that the future required what he was attempting to do. Already, "Howard University School of Law is performing an indispensable social function," he stressed, but the black lawyer must be especially "trained . . . [and] prepared to anticipate, guide and interpret his group's advancement." He expressed his views with an intensity that could frequently move to passion: "I believe that the race problem is one of the most fundamental problems in American life today. . . . The orderly process of the solution of this problem depends largely upon the prompt, just and efficient administration of the law." Under Houston, self-conscious racial advancement and the pursuit of full freedom and justice became central to the work of the school. In the university setting Houston developed and expounded his philosophy of "social engineering." This view that law could be used to effect social change imbued the law students and faculty as well as the civil libertarians who would participate in the decades of civil rights struggles after 1935.

Houston's philosophy was grounded in two beliefs about law: that law could be used to promote and secure fundamental social change for the betterment of society and that law was an instrument available to minority groups who were unable to achieve their rightful places in the nation through direct action. More specifically, Houston maintained that Afro-American lawyers were obliged to understand the Constitution and explore its uses, both in the solution of problems of local communities and in the improvement of conditions under which black

and poor citizens lived. In 1932 he wrote that social engineering should ensure that "the course of change is . . . orderly, with a minimum of human loss and suffering." At the same time, it should also articulate the demands and expectations of the weak and oppressed.

As Houston directed the work of the law school and taught his courses, he challenged the law students to become "sentinels guarding against wrong." For the black lawyer-social engineer, Houston underscored commitment and skilled advocacy. Two of his high-ranking students readily admitted that Houston was "absolutely fair," but they recalled even more vividly that he was not one to equivocate—"a lawyer's either a social engineer or he's a parasite on society." Moreover, as the head of the law school, Houston seized every opportunity to dispel myths about the inferiority of black lawyers and to use black lawyers from Howard in the cause of civil rights. He recognized the important contribution that prominent white constitutional lawyers like Moorfield Storey and Louis Marshall had made in arguing important NAACP cases before the Supreme Court until they both died in 1929, but he felt strongly that the time had come for black lawyers to play the commanding role in defending and advancing the rights of the race. Securing the accreditation for Howard University's Law School and making it a major source of black attorneys highly competent in civil rights litigation were directed toward this end. He told an NAACP national convention that, "for its greatest effectiveness," it ought to be "of the Negroes, by the Negroes . . . for all the Negroes," committing itself to a program of "intelligent leadership plus intelligent mass action." He also expressed the belief that black Americans should attempt to "unite with the 'poor white' . . . [although] the minds of both . . . have been poisoned against each other" by the ruling class that exploited both groups. Houston's view that blacks and poor whites needed to work out common objectives brought a new perspective to the work of the NAACP.

Houston's close friend and fellow Harvard Law School alumnus, William H. Hastie, underscored the magnitude of Houston's achievement at Howard when he noted, after Houston's death, that "a transformation which ordinarily requires a generation in the history of an educational institution" Houston accomplished in less than six years. All subsequent objective assessments of Howard Law School's modern growth and development reveal that the years of Houston's administration were the era during which the law school moved into a sphere of larger usefulness and national prominence. Supreme Court Justice Marshall is the most famous illustration of the lawyer that Houston's reorganization of the Howard University Law School produced.

Houston's work at the law school and his philosophy of social engineering brought him to the attention of civil rights/civil libertarian groups. In the early 1930s, on matters of due process, equal protection of the laws, lynching, voting rights, and employment security, he became a leading activist. He marched for the freedom of the "Scottsboro Boys," who were accused of raping two white women in Alabama, and he filed a brief on their behalf in the U.S. Supreme Court. On another occasion, he enlisted a Howard colleague and an alumnus to prepare a special legal memorandum arguing against lynching and for prosecution of derelict or conspiring officials under federal law.

Recognizing Houston's potential contribution beyond Washington, leaders of both the NAACP and the Communist-oriented International Labor Defense (ILD), which was at the time very active in civil rights litigation, approached Houston

about greater participation in nationwide civil rights advocacy. This was also the time when many groups, including the NAACP and the ILD, were seeking ways to help the vast numbers of blacks hit by the Great Depression. It was an appeal that Houston could not resist. Houston himself, deeply concerned with the economic problems of the black working class, did not flinch from cooperating with the Communists on occasion, but he opted to work within the framework of the black-controlled, reformist NAACP, even though that organization was being widely criticized for clinging too closely to its civil rights litigation program and not concerning itself enough with the economic problems of the masses. The first case he took for the NAACP involved an indigent Virginia black, accused of murder. Although Houston lost this case in 1933, it was a landmark for the NAACP, which used it to demonstrate that a black lawyer could handle a delicate, highly emotional case in a small southern town, with the respect and even admiration of local lawyers and judges. Two years later in the case of *Hollins v. State of Oklahoma*, Houston established an even more important precedent. Successfully defending a black man sentenced to death for criminal assault on a white girl, Houston—in the first case in which the NAACP employed exclusively black counsel before the Supreme Court—convinced the high tribunal to overturn the conviction because blacks had been illegally excluded from the jury panel.

Soon afterward Houston obtained a leave of absence from Howard University to serve as full-time special counsel for the NAACP. This position and title he retained from July 1935 until 1940, although beginning in 1938 he handled special legal projects from his Washington firm, leaving Marshall to work from the New York headquarters. For the rest of his life Houston remained deeply involved in a wide range of litigation affecting the rights and welfare of American blacks. The most notable civil rights cases resulting from this work were in the areas of education, labor, and housing. He argued civil rights cases before the Supreme Court, and he aided in the preparation of lower court suits. Between 1939 and 1950 he was the general counsel for the Association of Colored Railway Trainmen and for the International Association of Railway Employees. For nearly a decade he represented clients seeking relief from restrictive covenants (discriminatory agreements entered into by white homeowners to prevent movement of blacks into their neighborhoods).

The man who became head of the NAACP's first permanent salaried legal department in July 1935 was imposing—over six feet tall, roughly two hundred pounds, with features and bronze coloring that left no doubt about his Afro-American descent. An intense gaze, a steady baritone voice, and a confident demeanor worked together to create an aura of authority and immense competence. Both Walter White, the executive secretary, and Roy Wilkins, the assistant secretary, were optimistic about the man who was selected to take charge of the NAACP's legal program and develop a legal department that could effectively work for social change through law.

Among Houston's dozen or more legal defense inquiries in his first year with the NAACP were critical life and death matters. A telephone call or some papers left on his desk could place him in the middle of hearings for clients whom he had never met, but who required his help for successful appeals. Then there were requests for speeches about the new NAACP legal program. Sometimes traveling with White, other times with Eddie Lovett or Oliver Hill, both Howard graduates, and occasionally alone, Houston spoke at meetings and rallies of civic bodies, teachers' associations, interracial councils, church congregations, parents' groups, sorori-

ties, fraternities, and student organizations throughout black communities in the cities and rural areas of the South. He logged nearly 25,000 miles for the campaign against discrimination in education during his first year as special counsel.

Houston's reputation is undoubtedly most indelibly linked with his role in initiating the NAACP's long-range and ultimately successful campaign against segregation in southern public schools. Even before Houston joined its staff, the NAACP had decided to make its attack on this form of discrimination the central focus of its legal work. Houston was well aware that even under the more liberal climate of the New Deal, the conservative policies and cautious procedures of the American judicial system militated against judges entertaining an immediate direct attack on segregation that would force them to overrule an earlier court's decision on the constitutionality of segregation. Moreover, Houston knew that nothing in the history of the United States or the history of the Supreme Court justified the assumption that either would suddenly decide to promote racial equality. To secure both equal protection under the laws and justice for Afro-Americans required a protracted struggle, which would include successive legal battles (handled by lawyers working with black communities) that would be designed to undercut the legality of discrimination and segregation. Rather than waiting for cases to be referred to the NAACP's national office, Houston established not only a long range goal for the legal campaign—the elimination of segregation—but also limited objectives, priorities for blacks' civil rights, and criteria for suitable cases. Thereafter, Houston sought cases and test litigants that would effectively advance the NAACP's cause. Houston based the NAACP's legal strategy on his understanding of the United States, the American legal system, history, and racism. As a result the NAACP won a series of court battles that paved the way for successful attacks on the constitutionality of segregation itself.

Accordingly, Houston was careful not to move immediately against the separate-but-equal dictum, enunciated in 1896 in the case of *Plessy v. Ferguson*, which declared constitutional laws providing for segregation in public transportation. A carefully drawn, long-term assault on the citadel of southern school segregation was required. Houston developed a two-pronged strategy to topple the edifice of school segregation. On the one hand, the NAACP attacked the inequities, especially in teachers' salaries, that characterized the southern elementary and high school systems; on the other hand, Houston and his associates conducted litigation against the exclusion of blacks from the graduate and professional courses offered in state-owned white universities but not in the black colleges. In addition to the purely legal aspects of this work, Houston believed that the development of "a sustaining mass interest behind the program . . . along with or before litigation" was essential. Houston's message was clearly and simply expressed. If ignorance prevails among the masses of any race, they are bound to become "the tools of a small exploiting class," he explained to one gathering. And on the matter of racially segregated schools and inequities, Houston repeatedly told black Americans: "The mass of Negroes . . . are a part of the public which owns and controls the schools. . . . Both schools belong to one and the same system and the system belongs to the public."

Parents, teachers, and black community leaders in Maryland, Virginia, Tennessee, and Missouri took action to achieve equality of educational opportunities and to equalize the salaries of teachers. In Virginia and Maryland Houston consulted with local leaders and by 1936 launched a successful attack on racial discrimination in the appropriation of funds affecting black students and teachers in elementary

and secondary schools. In Tennessee and Missouri the focus was on exclusion from graduate-professional public education. Interested adults and students with good academic records came forward to volunteer for court battles. As part of his overall strategy, Houston planned for every situation and consequence he could anticipate, including when to accept or reject volunteers. Each case had to be measured against exacting standards, so that funds would not be expended unless there were some reasonable expectation of success on the appellate level.

As special counsel and chief legal officer of the NAACP, Houston developed test case requirements. Plaintiffs had to be "proper parties," representing "the discrimination which we desire to attack," and the situation had to represent "a sharply defined issue . . . support[able] . . . by auxiliary legal proceedings," and it should "present key discriminations," thereby furnishing "a focus or springboard for extending the attacks on a larger front."

With his eye on the Supreme Court, Houston took the situation of one Lloyd Lionel Gaines of Missouri under advisement. Gaines, a young college graduate, wanted to be a lawyer and did not want to wait until the state black institution, Lincoln University, had been voted sufficient appropriations to offer a legal education equal to that offered to white students. He therefore asked the St. Louis local chapter and the national office of the NAACP to handle his case against the white university. Using a complaint similar to a Maryland law school admissions case (in which Marshall and Houston had earlier prevailed on the state appellate level), the NAACP filed suit in 1936 on behalf of Gaines against the University of Missouri.

Houston's decision to handle the Gaines case was a tactical maneuver in the long-range plan to secure a favorable U.S. Supreme Court ruling against racial discrimination. Test cases that would systematically eviscerate the separate-but-equal principle of *Plessy v. Ferguson* were to be planned deliberately and prosecuted. Each case would progressively establish both a precedent for equality where segregation existed and the prerogative of the Supreme Court to determine what constituted equality consistent with the Constitution. (Concurrently, the NAACP through its magazine *Crisis* and in press releases provided interpretation of the significance of each case.) Houston targeted state-supported legal education because he reasoned that judges were qualified to compare legal education at various institutions and certainly, when they were asked to rule on the equality of law school offerings, they could not demur on the basis of lack of expertise or experience.

Everywhere Houston involved local black lawyers and community institutions in the law suits. In St. Louis Sidney Redmond and Henry Epsy of the Mound City Bar Association worked on the case. The black press reported regularly on each step of the litigation, and black residents attended the hearings. One of the highlights of the case was the reaction of the dean of the Missouri Law School, William Edward Masterson, who not only had a "complete lapse of memory" when Houston asked him telling a question, but who also "wiggled like an earthworm" on the stand.

As Houston had anticipated, the case was lost in Missouri's Supreme Court. (An understanding of jurisdiction necessitated that lawyers present in state courts claims regarding a state's obligation to its black citizens, but rarely had southern or border states ruled in favor of blacks.) Houston, with the assistance of his former students and colleagues at Howard University—Leon Ransom, NAACP Assistant Special Counsel Marshall, and Lovett, as well as Redmond and Epsy—prepared to appeal. Houston appeared before the Supreme Court in 1938 for the oral arguments in the Gaines case. On trial was more than Gaines's individual claim. Houston challenged

white supremacy as illegal, immoral, and inequitable when he made assertions about myths and biased interpretations of *Plessy v. Ferguson*. Was it not true that equal protection of the laws meant that if white Missourians were entitled to legal education by the state, then black citizens were entitled to legal education of the same quality? The contention was unambiguous: Missouri had denied Gaines equal protection by excluding him from the law school of the tax-supported University of Missouri for no reason other than his race; further, the university had failed to prove its out-of-state scholarships for blacks provided an equal opportunity for legal training.

Hardly had one month elapsed before the Supreme Court held that Missouri's Supreme Court had erred in denying the petitioner, Gaines, his federal rights. Chief Justice Charles Evans Hughes delivered the opinion that vindicated the NAACP's position, and he enunciated the new controlling precedent: the "obligation of the State to give the protection of equal laws" is imposed upon the state by the Constitution and must be "performed . . . within its own jurisdiction. . . . Here the petitioner's right was a personal one . . . and the State was bound to furnish him within its borders facilities for legal education substantially equal to those which the State . . . afforded for persons of the white race."

The implications of the decision were far-reaching, as the precedent inevitably extended beyond tax-supported law schools. It outlawed out-of-state scholarships and regional university programs for blacks as a means by which states might maintain segregation and shirk constitutional duties within their borders. Houston's success in the case of Gaines ushered in a period of widespread influence among NAACP-affiliated lawyers. The results of the Gaines case also provided a basis for changes in his personal life.

Ideally Houston should have been directing legal affairs for the NAACP from its Manhattan headquarters, but in mid-1938 he had responded to other responsibilities. In order to keep the firm, Houston, Houston & Hastie, out of jeopardy while his father served as special assistant to the U.S. attorney general and his colleague Hastie served as U.S. district court judge in the Virgin Islands, Houston had moved back to Washington, D.C. From here he supervised the education cases; his protégé Marshall—elevated to co-special counsel—worked in New York City. Whatever doubts might have existed about the arrangement were quieted by the impact of the Gaines's victory and the momentum it provided. No one presented a formidable challenge to Houston's NAACP strategy, which aimed at laying a social and legal foundation for direct attacks on racial discrimination and segregation.

Though he relinquished the title "special counsel" in 1940, Houston continued to cooperate with the NAACP Legal Department and its tax-exempt arm (which was established by the NAACP in 1939), the NAACP Legal Defense and Educational Fund, Incorporated (Inc. Fund) until his death in 1950. The Inc. Fund concentrated on racial discrimination in public education, while the NAACP's own legal work was concerned with a wide variety of litigation on other civil rights matters. Under Houston's leadership as member and later chairman of the NAACP's National Legal Committee, the NAACP's policy and practice were to support and promote the activities of the Inc. Fund. Due to Houston's unusual interpersonal skills, the NAACP board and staff, its legal committee, and the Inc. Fund all worked together and in effect spoke with one voice.

Houston remained the greatly admired and heavily leaned-upon philosopher-teacher, legal strategist, and tactician. His propensity for entertaining a broad range

of views regarding the civil rights struggle and for arriving at sound approaches through careful analysis and discussion was striking. Marshall himself was accustomed to writing Houston for "suggestions as to [a NAACP lawyers'] meeting . . . [and] working together between the National Legal Committee, the legal staff of the national office [Inc. Fund] and . . . branch lawyers." In the years between Houston's death and the 1954 school segregation decision, Marshall and others at the Inc. Fund continued to ask, "What would Charlie say?"

For both Houston and the NAACP the goal of complete elimination of segregation remained compelling. As Houston had expressed it initially, "Equality of education is not enough. . . . No segregation operates fairly on a minority group unless it is a dominant minority." By the late 1940s the impressive series of successful NAACP cases had turned the attack from an indirect one into a direct one. In 1947 Houston wrote in a major black newspaper that "one of the most interesting developments in the entire campaign is the change in the way the issue of segregation has been handled. . . . The NAACP lawyers in order to get the campaign underway accepted the doctrine that the state could segregate . . . provided equal accommodations were afforded. Now the NAACP is making a direct, open, all-out fight against segregation. . . . There is no such thing as 'separate but equal.' . . . Segregation itself imports inequality." Gradually, however, as his health failed, he withdrew from direct participation. As he wrote one of the NAACP's chief new leaders in the campaign in 1949: "These education cases are now tight sufficiently so that anyone familiar with the course of the decisions should be able to guide the cases through. You and Thurgood can proceed without any fear of crossing any plans I might have."

Houston had been interested in the problems of the black workers, and after returning to private practice in 1938 much of his attention was given to pioneering litigation on their behalf. No philanthropist or national civil rights organization offered funds with which to fight racial discrimination and injustice in employment when Houston decided to turn his attention to labor law and inequities affecting black workers. Samuel Clark and J. A. Reynolds, members of the Association of Colored Railway Trainmen and Locomotive Firemen (ACR) of Virginia, an all-black union, had come to Houston, Houston & Hastie because of Houston's reputation with the NAACP. Clark recalled, "I wanted to go to Washington to go before Congress or anybody that I could to find out what we should do to protect our rights." The workers felt virtually helpless in the face of large racist unions, unsympathetic employers, and the new collective-bargaining procedures of the amended National Railway Labor Act of 1934. Under the law only bargaining agents chosen by the majority of members in a union could be statutory representatives in collective-bargaining negotiations. Invariably this seemed to work to the detriment of the minority black workers, since all of the railroad brotherhood excluded blacks from membership. In 1940 Houston became the general counsel for both the ACR and a sister organization, the International Association of Railway Employees (IARE). The pace for pursuing the rights of these black railroad workers was less cautious than that of the NAACP's education campaign. Nonetheless, it was a carefully designed assault on bastions of white supremacy in the world of labor. Houston, with a young Howard law graduate, Joseph Waddy, assisting him, expressed the militancy and urgency of the workers in legal papers fashioned for judges.

In another important respect this fight differed from the campaign against discrimination in education. Minor skirmishes and battles to invalidate a particularly unfavorable precedent gradually would not be acceptable "positionary tactics." In the case of black workers' rights, a direct attack was imperative. There was virtual silence from both Congress and the Supreme Court on the issue at hand, and in the one significant precedent (*Hodges v. United States*, 1906) the Supreme Court had held that even though they were covered by union contract, black workers dismissed from their jobs had no federally protected rights under which they could sue. Houston summarized the situation for Clark: "You don't have any laws to protect you, but I'm going to make some laws that will."

Two primary concerns dictated how forcefully and how uncompromisingly the attack was to be launched. First, the well-being of Houston's clients and their unions had to be considered. Acts of hostility toward blacks by national unions dated back to 1863 and included the removal of blacks from upwardly mobile or steady jobs by exclusion from craft unions, secret union-management agreements, and even murder. Second, the lawyers needed to establish as soon as possible, through a test case, that there was a constitutional principle of fair representation regardless of race. Houston and Waddy sued on behalf of the ACR and IARE, articulating grievances that ranged from loss of wages, destruction of seniority rights, breach of contract, and fraud to the federal question of breach of duty under the Railway Labor Act.

Recognizing that the success and the credibility of his leadership in any battle for workers' employment rights hinged on more than legal expertise, Houston came to know the black union people and to move in their circles. The ACR and IARE were independent unions of men who operated trains—i.e., operating workers—therefore, he went to where they were meeting in their locals and on their jobs, climbing piers and examining tracks to "find out how the work was, what they had to do."

In *Steele v. Louisville & Nashville* and *Tunstall v. Brotherhood of Locomotive Firemen* (1944), Houston first clarified for the courts the relation of fairness and freedom under the Constitution to the racially discriminatory activities of railway labor unions acting under federal law. Houston planned and with the aid of Waddy and an Alabama attorney, Arthur Shores, promptly prosecuted Bester William Steele's case through the Alabama state court system while petitioning the federal court system for relief on behalf of Tom Tunstall. Carefully constructed arguments and strong records in both cases won the workers a hearing before the U.S. Supreme Court after the Alabama Supreme Court and the U.S. Court of Appeals ruled against Steele and Tunstall, respectively.

Arguing both cases before the U.S. Supreme Court, Houston declared that an agent designated under federal law as the exclusive bargaining agent had a good faith duty to the minority workers. That duty minimally included representing the minority equally with the majority, which had selected the agent, and seeking no profit for union members in the majority over the non-union or minority union members. "An opposite interpretation," Houston insisted, "would legitimize a federal law permitting the denial of equal protection and due process."

The Court's decision in December 1944 vindicating Houston's position was a signal constitutional achievement. It established a precedent for fair representation of all workers regardless of race or union affiliation. Nevertheless, Houston perceived it as no final victory. The Supreme Court extended to the men the opportunity to sue for their rights in accordance with the principle established in the

cases, but the principle would have to be developed further to "make sure that [the cases] give our people real protection," Houston reported to the ACR and IARE. Moreover, consistent with his view of judges and other public officers—whom he labelled generally "servants of the class which places them in office and maintains them there"—Houston quickly reminded a friend the mass "agitation . . . over the plight of the Negro [locomotive] firemen" and "the work of the President's Committee on Fair Employment Practices. . . served as the background" for the high court's action. Subsequently Houston and Waddy handled a series of cases for railroad workers. The practical benefits of their legal victories proved limited, given the context of the times, but they were of utmost importance in establishing the precedents on which A. Philip Randolph's Brotherhood of Sleeping Car Porters and others succeeded in fashioning a body of labor law that eventually proved highly effective in breaking down barriers of discrimination by both industry and unions.

Convinced that all the questions about workers' rights and fairness "cannot be fought out in . . . courts because the courts are too slow and litigation . . . too expensive," Houston had supported the wartime Fair Employment Practices Committee (FEPC) since its inception in 1941. The FEPC had been created under pressure by Franklin D. Roosevelt's executive order in response to Randolph's threatened March on Washington during 1941. Houston's vocal and persistent advocacy of black workers' rights had led to his appointment to the FEPC by Roosevelt in February 1944. The *Norfolk Journal & Guide* reporter remarked then, "Mr. Houston's appointment, because of his militancy and ability will undoubtedly meet with . . . hearty approval from the Negro and other liberal organizations."

Hard-working, outspoken, and unyielding in his demand for fairness regardless of race, Houston personally investigated workers' complaints against corporations across the country, but especially on the West Coast. In late 1945 he became a spokesman for the committee, focusing on the problem of employment discrimination in the urban transit industry. This problem had a low priority in the view of the executive branch of the federal government, and Houston voiced his discontent. Subsequently he made public his criticism of President Harry Truman's alleged commitment to racially fair employment practices when the president's office blocked, on the basis of specious logic, the FEPC's directive to Capital Transit of the District of Columbia that it cease discriminatory hiring and promotion practices. At first evasive and finally unresponsive, White House aides flaunted their lack of respect for the FEPC and Houston during the entire transit controversy.

The refusal of Truman to meet with the FEPC, despite the committee's urgent request, compelled Houston to conclude that the president was both repudiating the committee and nullifying the executive orders that created the administrative body. In a letter to Truman, in December 1945, which received wide press coverage, Houston resigned from FEPC. Telling Truman that "the effect of your intervention in the Capital Transit case is not to eliminate the discrimination but to condone it," Houston could not see himself remaining a part of an administration marked by its "failure to enforce democratic practices and to protect minorities."

Houston had not sought greater recognition and acclaim from civil libertarian lawyers and Afro-Americans in connection with his challenges to racially discriminatory employment practices and policies, but he had gained it anyway. Although he fell out of favor with the Truman administration, Houston managed to move

in and out of a presidential appointment with his militancy and integrity intact. According to Houston, it was the duty of the lawyers to "find a way to make the United State Supreme Court change" rulings that permitted denials of liberty.

It would have sounded self-serving if Houston had hinted to anyone except Henrietta, his wife of eight years, how responsible for blacks and America he felt. Sometimes he felt driven. He really believed what he so often told his Howard students and colleagues—"no tea for the feeble, no crepe for the dead." Although Houston wanted to be with his family and he was quite attached to his son, he could not be satisfied with less than superior effort in any professional undertaking, so he was often absent from his family. Getting the job done right was one of the important attributes that all of his students, colleagues, family, and friends remembered about Houston. So when Henrietta Houston heard him explain, before he left for an NAACP conference on restrictive covenants, that "the test of character is the amount of strain it can bear," she was not surprised.

The NAACP had decided upon a full-fledged attack on racially restrictive covenants, and at this planning conference Houston was undoubtedly the most respected lawyer present. Contracts that contained restrictions on the buying and selling of houses to a particular race or ethnic group were major impediments to equal housing opportunities. Since 1940 Houston had been handling restrictive covenant cases in the District of Columbia through his firm. He had spent years on strategy and tactics because he was unalterably opposed to infringements on the rights to convey property and to live in a house of one's choice in the land of one's birth.

As in the education and the employee-rights cases, there existed a negative precedent from the Supreme Court. The Court, in an NAACP-supported case, *Corrigan v. Buckley* (1926), had refused to rule against the practice. Now in the fall of 1947 a new NAACP-supported case, the Missouri case of *Shelley v. Kraemer*, had been certified for review by the Supreme Court. Houston, with his acute sense of timing, was anxious that a District of Columbia case, *Hurd v. Hodge*, for which he was attorney, should be considered by the Court at the same time. In the litigation concerning Houston's clients, lower court judgments had restricted the Hurds' purchase and occupancy of a covenanted house. The U.S. District Court and the U.S. Court of Appeals ruled against them. Even a motion for rehearing at the Court of Appeals level had been denied. Their attorney's last resort was to petition the U.S. Supreme Court. Timing was critical to Houston, because he was certain that the attack on this restrictive covenant would be most effective if heard in conjunction with the NAACP cases.

Working with Howard law alumnus and future judge of the U.S. Court of Appeals, Spottswood Robinson III, and a white civil libertarian attorney, Phineas Indritz, who volunteered his services without fee, Houston worked on the case in his usual intensive way. Robinson recalled that "long hours, incessant toil and meticulous attention to each element of the problem were the keys. . . . And at no time when I worked with him did I see any 'tea for the feeble.'" As they worked on the request for a hearing in the U.S. Supreme Court, Houston returned drafts to Robinson for refinement with regularity and, as Robinson remembered, Houston's "wide advice, accompanied by explanation of the analysis and synthesis forerunning it, was a revelation in itself." The three men researched and wrote painstakingly in order to show the applicability of the Fifth Amendment and the federal Civil

Rights Act of 1866 to their clients' claim. Conrad Harper writes that "Hurd, in which Houston's richly comprehensive presentation drew on constitutional, statutory, common law, public policy and social science materials, was one of his most extensively prepared cases." The central question of the brief was also a challenge to the justices and the system of which they were a part: "Shall we in the United States have ghettos for racial, religious and other minorities, or even exclude such minorities entirely from whole areas of our country, by a system of judicially enforced restrictions based on private prejudices and made effective through the use of government authority and power?"

As in all of his civil rights cases, Houston considered public support a necessity. He and the NAACP lawyers invited organizations interested in the battle to file briefs as friends of the court. He was most gratified, for obvious reasons, by such a brief filed by the office of the U.S. attorney general. And Houston created his own propaganda. In the *Afro-American*, he publicized the housing rights cases during 1947 and January 1948.

In oral argument before the Supreme Court, Houston called the attention of the Court to the meaninglessness of the right to own property without the right to be protected from judicially enforced discrimination. Houston stressed the racism inherent in the right his opponents claimed, discussed the legal propositions that clarified federal duty, and pointed out the record of facts pertaining to race relations. After his opponents confidently reminded the Court of its precedent in *Corrigan v. Buckley*, Houston forced the issue out of its private-agreement vacuum. In rebuttal he asked how such privacy could be reconciled with participation in World War II and with national security concerns. Robinson allowed that "just to watch him in action was to witness a demonstration of the way it ought to be done," as others in attendance remembered Houston exhibiting an intrepidity not frequently witnessed in the U.S. Supreme Court. To be certain that the justices understood the fundamental matter before them, Houston concluded with startling clarity, "Racism must go!"

Hurd v. Hodge and *Shelley v. Kraemer* settled the issues of judicial enforcement of restrictive covenants. Delivering opinions on both of these cases in May 1948, the justices declared such contracts unenforceable in the courts of the land. The equal protection clause of the Fourteenth Amendment prohibited such state action and the U.S. Code invalidated federal court enforcement of such agreements.

By the last years of the 1940s, Houston had enormous influence among civil rights and civil liberties proponents, but his court arguments did not reach the masses of black people as he had hoped. He was litigating education, labor, and housing cases. He was in demand throughout the United States to speak in defense of the rights of black Americans in every area of life. His legal advice was often coveted. Supporting the National Negro Congress's appeal to the United Nations, Houston told the readers of his weekly newspaper column that "discrimination and denial of human and civil rights [had] reach[ed] a national level" and the national government was not protecting black Americans against "local aggression." Houston encouraged Afro-Americans to see themselves a part of the non-white majority in a world that included Africans and Asians intent upon freeing themselves from the bonds of Western imperialism and colonialism. Regarding white America, he added, we have a "spiritual responsibility to lead . . . white United States brethren into the real fellowship of nations."

In Houston's last years, black people saw him as part of black leadership delegations in the White House protesting segregation or as a keynote speaker for

rallies on the rights of blacks and he was. In 1950, when both the black and white press prominently reported his death from a heart attack, blacks of all classes knew that they had lost a champion in Houston. Mourners at his funeral included five U.S. Supreme Court justices, federal judges, the secretary of the Department of the Interior, journalists who had covered Houston's many activities, colleagues such as Marshall, Wilkins, and White of the NAACP, Waddy, and Robinson as well as a score of other lawyers who identified themselves as "social engineers" and civil rights lawyers. As Hastie reminded those present, Houston engaged in struggle with full knowledge of its risks, yet he believed that "every battle must be fought until it is won . . . without pause to take account of those stricken in the fray."

Charles Hamilton Houston, as an educator and civil rights lawyer/activist, played a principal role in defining and pacing the legal phase of the Afro-American struggle for freedom from 1935 until his death. He always tried to take into account not only racial and class violence and exploitation, but also the *modus operandi* of the judicial system, limited minority access to law-making branches of government, and an historically racist, undemocratic, non-egalitarian society. In the context of this legal struggle he operated primarily in the judicial arena. Nevertheless, Houston also worked through other arms of the legal system because he recognized that "courts [were] too slow." He believed, however, that disfranchisement and racial repression militated against the immediately successful use of Congress, state legislatures, or executive agencies with no enforcement power as weapons in the struggle. Convinced that mass agitation and protest were essential, Houston supported direct action and participated in demonstrations, although his own major contribution lay in working through the courts.

Houston consistently held a position of leadership among Afro-Americans between 1935 and 1950. His legal accomplishments were the consequence of carefully considered, well-developed legal strategies and skillful arguments. Justice William O. Douglas of the U.S. Supreme Court, who was appointed in 1939 and had occasion to assess Houston as a litigator, noted: "I knew Charles H. Houston; and I sincerely believe he was one of the top ten advocates to appear before this court in my 35 years." His philosophy of social engineering—using the law to secure fundamental social change for the improvement of society and to establish and protect minority rights—had wide acceptance among civil rights lawyers. Moreover Houston maintained a strong leadership position among black people because of his skill at interpersonal relationships. His successes in the Supreme Court were shared accomplishments. They resulted from the cooperation of many legal associates throughout the nation and even the active efforts of communities, individuals, and protest organizations. He was a respected leader because people could sense that he was neither arrogant nor manipulative. He regarded himself as a "technician probing in the courts . . . how far the existing system will permit the exercise of freedom," and therefore he openly entertained a wide range of views pertaining to the struggle for freedom and justice. Finally, his legal strategy for promoting judicial recognition of the Afro-Americans' rights was successful. Not only did his work have some immediate impact on the opportunities for blacks to explore or exercise rights in some areas of American life, but his Supreme Court victories had far-reaching significance for the future progress of blacks in American society.