


Spring 1984

Desegregating the University of Florida Law School: Virgil Hawkins v. The Florida Board of Control

Darryl Paulson

Paul Hawkes

Follow this and additional works at: <http://ir.law.fsu.edu/lr>

 Part of the [Civil Rights and Discrimination Commons](#), [Constitutional Law Commons](#), [Fourteenth Amendment Commons](#), and the [Legal Education Commons](#)

Recommended Citation

Darryl Paulson & Paul Hawkes, *Desegregating the University of Florida Law School: Virgil Hawkins v. The Florida Board of Control*, 12 Fla. St. U. L. Rev. 59 (2017) .
<http://ir.law.fsu.edu/lr/vol12/iss1/3>

This Article is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in Florida State University Law Review by an authorized editor of Scholarship Repository. For more information, please contact bkaplan@law.fsu.edu.

DESEGREGATING THE UNIVERSITY OF FLORIDA LAW SCHOOL: VIRGIL HAWKINS V. THE FLORIDA BOARD OF CONTROL

DARRYL PAULSON* AND PAUL HAWKES**

In April of 1949, Virgil D. Hawkins, a thirty-nine-year-old black public relations official of Bethune-Cookman College, applied for admission to the University of Florida College of Law. Thus began a nine-year odyssey that would find Hawkins appearing four times before the United States Supreme Court and a half dozen times before Florida jurists in his attempt to become the first black admitted to the University of Florida, the state's only law school at that time. In spite of what appeared to be a clear order from the United States Supreme Court to admit Hawkins, he would be stymied in his quest to attend the law school of his native state. The actions of Florida's public officials, including the Governor, the Attorney General, the State Board of Control, and the Florida Supreme Court would frustrate Hawkins in his struggle to desegregate higher education in the state.¹

Hawkins' application, along with four others from black students applying to graduate programs at the University of Florida, was rejected on May 13, 1949, by the Florida Board of Control, the governing body of the state university system. Believing that this denial violated his fourteenth amendment right to "equal protection of the law," Hawkins asked the Florida Supreme Court to issue a writ of mandamus ordering his admission to the University of Florida Law School. In response to the suit, the Board of Control offered two alternative ways for Hawkins to achieve a legal education. The first plan allowed Hawkins to attend, at state expense, a law school outside the state. The second plan called for Hawkins to attend the newly authorized school of law at Florida A & M College in Tallahassee. Under the second plan, Hawkins would be allowed to attend law school at the University of Florida

* B.A. 1970, St. Cloud State College; M.A. 1971, Ph.D. 1975, Florida State University. Associate Professor of Political Science, University of South Florida, St. Petersburg.

** Student, Florida State University College of Law, Tallahassee.

1. Among the various articles on Virgil Hawkins, the most useful are: J. PREER, *Hawkins: Conditions That Now Prevail*, in *LAWYERS v. EDUCATORS* 127 (1982); Bennett, *The South's Most Patient Man*, *EBONY*, Oct. 1958, at 89; Brazeal, *Some Problems in the Desegregation of Higher Education in the "Hard Core" States*, 27 *J. NEGRO EDUC.* 352 (Summer 1958); Porter, *The Status of Educational Desegregation in Florida*, 25 *J. NEGRO EDUC.* 246 (Summer 1956); Selkow, *Hawkins, The United States Supreme Court and Justice*, 31 *J. NEGRO EDUC.* 97 (Winter 1962); Tomberlin, *The Negro and Florida's System of Education: The Aftermath of the Brown Case* (Aug. 1967) (Ph.D. dissertation, Florida State University).

“until such time as adequate and comparable facilities and personnel” could be established at Florida A & M to satisfy the equal protection requirements.²

The first alternative was rejected by Hawkins, his NAACP attorneys, and the Florida Supreme Court. Hawkins personally expressed his objections about the possibility of having to leave his home state to receive a legal education. As a state taxpayer, Hawkins felt entitled to state privileges. “The white boys with whom I had played didn’t have to go off,” noted Hawkins, and “had I gone off to law school the nearest one would have been Howard University in Washington, D.C.”³ The Florida Supreme Court was also fully aware of the fact that the United States Supreme Court had voided such a proposal in 1938 in *Missouri ex rel. Gaines v. Canada*.⁴ Missouri had required Negro law school applicants to obtain their education in adjacent states. The Supreme Court of the United States rejected this scheme, holding that once Missouri decided to support higher education for whites, it had the same obligation to blacks. In a six-two decision, the Court ordered Gaines’ admission, stating that “the State was bound to furnish him within its borders facilities for legal education substantially equal to those which the State there afforded for persons of the white race. . . .”⁵

Although Hawkins and his attorneys rejected the second alternative of the Board of Control, attending the newly created Florida A & M College of Law, the Florida Supreme Court found the plan acceptable. “In our view,” stated the unanimous court, “this alternative plan presented by the respondents in their answer satisfies all the requirements of the equal protection of the laws clause of the Federal Constitution.”⁶ The most important element of the case, according to the Florida Supreme Court, was the issue of state sovereignty. As the court noted in upholding the Board of Control’s second alternative,

No court in the land has ever required of a sovereign state any more than is encompassed within the plan proposed by the Board of Control in its answer. Every individual political right and privilege guaranteed the citizen by the provisions of the Federal Constitution is maintained under the program, while at the same time

2. *State ex rel. Hawkins v. Board of Control*, 47 So. 2d 608, 611 (Fla. 1950).

3. *Brazeal*, *supra* note 1, at 356.

4. 305 U.S. 337 (1938).

5. *Id.* at 351.

6. *Hawkins*, 47 So. 2d at 613.

the right of the State to adopt such method as it finds best designed to afford substantially equal educational opportunities to Florida citizens of different race groups has been preserved.⁷

In accepting the Board's second alternative, however, the Florida court seemed to be conveniently ignoring a series of United States Supreme Court decisions. These cases held that such "overnight" law schools and graduate schools were so deficient in terms of curriculum, facilities, faculties and a host of other intangible factors that they could not afford black students an equal educational opportunity.⁸

Ten months later, Virgil Hawkins was again before the Florida Supreme Court, asking them to order his admission to the University of Florida. Hawkins' complaint stated that he had exhausted all reasonable means to obtain admission to the only tax-supported law school in the state. He further claimed that "the creation of the purported school of law" for Negroes at Florida A & M failed to provide him with the equal protection of the law.⁹ Once again, the state's highest tribunal rejected this view. According to the court, all Hawkins had to do was make a "timely" application to Florida A & M and a law school for blacks would begin operating. The court also denied a request to dismiss its jurisdiction over the case so that Hawkins might appeal to the United States Supreme Court.

On August 1, 1952, Hawkins made his third appearance before the Florida Supreme Court. Hawkins' attorneys again requested his admittance to the University of Florida and, failing that, asked that the court dismiss the case. The court pointed out that the law school at Florida A & M which Hawkins had previously referred to as the "purported law school" no longer existed merely on paper but now had "classrooms, a law library, a law faculty, and appropriations of public moneys which appear to be sufficient adequately to maintain the law school."¹⁰ The court also judicially noticed the "fact" that the Florida A & M Law School "offered law courses similar in content and quality to those offered at the Col-

7. *Id.* at 614.

8. See *Sweatt v. Painter*, 339 U.S. 629 (1950); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950); *Sipuel v. Oklahoma*, 332 U.S. 631 (1948).

9. *State ex rel. Hawkins v. Board of Control*, 53 So. 2d 116, 118 (Fla. 1951).

10. *State ex rel. Hawkins v. Board of Control*, 60 So. 2d 162, 164 (Fla. 1952). The Florida A & M Law School opened in September of 1951 with five students, four faculty members and a library of 16,000 volumes. FLORIDA BOARD OF CONTROL, BIENNIAL REPORT (1950-1952).

lege of Law of the University of Florida."¹¹ Nevertheless, as Hawkins was adamant in his desire to attend the law school at the University of Florida, the court agreed that there was nothing more that it could do and so dismissed the case.

Hawkins and his attorneys immediately filed an appeal to the United States Supreme Court. Unlike the result in 1951, when the Court refused to hear the case because the state court still retained jurisdiction, this time certiorari was granted. Unfortunately for Hawkins, his case would be put on hold until the Court disposed of the *Brown v. Board of Education*¹² case on May 17, 1954. In that landmark decision, a unanimous Court struck down the "separate but equal" doctrine and declared that "separate educational facilities are inherently unequal."¹³ One week after the *Brown* decision, the Supreme Court issued a per curiam decision on the *Hawkins* case. In its ruling, the Court vacated the judgment of the lower court and remanded the case "in light of the Segregation Cases decided May 17, 1954 . . . and conditions that now prevail."¹⁴

At last, victory appeared to be within the grasp of Virgil Hawkins. Any celebration, however, would have to be postponed. The Florida Supreme Court had a far different perception of "conditions that now prevail" than did the nation's highest court. The Florida Supreme Court postponed any action on the *Hawkins* case until the Supreme Court of the United States handed down its *Brown II*¹⁵ ruling, which would indicate how the Court intended its desegregation decree to be implemented. In *Brown II*, the United States Supreme Court gave local officials the primary responsibility to make "a prompt and reasonable start toward full compliance," but these officials were allowed to take into consideration local conditions in fashioning their desegregation policy.¹⁶ The majority of the Florida justices interpreted *Brown II* as giving trial judges the authority to determine "the precise time in any given jurisdiction when members of the Negro race shall be admitted to white schools."¹⁷ This novel interpretation of *Brown II* became the rationale for spurning Hawkins' request for a writ of mandamus.

11. *Hawkins*, 60 So. 2d at 164.

12. 347 U.S. 483 (1954).

13. *Id.* at 495. For a masterful account of the history of this landmark case, see R. KLUGER, *SIMPLE JUSTICE* (1976).

14. *Florida ex rel. Hawkins v. Board of Control*, 347 U.S. 971 (1954).

15. *Brown v. Board of Educ.*, 349 U.S. 294 (1955).

16. *Id.* at 300.

17. *State ex rel. Hawkins v. Board of Control*, 83 So. 2d 20, 24 (1955).

The justices then agreed with the Board of Control's position that the admission of Virgil Hawkins to the University of Florida would present "grave and serious problems affecting the welfare of all students."¹⁸ The court appointed Circuit Judge John A. H. Murphree to be a commissioner of the court. Murphree was instructed to take testimony which would be used to determine "the time when the relator should be admitted to the University of Florida Law School."¹⁹

Justice Terrell wrote a concurring opinion that must rank as one of the most unsound legal decisions in the court's history. Terrell argued that southern states had spent "billions of dollars" creating a "separate but equal" school system and, therefore, desegregation should be delayed "until the schools provided in reliance on the doctrine of *Plessy v. Ferguson* have ceased to be adequate."²⁰ Justice Terrell then noted that segregation

is and has always been the unvarying law of the animal kingdom. The dove and the quail, the turkey and the turkey buzzard, the chicken and the guinea, it matters not where they are found, are segregated. . . . [W]hen God created man, he allotted each race to his own continent according to color, Europe to the white man, Asia to the yellow man, Africa to the black man, and America to the red man, but we are now advised that God's plan was in error and must be reversed. . . .²¹

An editorial cartoon in the *St. Petersburg Times* lambasted Terrell's faulty logic. The cartoon showed an American Indian confronting Terrell and telling him to "Scram, paleface!"²²

For the first time, two of the Florida justices dissented from their colleagues. Justices Sebring and Thomas noted that "whatever may be our personal views and desires in respect to the matter, we have the binding obligation imposed by our oath of office, to apply to the issue at hand the Federal Constitution, as presently interpreted by the Supreme Court of the United States. . . ."²³ Although they realized that certain "adjustments" would have to be made before admitting Hawkins, they did not believe that "these adjustments will be of such a major nature that

18. *Id.*

19. *Id.* at 25.

20. *Id.* at 26-27 (Terrell, J., concurring).

21. *Id.* at 27-28.

22. *St. Petersburg Times*, Oct. 21, 1955, at A6, col. 3.

23. *Hawkins*, 83 So. 2d at 31 (Sebring, J., concurring and dissenting).

the constitutional right of the relator to attend the school of his choice should be denied at this time. . . ."²⁴

In the face of the Florida Supreme Court's continued judicial defiance, Virgil Hawkins once again took his case to the nation's highest court. In a brief, but pointed, per curiam opinion, the Supreme Court attempted to distinguish desegregation in higher education from that in elementary and secondary schools. "[O]ur second decision in the *Brown* case . . . had no application to a case involving a Negro applying for admission to a state law school." The jurists then ordered, "As this case involves the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates."²⁵

After seven years of Florida's judicial delay, the March 12, 1956, decision of the United States Supreme Court appeared to put an end to Virgil Hawkins' battle. A front page story in the *New York Times* was headlined, "Court Bars Delay in Granting Negro Law School Seat," while the *Tampa Tribune* headline read, "High Court Orders Florida U. to Admit Negro Law Student." Unfortunately, the decision of the Supreme Court would not only trigger further judicial obstructionism, but also made the Hawkins case a pivotal political issue in the 1956 gubernatorial election.

Gilbert L. Porter, in a 1956 article in the *Journal of Negro Education*, contended that the *Hawkins* case helped push Florida from moderation to massive resistance on the race issue.²⁶ The day after the Supreme Court's decision, the *Tallahassee Democrat* editorialized that the Court had "allowed desegregation extremists to force from it a decision on admission of a Negro to the University of Florida right now at the height of a political campaign and with emotions running high."²⁷ Governor LeRoy Collins, widely praised as a force of moderation in southern race relations, immediately announced his opposition to the decision and said he would personally attempt to argue Florida's case before the Supreme Court.²⁸ In a statewide radio broadcast on the same day the Court

24. *Id.* at 33.

25. Florida *ex rel.* Hawkins v. Board of Control, 350 U.S. 413, 414 (1956) (citations omitted).

26. Porter, *supra* note 1, at 252.

27. Tallahassee Democrat, Mar. 13, 1956, at A6, col. 1.

28. St. Petersburg Times, Mar. 13, 1956, at A1, col. 3. The major works praising Governor Collins as a force of modernation include: E. BLACK, SOUTHERN GOVERNORS AND CIVIL RIGHTS (1976); D. COLBURN & R. SCHER, FLORIDA'S GUBERNATORIAL POLITICS IN THE TWENTIETH CENTURY (1980); Wagy, A South to Save: The Administration of Governor LeRoy Col-

rendered its verdict, Governor Collins vowed that Florida was "just as determined as any Southern state to maintain segregation, but we will do so by lawful and peaceful means."²⁹

At Collins' suggestion, the state cabinet met and pledged to resist the Court's order and agreed to call a conference to devise strategies to resist desegregation. That conference was held on March 21, 1956 in Tallahassee and participants included the governor and the cabinet, the Board of Control, all university presidents, and several legislators and educators. The conferees adopted four motions. First, they agreed to petition the Supreme Court to rehear the *Hawkins* case. Second, they voted to adopt new regulations for admission to state universities. Third, they agreed to appoint a commission to study desegregation remedies. Finally, they urged Governor Collins to ask President Eisenhower to call a meeting of Southern governors to discuss desegregation.³⁰

The two primary challengers to Governor Collins in the 1956 governor's race were Democrats, Senator Sumter Lowry of Tampa and former governor Fuller Warren of Miami. Lowry, a retired National Guard lieutenant general, took the most extreme position on the segregation issue. According to Lowry, desegregation was a plot designed to destroy the white race by mixing it with the blood of the Negro race. Lowry attacked Collins' inaction in the *Hawkins* case, saying that Collins' request to appear before the Supreme Court was "too little and too late."³¹ Invoking the doctrine of interposition, Lowry urged the state to interpose "the sovereign power of the State of Florida to prevent race mixing here."³²

Fuller Warren, governor from 1949 to 1953, was Collins' main electoral foe. Warren tried to capitalize on the *Hawkins* case by urging the Board of Control to reject Hawkins' application to law school. In a telegram to the Board, Warren accused Hawkins of having beaten two children while employed as a teacher in Lake County, Florida, in the 1940's. Warren described the alleged beat-

lins of Florida (June 1980) (Ph.D. dissertation, Florida State University).

29. LeRoy Collins, Radio and Television Campaign Speech (Mar. 12, 1956) (available in Box 1 of the LeRoy Collins Papers in the library of the University of South Florida, Tampa) [hereinafter cited as Collins Papers]. Miami Herald columnist Jack Bell wrote that he was "surprised and disappointed" by Collins' refusal to "show courage" with respect to the *Hawkins* case. Sept. 30, 1956, at 4G, col. 1. In a personal letter responding to Bell's column, Collins argued that his refusal to resist Hawkins' admission "would have had disastrous consequences" because of the "explosive atmosphere" in the state. Collins Papers, Box 1.

30. Tomberlin, *supra* note 1, at 162.

31. Tallahassee Democrat, Mar. 13, 1956, at 1, col. 5.

32. St. Petersburg Times, Apr. 4, 1956, at 12, col. 3.

ings as "cruel and unusual punishment" in violation of the Constitution and, as such, grounds for rejecting Hawkins' request for admission to the University of Florida.³³ The efforts of Collins, Lowry, and Warren in trying to emerge in the eyes of the electorate as the leading defender of segregation led Frank Trippett of the *St. Petersburg Times* to describe the 1956 gubernatorial campaign as "rolling along like a segregation surrey with a lunatic fringe on top."³⁴

Two important reports were issued on the *Hawkins* case in May of 1956. The first report was filed by Commissioner Murphree, who had been appointed by the Florida Supreme Court to gather evidence concerning the impact of Hawkins' admission to law school. Hawkins and his attorneys refused to participate in the hearings, a sign that was duly noted by Murphree to indicate that it was not the right time to admit Hawkins. After hearing testimony from state officials and educators, Murphree concluded that Hawkins' enrollment "may have the potential of causing serious public discord and disturbances in the state."³⁵

That same month, the Board of Control issued its *Study on Desegregation*. In this report, the Board concluded that better than ninety percent of the Negroes would be in difficulty academically when they came to the white institutions. Based on 57,322 questionnaires sent out by the Board, the report stated that the main fear expressed was that of intermarriage between the white and Negro races. In addition, the Board expressed fear of declining revenue in cafeterias and a decline in alumni contributions because of integration.³⁶

Armed with these new reports, in March of 1957 the Florida Supreme Court would stifle for a fifth time the attempt of Virgil Hawkins to enter the law school at the University of Florida. Chief Justice Roberts first rejected the 1956 ruling of the United States Supreme Court which stated there was "no reason for delay" in the *Hawkins* case. Roberts and four of his colleagues noted several rea-

33. Two former school officials from Lake County denied that the incident ever occurred. On March 29, 1956, Governor Warren released four affidavits which he said substantiated his case. The affair ended when Attorney General Ervin informed Warren that his charges against Hawkins did not affect the question of admission to the University of Florida. See Tomberlin, *supra* note 1, at 122-24.

34. *St. Petersburg Times*, Mar. 25, 1956, at 1, col. 1.

35. Hearing Conducted by Commissioner John A. H. Murphree at the Request of the Florida Supreme Court (May 21, 1956). Transcripts of the hearing are contained in the Collins Papers, *supra* note 29, in Box 139, File "Race Relations, 1955-1958."

36. FLORIDA BOARD OF CONTROL, STUDY ON DESEGREGATION (1956).

sons why delay was justified. For the most part, they merely summarized the reports of Commissioner Murphree and the Board of Control. Justice Roberts, in a lengthy plea in support of state sovereignty, argued that despite recent infringements on states' rights:

[W]e cannot attribute to the Supreme Court an intention to abrogate the rule which denies to federal courts the right to regulate or control long-established rules of practice and procedure adopted by state courts for the administration of justice therein. . . . [W]e cannot assume that the Supreme Court intended to deprive the highest court of an independent sovereign state of one of its traditional powers, that is, the right to exercise a sound judicial discretion as to the date of the issuance of its process in order to prevent a serious public mischief.³⁷

The high court denied without prejudice the request for a writ of mandamus until such time as Hawkins could show that "his admission can be accomplished without doing great public mischief."³⁸ In reality, the court had thrust an impossible burden of proof upon Hawkins.

As had occurred in the Florida court's 1955 decision, two justices dissented. Justices Thomas and Drew agreed that "the time has arrived to obey the mandate of the higher court . . . regardless of our lack of sympathy with the holding."³⁹ After describing in detail the history of Hawkins' court battles, Justice Thomas concluded, "It seems to me that if this court expects obedience to its mandates, it must be prepared immediately to obey mandates from a higher court."⁴⁰ Finally, Justice Drew cited the often quoted axiom

37. *State ex rel. Hawkins v. Board of Control*, 93 So. 2d 354, 358 (Fla. 1957).

38. *Id.* at 360. In a concurring opinion, Justice Terrell bitterly attacked the United States Supreme Court's recent holdings with respect to the right of states to determine their own education systems:

Some anthropologists and historians much better informed than I am point out that segregation is as old as the hills. The Egyptians practiced it on the Israelites; the Greeks did likewise for the barbarians; the Romans segregated the Syrians; the Chinese segregated all foreigners; segregation is said to have produced the caste system in India and Hitler practiced it in his Germany, but no one ever discovered that it was in violation of due process until recently and to do so some of the same historians point out that the Supreme Court abandoned the Constitution, precedent and common sense and fortified its decision solely with the writings of Gunner Myrdal, a Scandinavian sociologist. What he knew about constitutional law we are not told nor have we been able to learn.

Id. at 360-61 (Terrell, J., concurring).

39. *Id.* at 367 (Thomas, J., dissenting).

40. *Id.* This position was supported by United States Senator Jacob Javits (Repub.—N.Y.), who cited the *Hawkins* case as a "striking example" of interposition. Sena-

of law that "justice delayed is justice denied."⁴¹

The *Tampa Tribune* praised the "basically sound" reasoning of the court in an editorial the day after the court's decision. "Are not Florida authorities better qualified to know the difficulties involved," argued the *Tribune*, "than are the nine men sitting in splendid isolation in Washington?"⁴² Richard Ervin, Florida's Attorney General and Hawkins' opponent throughout the long ordeal, described the decision as "very fine."⁴³ The NAACP attorney for Hawkins, Horace E. Hill, not only complained about the legal reasoning of the decision but also questioned its philosophical implications. "Florida and its people," observed Hill, "have not progressed far enough toward the idea of Christian morality and brotherhood."⁴⁴

On October 15, 1957, the Supreme Court of the United States denied certiorari to Virgil Hawkins, "without prejudice to the petitioner's seeking relief in an appropriate United States District Court."⁴⁵ Hawkins followed the Supreme Court's advice, but on January 29, 1958, Federal District Judge Dozier DeVane refused to issue a preliminary injunction against university officials. Judge DeVane refused to permit Hawkins to present evidence at the hearing, an error that was noted by the Court of Appeals for the Fifth Circuit in reversing Judge DeVane's opinion.⁴⁶

On May 16, 1958, the Board of Control placed another obstacle in the path of Virgil Hawkins. The Board adopted a regulation barring anyone from the University of Florida Law School who had scored less than 250 on the admissions test in the past or 350 in the future.⁴⁷ Hawkins had scored only 200 when he had taken the examination in August 1956. When Hawkins originally applied to the University in 1949, it had no minimum test score requirement. In fact, the Florida court noted in its 1950 decision that Hawkins possessed "all the scholastic, moral and other qualifications, except

tor Javits encouraged an audience of New York University Law Alumni to take a firm stand "in favor of the Federal Constitution as the paramount law of the land and against the doctrine of interposition." *New York Times*, Mar. 12, 1957, at 6, col. 3.

41. *Hawkins*, 93 So. 2d at 367 (Drew, J., dissenting).

42. *Tampa Tribune*, Mar. 9, 1957, at 8, col. 1.

43. *St. Petersburg Times*, Mar. 9, 1957, at 1, col. 1.

44. *Id.* Hawkins' first attorney was Alex Ackerman, a white Orlando lawyer active in Republican party politics. Hill, a black attorney from Daytona Beach, was assisted by several lawyers from the NAACP Legal Defense and Education Fund, including its chief counsel, Thurgood Marshall.

45. *Florida ex rel. Hawkins v. Board of Control*, 355 U.S. 839 (1957).

46. *Hawkins v. Board of Control*, 253 F.2d 752 (5th Cir. 1958).

47. *New York Times*, May 17, 1958, at L39, col. 6.

as to race and color.”⁴⁸ Now the state of Florida had changed the rules of the game in its attempt to deny Virgil Hawkins a place in law school.

Appearing once again before Judge DeVane, the state contended that Hawkins was not “scholastically or morally fit” to attend the University of Florida. In addition to noting Hawkins’ admission test score, Florida officials contended that Hawkins had written a bad check, defaulted on an auto loan, and had beaten two children while teaching school. DeVane was not convinced by the state’s argument, and asked Hawkins if he was ready to make a new application, or if he would continue to seek admission based on his 1949 application. Hawkins opted for the first approach. According to Samuel Selkow, Hawkins decided on this option because if he

relied on his 1949 application, there might have been a long trial on his qualifications. During such a long trial other qualified Negroes would have had to wait for the Federal Court’s decision on the race issue. . . . By agreeing to present a new application, Hawkins removed the issue of his own qualifications from the case and allowed the Federal Court to go directly to the race issue.⁴⁹

On June 18, 1958, Judge DeVane issued an injunction prohibiting the University of Florida from limiting admission to its graduate programs to white persons only.⁵⁰

Although Hawkins applied for admission to the University of Florida for the Fall 1958 term, he changed his mind and decided to pursue his graduate education elsewhere. Hawkins told the *Pittsburgh Courier* that he ended his nine-year battle because he was tired and broke, and because his wife had asked him not to continue the fight.⁵¹ Hawkins also expressed his resentment over the delaying tactics of the Florida government. “When I started this I was 39 years old,” exclaimed Hawkins. “After ten years of delaying tactics, they talk about gradualism and patience! How gradual can

48. *Hawkins*, 47 So. 2d at 609.

49. Selkow, *supra* note 1, at 100 (footnote omitted).

50. *Hawkins v. Board of Control*, 162 F. Supp. 851, 853 (N.D. Fla. 1958).

51. *Pittsburgh Courier*, Nov. 7, 1959. In an interview with the authors on December 10, 1982, Mr. Hawkins confirmed that the primary reason for ending his legal battle was the request of his wife. In September of 1958 the University of Florida Law School admitted its first black student, George Starke of Orlando, without incident. Tomberlin, *supra* note 1, at 190.

we be? I wish I were nine years younger."⁵²

In September of 1959, Virgil Hawkins enrolled at Boston University and earned a master's degree in public relations. From 1961 until 1965, Hawkins attended the New England School of Law in Boston where he would finally earn his law degree at the age of fifty-eight.⁵³ Unfortunately, the New England Law School was not accredited until four years after Hawkins graduated, and the Florida Bar demands that its lawyers attend accredited institutions. If Hawkins had been admitted to the University of Florida when he had originally applied, he would have qualified for "diploma privileges" which would have earned him admission to the Florida Bar without a bar examination. In 1974, the Florida Supreme Court voted to admit Benjamin Ervin, brother of former Florida Attorney General Richard Ervin, to the Florida Bar even though he had failed the Bar examination four times. The court ruled that Ervin had originally enrolled in law school when diploma privileges were in effect and, thus, he was not required to pass the Bar examination.⁵⁴ Two years later, Hawkins would appeal to the Florida Supreme Court to admit him directly to the Florida Bar without having to pass the Bar exam. Hawkins cited the *Ervin* precedent. On November 13, 1976, at the age of seventy, a unanimous supreme court admitted Virgil Hawkins to the Florida Bar without his having to take the Bar examination.⁵⁵ In its opinion, the court noted that Hawkins had a "claim on this court's conscience."⁵⁶ After over a quarter of a century in struggle, Virgil Hawkins, "the South's most patient man," was finally a lawyer.⁵⁷

52. Brazeal, *supra* note 1, at 358.

53. St. Petersburg Times, Mar. 21, 1976, § "The Floridian," at 22, col. 1.

54. *In re Ervin*, 290 So. 2d 9 (Fla. 1974).

55. *In re Hawkins*, 339 So. 2d 637 (Fla. 1976).

56. *Id.* at 638. Prior to the Florida Supreme Court's decision on admitting Hawkins to the Bar, Richard Ervin, the Florida Attorney General who had so vigorously defended Florida's policy of segregation in the various Hawkins trials, would urge the high court to admit Hawkins. Ervin told the St. Petersburg Times that "I thought I had the duty at the time to oppose his admission to the University of Florida. However, in retrospect, I'm sorry about the whole episode." Mar. 21, 1976, § "The Floridian," at 22, col. 1.

57. Two issues surrounding Virgil Hawkins emerged in the spring of 1983. Over 100 law students at Florida State University signed a petition urging the state legislature to name the school's new law library after Hawkins. The proposal was sponsored by State Senator Carrie Meek (Dem.—Miami), but was not acted on by the legislature. St. Petersburg Times, Apr. 19, 1983, at 9B, col. 3. The legislature did establish ten law fellowships at both the University of Florida and Florida State University in Hawkins' name. Ch. 83-300, 1983 Fla. Laws 1635.

In a second development, proceedings were initiated to discipline Hawkins for alleged "inadequate and incompetent" handling of a client's case. Hawkins was accused of failing to

tell his client of a plea bargain offer, failing to interview prosecution witnesses, and encouraging a defense witness to misrepresent her identity. A legal referee who heard the charges against Hawkins stated: "I do not believe that any of his [Hawkins'] actions were undertaken with intent to deceive the court but resulted from a lack of experience." The referee recommended that Hawkins be publicly reprimanded and be placed on probation for two years. After consultation with counsel, Hawkins agreed to these sanctions. The Board of Governors of the Florida Bar petitioned the Florida Supreme Court to overturn the referee's recommended disciplinary measures and to instead suspend Hawkins for three months and not allow him to resume his practice until he provided proof of rehabilitation. *Florida Bar v. Hawkins*, 9 Fla. L.W. 42 (Feb. 3, 1984).

In an impassioned plea before the Florida Supreme Court on November 9, 1983, Hawkins stated:

On the 28th of this month, I'll be 77 years old and all of us know that at age 77, the sand in the hourglass of time is swiftly running out. I would hate very much to be suspended on a little thing and leave here not a member of the Florida Bar.

St. Petersburg Times, Nov. 10, 1983, at 3B, col. 1.

Once again, the fate of Virgil Hawkins was pending before the Florida Supreme Court. The court held that, based on the referee's findings of fact, "we find no justification for the imposition of the punishment requested by the Board of Governors." Hawkins was therefore not suspended but was instead reprimanded and placed on probation. 9 Fla. L.W. at 42.

