

part the board seemed to discharge its duties efficiently and without significant controversy. One area in which it did not measure up, at least in hindsight, was its reluctance to come to grips with the state's flagrant discrimination against blacks in higher education.

"Separate but equal" was, of course, the law governing public education in Maryland, but the separate systems were not equal, especially in higher education. Black students were not admitted to the University of Maryland or to the state teachers colleges, and there were no public substitutes for them. Morgan and Princess Anne Colleges were still private schools, although they did receive state appropriations.

By 1935 this scandalous condition could no longer be ignored by the legislature. In that year it created a Commission on Higher Education of Negroes and charged it with conducting a study "of the needs of higher education in Maryland, including Morgan College" and making such recommendations "as may be necessary to provide facilities for the higher education of Negroes in the State of Maryland." At the same time, as a feeble alternative to integration (or even to the development of equal facilities for blacks), the General Assembly established a system of partial scholarships (\$200 each) to be offered to qualified black students to assist their attending out-of-state schools. The study commission was authorized to administer the scholarship program.<sup>48</sup>

In a letter dated 1 January 1936 Commissioner Carl Murphy requested from the Board of Public Works an additional \$6,000 in order to complete the study in time for the 1937 session of the legislature. The board rejected his request.<sup>49</sup> Two months earlier it had also rejected a plea from Judge Morris Soper, also a commissioner, to work out an acceptable solution to the problem. Judge Soper noted that the state was then a defendant in a suit pending in the Court of Appeals involving the University of Maryland Law School, an action brought by a young black attorney named Thurgood Marshall on behalf of a black student who had been denied admission to the school solely on the ground of his race.<sup>50</sup>

The board was guided by the advice of an assistant attorney general—one William Henderson, later to become associate judge and then chief judge of the Court of Appeals. Notwithstanding that the state had lost its case before the Baltimore City Court, which had ordered it to admit the plaintiff to the Law School, Henderson believed that the state would prevail in the Court of Appeals and ultimately in the Supreme Court. He advised the board to await the anticipated favorable decisions before even embarking on the mandated survey of education for blacks in the state.<sup>51</sup>

The wait was short lived, and the result was not what Henderson expected. On 15 January 1936 the Court of Appeals unanimously affirmed the lower court order and directed the university to admit the plaintiff-applicant.<sup>52</sup> The legislative reaction to this was to expand the scholarship program in order to provide a more equal resource for black students (and thus continue their exclusion from the university) and ultimately to authorize the acquisition of Morgan College as a state college for blacks.

48. Acts of 1935, ch. 577. A total of \$6,000—\$3,000 for fiscal year 1936 and a like amount for fiscal year 1937—was appropriated in the 1935 budget bill to carry out the study. The legislature also appropriated \$10,000 for fiscal year 1936 and a like amount for fiscal year 1937 for the scholarship program. See Acts of 1935, ch. 92. At the rate of \$200 each, those amounts would fund fifty scholarships. To be eligible the candidate had to "maintain a satisfactory standard in deportment, scholarship and health after the award is made, and must meet all additional charges beyond the amount of the scholarship to enable him to pursue his studies." Acts of 1935, ch. 577, sec. 2.

49. BPW Minutes, 8 January 1936, 4:229-30. Acts of 1935, ch. 577 directed that the study be completed by 1 January 1935. That date was obviously a typographical error, inasmuch as the law did not take effect until 1 June 1935, and appropriations were made for fiscal years 1936 and 1937. The intention may have been for the report to be completed by 1 January 1938, which would explain Commissioner Murphy's request that the commission be allowed to complete its work by January 1937.

50. BPW Minutes, 5 November 1935, 4:182-83.

51. *Ibid.*

52. *University v. Murray*, 169 Md. 478 (1936).