Howard University School of Law has never had the luxury of being an average law school. Since it was founded in the 19th century, many of the school’s deans, professors, alumni, and students have volunteered to serve on the front lines of ongoing civil rights struggles in America.

As a result, the law school has always had dual goals. The primary one was, and is, to train mostly black, but also Hispanic, Native American, Asian, and white students in research fundamentals; steep them in legal history; teach them how to understand and use ethics and professional standards; and finally, to ensure they are ready to pass the bar.

Secondarily, throughout much of its existence Howard has also served as an incubator for attorneys and legal scholars dedicated to attacking all aspects of de facto and later de jure racial discrimination and segregation and their legacies.

The law school’s interim dean, Patricia M. Worthy (J.D. ’69), says that “the law school teaches students to be leaders who are committed to helping African Americans and other disadvantaged people enjoy the full rights of citizenship, ensuring equal protection for all, and reminding our nation of its responsibility to fulfill the promises of our Constitution.”

Howard University School of Law was founded in 1869—four years after the Civil War’s end, and two years after the Supreme Court overruled the Dred Scott decision. Since then, the law school has been a leader in the struggle for African American freedom. Its graduates have played key roles in some of the most important civil rights cases in history, including Brown v. Board of Education, which overturned the “separate but equal” doctrine and paved the way for desegregation.

Overturning the Court

by Frank McCoy

Striking blows for African American freedoms is a Howard University School of Law tradition.
Despite these victories, Marshall knew the black struggle for civil and economic rights was ongoing. As associate justice, he once advised law students, “Don’t stop fighting. Use Howard Law School as a stepping stone...a driving spirit in the battle for equality. Don’t slow down. If you do, they’ll run you over.”

Professor Julian R. Dugas, who was of counsel in Bolling v. Sharpe, a companion case to Brown in 1954, recalls that Marshall “was smart, articulate, and handsome, which met all the prerequisites of making a good impression on the court.”

For many though, Charles Hamilton Houston, the first black editor of the Harvard Law Review and dean of Howard’s law school (1930-1935) is “the man who killed Jim Crow.” Although Houston died in 1950, four years before Brown v. Board of Education was decided, he knew the Supreme Court well. He argued his most prominent case, Brown v. Board of Education, which successfully challenged segregation in public schools. Houston won an overwhelming majority of the cases he argued before the U.S. Supreme Court.
Clockwise from top left: Howard law professors William H. Hastie, Charles Hamilton Houston, George E.C. Hayes. Professor Spottswood Bolling III (far right) standing next to law school dean George Johnson.

In 1935, he also became the NAACP’s first full-time paid special counsel, a position Marshall, his protégé, later took over. It was there that he and others began to devise an incremental legal campaign to dismantle segregation. The idea was to create successful precedents based on proving the inequality of “separate but equal” education, first at the graduate and professional school level, then in elementary and high schools. The end of this process was Brown v. Board of Education.

Hastie was equally calculating in giving advice to students, once telling prospective graduates that, “A lawyer is either a social engineer or he is a parasite on society.”

William H. Hastie, like Houston, was a native Washingtonian, an Amherst College graduate and a former Harvard Law Review editor. He was also a great litigator, having appeared before the Supreme Court in teacher salary equalization, voting rights, and transportation cases. From 1937 through 1939, while dean of Howard’s law school, Hastie—who would become the first black federal judge in the United States—mobilized the school’s talent to serve at the appellate level.

Historian Michael R. Winston says: “Of all the brilliant activist professors at the Howard law school in the battle against segregation, Hastie was one of the most versatile and successful.”

Making the case
When individuals are engaged in a great quest, they may agree on the specific goal, but disagree on the tactics and tools needed to complete it. Looking back 50 years, the fact that Brown v. Board of Education comprised five related legal cases, not just one, is often overlooked. But each case had arguments that hammered at the wall of segregation in different ways.

The first four cases, Brown v. Board of Education (Kansas), Briggs v. Elliot (South Carolina), Davis v. County School Board of Prince Edward County (Virginia), and Gebhart v. Belton (Delaware), hinged on the argument that segregation in those states deprived African Americans of equal protection of the laws under the Fourteenth Amendment. When the Supreme Court overturned Plessy v. Ferguson and the “separate but equal” doctrine, finding that it had no place in public education, its ruling declared segregation in public education unconstitutional.

Unfortunately, the battle to actually desegregate the nation’s school systems continues today.

The companion case to Brown, Bolling v. Sharpe, was similar, but with a subtle difference. Since the District of Columbia is not a state, but a federal jurisdiction, the legal team could not say that public school segregation was a violation of the Fourteenth Amendment. Instead, it said that the District’s segregated schools denied blacks the due process of law guaranteed by the Fifth Amendment to the Constitution.

To James M. Nabrit, Jr., the Howard law professor who argued the case before the Supreme Court, the distinction was paramount. On the incremental victory path that Thurgood Marshall and Charles Houston traveled, contesting Brown v. Board of Education was seen as merely a step toward eventually overcoming Plessy v. Ferguson. In fact, prior to the Brown decision, Dugas recalls that the team’s mood was pessimistic. There was fear among some of the members that if the high court sustained Plessy, then segregation might be further entrenched.

“If they thought the foundation was being laid for a victory later,” he says.

Nabrit didn’t agree. He refused to argue that D.C.’s segregated schools were unconstitutional due to their inequality, but instead thundered that American apartheid itself was unconstitutional. It was the type of frontal assault on segregation that Nabrit, who witnessed a lynching as a boy, relished.

The Morehouse graduate, who was first in his Northwestern University Law School class in 1927, had been preparing to destroy segregation for a decade before he joined the Howard’s law school faculty in 1936. Prior to moving to Washington, D.C., the former partner in a Houston, Texas firm had practiced all types of law, but specialized in electoral issues affecting blacks. In 1939, in Laney Wilson, whom he won before the Supreme Court, Nabrit overturned Oklahoma’s “grandfather clause” that prevented blacks from voting.
Two years earlier, the man who would later become dean of the law school (1958-1960) and president of the university (1960-1969), created the nation’s first formal civil rights course. During that time, he also began collecting more than 2,000 cases on the subject—an invaluable library the legal team used to find precedents for the arguments they employed against segregation.

Nabrit should also be remembered for his refusal to back down. In 1954, Marshall was first in their graduating class and Hill was second. He retired from his law practice at the age of 91. In 1951, Hill filed Davis v. County School Board of Prince Edward County on behalf of black students at a dilapidated high school. It later became one of the five Brown v. Board of Education suits.

H is partner, Robinson, was the number one Howard law student in 1939. Current law professor and historian J. Clay Smith says Robinson’s “brilliant legal mind” helped win numerous Supreme Court decisions that gave all Americans the right to buy property where they wanted; to travel equally on public transportation; to enjoy equal access to public education; and to use public recreational facilities.

At one time, Robinson and Hill had legal actions in 75 Virginia school districts. In 1954, the youngest member of the NAACP legal team, Dugas, was 34. Now, 84, he has been affiliated with Howard University in some capacity for 56 years. Since 1964, he has taught trial advocacy there.

Nearly a half century ago, Dugas was of counsel for the D.C. school desegregation case. In a 1954 Legal Times article, he said of that period, “I always liked to think of it as walking in the valley of the giants because all the people we were dealing with were extremely good lawyers and I was just beginning. When the case was tried, I had only been at the bar for three years.”

Dugas, who doesn’t consider himself scholarly, says the legal team expected him to be persistent, orderly, organized, and to do research for them. He adds, “I do think these cases changed the fabric of the nation and the world.”

That doesn’t mean there isn’t more to be done. In a 1998 memorandum, Dugas crafted what he thinks is Howard University School of Law’s continuing mission:

Preparing students for entry into the workplace of today and tomorrow by passing a bar
Taking the lead in finding solutions to the myriad problems facing the black community in its efforts to enjoy the full rights of citizenship and eradicating vestiges of inequality or injustice.
Ensuring that equal protection and opportunity are available for all by never shrinking from reminding the nation to fulfill the promises of the Constitution in deeds and not words.

In a 1950s, the war blacks must win by any legal means necessary is the fight for economic equality.

One amazing revelation gleamed from looking at the Brown legal team is how supportive the Howard University administration was of their efforts to wage an insurrection against American apartheid. During the 1940s and early 1950s, Howard University President M. Dorcas W. Johnson backed these rebels fully despite the fact that Howard depended upon congressional funding from unsympathetic congressmen from the south as well as the north.

The university’s facilities were always at the team’s disposal. Dugas says in the early 1950s, Marshall, Nabrit, Hill, and Robinson regularly used the law school to rehearse oral arguments before the Supreme Court. Howard law faculty, alumni, students, and members of the Washington Bar were invited to critique and to ask questions as if they were the high court justices.

Perhaps not so coincidentally, 50 years later, Howard law school still has gifted legal debaters. Last March law students led by professor E. Christi Cunningham, who teaches legal methods, won the Sutherland Cup, the nation’s oldest national moot court competition, besting teams from Georgetown University, New York Law School, and Vanderbilt University.

A month earlier, another law school team took home the “Best Overall Team” award at the Juvenile Law National Moot Court Competition at Whittier University School of Law in Costa Mesa, California. A two-person Howard team carried away the “Best Oral Advocate” and “First Runner-up Oral Advocate” awards.

Fifty years ago, the Howard School of Law provided the brains, bodies, and books needed to redress legalized discrimination. At the time, the connection had a transforming effect. Nabrit once said, “Our students, who had formerly been just reciting and listening to the professor’s lecture, were now made to start drafting documents, drafting pleadings, and procedures.”

Where else in America could a faculty and students know that their work would be used in such high-level appellate litigation?

**Top:** Law professor and historian J. Clay Smith. **Bottom:** Assistant professor E. Christi Cunningham.