



## Touro Law Review

---

Volume 15 | Number 2

Article 23


---

1999

### 53 Years in the Struggle for Equal Rights: An African-American Jurist's Life in the Law (Equal Justice Under The Law: An Autobiography by Constance Baker Motley)

Lancelot B. Hewitt

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>

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

---

#### Recommended Citation

Hewitt, Lancelot B. (1999) "53 Years in the Struggle for Equal Rights: An African-American Jurist's Life in the Law (Equal Justice Under The Law: An Autobiography by Constance Baker Motley)," *Touro Law Review*. Vol. 15 : No. 2 , Article 23.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol15/iss2/23>

This Book Review is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

53 YEARS IN THE STRUGGLE FOR EQUAL  
RIGHTS: AN AFRICAN-AMERICAN JURIST'S LIFE IN  
THE LAW

*Equal Justice Under Law : An Autobiography By  
Constance Baker Motley*

Lancelot B. Hewitt\*

In *Plessy v. Ferguson*,<sup>1</sup> the plaintiff, Homer Plessy, argued before the United States Supreme Court that a 1890 Louisiana statute requiring railroads to provide “equal but separate accommodations for the white and colored races” was unconstitutional in that it violated the Equal Protection Clause of the Fourteenth Amendment.<sup>2</sup> Plessy argued that the statute branded “colored” people as inferior citizens on the basis of race and that the setting aside of separate railroad cars officially denoted inferiority.<sup>3</sup>

The majority of Justices on the Court disagreed with the plaintiff.<sup>4</sup> The Court held that racial segregation in “separate but equal” public facilities did not violate the Fourteenth

---

\* Lancelot B. Hewitt is an Associate Court Attorney with the Law Department of the New York State Supreme Court, Civil Branch, New York County. He also serves on the Board of Directors of the Metropolitan Black Bar Association.

<sup>1</sup> 163 U.S. 537 (1896).

<sup>2</sup> *Id.* at 540. Plessy, of mixed descent, was charged with violating the Louisiana statute by occupying a vacant seat in an railway coach designated for white persons. *Id.* at 541. See also U.S. CONST. amend. XIV. This amendment provides: “No state shall . . . deny to any person with its jurisdiction the equal protection of the laws.” *Id.*

<sup>3</sup> *Id.* at 541-42.

<sup>4</sup> *Id.* at 544. The Court disagreed with Plessy reasoning that:

Laws permitting, and even requiring their separation in places when they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power.

*Id.*

Amendment.<sup>5</sup> In dicta, the Court stated that “any badge of servitude” complained of by Plessy existed only in the “minds of the Coloreds.”<sup>6</sup> After the *Plessy* decision was rendered, segregation in the United States became entrenched national policy.<sup>7</sup>

Almost sixty years later, in *Brown v. Board of Education of Topeka, Kansas*,<sup>8</sup> Thurgood Marshall and his team of lawyers at the NAACP Legal Defense and Educational Fund (“LDF”) successfully argued that *Plessy* should be overruled, with respect to segregation in public education.<sup>9</sup> It was a stunning legal victory that gave tremendous momentum to a civil rights

---

<sup>5</sup> *Id.* at 550-51.

<sup>6</sup> *Id.* at 551. The Court held that “if the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other’s merits and a voluntary consent of individuals.” *Id.* Moreover, the Court noted that:

legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially the Constitution of the United States cannot put them upon the same plane.

*Id.* at 551-52.

<sup>7</sup> See David Bernstein, *The Supreme Court and “Civil Rights,” 1886-1908*, 100 YALE L.J. 725 (1990) In his article, David Bernstein notes that:

*Plessy* had a significance well beyond its implication for segregation on railroads and other common carriers . . . *Plessy* gave local governments the legal green light to pass all manner of laws regulating the racial politics of private businesses. In the years following *Plessy*, laws segregating everything from hospitals to tent shows to fraternal societies were passed throughout the South.

*Id.* at 740-41.

<sup>8</sup> 347 U.S. 483 (1954).

<sup>9</sup> *Id.* at 494-95. The issue in *Brown* was “does segregation of the children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal education opportunities?” *Id.* at 493. The Court answered this question in the affirmative holding “in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” *Id.* at 495.

movement that was then in an embryonic stage.<sup>10</sup> A key member of that stellar LDF legal team was a young, African-American lawyer named Constance Baker Motley.

Judge Baker Motley was on the frontline for eighteen years during this legal battle for equal justice, as the first African-American woman to litigate civil rights cases in the federal courts in the Deep South. Not surprisingly, Judge Baker Motley would continue to be a “first,” confronting and overcoming race and gender bias throughout her professional life.

Today, the Honorable Constance Baker Motley is a senior judge, and former chief judge, of the United States District Court for the Southern District of New York. Judge Baker Motley has recently published her autobiography entitled: *Equal Justice Under Law: An Autobiography*.<sup>11</sup>

Prior to *Brown*, Judge Baker Motley states, everyone at the National Association for the Advancement of Colored People (“NAACP”) and the LDF was acutely aware of the “momentous significance” any assault on the “separate but equal” doctrine would have on American society. Judge Baker Motley also informs us that a few years before *Brown* several important cases were being litigated around the country that ultimately determined the ripeness of a direct challenge to *Plessy*. A few of those cases were being handled by the LDF.

Judge Baker Motley was born in New Haven, Connecticut in 1921. She was the ninth of twelve children born to Willoughby Alva Baker and Rachel Keziah Huggins, West Indian immigrants from the eastern Caribbean island of Nevis. The judge offers an intriguing and detailed personal history of her family’s life in Nevis, their eventual migration to the United States, and also shares her insights into the economic, social, political, and

---

<sup>10</sup> See, e.g., Howard A. Glickstein, *The Impact of Brown v. Board of Education and its Progeny*, 23 HOW. L.J. 51, 55 (1980) (asserting that *Brown* served as the foundation of our quest for equal justice in the United States); Nathaniel R. Jones, *The Desegregation of Urban Schools Thirty Years after Brown*, 55 U.COLO. L.REV. 515, 553 (1984) (noting that *Brown* “transformed the face and heart of America.”).

<sup>11</sup> See CONSTANCE BAKER MOTLEY, *EQUAL JUSTICE UNDER LAW: AN AUTOBIOGRAPHY* (1998).

religious life in New Haven at a time when immigrants from various islands in the Caribbean increased their numbers yearly.

Judge Baker Motley recalls that at the age of fifteen, she decided to become a lawyer although she received “no encouragement” to pursue this goal.<sup>12</sup> Rejecting the notion that “race or sex”<sup>13</sup> could bar success in life, Judge Baker Motley graduated with honors from New Haven High School in 1939. She attended Fisk University for a semester before transferring to New York University’s Washington Square College.

While at New York University, Judge Baker Motley was elected to the Justinian, the pre-law honor society. She majored in Economics and graduated with honors in 1943. During those years, the judge took a room at the YMCA on 137<sup>th</sup> Street in Manhattan, the “heart of Black Harlem” and the “Black Mecca.”<sup>14</sup> It was an experience the author remembers as broadening her view of the world “dramatically.”<sup>15</sup>

Judge Baker Motley won a scholarship to Columbia Law School. About fifteen women were enrolled at the school when she arrived. The author asserts that these women were much like herself: “determined to become lawyers, notwithstanding the hard-nosed, anti-woman bias prevalent in the profession.”<sup>16</sup> The judge names the late Congresswoman Bella Abzug, New York State Supreme Court Justice Beatrice Shainswit, and Charlotte Smallwood Cook, the first woman elected as a district attorney in New York State, as a few of the women who attended the law school while she was there.

Judge Baker Motley began working at LDF as a law clerk in October, 1945, several months before graduating from Columbia in June, 1946. She worked as counsel on both *Brown v. Board of Education of Topeka Kansas*<sup>17</sup> and *Sweatt v. Painter*.<sup>18</sup>

---

<sup>12</sup> *See id.* at 41.

<sup>13</sup> *Id.* at 42.

<sup>14</sup> *Id.* at 53.

<sup>15</sup> *Id.* at 54.

<sup>16</sup> *Id.* at 56.

<sup>17</sup> 347 U.S. 483 (1954).

<sup>18</sup> 339 U.S. 629 (1950).

One of the first important civil rights cases Judge Baker Motley worked on while at LDF was *Sweatt v. Painter*. In *Sweatt*, the plaintiff, Heman Marion Sweatt, had applied for admission to the University of Texas Law School.<sup>19</sup> Sweatt was denied admission to the school because he was black.<sup>20</sup> Thereafter, he bought a lawsuit to compel his admission.<sup>21</sup> In response to the pending lawsuit, and under *Plessy's* "separate but equal" standard, the university quickly established a separate law school for African-American students; and in this instance, Sweatt was the only student.<sup>22</sup> The University of Texas Law School had 850 students, 16 full time professors, and three part time professors.<sup>23</sup> The "law school for negroes" would have no faculty of its own: rather four faculty of the Texas Law School would teach the classes.<sup>24</sup>

Commencing an action in state court, the LDF planned to use expert testimony to demonstrate that this separate law school, situated in the basement of a building in Austin, was not equal, in "any respect," to the "long-established, high-quality law school for whites on the University of Texas campus."<sup>25</sup> Judge Motley reveals that the LDF felt that the case could be "easily" won under the "separate but equal" doctrine, and that a "frontal assault on segregation was unnecessary."<sup>26</sup> More importantly, the reader is told, arguments against segregation in education had yet to be fully developed.

After making its way through the Texas state courts, *Sweatt* reached the United States Supreme Court in 1950. The Court held that the school set up for Sweatt did not in fact offer an education equal to that for white students at the University of Texas Law School. For the first time, the Court actually ordered

---

<sup>19</sup> *Id.* at 631.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 632.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 633.

<sup>25</sup> See MOTLEY, *supra* note 11, at 61.

<sup>26</sup> See *id.* at 63.

the admission of an African-American student to an all white state institution.<sup>27</sup> The Court reasoned that :

In terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the University of Texas Law School is superior . . . . Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.<sup>28</sup>

Judge Baker Motley maintains that the Court's decision in *Sweatt*, along with decisions rendered in *Sipuel v. Board of Regents of the University of Oklahoma*,<sup>29</sup> and *McLauren v. Oklahoma State Regents for Higher Education*,<sup>30</sup> "fired up" the LDF and set the legal stage for an all out attack on segregation per se.<sup>31</sup>

"The graduate and professional school levels having been desegregated, we were prepared to tackle the grammar and high school levels," Judge Constance Baker Motley writes.

This was a major undertaking for the NAACP and the LDF. It represented the premier goal of both organizations-----the end of all legal segregation. All of our financial and manpower resources were to be devoted to it. Other cases would be pursued but education cases were to be given priority."<sup>32</sup>

Judge Constance Baker Motley expresses the view that the Court's ruling in *Brown* "foreshadowed" the end of all public segregation, and that even though the Court failed to expressly

---

<sup>27</sup> *Sweatt*, 339 U.S. at 633.

<sup>28</sup> *Id.* at 634.

<sup>29</sup> 332 U.S. 631 (1948).

<sup>30</sup> 339 U.S. 637 (1950).

<sup>31</sup> See MOTLEY, *supra* note 11, at 65.

<sup>32</sup> See *id.* at 65.

overrule *Plessy*, its “overruling was implicit.”<sup>33</sup> The Judge also offers the opinion that *Brown* “ushered in our greatest period of social upheaval since the Civil War,” as evidenced by the “massive resistance”<sup>34</sup> to the Court’s decision during what she terms “the immediate post-Brown era.”<sup>35</sup> Judge Baker Motley laments the Court’s subsequent May, 1955 decision to implement the holding in the case with “all deliberate speed.”<sup>36</sup> Judge Baker Motley indicates that the Court’s subsequent decision “depressed and befuddled” LDF members and that they all felt the decision would “encourage delay and evasion.”<sup>37</sup>

It is important to note that the work of Judge Baker Motley and LDF at this juncture in American history came at a time when there was no legislation, no expression of Congressional will (e.g. Civil Rights Act of 1964) to address the question of civil rights for African-Americans. LDF pioneered the strategy of bringing claims in federal and state courts around the country with the hope of eventually arguing before the United States Supreme Court.<sup>38</sup> The Constitution and the rule of law, therefore, were the weapons of choice for the struggle for equality.

They persisted despite the raw hostility they often encountered in the mostly Southern towns, cities, and states they traveled to. It was not uncommon to contend with a hostile judiciary as well. By the 1960’s, and the passage of legislation in the area of civil rights, the sight of an African-American lawyer litigating a civil rights case in a federal or state court was no longer a novelty. Although the author does not insist upon it, the members of the LDF must receive much of the credit for laying the foundation for this phenomenon.

In 1961, when James Meredith wrote to the LDF and asked that they assist him in his quest to be admitted to the University of

---

<sup>33</sup> *Id.* at 107.

<sup>34</sup> *Id.* at 108.

<sup>35</sup> *Id.* at 112.

<sup>36</sup> *Id.* at 106.

<sup>37</sup> *Id.* at 111.

<sup>38</sup> See CHARLES HAMILTON HOUSTON, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* (1985).



Mississippi, the author was assigned the case by Thurgood Marshall. The case was initially litigated in Mississippi, and it gave Judge Baker Motley the opportunity to work with famed civil rights activist Medgar Evers, then a newly appointed staff member of the NAACP. Meredith had been denied admission to the university on the grounds that he had failed to supply the registrar at the school with certain "alumni certificates."<sup>39</sup>

On May 30, 1961, the author traveled to Mississippi to commence an action in federal court and to seek a preliminary injunction against the university.<sup>40</sup> After months of delay, the judge in the case denied the preliminary injunction on the grounds that Meredith had failed to demonstrate that the University's denial of his application was due to his race.<sup>41</sup>

On appeal to the Court of Appeals for the Fifth Circuit, the appellate court affirmed the denial of the preliminary injunction on the grounds that the record was not complete and that it was, therefore, "impossible" to determine if there were valid nondiscriminatory grounds for the university's refusal of

---

<sup>39</sup> See MOTLEY, *supra* note 11, at 163.

<sup>40</sup> See Meredith v. Fair, 199 F. Supp. 754 (S.D. Miss. 1961), *aff'd*, 298 F.2d 696 (5th Cir. 1962).

<sup>41</sup> *Id.* at 757. The court reasoned:

The Registrar swore emphatically and unequivocally that the race of plaintiff or his color had nothing in the world to do with the action of the Registrar in denying his application. An examination of the entire testimony of the Registrar shows conclusively that he gave no consideration whatsoever to the race or the color of the plaintiff when he denied the application for admission and the Registrar is corroborated by other circumstances and witnesses in the case to this effect. Careful consideration was given to the application and in the honest judgment of the Registrar he did not meet the requirements required of all students at the University. This testimony is undisputed and the testimony of the Registrar was not unreasonable, but on the contrary was given openly and fairly; and in addition to his testimony, of course there is the presumption of law that an official will perform his duties honestly.

*Id.* at 757-58.

Meredith's application.<sup>42</sup> The case was sent back to the lower court for a full trial on the merits.<sup>43</sup>

The trial of the case began on January 16, 1962. On February 3, 1962, the case was dismissed. The judge held that the evidence was "overwhelming" that Meredith had not been denied admission because of race.<sup>44</sup> The judge noted that the university had been segregated by custom before the United States Supreme Court's decision in *Brown* and that "such segregation had been legal under *Plessy*." The judge ruled, however, that the plaintiff and LDF had failed to prove that there was a policy of excluding "qualified Blacks."

"Judgment Day in Mississippi,"<sup>45</sup> according to Judge Baker Motley, occurred on June 25, 1962, when the Court of Appeals reversed the trial court's decision that race was not involved in the decision to exclude Meredith from the university, and upheld his right to attend the school.<sup>46</sup> After additional appeals, including to the United States Supreme Court, the arrest of Meredith, rioting, and the eventual intervention of the U.S. Department of Justice, Meredith enrolled in the university and graduated in June, 1963. In Judge Baker Motley's opinion, the *Meredith* case "effectively put an end to massive resistance in the Deep South" to the *Brown* decision.<sup>47</sup>

Judge Baker Motley's entry into the world of New York City politics in 1964 came at the prompting of New York State Senator James L. Watson, "an old friend from NYU."<sup>48</sup> Watson

---

<sup>42</sup> *Meredith v. Fair*, 298 F.2d 696, 701 (5th Cir. 1962).

<sup>43</sup> *Id.* at 703. The court reasoned that Meredith should be given a fair, unfettered, and unharassed opportunity to prove his case. A man should be able to find an education by taking the broad highway. He should not have to take by-roads through the woods and follow winding trails through sharp thickets in constant tension because of pitfalls and traps, and, after years of effort, perhaps attain the threshold of his goal when he is past caring about it.

*Id.* at 703.

<sup>44</sup> *Meredith v. Fair*, 202 F. Supp. 224, 226 (S.D. Miss. 1962).

<sup>45</sup> See MOTLEY, *supra* note 11, at 174.

<sup>46</sup> See *Meredith v. Baker*, 305 F.2d 343 (5th Cir 1962).

<sup>47</sup> See MOTLEY, *supra* note 11, at 187.

<sup>48</sup> See *id.* at 203.

had decided to run for a vacancy in the New York City Civil Court and urged the author to seek election to his senate seat. The judge left the LDF after 18 years, when she won a special election in February 1964 to fill the Watson vacancy.<sup>49</sup>

In February 1965, six weeks into the new senate term, the author was elected by the eight Manhattan City councilmen to fill a vacancy in the office of Manhattan borough president. Her election “stunned” the Black political establishment in Harlem, the author maintains, because they “firmly” believed that anyone who had not come up the political ladder could not receive such a “plum.”<sup>50</sup> At that time, according to the Judge, the Manhattan borough presidency was the highest political post ever held by an African-American in New York City government.

“The Democratic Party’s reign in New York City was still in effect,” states the judge. “The first black borough president was Hulan Jack . . . the second black to hold the office was Edward Dudley. I was the third black to hold the office and the first woman elected president of any borough.”<sup>51</sup> In November 1965, Judge Baker Motley won election to a full four-year term to the office.

Prior to this election, however, United States Senator Robert Kennedy had submitted Judge Motley’s name to the White House for a seat on the federal district court in Manhattan. When Judge Baker Motley was eventually sworn in as a judge in the United States District Court for the Southern District of New York on September 9, 1966, she joined a bench which had twenty-four judges, the largest federal trial court in the country, but no women or minorities. Judge Constance Baker Motley became the first African-American woman to be appointed to that court.

Judge Baker Motley’s autobiography is a compelling story about an African-American lawyer who sought to use the law as

---

<sup>49</sup> So impressive was the author’s tenure with the LDF that when Thurgood Marshall left as head of the legal team in 1961, bound for the United States Court of Appeals, Second Circuit, Judge Baker Motley was one of two finalists “seriously considered” by Marshall as his own replacement. JUAN WILLIAMS, *THURGOOD MARSHALL: AMERICAN REVOLUTIONARY* (1998).

<sup>50</sup> See MOTLEY, *supra* note 11, at 206.

<sup>51</sup> *Id.*

an instrument for social change. Along the way, the author made history and blazed a trail for others to follow. Her book covers a lot of ground and includes her insights with respect to affirmative action and other areas of the law. However, one need not be a lawyer to enjoy reading this book.

*Equal Justice Under the Law: An Autobiography* is a history book about American law and politics during the author's professional life. It is also the personal account of an African-American woman whose courage, intelligence, education and training, took her on a journey that not even she could have predicted. Read it and be inspired!

